

Federal Court



Cour fédérale

**Date: 20161020**

**Docket: T-1361-16**

**Citation: 2016 FC 1181**

**Vancouver, British Columbia, October 20, 2016**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**ALAN QUAN**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Alan Quan's application for a transportation security clearance was refused by a Minister's delegate at Transport Canada, based upon his admitted past involvement in drug trafficking. Mr. Quan submits that the Minister's delegate's decision was unreasonable, as she made findings that were unsupported by the evidence that was before her, and that she further failed to give sufficient consideration to that evidence. Mr. Quan also submits that the reasons provided by the Minister's delegate for refusing his application for a transportation security

clearance were inadequate. Finally, Mr. Quan contends that he was treated unfairly in the application process.

[2] While I appreciate that the Minister's delegate's decision has devastating consequences for Mr. Quan's career in aviation, he has not persuaded me that the decision was unreasonable, nor has he persuaded me that he was denied procedural fairness in the way that his application for a transportation security clearance was handled. Consequently, his application for judicial review will be dismissed.

### **I. Background**

[3] Mr. Quan is now in his mid-20's. In August of 2011, when he was 19 years old, Mr. Quan was driving his mother's car when the car was stopped by the Vancouver police. The car had evidently been flagged by the police as a vehicle that was being used in "Dial-a-Dope" activity. A police search uncovered \$1850 in cash in Mr. Quan's pocket, and a cell phone under his seat. Mr. Quan was also found to be in the company of a person who had recently been charged with drug trafficking, although the charges had been stayed. While no drugs were found in the vehicle, a police dog had "hits" on the driver's seat, gas cap and right headlight areas indicating that drugs had recently been in the vehicle.

[4] Mr. Quan told the police that the cash had been given to him by his parents. However, when police attempted to verify this information, Mr. Quan's mother denied giving him the money.

[5] Both Mr. Quan and his passenger's cell phones rang constantly throughout the traffic stop. Police answered calls on both cell phones, and took several drug orders. Mr. Quan admitted

to the police that he had been taking orders for drugs and that he had been forwarding these orders to someone else to fill, for which he claimed to receive \$50 per evening. No charges were laid by the police against Mr. Quan, although they seized the cash and the cell phones.

[6] In July of 2012, the Vancouver police found several people including Mr. Quan smoking marijuana in front of an elementary school. The police did not lay charges in relation to this incident.

[7] In 2014, Mr. Quan obtained employment as a cargo handler with Menzies Aviation at the Vancouver International Airport. The job required that he be able to enter restricted areas of the airport. To do this, Mr. Quan needed a Restricted Area Identity Card (RAIC). In order to be entitled to a RAIC, a person must first obtain a transportation security clearance from Transport Canada. Consequently, Mr. Quan applied for a transportation security clearance in August of 2014.

[8] During the processing of his application for a security clearance, Transport Canada was provided with an RCMP background check which revealed Mr. Quan's two past encounters with the police. Consequently, Mr. Quan was sent a letter informing him that Transport Canada had been made aware of the two incidents, and that the incidents raised concerns as to his suitability for a transportation security clearance. Mr. Quan was invited to provide information outlining the circumstances surrounding these incidents (as well as any other information that he wished to provide) within 20 days of the date of the letter.

[9] Mr. Quan's response noted that both incidents had occurred several years earlier, and advised that he had since gone back to school to become an Aircraft Maintenance Engineer.

Mr. Quan also stated that he no longer associated with any of the individuals referenced in the police records, and that the past events did not reflect the person that he was now.

[10] In December of 2015, before a decision could be made in relation to his first application for a transportation security clearance, Mr. Quan accepted an offer of employment with WestJet at Edmonton International Airport. This position also required that he obtain a RAIC. Mr. Quan contacted Transport Canada, and he was advised that he would have to make a second application for a transportation security clearance, which he did.

[11] Because of the concerns that had arisen with respect to Mr. Quan's application, a Transportation Security Clearance Program Advisory Body met on April 12, 2016 to discuss his case. The written summary of the Advisory Body's discussions indicates that the Advisory Body made a number of findings related to the adverse information that had been received by Transport Canada with respect to Mr. Quan.

[12] Based on these findings, the Advisory Body recommended that Mr. Quan's application for a transportation security clearance be refused. Mr. Quan's past involvement in the drug trade and his association with a person involved in drug trafficking led the Advisory Body to conclude that he "may be prone or induced to commit an act, or assist or abet any person to commit an act that may unlawfully interfere with civil aviation".

[13] After reviewing Mr. Quan's file, including his submissions and the recommendation of the Advisory Body, a Minister's delegate refused his application for a transportation security clearance. The decision stated that the Minister's delegate had reason to believe, on a balance of

probabilities, that Mr. Quan may be prone or induced to commit an act, or to assist or abet any person to commit an act that may unlawfully interfere with civil aviation.

## **II. Analysis**

[14] Mr. Quan raises three arguments relating to alleged errors in the decision of the Minister's delegate. The parties agree that the substantive conclusions reached by a Minister's delegate in relation to an application for a transportation security clearance are to be reviewed on the reasonableness standard. I agree: *Lorenzen v. Canada (Transport)*, 2014 FC 273 at para. 12, [2014] F.C.J. No. 299, *Brown v. Canada (Attorney General)*, 2014 FC 1081 at para. 41, [2014] F.C.J. No. 1327.

### *A. Findings Unsupported by the Evidence*

[15] Mr. Quan submits that the decision of the Minister's delegate was based upon findings of fact that were not supported by the evidence. Mr. Quan takes particular issue with the finding of the Minister's delegate that he lied about the source of the funds that were found in his possession during the police stop in 2011, and the statement by the Advisory Body that drugs had been found in Mr. Quan's possession during the police stop, when that was clearly not the case.

[16] Insofar as the first issue is concerned, Mr. Quan told the Vancouver police that the \$1850 found on his person during the 2011 police stop had been given to him by his parents. The police subsequently spoke to Mr. Quan's mother, who told them that she had not given the money to her son. This led the Advisory Body to question Mr. Quan's trustworthiness, and the Minister's delegate's decision stated that these events led her to question Mr. Quan's credibility.

[17] Mr. Quan says that there was no evidence before either the Advisory Body or the Minister's delegate that his father had not given him the money. Thus, the Advisory Body and the Minister's delegate both erred in finding that his statement as to the source of the money was untrue.

[18] I do not accept this argument. Applicants for transportation security clearances bear the burden of dispelling reasonable inferences that can be drawn from available information: *Lorenzen*, above at paras. 51-52, *Wu v. Canada (Attorney General)*, 2016 FC 722 at para. 46, [2016] F.C.J. No. 674. It was thus incumbent on Mr. Quan to establish that his father had in fact given him the \$1850 in cash.

[19] Mr. Quan told the police that the money had been given to him by his parents, using the plural. When Mr. Quan's mother denied giving the money to her son, it was reasonable for the Advisory Body and the Minister's delegate to infer that Mr. Quan was not being truthful about the source of the funds, especially as he never suggested in his submissions to Transport Canada that his father had given him the money.

[20] Mr. Quan says that the Advisory Body also erred in finding that the Vancouver police had found drugs in his vehicle during the traffic stop, when the RCMP report clearly states that this was not the case.

[21] The Advisory Body's analysis states that "[t]he applicant was searched and the drugs were found but the police located \$1850 in cash on his person" [my emphasis]. I agree with the respondent that the statement that drugs were found in Mr. Quan's car is clearly a misstatement or typo. Otherwise, the use of the word "but" immediately afterward would not make sense. It is

obvious that the Advisory Body meant to say that drugs were not found during the search of the car, but that the police located \$1850 cash on Mr. Quan's person. Otherwise it would have stated that drugs were found in the car *and* the police located \$1850 cash on Mr. Quan's person.

[22] The more fundamental problem with Mr. Quan's argument is that the reasons given by the Minister's delegate for refusing Mr. Quan's application for a transportation security clearance make it crystal clear that she was aware that no drugs were found during the police search of Mr. Quan's vehicle, as she says precisely that: "I also note that *although no drugs were present in the vehicle*, you were found in possession of \$1850 in cash and claimed that the money was given to you by your parents". [my emphasis]

[23] Mr. Quan has thus failed to persuade me that the Minister's delegate's decision was based upon findings of fact that were not supported by the evidence.

B. *Failure to Give Adequate Consideration to Relevant Matters and the Adequacy of the Minister's Delegate's Reasons*

[24] Mr. Quan also submits that the Minister's delegate failed to give adequate weight to relevant considerations, including the dated nature of Mr. Quan's interactions with the police, his relative youth at the time of the events in question, the lack of gravity of the incidents, his efforts at distancing himself from his prior associates, his diligence in pursuing his education and employment, his candour and his remorse. According to Mr. Quan, his exemplary conduct in recent years should have weighed heavily in the decision-maker's analysis, yet all of the information provided by Mr. Quan in this regard was ignored.

[25] Mr. Quan further submits that the reasons provided by the Minister's delegate for refusing his application for a transportation security clearance were inadequate, and that she

failed to turn her mind to the specifics of Mr. Quan's case, instead "blindly focussing on policy to the exclusion of other relevant factors".

[26] I do not accept these submissions.

[27] Insofar as the sufficiency of the Minister's delegate's reasons are concerned, the Supreme Court of Canada made it clear in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] S.C.J. No. 62 that a decision-maker is not required to refer to every piece of evidence or argument in his or her reasons, nor is the decision-maker required to make an explicit finding on every element that leads to the final conclusion. Decision-makers are, moreover, presumed to have considered all of the evidence before them: *Hassan v. Canada (Minister of Citizenship and Immigration)*, [1992] F.C.J. No. 946, 147 N.R. 317 (F.C.A.).

[28] In this case, the Minister's delegate expressly stated that she had reviewed Mr. Quan's written submissions, but that she was not persuaded that the information that he had provided was sufficient to address her concerns. It is not the role of this Court to re-weigh the evidence that was before the Minister's delegate.

[29] Moreover, reading the Minister's delegate reasons together with the outcome of the case, as I am required to do, it is clear that the refusal of Mr. Quan's transportation security clearance falls comfortably within the range of possible acceptable outcomes in this case.

C. *Was Mr. Quan Treated Unfairly in the Application Process?*

[30] Mr. Quan's final argument is that he was treated unfairly in the application process as he was not put on notice that the Advisory Body was concerned that drugs had been found during



the 2011 police stop. Nor was he aware that there was a concern that he had lied to the police regarding the source of the cash found on his person at that time.

[31] Where an issue of procedural fairness arises, the Court's task is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.

[32] The jurisprudence has held that the level of procedural fairness owed to individuals seeking an initial transportation security clearance is minimal: *Pouliot v. Canada (Transport)*, 2012 FC 347 at para. 9, [2012] F.C.J. No. 427; *Motta v. Canada (Attorney General)* (2000) 180 F.T.R. 292 at para. 13, [2000] F.C.J. No. 27 (T.D.). This is because individuals have no right to a security clearance, and they can thus have no legitimate expectation that they will be issued such a clearance.

[33] The duty of procedural fairness will be satisfied if an applicant for a transportation security clearance is informed of the facts alleged against him and is afforded the opportunity to make representations about those facts and his suitability to receive a security clearance: *Pouliot*, above at para. 11.

[34] In this case, the October 23, 2015 procedural fairness letter sent to Mr. Quan made it clear that Transport Canada was concerned about the source of the cash found on his person during the 2011 police stop, and Mr. Quan's mother's denial that she had given him the money. While the letter does not expressly accuse Mr. Quan of lying, it is obvious that Transport Canada had concerns about his veracity with respect to the source of the funds, and one would have

expected Mr. Quan to tell Transport Canada that the money had come from his father, had this in fact been the case.

[35] Mr. Quan was given the opportunity to respond to the procedural fairness letter. Nowhere in his submissions to Transport Canada did Mr. Quan ever suggest that he had received the \$1850 from his father. Nor did he say this in his affidavit filed in support of this application for judicial review. Although it is true that judicial review is ordinarily to be conducted on the basis of the record that was before the decision-maker whose decision is being reviewed, the record can be supplemented where, as here, it is alleged that there has been a breach of procedural fairness: *Ontario Assn. of Architects v. Assn. of Architectural Technologists of Ontario*, 2002 FCA 218 at para. 30, [2003] 1 F.C. 331.

[36] Consequently, Mr. Quan has not persuaded me that he was treated unfairly in this regard.

[37] This leaves Mr. Quan's argument that he was treated unfairly as he had no way of knowing that the Advisory Body would conclude that drugs had been found during the 2011 police stop, and that he thus had no opportunity to address this issue. However, I have already concluded that the statement in the reasons of the Advisory Body to this effect was the result of a typographical error, and that no such finding was in fact made by the Advisory Body. I have, moreover, concluded that had there been such an error, it was immaterial to the result, as the Minister's delegate was clearly aware that no drugs were found during the search at the time that she made the decision to refuse Mr. Quan's application for a transportation security clearance.

### **III. Conclusion**

[38] As the Federal Court of Appeal observed in *Farwaha v. Canada (Minister of Transport, Infrastructure and Communities)*, 2014 FCA 56, [2014] F.C.J. No. 227, risk assessments “are forward-looking and predictive”, and are not matters of “exactitude and scientific calculation but rather matters of nuance and judgment”: at para. 94. The jurisprudence has further established that it is open to Minister’s delegates to err on the side of caution, by giving priority to public safety over the interests of individuals in pursuing employment in the aviation industry: *Wu*, above at para. 53, *Brown*, above at para. 71.

[39] Mr. Quan has clearly made considerable efforts in recent years to turn his life around, and, as I said at the outset of these reasons, I understand that the decision to refuse his application for a transportation security clearance will have devastating consequences for his dream of a career in aviation. I have nevertheless not been persuaded that the decision to deny him a transportation security clearance because of his past involvement in the drug trade was unreasonable, nor have I been persuaded that he was treated unfairly in the application process. Consequently, Mr. Quan’s application for judicial review is dismissed. In the exercise of my discretion, I make no order as to costs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Anne L. Mactavish"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1361-16

**STYLE OF CAUSE:** ALAN QUAN v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** OCTOBER 19, 2016

**JUDGMENT AND REASONS:** MACTAVISH J.

**DATED:** OCTOBER 20, 2016

**APPEARANCES:**

Alison Latimer FOR THE APPLICANT

Oliver Pulleyblank FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Farris, Vaughan, Willis & Murphy FOR THE APPLICANT  
Barristers and Solicitors  
Vancouver, British Columbia

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Vancouver, British Columbia