

Federal Court



Cour fédérale

Date: 20180208

Docket: T-186-17

Citation: 2018 FC 145

Toronto, Ontario, February 8, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

GUNWANT SODHI

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The present Application challenges a decision of a delegate of the Respondent Minister [Delegate] dated January 9, 2017, rejecting the Applicant's request for relief from the cancellation of his NEXUS card arising from an incident that occurred on August 17, 2016 at the Whirlpool Bridge port-of entry in Niagara-on-the-Lake.

[2] Counsel for the Applicant offers a general description of the following events:

The Applicant is a 65 year old US citizen of Indian origin. On August 8, 2016, his daughter, son-in-law (Vineet Rore), and grandson arrived at JFK airport on a flight from India. The Applicant picked them up from the airport and brought them to his home in Niagara Falls, New York.

On the evening of August 16, 2016, his daughter and her family left for their home in Fort Erie, Ontario.

On August 17, 2016, at about 7:00 am, the Applicant received a phone call from his daughter advising him that they had forgotten Vineet's medication pouch, which included medication to control his diabetes and high blood pressure.

At approximately 9:00 am, the Applicant approached the Canadian border at the Whirlpool Bridge and told the border guard that he needed to rush to Fort Erie to hand over the prescribed medication. The Applicant was sent to secondary inspection, where he was detained for four hours. His son-in-law's medication was seized, and the Applicant's NEXUS card was revoked.

[Emphasis added]

(Applicant's Memorandum of Fact and Law (AMFL) paras. 2 to 6)

[3] The quality of the Delegate's decision-making with respect to the revocation of the NEXUS card is a primary feature of the present Application.

I. The Decision Under Review

[4] The Delegate's decision-making statement is provided in three sections.

[5] The first section under the heading "Decision - Customs Act" begins with these findings:

After considering all of the circumstances, I have decided, under the provisions of section 131 of the *Customs Act*, that there has been a contravention of the *Customs Act* or the Regulations in respect of the goods that were seized.

Under the provisions of section 133, of the *Customs Act*, the seized prescription medication shall be held as forfeit.

[Emphasis added]

[6] Immediately following is the heading “Reasons” and a narrative that reports the Applicant’s first statement at the border to explain his purpose being “to visit your daughter and to return some goods she had forgotten”, and later to also say that “you needed to bring prescription medication to your son-in-law”. A finding is then made as follows:

Notwithstanding your submissions, it was noted in the primary and seizing officer narrative report that you declared bringing goods to your daughter as she had forgotten them during her visit. It was only when during the secondary examination that you stated to the officer that you needed to bring the prescription medication to your son-in-law.

[7] The content of the second section is composed of a Health Canada statement concerning what is required for prescription drugs to be lawfully imported, followed by a *Food and Drug Regulations – C01.045* statement and the following finding:

As you were not the person to whom the prescription medication had been prescribed to, the enforcement action was applied correctly and is maintained.

[8] The third section deals directly with the Applicant’s NEXUS card issue:

Decision - *Presentation of Persons (2003) Regulations*

After considering all of the circumstances, I have decided that the cancellation of your membership in the NEXUS program was justified in accordance with the *Presentation of Persons (2003) Regulations*.

Reasons

The NEXUS program is a joint initiative of the CBSA and the United States Customs and Border Protection (U.S. CBP). Membership in the NEXUS program is a privilege granted travellers. The eligibility requirements for membership in NEXUS are in place to protect the integrity of the program.

One of the terms and conditions of the NEXUS program as set out in paragraph 22(1)(b) of the *Presentation of Persons (2003) Regulations* is that membership may be cancelled if a person has contravened the *Customs Act*.

[Emphasis added]

II. The Arguments

[9] Counsel for the Applicant takes the position that the Officer revoked the NEXUS card on the ground that the Applicant contravened the *Food and Drug Regulations* (AMFL, paras. 14 and 15). In response, Counsel for the Respondent argues as follows:

53. Contrary to the Applicant's submission, the Applicant's contravention of the *Food and Drug Regulations* was not the reason for the NEXUS membership cancellation, but rather it was the contravention of section 7.1 of the *Customs Act*, which is a proper ground to revoke the Applicant's NEXUS card under subsection 22 (1)(b) of the *Presentation of Persons (2003) Regulations*.

[Emphasis added]

(Respondent's Memorandum of Fact and Law)

[10] Section 7.1 reads as follows:

Obligation to provide accurate information

7.1 Any information provided to an officer in the administration or enforcement of this *Act*, the *Customs Tariff* or the *Special Import Measures Act* or under any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, shall be true, accurate and complete.

[Emphasis added]

[11] With respect to a NEXUS card, s. 22(1)(b) of the *Presentation of Persons (2003)*

Regulations reads as follows:

22 (1) The Minister may suspend or cancel an authorization if the person:

(a) no longer meets the requirements for the issuance of the authorization;

(b) has contravened the *Act*, the *Customs Tariff*, the *Export and Import Permits Act* or the *Special Import Measures Act*, or any regulations made under any of those Acts; or

(c) has provided information that was not true, accurate or complete for the purposes of obtaining an authorization.

[12] Since s. 7.1 was not engaged by the Delegate, the process explained by Counsel for the Respondent in paragraph 53 of the argument presented could not take place.

III. The Issue

[13] The question for determination is whether the Delegate's decision is made in reviewable error with respect to the revocation of the NEXUS card. It is important to note that s. 131 is only

a process provision which required the Delegate to make a decision with respect to how to handle the seizure that took place:

131 (1) After the expiration of the thirty days referred to in subsection 130(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide

(a) in the case of goods or a conveyance seized or with respect to which a notice was served under section 124 on the ground that this Act or the regulations were contravened in respect of the goods or the conveyance, whether the Act or the regulations were so contravened;

[Emphasis added]

[14] I find that three reviewable errors exist in the Decision. First, the Delegate purports to revoke the NEXUS card by taking action under s. 131. Section 131 does not provide authority to address the revocation of the NEXUS card. Second, there is no stated connection between the application of s. 131 and the finding made that the Applicant has contravened the *Customs Act*. And third, in the Decision there are no reasons provided to state how the Delegate believes that the Applicant contravened the *Customs Act*.

[15] As a result, I find that the Decision is unreasonable because the revocation of the NEXUS card lacks justification.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside, and the matter is referred back to the Minister for redetermination.

As the successful party, I award costs in favour of the Applicant in the lump sum of \$1,500 payable forthwith.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-186-17

STYLE OF CAUSE: GUNWANT SODHI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: CAMPBELL J.

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