Federal Court  Cour fédérale

Date: 20181030

Docket: IMM-902-17

Citation: 2018 FC 1083

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, October 30, 2018

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

RUDY FERNANDO ALVAREZ VASQUEZ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Alvarez Vasquez is seeking judicial review of the [TRANSLATION] "Report under subsection 44(1) of the *Immigration and Refugee Protection Act*" [the Report] rendered on

October 26, 2016, by an officer [the Officer] of the Canada Border Services Agency [the CBSA] and declaring him inadmissible.

[2] In her Report, the Officer declared Mr. Alvarez Vasquez inadmissible under section 41 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], [TRANSLATION] "based on the fact that, on a balance of probabilities, he is a foreign national who is inadmissible for failing to comply with this Act through an act or omission which contravenes, directly or indirectly, a provision of this Act", in this case for having remained in Canada after the expiry of his work permit.

[3] For the reasons set out below, the Court will dismiss the application for judicial review.

II. Background

[4] Mr. Alvarez Vasquez is a citizen of Guatemala. In April 2016, he was admitted to Canada as a temporary resident and received a work permit valid from April 15 to October 14, 2016.

[5] According to the information appearing on the work permit itself, Mr. Alvarez Vasquez is authorized to work as an agricultural labourer for the company Québec Multiplants Enr., and he is prohibited from working in any employment other than the one mentioned (page 10 of the Certified Tribunal Record).

[6] Without first obtaining a new work permit, Mr. Alvarez Vasquez left his position with the company Québec Multiplants Enr. for another position with Les Progrès inc., owned by Esvin

Trinidad Cordon Paredes. Mr. Alvarez Vasquez does not contest the fact that he remained in Canada after October 14, 2016, the expiry date of his work permit.

[7] On October 26, 2016, Mr. Alvarez Vasquez, still in Canada despite the expiry of his work permit, along with several other temporary foreign workers, was arrested in an operation led by a CBSA enforcement team from the Sherbrooke office. The operation was conducted in cooperation with the Criminal Investigations Division, the CBSA enforcement office in Québec, the Sûreté du Québec and the Royal Canadian Mounted Police.

[8] On the day of their arrest, Mr. Alvarez Vasquez and the other temporary foreign workers were bussed to the CBSA office in Sherbrooke, where they were met with individually. The parties disagree about some of the circumstances surrounding the arrest and the way in which the counsel to whom they were entitled was retained. These aspects will be reviewed in further detail below.

[9] Still on October 26, 2016, the Officer signed the Report for the Minister of Citizenship and Immigration. In her Report, the Officer declared that Mr. Alvarez Vasquez was inadmissible under section 41 of the Act, [TRANSLATION] “based on the fact that, on a balance of probabilities, he is a foreign national who is inadmissible for failing to comply with this Act through an act or omission which contravenes, directly or indirectly, a provision of this Act”.

[10] In the case of Mr. Alvarez Vasquez, the failure to comply with the Act relates to subsection 29(2) of the Act, which requires temporary residents to leave by the end of the period authorized for their stay, which Mr. Alvarez Vasquez did not do.

[11] On March 24, 2017, Prothonotary Morneau ordered that 12 files be consolidated and designated docket IMM-902-17 as the [TRANSLATION] "master file". The other 11 files are also related to temporary foreign workers, each of whom is the subject of a report under subsection 44(1) of the Act and was also found inadmissible under section 41 of the Act. However, their failures to comply relate instead to subsection 30(1) of the Act, as they worked for a company other than the one named on their work permits.

[12] On July 20, 2017, the Court granted leave for the application for judicial review challenging the Officer's Report in the master file and in each of the 11 files joined to it.

[13] The Court also granted leave for judicial review in a 13th file, docket IMM-4650-16, related to the 12 cited above. In that file, an officer prepared a report under subsection 44(1) of the Act and declared Juan Antonio Godoy Enriquez inadmissible for failure to comply with the Act, which the latter did not contest. A Minister's delegate then decided to refer the subsection 44(1) report to the Immigration Division for an admissibility hearing, pursuant to subsection 44(2) of the Act, a decision contested by Mr. Godoy Enriquez. The latter raised the same arguments as those raised in the 12 consolidated files, and all of the files were argued together. Because almost all the files were heard at the same time and the arguments raised by

the parties are identical, the decision in this case will be placed in docket IMM-4650-16 and will apply *mutatis mutandis*.

III. Position of the parties

A. *Applicant's position*

[14] In terms of evidence, each applicant submitted an affidavit. These affidavits were signed in April and May 2017 and were filed in French without a translator's jurat attached. The evidence also includes two affidavits of the applicant's counsel, Ms. Ramirez, as authorized by the Prothonotary under Rule 82 of the *Federal Courts Rules*, SOR/98-106 [the Rules]. Ms. Ramirez's first affidavit was filed in docket IMM-4651-16 and is dated March 7, 2017, while the second affidavit is dated May 1, 2017.

[15] The affidavit of Ms. Ramirez filed on March 7, 2017, is accompanied by (1) a letter from Thomas Mulcair to the Minister of Immigration, Refugees and Citizenship, asking him to use his discretionary power to grant temporary residence permits to the workers; (2) emails exchanged between Thomas Mulcair's office and the Office of the Minister; and (3) six newspaper articles regarding, among other things, the arrest and working conditions of the Guatemalan workers, including an article published in *La Presse* on December 4, 2016, entitled [TRANSLATION] "Mulcair Stands up for Guatemalan Workers", that cites statements by Ms. Ramirez. None of the other affidavits are accompanied by any supporting evidence.

[16] In his memoranda and in the additional submissions requested by the Court, Mr. Alvarez Vasquez did not make any submission regarding the appropriate standard of review. He does argue (1) that the CBSA violated the principles of natural justice and procedural fairness at the time of his arrest, particularly his right to be informed of the reasons for his arrest and to be informed of his right to retain counsel under section 10 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the *Charter*], and his right to remain silent; (2) that the Court has the necessary jurisdiction to consider the validity of the arrest in this judicial review; and (3) that the Officer erred in the preparation of the Report under subsection 44(1) of the Act.

[17] At the hearing, the applicant confirmed that he was withdrawing his argument regarding his right to silence.

[18] In connection with the alleged violation of his right to counsel guaranteed by paragraph 10(b) of the *Charter*, Mr. Alvarez Vasquez submits that (a) the CBSA selected a lawyer and imposed its choice on him; (b) he was not given the opportunity to contact the person he believed to be his counsel; (c) he was not given access to counsel *without delay* (*R v Suberu*, 2009 SCC 33 at para 42), but rather about four hours after his arrest; (d) he had to speak with his lawyer in a group rather than individually; (e) his exchanges with the lawyer were not confidential because an officer remained on the bus and the door of the bus remained open during the exchange; (f) he was placed far from the telephone and had difficulty hearing the interview with the lawyer; (g) the lawyer did not speak Spanish (page 294 of the Applicant’s

Record) and the exchange took place without an interpreter; and (h) the CBSA did not reiterate his right to counsel before examining him.

[19] With respect to the right to be informed of the reasons for his arrest under paragraph 10(a) of the *Charter*, Mr. Alvarez Vasquez essentially argues that he was not informed of the reasons, as he does not understand French and no interpreter was present at the time of the arrest.

[20] With respect to the issue of the Court's jurisdiction to consider the validity of the applicants' arrest in this judicial review, Mr. Alvarez Vasquez submits that the Court may consider the validity of the arrest, relying on sections 2 and 18 of the *Federal Courts Act*, RSC 1985, c F-7, and sections 3, 4, 55, 72 and 138 of the Act. In short, he argues that the arrest is an action or decision made under the Act, that it must be consistent with the *Charter*, and that the enforcement officer making the arrest is a federal board, commission or other tribunal and is therefore subject to the Court's judicial review power. Therefore, Mr. Alvarez Vasquez submits that the Court has the jurisdiction to declare the arrest process invalid or unlawful. Furthermore, in response to a question from the Court, the applicant specified that the Court must decide whether the workers' arrest was valid, as if they had not been arrested, the temporary workers would not have met with the Officer and would not have admitted to him the facts on which her Report is based.

[21] The Court notes in passing that the application for leave for judicial review presented by Mr. Alvarez Vasquez on February 27, 2017, challenges only the Report and that the leave granted by the Court on July 27, 2017, therefore also applies only to the Report.

[22] Therefore, it is clear that a challenge to the arrest of the foreign workers is not an issue before the Court and that it will not consider the validity of this arrest unless it has an impact on the impugned decision (the Report).

[23] With respect to the argument that the Officer erred in drafting her Report, the applicant alleges that the Report is based on [TRANSLATION] "erroneous findings of fact, drawn capriciously from the evidence". However, he does not specify which facts are erroneous (page 296 of the Applicant's Record).

[24] Moreover, Mr. Alvarez Vasquez submits in reply that the Officer's statement to the effect that she had knocked before entering the residence and informed all the workers of the reasons for their arrest and their right to counsel was not credible. He argues that the officers instead broke down the doors of the house to enter and did not even have a warrant.

[25] During the hearing, the applicant tried to raise several arguments that were not included in his written submissions. Among other things, he stated that the Officer and the Minister's delegate had a discretionary power and that they should have exercised it in favour of the temporary workers, who he alleged had been abused by their first employer and defrauded by Mr. Cordon, their second employer. He also raised arguments regarding the absence of

handwritten notes supporting the Officer's affidavit, the procedure followed during an arrest under the Act and the dual role that some officers may be called upon to play.

[26] The respondent objected to the raising of these new arguments, and the Court will address this below.

B. *Defendant's position*

[27] In support of its case, the respondent submitted three affidavits. The first is that of Maryse Breault, a CBSA enforcement officer, dated May 25, 2017, and accompanied by (a) a French-Spanish document submitted to the officers before the arrest; (b) notes taken by Officer Antoine Doyon on the day of the arrest; (c) notes taken by Officer Éric Lacombe on the day of the arrest; (d) an email sent by Clément Rivarol to Maryse Breault confirming that he was outside of the minibus while the applicants were speaking with their counsel; and (e) the Notice of Rights Conferred by the *Vienna Convention* and the right to be represented by counsel at a hearing.

[28] The second is that of Simon Hallé, a CBSA enforcement officer, dated May 25, 2017, and accompanied by (a) the French-Spanish document provided to the officers before the arrest; and (b) the three notices of arrest under section 55 of the Act.

[29] The third is that of Dorothy Niznik, a legal assistant from the Department of Justice's Quebec Regional Office, dated May 25, 2017, and accompanied by (a) emails dated November 9 and 10, 2016; and (b) copies of the foreign workers' work permits.

[30] In docket IMM-4650-16, the respondent submitted the same affidavits of Maryse Breault and Simon Hallé, as well as an affidavit of Louis Lessard, a CBSA enforcement officer and the author of the decision challenged by the applicant in docket IMM-4650-16. The affidavit is dated May 26, 2017, and is accompanied by (a) a copy of the work permit of Mr. Godoy Enriquez; and (b) the referral for a hearing signed by Mr. Lessard.

[31] In his memorandum and additional submissions, the respondent recalls that what is being challenged is the Report. In his memorandum, Mr. Alvarez Vasquez does not contest the facts supporting the Report, namely, the fact that he did not leave Canada at the end of his authorized stay. Nor did the other workers contest the facts underlying each of their reports, namely, that they had worked for an employer other than the one named in their work permits.

[32] Because the judicial review in this case applies to the Report, the respondent submits that the issue is instead, [TRANSLATION] "Did the enforcement officer violate the principles of natural justice or breach procedural fairness in rendering her inadmissibility report under subsection 44(1) of the Act?" The same issue is raised in docket IMM-4650-16 with respect to the Minister's delegate.

[33] In presenting his arguments, the respondent sets out the legislative framework and submits that the standard of review appropriate for questions of natural justice and procedural fairness is correctness (*Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 at para 16 [*Cha*]), while the standard of reasonableness applies to the inadmissibility decision

(*Richter v Canada (Minister of Citizenship and Immigration)*, 2008 FC 806 at para 9; *Finta v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 1127 at para 31).

[34] The respondent objected to the presentation of additional arguments by the applicant at the hearing.

[35] In his memorandum, the respondent begins by stating that the arguments relating to the violation of the right to an interpreter and the right to be informed of the reasons for one's arrest are unfounded, because (a) Mr. Alvarez Vasquez and the other workers signed affidavits drafted in French without a declaration from an interpreter that they were translated orally into Spanish; and (b) in any event, the affidavits of the two officers present during the arrest clearly indicate that the information was given to them in Spanish and that the Officer had used the services of an interpreter, who translated her statements into Spanish by telephone.

[36] The respondent submits, in this regard, that the affidavits of the workers have less probative value than those of the CBSA officers, as the former do not respect Rule 80(2.1) of the Rules and the state agents had no reason to lie (*Pompey v Canada (Citizenship and Immigration)*, 2016 FC 862 at paras 33, 36-39 [*Pompey*]). Moreover, the respondent notes that the officers' affidavits are supported by notes made at the time of the event, while the workers prepared their affidavits more than six months after the events.

[37] With respect to the right to counsel at the time of arrest, the respondent replies that this was respected by the officers and that the workers were informed twice of this right and the fact

that they could contact a lawyer as soon as they arrived at the CBSA office. Furthermore, the respondent notes that the right to counsel of choice is not absolute: the lawyer chosen must be available (*Émond c R*, 2012 QCCA 2090 at paras 8-11). In accordance with the principle that an arrested person must have access to counsel without delay, the officers acted diligently. The Officer tried several times, unsuccessfully, to contact their [TRANSLATION] "representative", Mr. Emmanuel, and spoke with several lawyers before finding Mr. Caza, who speaks Spanish fluently. The workers approved these steps and consented to speak with Mr. Caza as a group. They were able to do this confidentially with no officers present. Moreover, the respondent argues that the Officer had no obligation to reiterate to Mr. Alvarez Vasquez, before the individual interview, his right to counsel.

[38] The respondent argues that the Officer's decision is reasonable because the allegations contained in the decision have been admitted by the applicant. It is uncontested that the applicant contravened the conditions of his work permit.

[39] As additional submissions, the respondent states that (1) the decisions under judicial review are the inadmissibility reports issued under subsection 44(1) of the Act; (2) if the applicants had wished to challenge the validity of their arrest, they should have done so during their detention review before the Immigration Division; (3) the Court may incidentally review the allegations of *Charter* violations at the time of the arrests solely for the purposes of determining whether the applicants' incriminating post-arrest statements should or should not be considered in the analysis of whether the Report was reasonable; and (4) even if the applicants' statements were inadmissible in evidence, this would have no impact on the validity of the

reports under subsections 44(1) and 44(2), since the tribunal record also contains independent evidence, such as the employers' informations and the statements of pay.

IV. Issues

[40] The Court must first decide how to deal with the new arguments that the applicant wished to raise at the hearing and with the applicants' affidavits.

[41] Next, the Court must consider the alleged violations of rights guaranteed by section 10 of the *Charter* and determine whether or not the Officer's decision was reasonable.

V. Analysis

(1) Additional arguments

[42] At the hearing, the applicant wished to raise several new arguments that were addressed in neither his memorandum nor his reply.

[43] The Court notes that the applicant failed to avail himself of the opportunity provided to him in July 2017, when the Court granted leave for judicial review, to present a supplementary memorandum, and that he contented himself with the memoranda and affidavits he had already filed in support of his application for leave for judicial review. He made no attempt to improve his case before the hearing, held one year later, in June 2018.

[44] At the hearing, one of the points raised by the applicant was that the Officer and the Minister's delegate held, under subsections 44(1) and 44(2) of the Act, a discretionary power that they should have exercised in the applicants' favour given the applicants' allegations that they were victims, abused by their first employer and defrauded by their second employer. In response to a question posed by the Court, counsel for the applicant confirmed that the evidence that these allegations were well founded could be found in the above-mentioned newspaper article published on December 4, 2016, after the Officer had signed her Report on October 26, 2016, and entitled [TRANSLATION] "Mulcair Stands up for Guatemalan Workers".

[45] The applicant also raised his concerns at the hearing about the procedure followed in the case of an arrest under the Act and the dual role that some officers may be called upon to play, being involved in both the preparation of the arrest warrants and the arrests themselves. However, in response to the Court's questions, counsel for the applicant confirmed several times that these issues were not related to the present application for judicial review or the impugned Report.

[46] The respondent replied that the Court should not consider the new arguments, as the applicant had never raised them prior to the hearing and the respondent was taken by surprise. In any event, regarding the scope of the discretionary power, the respondent cites the Federal Court of Appeal in *Cha*, which confirmed that an officer and a Minister's delegate have no discretionary power because they are simply on a fact-finding mission (see paragraphs 35 to 37).

[47] The Court agrees with the respondent and will not consider the arguments raised at the last minute. First, according to the applicant's own submissions, most of the arguments have no connection with this application for judicial review, and it is well established in the case law that, unless the situation is exceptional, new arguments not presented in a party's memorandum of fact and law should not be entertained as to do so would prejudice the opposing party and could leave the Court unable to fully assess the merits of the new argument (*Abdulkadir v Canada (Citizenship and Immigration),* 2018 FC 318 at para 81; *Del Mundo v Canada (Citizenship and Immigration)*, 2017 FC 754 at paras 12-14; *Adewole v Canada (Attorney General)*, 2012 FC 41 at para 15; *Mishak v Canada (Minister of Citizenship and Immigration)* (1999), 173 FTR 144 (TD) at para 6).

[48] Therefore, the Court will not consider the new arguments raised by the applicant at the hearing that were not in his memoranda.

(2) Applicants' affidavits

[49] First, the Court will not dismiss the application for judicial review on the basis that the affidavits do not comply with subsection 80(2.1) of the Rules, but it will grant them only a very limited amount of weight.

[50] The Court does note that the affidavit of Mr. Alvarez Vasquez, like those of the others, is written in French and does not include a translator's jurat. Mr. Alvarez Vasquez himself states that he did not understand French at the time of his arrest.

[51] As early as May 2017, the respondent raised this omission in his reply memorandum. In June 2017, the applicant replied by alleging that all of the applicants had taken French courses between the date of their arrest, in October 2016, and the date of signature of their affidavits in April or May 2017, but he filed no affidavit or evidence in support of this allegation. Counsel for the applicants reiterated this allegation at the hearing held in June 2018; however, at no time did she file or attempt to file any supporting evidence, evidence which should, in all likelihood, have been easy to obtain.

[52] Thus, beyond the allegation expressed by counsel for the applicants, the Court has no evidence that the latter took French courses between October 2016 and April 2017 or that they had reached, by the time they had signed their affidavits, the level of knowledge required to understand their substance in French without the benefit of translation. The Court will therefore grant very little weight to the applicants' affidavits (*Zaldana v Canada (Citizenship and Immigration)*, 2013 FC 1156 at para 20; *Kazan v Canada (Citizenship and Immigration)*, 2012 FC 1373 at para 19; *Cubria Juarez v Canada (Citizenship and Immigration)*, 2012 FC 187 at para 26; *Velinova v Canada (Citizenship and Immigration)*, 2008 FC 268 at para 14).

[53] Further, the affidavits from the state representatives, two of whom were present at the time of the arrest, were written on the basis of notes taken at the time of the events. The Court agrees with the position stated in *Pompey* and concludes that, in the circumstances, the officers' affidavits should be accorded greater probative value.

[54] The case will therefore be assessed on the basis of the respondent's version of the facts.

(3) Rights guaranteed by section 10 of the *Charter* at time of arrest

[55] The applicant did not, in his memoranda, specify the connection between the potential *Charter* violations at the time of the applicants' arrest and the validity of the Report that is the subject of this application for judicial review, especially given that the applicant is not contesting his failure to comply with the Act.

[56] In response to questions posed by the Court, the applicant specified that (1) the Court had the necessary jurisdiction to consider the validity of an arrest by a federal officer; (2) the admission of the failure to comply with the Act received by the Officer from the applicant following the illegal arrest could not serve as a basis for her Report; (3) the Officer had no evidence other than the applicant's admission on which to base her Report; and (4) her Report must therefore be set aside.

[57] First, the Court is not dealing with an application for judicial review of the officers' decision to arrest the applicant, and it will therefore consider only those alleged *Charter* violations that are connected to the case before it.

[58] The fact is, as the respondent has pointed out, that even if the Court were to reject the admission made by the applicant to the Officer during the post-arrest interview, that this would have no impact on the reports produced under subsections 44(1) and 44(2) of the Act. The Officer had several other independent pieces of evidence establishing the failure to comply with the Act, including the applicant's presence in Canada despite the expiry of his work permit, the

information of the former employer and the evidence of wages received from the new employer (pages 23 to 26 and 35 to 46 of the tribunal record received in docket IMM-4650-16). Moreover, these are not criminal charges; the applicant himself admitted that the right to remain silent was inapplicable and that, as this was an immigration matter, the applicants were required to answer all of the Officer's questions. Finally, the applicants are not challenging the fact that they failed to comply with the Act by changing employers without authorization or remaining in Canada after the expiry of their permits.

[59] In any case, on the basis of the evidence in the record, the Court cannot conclude that the applicant's rights guaranteed by section 10 of the *Charter* were violated.

[60] For the reasons set out above, the Court gives more weight to the respondent's version. According to the latter's record, at the time of the arrest, the officers took the time to inform the workers at least once in Spanish of the reasons for their arrest, their right to counsel and their right under the *Vienna Convention* to have the Officer inform the consular representative of their arrest. They also informed them that an interpreter would be present at the CBSA office. The Officer had also prepared a document in French and in Spanish, which included these concepts translated into Spanish, a document that had been provided to the officers (page 43 of the Respondent's Record) for their reference. When the workers were gathered in the bus, the Officer repeated this information, translated by an interpreter through the speaker function of a cellular phone. The Officer checked to see whether the applicants had understood what was said.

[61] The arguments regarding the lack of information and the absence of an interpreter are therefore unsupported by the evidence.

[62] The evidence also shows that the applicants were informed of their right to counsel and that they were given access to counsel without delay, given the circumstances.

[63] In this case, the evidence indicates that the officers informed the workers of their right to counsel at the time of the arrest. Although some time did elapse before the workers could communicate with counsel, the officers did not attempt to extract any information before the workers had an opportunity to speak with the lawyer. The Court considers the delay acceptable in light of the circumstances of the operation.

[64] The evidence does not support the allegation that the Officer did not allow the applicants to choose their own counsel. The Officer made two attempts to contact the applicants' immigration counsellor, Emmanuel Guillaume, without success. Next, the Officer tried to find a Spanish-speaking lawyer who would take legal aid cases. After several unsuccessful attempts, she reached Mr. Caza, who agreed to speak with the workers. The evidence also supports the fact that the workers agreed to speak with the lawyer collectively.

[65] Therefore, the evidence does not support a finding that the right to counsel was violated.

(4) The decision is reasonable

[66] An officer who is of the view that a foreign national is inadmissible under section 41 of the Act for failing to comply with the Act may prepare a report under subsection 44(1) of the Act. “An officer’s decision to prepare a report pursuant to subsection 44(1) . . . [is] reviewable on the standard of reasonableness. Where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court will show deference to the immigration officer’s decision and avoid intervening” (*El Kamel v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 730 at para 9 [*El Kamel*]).

[67] In this case, the Court is satisfied that the decision rendered by the Officer is reasonable. In accordance with subsection 29(2) of the Act, temporary residents must leave Canada by the end of the period authorized for their stay, and, in accordance with subsection 30(1) of the Act, may not work unless authorized to do so under the Act and in accordance with the conditions of his work permit. The Officer issued her Report after noting the failure to comply with the Act. Her decision is therefore reasonable.

[68] The Court has noted the applicant’s allegations that he was abused by his first employer and defrauded by his second employer. Unfortunately, despite the sympathy that such allegations engender towards the applicants, this is not the issue to be decided.

[69] The Court also notes that Mr. Alvarez Vasquez and the other workers admit that they did not respect the conditions of their work permits. Although they allege that they believed their status was in the process of being regularized, the fact remains that they did not respect the conditions or expiry date of their work permits. “When a foreign national does not comply with

the conditions imposed by law and regulations, he is subject to an exclusion order . . . . The Court finds it very unfortunate that the applicant hired an immigration consultant who provided him with bad advice, given that the Court was satisfied that the applicant had acted in good faith. However, ignorance of the law and impaired representation alone do not justify the failure to comply with the requirements" (*El Kamel* at para 11).

[70] Accordingly, the Court is satisfied that the Officer's decision to prepare a report pursuant to subsection 44(1) and that of the Minister's delegate to refer the matter to the Immigration Division are reasonable. In light of the evidence in the record, these decisions fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[71] Therefore, I am of the view that these applications for judicial review must be dismissed.

(5) Certified question

[72] The applicant proposed three questions for certification. The Court rejected the first two from the bench because, even according to the submissions of counsel for the applicant, they were neither related to this judicial review, nor were they dispositive of the matter.

[73] The third question proposed reads as follows:

> [TRANSLATION]
>
> In the case of the arrests of the seasonal workers who were victims of fraud and/or abuse by their employer or a third party, should the CBSA officers use their discretionary power not to issue a section 44 report and simply remove the person from Canada so

> that he may not suffer the consequences of an inadmissibility report and may reapply for the program?

[74] The respondent objected to the certification, arguing that not all of the appropriate criteria were met in this case.

[75] For a question to be certified, it must have been raised and dealt with by the court below (*Nguesso v Canada (Citizenship and Immigration)*, 2018 FCA 145 at paras 21-22; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at para 16; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [*Zhang*]; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 32), must be dispositive of the appeal, must transcend the interests of the immediate parties to the litigation and must contemplate issues of broad significance or general importance (*Zhang*). The Court is not satisfied that these criteria are met in this case and will not certify the question.

JUDGMENT in docket IMM-902-17

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

2. The decision is placed in each of the dockets consolidated with master file IMM-902-17.

3. The decision is placed in docket IMM-4650-16 and will apply *mutatis mutandis*.

4. No question is certified.

"Martine St-Louis"
Judge

Certified true translation
This 26th day of November, 2018.

Francie Gow, BCL, LLB

***Immigration and Refugee Protection Act* (SC 2001, c 27)**	***Loi sur l'immigration et la protection des réfugiés* (LC 2001, ch 27)**
Obligation — temporary resident	**Obligation du résident temporaire**
29 (2) A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.	**29 (2)** Le résident temporaire est assujetti aux conditions imposées par les règlements et doit se conformer à la présente loi et avoir quitté le pays à la fin de la période de séjour autorisée. Il ne peut y rentrer que si l'autorisation le prévoit.
Work and study in Canada	**Études et emploi**
30 (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.	**30 (1)** L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.
Non-compliance with Act	**Manquement à la loi**
41 A person is inadmissible for failing to comply with this Act **(a)** in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and **(b)** in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.	**41** S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.
Preparation of report	**Rapport d'interdiction de territoire**
44 (1) An officer who is of the opinion that a permanent resident or a foreign national	**44 (1)** S'il estime que le résident permanent ou

who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

Federal Courts Rules

Affidavit by deponent who does not understand an official language

80 (2.1) Where an affidavit is written in an official language for a deponent who does not understand that official language, the affidavit shall

(a) be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and

(b) contain a jurat in Form 80C.

Règles des Cours fédérales

Affidavit d'une personne ne comprenant pas une langue officielle

80 (2.1) Lorsqu'un affidavit est rédigé dans une des langues officielles pour un déclarant qui ne comprend pas cette langue, l'affidavit doit :

a) être traduit oralement pour le déclarant dans sa langue par un interprète indépendant et compétent qui a prêté le serment, selon la formule 80B, de bien exercer ses fonctions;

b) comporter la formule d'assermentation prévue à la formule 80C.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-902-17
STYLE OF CAUSE:	RUDY FERNANDO ALVAREZ VASQUEZ v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 27 AND 28, 2018
JUDGMENT AND REASONS:	ST-LOUIS J.
DATED:	OCTOBER 30, 2018

APPEARANCES:

Susan Ramirez	FOR THE APPLICANT
Édith Savard Suzon Létourneau	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT