Federal Court Cour fédérale

Date: 20190111

Docket: IMM-1916-18

Citation: 2019 FC 39

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 11, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

SAMIR SLIMANI

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, the Minister of Public Safety and Emergency Preparedness, seeks judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada dated March 14, 2018. In that decision, the IAD granted the respondent, Samir

Slimani, a five-year stay of the removal order made against him, subject to the conditions set out in the stay.

[2] For the reasons that follow, the application for judicial review is dismissed.

II. Background

[3] The respondent is a citizen of Algeria. On July 23, 2004, he became a permanent resident of Canada as a dependent of his father, who was admitted to Canada as a skilled worker. The respondent was 11 years old at the time.

[4] As a teenager, the respondent was convicted of several criminal offences for which he received various sentences under community supervision. As an adult, he continued to amass criminal convictions. For example, on November 5, 2013, the respondent was found guilty of possession of property obtained by crime having a value exceeding $5,000.00, an offence punishable by a maximum term of imprisonment of 10 years under paragraph 355(1)(*a*) of the *Criminal Code*, RSC, 1985, c C-46. The respondent was sentenced to 90 days' imprisonment with two years' probation.

[5] Because of the conviction, a report was prepared under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and issued against the respondent on January 7, 2014. The officer was of the opinion that the respondent was inadmissible on grounds of serious criminality within the meaning of paragraph 36(1)(*a*) of the

IRPA. The report was referred to the Immigration Division [ID] for an admissibility hearing under subsection 44(2) of the IRPA.

[6] On January 24, 2014, the ID determined that the respondent was inadmissible on grounds of serious criminality under paragraph 36(1)(*a*) of the IRPA and made a deportation order under paragraph 45(*d*) of the IRPA. The respondent, who was in custody at the time, was released after the hearing on a $500.00 bond. His release was subject to a number of conditions.

[7] The respondent appealed the ID's decision to the IAD under subsection 63(3) of the IRPA. He did not challenge the validity of his inadmissibility but raised humanitarian and compassionate considerations to seek a stay of the deportation order.

[8] At the hearing before the IAD on July 31, 2017, the applicant submitted, among other things, evidence of the charges brought against the respondent in Ontario in 2016 with regard to offences he had allegedly committed in autumn 2015. The charges concerned hostage taking, procuring, forcible confinement, and obtaining sexual services for consideration.

[9] The applicant was also granted leave to file additional evidence after the hearing regarding charges brought against the respondent in Montréal in August 2017. The respondent was charged with, among other offences, negligent use of a firearm, possession of a prohibited or restricted firearm with ammunition, possession of material for use in the forging of credit cards, possessing or trafficking in forged credit cards, possession of a controlled substance with intent to traffic, and three counts of failing to comply with a condition of an undertaking or a recognizance in relation to the ongoing proceedings in Ontario. Because of the seriousness of the

charges brought against the respondent in 2016 and 2017, which cast doubt on the possibility of rehabilitating him, the applicant asked the IAD to dismiss the appeal.

[10] In a decision dated March 14, 2018, the IAD concluded that the deportation order was valid in law but that there were humanitarian and compassionate considerations to warrant special relief in accordance with subsection 68(1) of the IRPA. The IAD granted the respondent a stay of the removal order for a period of five years. The stay was subject to 18 conditions.

[11] The applicant seeks judicial review of that decision.

III. Analysis

[12] The parties agree that the standard of review applicable to decisions rendered by the IAD under paragraph 67(1)(*c*) of the IRPA is the reasonableness standard.

[13] Where the reasonableness standard applies, the role of the Court is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law". If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility", it is not open to this Court to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 58-59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[14] It is also important to note that the jurisdiction of the IAD on appeal is broad. According to subsection 68(1) of the IRPA, the IAD may stay a removal order if it is satisfied that there are

"sufficient humanitarian and compassionate considerations [to] warrant special relief in light of all the circumstances of the case".

[15] It is recognized that, in exercising this power, the IAD must consider the non-exhaustive factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IADD N°4 (QL) at para 14 [*Ribic*], and adopted by the Supreme Court of Canada in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 40 [*Chieu*], and *Al Sagban v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 4 at para 11. These factors include the seriousness of the offence leading to the removal order, the possibility of rehabilitation, the length of time spent in Canada and the degree of establishment, the support available within the family and the community, the dislocation to the family that the deportation would cause, and the degree of hardship that would be caused to the individual if returned to his or her country of origin (*Khosa* at para 7; *Chieu* at paras 40-41, 90).

[16] Weighing and applying these factors is a highly fact-based and discretionary exercise to which this Court owes a considerable degree of deference. It falls to the IAD, given its expertise in such matters, to assess the evidence presented to it and to determine, in light of the circumstances, what weight it will give to each of the *Ribic* factors (*Khosa* at paras 60, 65, 67, 137; *Chieu* at para 40).

[17] In the case at bar, the IAD found that the positive factors represented by "the possibility, however remote, of the [respondent's] rehabilitation", the dislocation caused to his family by his removal, the support available to him from his family and community, and the hardship likely to result from his deportation outweighed the negative factor represented by the seriousness of

crime that gave rise to the deportation order and the neutral factor represented by his establishment in Canada.

[18] The applicant’s challenge is limited to the assessment of the factor concerning the possibility of rehabilitation and the risk of re-offending. First of all, the applicant argues that the IAD’s finding that the respondent demonstrated a “remote possibility of rehabilitation” contradicts the evidence in the record. The applicant is of the view that this finding is unreasonable, irrational and inconsistent with the IAD’s observation that there was an “escalation of the seriousness of criminal activity in which the [respondent] had previously been engaged. They involve continuing disregard for the laws of Canada and the conditions imposed upon him”. Second, the applicant criticizes the IAD for erring in its assessment of the evidence of outstanding charges and for importing the criminal law principle of the presumption of evidence into an immigration matter. Third, the applicant submits that the IAD disregarded the evidence concerning the failure to comply with conditions, which demonstrated that the respondent was not [TRANSLATION] “a viable candidate for rehabilitation”. Finally, the applicant is of the opinion that the IAD erred in concluding that imposing conditions could counteract the risks of re-offending. According to the applicant, there is no evidence that warranted granting the respondent a stay of removal.

[19] The Court cannot agree with the applicant’s arguments.

[20] The IAD’s assessment of the factor regarding the possibility of rehabilitation is not based on a selective treatment of the evidence or on a flawed understanding of the presumption of innocence. The IAD weighed the evidence in a reasonable manner and applied the relevant

principles before concluding that there was a possibility, however remote, that the respondent could be rehabilitated.

[21] In its assessment of the factor regarding the possibility of rehabilitation, the IAD began by addressing the respondent’s criminal record. It acknowledged that he had amassed numerous convictions when he was a teenager and that the offence giving rise to the removal order had been followed by multiple convictions for offences committed in 2012 and 2013, including for failing to comply with the conditions imposed. However, it found that the respondent’s testimony pointed to the possibility of a successful rehabilitation. On this point, it noted the positive factors that emerged from the respondent’s testimony: (1) he took full responsibility for the bad decisions he had made; (2) his remorse appeared to be genuine; (3) he had participated in workshops at the detention centre, which had allowed him to learn certain skills; (4) he had stopped using drugs and seeing his former girlfriend, who was a bad influence on him; and (5) he promised to respect any new conditions imposed on him since he now had something to lose, his budding career as a rapper.

[22] Despite these positive factors, the IAD went on to note that its analysis of the potential for rehabilitation would be incomplete if it did not take into account the most recent charges against the respondent. It stated that the charges brought in Ontario in 2016 and in Montréal in 2017, as well as the police reports on the circumstances surrounding alleged criminal activities, raised deeply troubling concerns. It found that these charges called into question in stark fashion the possibility of the respondent’s successful rehabilitation, undermined the credibility of his testimony in many respects, and represented “an important escalation of the seriousness of criminal activity in which the [respondent] had previously been engaged. They involve

continuing disregard for the laws of Canada and the conditions imposed upon him arising out of prior criminal infractions, and this in the context of and despite a deportation order hanging over his head”. It acknowledged that these charges raised serious implications in relation to the safety and security of Canadian society and that, had they led to convictions, it would not have been possible to discern a reasonable possibility of rehabilitation success since the positive factors for the respondent would have been insufficient to overcome the negative ones. However, the IAD added that the charges were still pending and that until the respondent was found guilty, he was presumed to be innocent.

[23] Although it acknowledged that the recent charges raised serious doubts as to the possibility of rehabilitating the respondent, the IAD noted that the test was to determine whether or not there was a possibility, even a remote one, of rehabilitation. It found that there was in this case. In coming to this conclusion, it took into account the presumption of innocence, the respondent’s testimony, the criminal charges and the context in which they were brought, according to the detailed police reports describing the circumstances. It added that even though the remote possibility of rehabilitation constituted, at first glance, a positive factor in the respondent’s case, it did not merit substantial weight in light of the recent charges and the potential for the respondent to be convicted of the offences with which he had been charged. This is why it found that it was necessary to impose strict conditions on the respondent to reduce the potential risks of his re-offending before the legal proceedings came to term.

[24] This analysis, taken as a whole, shows that the IAD considered and weighed all the evidence. The seriousness of the recent charges is the precise reason for the IAD characterizing the possibility of rehabilitation as remote and giving little weight to this factor in its broader

assessment of whether there are humanitarian and compassionate considerations warranting special relief from the removal order. Contrary to what the applicant states, the Court sees nothing irrational or inconsistent in this.

[25] Moreover, the Court cannot agree with the applicant's argument that the IAD disregarded the evidence concerning the failure to comply with criminal and immigration conditions. This conclusion simply does not follow from the IAD's decision or from a review of the record. The hearing transcript shows that the respondent was questioned regarding his failures to comply with his undertakings and regarding the imposition of conditions on the requested stay. The IAD's reasons also show that it did indeed consider the failure to comply with conditions. In fact, it first mentioned these breaches when discussing the respondent's criminal past. It then went on to address them when it noted that the respondent had testified regarding the reasons for not complying with all the conditions that had been imposed on him and regarding his undertaking to comply with those that would be imposed on him. Finally, it also referred to these breaches when it stated that the new charges were indicative of a disregard for the conditions imposed on him arising out of prior criminal offences.

[26] It is important to note that the IAD is presumed to have considered all the evidence before it *(Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL) at para 1) and that it is not required to make an explicit finding on each constituent element leading to its final conclusion (*Newfoundland and Labrador Nurses' Union v Newfoundland and-Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[27] As for the measures taken by the IAD to counter the risk of re-offending, the IRPA gives the IAD the jurisdiction and discretion to impose such conditions as it deems necessary to protect Canadian society. In this case, the IAD found that the serious implications of the criminal charges for the security of Canadian society and the possibility that the respondent would be found by the courts to have re-offended required strict conditions to reduce the risk of re-offending, at least until the end of the legal proceedings. Although it was reasonable in the circumstances for the applicant to fear that the respondent would not respect the conditions of the stay, it has not been shown that granting the respondent an initial stay with multiple conditions does not fall within the range of possible, acceptable solutions which are defensible in respect of the facts and law (*Dunsmuir* at para 47). What is more, if it should turn out that the respondent has not complied with the conditions imposed on him, the IAD will be able to cancel his stay under subsection 68(2) of the IRPA, on application or on its own initiative. In addition, under subsection 68(4) of the IRPA, the stay of the removal order will be cancelled by operation of law if the respondent is convicted of another offence referred to in subsection 36(1) of the IRPA.

[28] Finally, contrary to the applicant's arguments, the Court is not persuaded that the IAD imported the presumption of innocence principle into an immigration matter. Its comments on the presumption of innocence must be considered in the context of its entire analysis. Moreover, its treatment of the pending charges is consistent with the principles laid down in *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326 at para 50 [*Sittampalam*]. The IAD considered the pending charges, which had an impact on the weight given to the possibility of rehabilitation factor and on the conditions placed on the stay. In accordance with the *Sittampalam* principle, it was entirely reasonable for the IAD to take into account the fact that the respondent's criminality had not yet been established.

[29] In sum, it was the IAD's role, as a specialized tribunal, to assess the evidence in the record to determine whether the respondent's prospects for rehabilitation, alone or in combination with the other factors established in *Ribic* and *Chieu*, warranted special relief from the removal order (*Khosa* at para 66). On the whole, that is precisely what it did. The IAD considered the relevant *Ribic* factors, weighed the positive, negative and neutral elements, and concluded that there were humanitarian and compassionate considerations warranting special relief in accordance with subsection 68(1) of the IRPA. It is not this Court's place to reassess the evidence and substitute the solution that it deems most appropriate. It is important to bear in mind that that possibility of rehabilitation is but one of the factors that the IAD must consider.

[30] Since the IAD's finding falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47), the application for judicial review is dismissed.

[31] No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

[32] The parties agreed at the hearing that the style of cause needed to be amended to replace the Minister of Citizenship and Immigration with the Minister of Public Safety and Emergency Preparedness.

JUDGMENT in docket IMM-1916-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The style of cause is amended to replace the "Minister of Citizenship and Immigration" with the "Minister of Public Safety and Emergency Preparedness";
3. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

Certified true translation
This 5th day of March, 2019.
Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1916-18
STYLE OF CAUSE:	THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v SAMIR SLIMANI
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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