

Federal Court



Cour fédérale

**Date: 20190523**

**Docket: IMM-1992-18**

**Citation: 2019 FC 543**

**Ottawa, Ontario, May 23, 2019**

**PRESENT: Mr Justice James W. O'Reilly**

**BETWEEN:**

**GAMALIEL RAMIREZ VELASCO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2008, Mr Gamaliel Ramirez Velasco used a forged passport to enter Canada. During the processing of his wife's application to sponsor him, a visa officer found Mr Ramirez to be inadmissible to Canada based on the crime of forgery. To overcome the inadmissibility finding, Mr Ramirez sought a ruling that he had been rehabilitated. In 2018, a delegate of the Minister

concluded that Mr Ramirez was not rehabilitated and, therefore, remained inadmissible to Canada.

[2] Mr Ramirez maintains that the delegate's decision was unreasonable because it failed to address a key question – whether Mr Ramirez was likely to reoffend. In addition, Mr Ramirez submits that the delegate wrongly concluded that Mr Ramirez was not remorseful, and overlooked the fact that he feared for his life in Mexico. Finally, Mr Ramirez contends that the delegate made a factual error about the length of time he had spent in Canada after using the forged passport. Mr Ramirez asks me to quash the delegate's decision and order another delegate to reconsider his application.

[3] I agree with Mr Ramirez that the delegate failed to address the key issue before him – Mr Ramirez's likelihood of committing other offences. Absent that analysis, the delegate's decision was unreasonable and must be overturned. I need not consider the other grounds on which Mr Ramirez relies.

II. Was the delegate's decision unreasonable?

[4] The delegate assessed both positive and negative factors relating to Mr Ramirez's application. On the positive side, Mr Ramirez's marriage was genuine, he had not committed any other crimes, and through his counsel, he had expressed remorse for his offence.

[5] On the negative side, the delegate found that Mr Ramirez had shown a lack of respect for Canadian immigration laws, failed to show remorse during his interview, used various aliases to conceal his identity, and relied on a false identity for many years until the truth was discovered.

[6] The delegate was not satisfied that Mr Ramirez was rehabilitated.

[7] The Minister argues that the delegate's analysis was sufficient because the weighing of mitigating and aggravating factors was, in effect, a means of evaluating Mr Ramirez's propensity to reoffend, as in *Yu v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1280 at para 11. In *Yu*, Justice Alan Diner observed that an acceptable analysis of recidivism requires consideration of the nature of a person's past criminality, the person's conduct in the intervening period, and any indicators that the person's misconduct will recur.

[8] In my view, while the delegate mentioned a number of relevant factors, the delegate did not employ those factors to arrive at a conclusion regarding Mr Ramirez's likelihood of committing further crimes, the essential question before him (*Tahhan v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1279 at para 21). The negative factors mentioned by the delegate could easily point to a conclusion that Mr Ramirez had made a significant, but singular, error in judgment in creating a false identity to enter and remain in Canada. That finding would not necessarily indicate a likelihood of committing more crimes in the future.

[9] In my view, it is insufficient for the delegate simply to balance mitigating and aggravating factors, as one might do, for example, in an application for humanitarian and

compassionate relief. On a rehabilitation application, the delegate must go on to assess what those factors reveal about the person's tendency to commit additional offences. Here, the delegate failed to perform that assessment and, as a result, the delegate's conclusion was unreasonable.

### III. Conclusion and Disposition

[10] The Minister's delegate failed to perform a meaningful assessment of Mr Ramirez's likelihood of committing additional offences. Accordingly, the delegate's conclusion that Mr Ramirez had not shown that he was rehabilitated was unreasonable. Mr Ramirez's application is therefore remitted to another delegate for reconsideration. Neither party proposed a question of general importance to be certified and none is stated.

**JUDGMENT IN IMM-1992-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, and the matter is remitted to another delegate for re-determination. No question of general importance is stated.

"James W. O'Reilly"

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Judge

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

**DOCKET:** IMM-1992-18

**STYLE OF CAUSE:** GAMALIEL RAMIREZ VELASCO v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 6, 2019

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** MAY 23, 2019

**APPEARANCES:**

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