

Federal Court



Cour fédérale

Date: 20201218

Docket: IMM-5888-19

Citation: 2020 FC 1165

Ottawa, Ontario, December 18, 2020

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

OSEP GUZELIAN

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

ORDER AND REASONS

[1] This is an application by the Respondent Minister under s 87 of the *Immigration and Refugee Protection Act* SC 2001, c 27 (*IRPA*). The Minister seeks an Order to protect information that would normally be disclosed to the Applicant in the Certified Tribunal Record (CTR) produced for the underlying judicial review application. That application relates to the refusal of the Applicant's application for permanent residence on humanitarian and compassionate grounds.

[2] The Applicant was informed of the refusal by letter dated September 11, 2019 and his application for leave and for judicial review was filed on October 1, 2019. Leave was granted on March 13, 2020 and the matter was set down for a hearing in June. It did not proceed at that time due to the pandemic. On July 31, 2020 the Respondent requested an extension of time to produce the CTR due to the presence of sensitive information in the file. That request was granted on August 21, 2020.

[3] The CTR was received by the Federal Court Registry in Montreal on September 25, 2020. The Respondent's cover letter indicated that information found on pages 94-98, 1132, 1133, 1147-1149 of the CTR was not disclosed and that a motion to protect that information would be filed. The motion was filed on September 29, 2020 seeking to protect the redacted information on the ground that disclosure would be injurious to national security or endanger the safety of any person. The Respondent's submissions indicated that they do not intend to rely on the redacted information for the purposes of the judicial review.

[4] The Applicant filed his Reply to the Respondent's Motion on October 7, 2020. In his Reply, the Applicant recognized that there are cases in which national security imperatives could justify nondisclosure of sensitive evidence. However, not having had the opportunity to review the redacted materials, he submitted, they may have influenced the Immigration Officer in the underlying decision and could be persuasive to the Court whether or not the Respondent overtly relies upon them. He therefore opposed the motion and, in the alternative, requested the appointment of a Special Advocate.

[5] The Respondent filed the classified affidavit of an Intelligence Officer on November 2, 2020. The Affidavit explains the grounds asserted by the Respondent for seeking protection of the information. Attached as exhibits were the relevant pages of the CTR with the redacted information appearing in highlighted text. The highlights are in different colours associated with the several grounds for seeking protection but did not interfere with reading the information.

[6] On November 17, 2020, I convened a case management conference with counsel for the parties and counsel appearing for the Attorney General of Canada on the s 87 motion. During that conference, I indicated that although I had not made a determination, I was considering the appointment of a Special Advocate under s 87.1 of *IRPA* to address a narrow legal issue. I did not indicate the nature of that issue but described the subject matter as “potentially, arguably relevant.” I also informed counsel that I considered that most of the redactions pertained to non-substantive information which the Court routinely protected on s 87 motions. In conclusion, I indicated that I would contemplate the appointment of a Special Advocate to argue whether the substantive information had any bearing on the motion or the underlying application.

[7] The Court in *Farkondehfall v Canada (Minister of Citizenship & Immigration)*, 2009 FC 1064, held that a number of factors should be weighed in assessing whether considerations of fairness and natural justice require the appointment of a Special Advocate. Relevant considerations include the amount of information that has been disclosed and the extent to which the affected individual has been made aware of the case that they have to meet.

[8] Having considered the matter, heard the Minister's *ex parte* evidence and reviewed the record of the underlying application, the Court is satisfied that the appointment of a Special Advocate is not necessary to protect the interests of the Applicant in the s 87 motion or the underlying application for judicial review.

[9] The Court was informed on December 8, 2020 that the Respondent had inadvertently omitted to include a page which ought to be inserted after page 1132 of the CTR. That page, now numbered 1132a, also contains redacted information in a string of emails between officials.

[10] The Respondent filed a Supplemental Classified Affidavit from the same Intelligence Officer on December 11, 2020 providing an explanation for the redactions in page 1132a. The page was attached as an exhibit in clear text.

[11] The Court conducted a hearing on December 15, 2020 at which it received the sworn testimony of the Intelligence Officer and submissions from counsel for the Attorney General of Canada.

[12] The number of redactions in the 1806-page CTR is minimal and almost all of them are non-substantive. The information, however, would identify or tend to identify employees, contact information, internal procedures, investigative techniques or administrative methodologies. Disclosure of this information could put government employees at risk, hinder their effectiveness and prejudice the ongoing collection of information and intelligence. None of this information would be of assistance to the Applicant in the underlying application and it is of

a nature routinely protected by the Court on s 87 applications: *Dhahbi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 347.

[13] I note that the finding of the National Security Screening Division of the Canada Border Services Agency, based in part on consultations with partners, that it did not have grounds to believe that the applicant is inadmissible is not redacted in the CTR and is relied upon in the Applicant's Memorandum of Fact and Law and his Reply to the Respondent's factum in support of his argument that the decision is unreasonable. That argument can be advanced vigorously at the hearing on the merits of the judicial review application along with the other arguments on procedural and substantive grounds which the Applicant has raised.

[14] In conclusion, I am satisfied that disclosure of the information the Minister seeks to keep confidential would be injurious to Canada's national security or the safety of any person. The Court is therefore required to ensure the information is not disclosed (*Canada (Attorney General) v Soltanizadeh*, 2019 FCA 202 at para 26).

ORDER IN IMM-5888-19

THIS COURT ORDERS that:

1. The Respondent's motion pursuant to section 87 of the *IRPA* is granted.
2. The information redacted from pages 94-98, 1132, 1132a, 1133, 1147-1149 of the CTR shall be protected and shall not be disclosed to the Applicant, his counsel or the public.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5888-19

STYLE OF CAUSE: OSEP GUZELIAN v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: DECEMBER 15, 2020

ORDER AND REASONS: MOSLEY J.

DATED: DECEMBER 18, 2020

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