

Federal Court



Cour fédérale

Date: 20210421

Docket: IMM-2136-20

Citation: 2021 FC 350

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, April 21, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

BENI GILEZA

Applicant

and

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

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Ottawa, Ontario, on April 21, 2021)

[1] Mr. Gileza is a citizen of the Democratic Republic of Congo. He entered Canada at the age of nine and obtained permanent resident status in 2007. In July 2015, he allegedly incited some of his friends to burglarize his neighbours' house, with the objective of collecting a portion of the proceeds from the sale of stolen goods. In May 2016, he pleaded guilty to breaking and

entering with criminal intent in connection with these events. The Immigration Division [ID] found him inadmissible for serious criminality under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, and issued a removal order against him.

[2] Mr. Gileza appealed that decision to the Immigration Appeal Division [IAD] on humanitarian and compassionate grounds. Applying the criteria of *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL), the IAD concluded that the seriousness of the offence and the high risk of Mr. Gileza re-offending warranted dismissing the appeal. With respect to rehabilitation, the IAD noted that Mr. Gileza had pleaded guilty to a variety of offences, both before and after the issuance of the removal order, and that when questioned about some of these offences, he did not deny the events, but did not show any real introspection. The IAD observed a repeated tendency to minimize the incidents in which he is involved and to blame his bad company, his alcohol consumption or the fact that the victims of his actions did not understand his humour. The IAD also noted that Mr. Gileza provided police with false identities on several occasions, even after being warned of the consequences of doing so.

[3] Mr. Gileza is now seeking judicial review of that decision.

[4] He first argues that the IAD erred in its assessment of the seriousness of the offence with which he is charged. In this regard, the IAD relied on a statement made by Mr. Gileza to the police shortly after the incident, according to which he was the instigator of the theft and was to receive a portion of the proceeds. The IAD discounted Mr. Gileza's testimony at the hearing, which was intended to minimize his degree of responsibility, as not credible. Mr. Gileza argues

that the IAD committed an error similar to those found by this Court in *Rajagopal v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 523, and *Canada (Minister of Citizenship and Immigration) v Hua*, 2001 FCT 722.

[5] In this regard, I note that it is not for this Court to reweigh the evidence presented to the IAD. Here, the IAD's reasons for not believing Mr. Gileza are entirely reasonable. In particular, as in *Nashir v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 147, at paragraph 29, the IAD was not required to accept Mr. Gileza's explanation that he pleaded guilty at the suggestion of his counsel. At the hearing before me, Mr. Gileza argued that the lawyer who represented him at the time may not have been aware of the consequences of such a plea on permanent resident status. However, this is pure speculation.

[6] Moreover, in *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751, at paragraph 29, my colleague Justice Nicholas McHaffie conducted an extensive review of the case law and concluded that there is no absolute prohibition against considering information from a police report. Therefore, the IAD did not err in discounting Mr. Gileza's testimony in favour of his statement in the police report. For the same reasons, the IAD did not breach the presumption of innocence by referring to a charge that has not yet resulted in a conviction. In this regard, I note that Mr. Gileza has been convicted of the vast majority of the offences identified by the IAD. At the hearing before me, he was unable to specify which offences had not yet given rise to a conviction at the time of the hearing before the IAD.

[7] Mr. Gileza also argued that because of his chances of rehabilitation, however slim, the IAD should have allowed the appeal or at least stayed the removal and imposed conditions. However, the weighing of the *Ribic* factors and the selection of the appropriate remedy is a matter for the IAD and not for this Court on judicial review. On the facts set out above, I find that the IAD could reasonably conclude that Mr. Gileza's lengthy criminal record is a significant factor against him and that there was no requirement for the IAD to show leniency.

[8] Finally, I emphasize that I have not considered the additional evidence that the Minister has sought to introduce regarding offences that Mr. Gileza allegedly committed after the IAD decision was made. On judicial review, such evidence is normally inadmissible. The IAD's decision is reasonable even without relying on this evidence.

[9] For these reasons, the application for judicial review will be dismissed.

JUDGMENT in IMM-2136-20

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2136-20

STYLE OF CAUSE: BENI GILEZA v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: VIA VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 21, 2021

JUDGMENT AND REASONS: GRAMMOND J.

DATED: APRIL 21, 2021

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