

Federal Court



Cour fédérale

Date: 20210616

Docket: IMM-3443-20

Citation: 2021 FC 615

Ottawa, Ontario, June 16, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SUKHWINDER SINGH

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision by the Canada Border Services Agency (CBSA) declaring cash bonds forfeit pursuant to a breach of a performance bond and an immigration conditions of release bond.

[2] The Applicant is a guarantor for compliance of an immigration conditions of release cash bond to the value of \$5,000 and for a \$15,000 performance bond for the benefit of a third party.

On May 7, 2020, a letter addressed to the Applicant was issued for each bond indicating a contravention of conditions or evidence suggesting violation of such by the third party and requesting submissions within thirty days for reasons in consideration to not realize the bonds. A similar correspondence was previously sent to the third party on June 19, 2019.

[3] In the absence of a response from the Applicant, the CBSA informed by way of letter, one dated July 2 and the other July 9, 2020, that the respective cash bonds were declared forfeited.

[4] This judicial review relates to CBSA's observation of procedural fairness and the reasonability of its conclusions with respect to the reasons provided. Except in respect of the first issue, the applicable standard of review by this Court is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77).

[5] The Applicant argues that the CBSA breached the principles of procedural fairness as the notification letters were not received enabling reasons to be provided prior to the issuance of a decision. Furthermore, the Applicant advances that the reasons provided in the decisions are inadequate as it is unclear what conditions were breached and how – as the third party is now deported – how this may be attributed to the Applicant and whether consideration was given to the principles which guide the exercise of discretion.

[6] From the outset, it is made evident that the procedural fairness letters were communicated and received at the Applicant's stated address found in the CBSA's file, namely on the bond

agreement, additionally correlating with the address used by Canada Revenue Agency. This same address was also used for the correspondence declaring the forfeiture of the bonds, which the Applicant took notice. Both fairness letters were sent via Purolator, with tracking, confirming door delivery three days after postage, with signature upon delivery.

[7] The Court is irresolute as to whether the Applicant's counsel was on file at the requisite time to take receipt of the letters as the sole indication of the presence of counsel is found in a singular written correspondence dated April 30, 2020, that is not addressed to the CBSA, but rather to the Immigration and Refugee Board of Canada, Immigration Division.

[8] Notwithstanding the foregoing, the Court is satisfied that the Applicant was notified of the possible forfeiture of the bonds and that submissions may be made in this regard within thirty days.

[9] However, the content of the fairness letters do not effectively advise the Applicant of the breach of conditions, such that the guarantor may choose to respond without reverting to the CBSA for further inquiry in the prescribed time. Where the letters to the Applicant stipulate that a breach of terms has occurred for failure to present at a date, time and place as required to comply with any obligation imposed under the legislation, including removal, if necessary, and the third party failed to fully cooperate with respect to obtaining travel documents, the fairness letter to the third party indicates the following:

1. [The third party] was arrested for Removal from Canada as he refused to cooperate with removal procedures, specifically: refusal to accept the Direction to Report for Removal; refusal to answer removal related questions; refusal to sign removal related

documents; refusal to allow CBSA to take photographs and fingerprints; and that [the third party] did cause a public disturbance at the Montreal International Airport on June 16, 2019, during removal efforts which resulted in CBSA Escort Officers having to remove him from the airport.

2. [The third party] failed to cooperate with efforts to obtain a travel document, made untrue statements with regards to his efforts to obtain a travel document, and attempted to negatively influence the issuing state's decision to issue a travel document. [The third party] has not provided a travel document to the CBSA, after having been released on conditions to do so on December 3, 2011. CBSA acquired a travel document on its own accord.

[10] Though complete, detailed or extensive disclosure supporting or suggesting a breach of terms is not expected nor required, a minimum of grounding, such as specifics of the breach, is warranted to notify the guarantor and permit the latter where willing to engage in the process as is permitted, without which procedural fairness may be compromised (see *Immigration, Refugees and Citizenship Canada, Enforcement*, ENF 8, 8.19 at pp 33–34).

[11] Where the fairness letters had been addressed to counsel, the Court would have expected inquiries to be made and the fairness issue would have been moot, but this is not the case at present. Rather the Applicant finds himself with fairness letters with the nature of the breach and an invitation for submissions, no more, no less. These are wasted in comparison with the fairness letter that was sent to the third party near a year prior, which contains specifics of the breach.

[12] For these reasons, the Court finds a breach of procedural fairness and the matter should be remitted to allow the Applicant to make, should he choose to do so, submissions on the alleged breach as specified for consideration in the realization of the bonds. It is not appropriate

for the Court to engage on the reasonableness of the reasons at this time as to not usurp the functions of the decision maker.

[13] The application for judicial review is granted.

JUDGMENT in IMM-3443-20

THIS COURT'S JUDGMENT is that the judicial review be granted and that a different decision maker from the CBSA consider the matter anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3443-20

STYLE OF CAUSE: SUKHWINDER SINGH v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 15, 2021

JUDGMENT AND REASONS: SHORE J.

DATED: JUNE 16, 2021

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