Date: 20140322

Docket: IMM-2947-03

Citation: 2004 FC 428

Ottawa, Ontario, March 22, 2004

PRESENT: The Honourable Mr. Justice Blais

BETWEEN:

SHAMEZ POONAWALLA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED REASONS FOR ORDER AND ORDER PURSUANT TO RULE 397(2)

(UPON being satisfied that the Order issued March 8, 2004 contained clerical mistakes and omissions, pursuant to rule 397(2), I decided to correct those mistakes and issue Amended Reasons for Order and Order.)

[1] This is an application for judicial review of the decision by Ms. L. Hill, the Minister's delegate, to refer a report to the Minister recommending an admissibility hearing pursuant to section 44 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA).

[2] On December 5, 2003, Mr. Justice Rouleau of this Court dismissed an application for a stay of a deportation order that was to be executed on December 8, 2003. In his ruling, Justice Rouleau refers to yet another file, IMM-7023-03, this one an application for judicial review of a decision rendered by the Appeal Division of the Immigration and Refugee Board (IRB) dismissing an appeal of the deportation order.

BACKGROUND

[3] The applicant was born in India on January 18, 1980. His parents were divorced in 1981. His father had a drug addiction, and allegedly tried to sell him for drugs when he was three or four years old. At the age of seven, he witnessed his mother burn to death. His maternal uncle, Amin Ismael, a Canadian citizen, went to India, became his legal guardian and brought him back to Canada. Mr. Ismael raised the applicant as his son, but the applicant never became a Canadian citizen.

[4] When the applicant was sixteen, conflicts with his aunt and uncle led him to leave the house. He had difficulty holding a job, and fell into criminal activities with a gang.

[5] He was convicted of possession of stolen goods, driving without insurance or a licence. He became involved in drug trafficking, and was convicted of possession of cocaine for the purposes of trafficking, as well as belonging to a criminal organization. For these last two offences, to which he pled guilty, he was sentenced to 5 years and 6 months in jail.

[6] While serving his sentence in Drumheller, Alberta, a report was made for the purposes of the former Immigration Act, section 27. With the change of legislation that came into effect in 2002, the report is now discretionary under section 44, but the section 27 report can still be used for the purposes of section 44 under Regulation 321 of the new Act. Under the IRPA, report is forwarded to the Minister (or his delegate) who may refer the report to the Immigration Division for an admissibility hearing.

[7] In the applicant's case, the report was referred by the Minister's delegate to the Immigration Division, which ruled that the applicant was inadmissible on the grounds of serious criminality and thus had to be removed. The Appeal Division dismissed the appeal of the deportation order. The deportation order was enforced on December 8, 2003. The applicant was deported from Vancouver to India.

ISSUE

[8] Did the Minister's delegate commit a reviewable error by referring the report to the Minister recommending an admissibility hearing?

ANALYSIS

Preliminary Matters

[9] The respondent submitted that the style of cause should be changed to reflect the fact that it is now the Solicitor General, as head of the CBSA, who would be responsible for matters of inadmissibility; the applicant agrees, therefore pursuant to Order in Council P.C. 2003-2061 of 12 December 2003 and Order in Council P.C. 2003-2063 also dated December 12, 2003, the

style of cause is amended to name the Solicitor General of Canada styled Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness as respondent.

[10] The respondent also raised the issue of mootness, given that the applicant had already been deported. However, subsection 52(2) of the IRPA provides for the possibility of the removal order being set aside by judicial review and the foreign national being entitled to return to Canada at the expense of the Minister. The respondent argued that the applicant did not seek judicial review of the deportation order; since the applicant had been deported, there was no longer a live controversy between the parties.

[11] The fact of the deportation is not in itself an indicator of mootness, as shown by subsection 52(2) of the IRPA. The applicant has sought judicial review of the decision to refer, rather than the decision to remove, no doubt for strategic reasons. The decision by the Immigration Division was no doubt reasonable and sound, and may be unassailable. Judicial review is not precluded because one ground is preferred over another; since leave was granted by this Court for judicial review, since the possibility exists for the applicant to return according to the IRPA, the issue in this judicial review is not moot.

Standard of Review

[12] The applicant argued, on the basis of *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, that the standard of review applicable in this case was reasonableness simpliciter. The respondent Minister contended that it was patent unreasonableness, based on the four factors of the pragmatic and functional approach: "the

presence or absence of a privative clause or statutory right of appeal; the expertise of the tribunal relative to that of the reviewing court on the issue in question; the purposes of the legislation and that provision in particular; and, the nature of the question-law, fact, of mixed law and fact." (*Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, para. 26).

[13] In this case, the issue as to whether the standard is one of reasonableness simpliciter or patent unreasonableness will not be determinative to granting judicial review. According to the evidence, it would seem that the decision to refer was reasonable. As the Supreme Court of Canada has stated many times (*Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247; *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748) the reasonable decision is not necessarily the one that the reviewing court would have reached, but one which is supported by the facts in evidence. In deciding not to stay the deportation, Justice Rouleau wrote that there was no serious issue which could satisfy the first requirement to granting the stay, because the decision was reasonable and the various factors mentioned by the applicant to challenge it were not sufficient to show it to be unreasonable.

[14] I agree that the decision to refer the case was reasonable. The decision is based on the report itself, which emphasizes the gravity of the offence and the length of the sentence. Another decision-maker might have been moved by the letters sent in by the family and decided not to refer the report to the Immigration Division. However, there are certainly reasonable grounds to support the decision to refer. Again, the standard of reasonableness does not imply, according to the jurisprudence of the Supreme Court of Canada, that the reviewing court would necessarily have arrived at the same result, but only that there are sufficient grounds to justify the decision.

Thus, even accepting the standard proposed by the applicant, the decision would withstand the test of reasonableness.

[15] The question is not whether the Minister's delegate properly applied the guidelines or gave enough weight to relevant factors, but whether there is any evidence that Ms. Hill failed to consider the appropriate factors.

[16] There is no evidence that the Minister's delegate made a reviewable error that would justify this Court's intervention.

ORDER

THIS COURT ORDERS that:

[1] The application for judicial review de dismissed.

[2] Counsel for the applicant suggested a serious question:

> Whether the execution of a removal order renders moot a judicial review of a decision to refer a permanent resident to an admissibility hearing?

[3] Counsel for the respondent opposed this question suggesting that mootness is a question of facts and should be addressed on a case by case basis in light of the parameters set by the jurisprudence.

[4] I agree with counsel for the respondent, and I do not believe that a serious question of general importance is involved, therefore, no question will be certified.

"Pierre Blais"
Judge

ANNEX "A"

Legislation Applicable

Immigration and Refugee Protection Regulations, SOR/2002-227	*Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227
321 (1) A report made under section 20 or 27 of the former Act is a report under subsection 44(1) of the *Immigration and Refugee Protection Act.*	**321. (1)** Le rapport établi sous le régime des articles 20 ou 27 de l'ancienne loi est réputé être le rapport visé au paragraphe 44(1) de la *Loi sur l'immigration et la protection des réfugiés.*
(2) For the purpose of subsection (1)	(2) Pour l'application du paragraphe (1) :
…	[…]
(e) inadmissibility on the basis of paragraph 27(1)(d) of the former Act is inadmissibility under the Immigration and Refugee Protection Act on grounds of	e) le fait d'être visé à l'alinéa 27(1)d) de l'ancienne loi est un motif d'interdiction de territoire pour :
(I) serious criminality, if the person was convicted of an offence and a term of imprisonment of more than six months has been imposed or a term of imprisonment of 10 years or more could have been imposed, or	(I) grande criminalité en vertu de la Loi sur l'immigration et la protection des réfugiés si l'intéressé a été déclaré coupable d'une infraction pour laquelle une peine d'emprisonnement de plus de six mois a été infligée ou une peine d'emprisonnement de dix ans ou plus aurait pu être infligée,
…	[…]
(3) A report that was forwarded to a senior immigration officer under the former Act and in respect of which a decision has not been made on the coming into force of this section is a report transmitted to the Minister.	(3) Le rapport transmis à un agent principal sous le régime de l'ancienne loi et au sujet duquel aucune décision n'a été prise à la date d'entrée en vigueur du présent article est réputé être un rapport transmis au ministre.

(4) The causing by a senior immigration officer of an inquiry to be held under the former Act is the referring by the Minister of a report to the Immigration Division under subsection 44(2) of the Immigration and Refugee Protection Act unless that subsection allows the Minister to make a removal order.

(4) Sauf dans le cas où le ministre peut prendre une mesure de renvoi en vertu du paragraphe 44(2) de la Loi sur l'immigration et la protection des réfugiés, le fait pour un agent principal de faire procéder à une enquête sous le régime de l'ancienne loi vaut renvoi de l'affaire à la Section de l'immigration pour enquête en vertu de ce paragraphe.

Immigration Act, R.S.C. 1985, c.I-2, as amended.

Loi sur l'immigration, L.R.C. (1985), ch. I-2, et ses modifications

27. (1) An immigration officer or a peace officer shall forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a permanent resident is a person who . . .

(d) has been convicted of an offence under any Act of Parliament, other than an offence designated as a contravention under the Contraventions Act, for which a term of imprisonment of more than six months has been, or five years or more may be, imposed;

27. (1) L'agent d'immigration ou l'agent de la paix doit faire part au sous-ministre, dans un rapport écrit et circonstancié, de renseignements concernant un résident permanent et indiquant que celui-ci, selon le cas:

(d) a été déclaré coupable d'une infraction prévue par une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions :

(i) soit pour laquelle une peine d'emprisonnement de plus de six mois a été imposée,

(ii) soit qui peut être punissable d'un emprisonnement maximal égal ou supérieur à cinq ans;

Immigration and Refugee Protection Act, S.C. 2001, c. 27.

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of

36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une

an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed; . . .	loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé; [...]
44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	44. (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.
(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, …	(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, […]
45. The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the following decisions:	45. Après avoir procédé à une enquête, la Section de l'immigration rend telle des décisions suivantes :
…	[…]
(d) make the applicable removal order against a … permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.	d) prendre la mesure de renvoi applicable contre [...] le résident permanent sur preuve qu'il est interdit de territoire.

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2947-03
STYLE OF CAUSE:	SHAMEZ POONAWALLA v. MCI
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	MARCH 8, 2004
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DATED:	MARCH 22, 2004

APPEARANCES:

Wendy Bouwman	FOR THE APPLICANT
W. Brad Hardstaff	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Andrew, March Edmonton, AB	FOR THE APPLICANT
Morris Rosenberg Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT