Federal Court  Cour fédérale

Date: 20210826

Docket: IMM-24-21

Citation: 2021 FC 878

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 26, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JOHNATAN FERNANDO MEZA CAMARGO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a December 4, 2020 decision of the Immigration Appeal Division (IAD) in which the IAD confirmed a removal order for serious criminality within the meaning of paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant is a citizen of Colombia and was granted permanent residence in Canada in 2005, after being declared a person in need of protection. In August 2017, the applicant pleaded guilty to break and enter and conspiracy, and was sentenced in March 2018 to intermittent imprisonment and supervised probation including community service hours to be performed. Three additional offences were reported between 2016 and 2017, including two curfew violations and a conviction for threatening to kill police officers.

[3] In July 2019, a removal order was issued against the applicant by the Immigration Division for serious criminality. The IAD dismissed the appeal, including the application to stay the removal order, for insufficient humanitarian and compassionate grounds to obtain special relief.

[4] This judicial review focuses on the reasonableness of the IAD's decision. A "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). Unless there are exceptional circumstances, this Court must not alter findings of fact or reweigh the evidence (*Vavilov*, at paras 125 and 128).

[5] The applicant essentially argues that the IAD gave undue weight to extraneous or irrelevant elements and that it weighed the humanitarian and compassionate considerations unfairly. By way of comparison, he points to the separate treatment of his brother's case, who

was also accused in the main offence, by the same IAD member. In the applicant's submissions, he also seems to allude to the member's bias, but that is all.

[6] A priori, each case must be considered independently on its own facts. The Court will not become involved in an exercise comparing this case with a separate case, that of the applicant's brother, who is not before this Court in this matter. The Court must likewise reject the reference to bias, a serious allegation, as being without foundation or evidence to that effect.

[7] Regarding the applicant's other arguments, it should be noted that the IAD has discretionary authority in respect of humanitarian and compassionate considerations under the IRPA. The IAD is guided by the non-exhaustive factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IADD No 4 (QL), and approved by the Supreme Court of Canada (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at paras 40–41). The weight given to each factor and piece of evidence is left to the discretion of the IAD (*Ambat v Canada (Citizenship and Immigration)*, 2011 FC 292 at para 32; see also a very detailed judgment on important elements to be retained from the judgment, *Zhang v Canada (Citizenship and Immigration)*, 2020 FC 927, with the case law specified in the judgment).

[8] In this case, the IAD first found that the offence giving rise to the removal order is very serious and rehabilitation is weak. In particular, it noted the applicant's carefree attitude in complying with his conditions and his failure to try to fulfil his obligations in a timely manner.

[9] The IAD also considered the admissions of multiple curfew violations, the contradictory statements regarding alcohol consumption, the applicant's lack of seriousness and his financial instability, which constitute the greatest risks for re-offending.

[10] The applicant was also found to have a low degree of establishment in Canada, as apparent from his low level of personal and professional commitment, and given the limited evidence of efforts in this area. The criterion of family in Canada was, however, considered positive, as was community support.

[11] The dislocation that would be caused by removal from Canada, which is not in process, was not considered. That said, the panel did assess the consequences of losing permanent resident status and concluded, in the absence of clear evidence, that the applicant would not suffer significant hardship in that regard.

[12] Similarly, the IAD determined that the best interests of the children directly affected, being the applicant's child and those of his family, was a neutral criterion since the applicant had not demonstrated that the loss of his status would have an impact on those children.

[13] Finally, the IAD found that the applicant had not demonstrated sufficient grounds to justify granting special relief. According to the Court, the applicant had not demonstrated a willingness to take responsibility for himself on an ongoing basis, nor had he recognized the problems that need to be corrected or the significance of the crimes committed.

[14] The Court finds that the decision is reasonable. The applicant challenges the IAD's assessment of each of the above factors in its entirety by offering a nuanced interpretation of his case. The IAD is presumed to have considered all the evidence before it, and its reasons support its conclusions (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCA No 598 (FCA) (QL) at para 1). It was not required to accept the applicant's own assessment of the evidence on file (*Karakaya v Canada (Citizenship and Immigration)*, 2014 FC 777 at para 18).

[15] For these reasons, the Court dismisses the application for judicial review.

JUDGMENT in IMM-24-21

THIS COURT ORDERS that the application for judicial review be dismissed; there is no question of general importance to certify.

"Michel M.J. Shore"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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