Federal Court  Cour fédérale

Date: 20211105

Docket: IMM-2324-20

Citation: 2021 FC 1191

St. John's, Newfoundland and Labrador, November 5, 2021

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ALTIN DHESKALI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Pursuant to s 52(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], if a removal order has been enforced, the subject foreign national shall not return to Canada unless authorized by an officer or in other prescribed circumstances. Pursuant to s 226(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, for the purposes of s 52(1) of the IRPA, a deportation order obliges the foreign national to obtain a written authorization in order to return to Canada at any time after the deportation order was enforced.

[2] The Applicant, Altin Dheskali, seeks judicial review of the April 13, 2020 decision of a Migration Program Manager [Officer] refusing his request to be granted an Authorization to Return to Canada [ARC].

Background

[3] The Applicant is now a citizen of Greece. In 1991, when he was 19 years old he entered Canada as a crew member on a foreign flag vessel and, as an Albanian national, sought refugee status. His claim was denied as was his subsequent application for leave to apply for judicial review of that decision. On February 11, 1992, the Applicant was issued a departure order requiring him to leave Canada by January 1, 1993. When the Applicant failed to do so, the departure order became a deportation order.

[4] Meanwhile, the Applicant married his Canadian girlfriend on April 29, 1993. A spousal sponsorship application for permanent residence was subsequently denied on June 22, 1993. On June 15, 1993, the Applicant was arrested and detained prior to removal from Canada but later escaped from detention. He was re-apprehended and was deported from Canada on July 2, 1993.

[5] On April 28, 2014, the Applicant submitted an application for a work permit in which he did not disclose his immigration history. During an interview in support of that application, the Applicant was asked whether he had previously been to Canada and he responded that he had not. The interviewing officer then advised the Applicant that Canada's records confirmed that he had been previously detained and removed from Canada in 1993. The Applicant was found to be inadmissible for misrepresentation under s 40(1)(a) of the IRPA, and his application was denied.

[6] On March 5, 2020, the Applicant applied for an ARC, pursuant to s. 52(1) of IRPA. The decision denying that application is the subject of the application for judicial review.

Decision Under Review

[7] The Officer's reasons are contained in the decision letter sent to the Applicant. The Global Case Management System [GCMS] notes also comprise a part of the Officer's reasons (*Wang v. Canada (Citizenship and Immigration)*, 2018 FC 368 at para 9; *Gebrewldi v Canada (Citizenship and Immigration)*, 2017 FC 621 at para 29; *Pushparasa v Canada (Citizenship and Immigration)*, 2015 FC 828 at para 15; *Khowaja v Canada (Citizenship and Immigration)*, 2013 FC 823 at para 3). In the GCMS notes, an officer reviewing the ARC application set out the Applicant's prior immigration history. That officer also noted the reason for the Applicant's ARC application, which was to visit his son who is a Greek citizen and is in Canada on a study permit valid to August 2021. The reviewing officer considered the Applicant's establishment in Greece, the lengthy period since the Applicant's deportation order, and the fact that the Applicant did not have a criminal record. The reviewing officer also considered the Applicant's immigration history. The reviewing officer states that the Applicant did not appear to have a compelling reason to visit Canada.

[8] The reviewing officer noted that the Applicant's son had been absent from Greece for 5 months. He was enrolled in a post-secondary program in Canada where, typically, the winter semester ends in April (the following month). Therefore, the separation was unlikely to be lengthy. It was also temporary and voluntary, and the Applicant's son could return to Greece at any time. The reviewing officer noted that the Applicant does not appear to have strong ties to

Greece or Albania. Ownership of his apartment following his divorce from his second spouse was unclear – she and their child reside there but the Applicant does not. The Applicant also appears to be supporting several households financially with a relatively low income, the provenance of his funds was not certain and, based on the documentation provided, he did not appear to be financially well established in Greece or Albania. The reviewing officer concluded that there could be more factors weighing against the Applicant than those in his favour.

[9] In the GCMS notes, the deciding Officer states that they have reviewed the Applicant's file. The Officer set out the test to be met in order to be granted an ARC: that the person does not represent a risk to Canada; will not contravene the laws of Canada including the IRPA; and, there are compelling reasons to consider an ARC. The Officer found that the Applicant's reason for visiting Canada is not of a serious and compelling nature given that his son chose to study in Canada and can return to Greece, or visit his father outside Canada. The Officer acknowledges that the Applicant's removal story is old but found that it is significant as it includes multiple acts of non-respect for Canada's immigration law – including escaping detention. Further, the Applicant's ties to Albania and Greece are not strong. The Officer issued the refusal letter advising that the reasons for which the Applicant requested an ARC do not justify the granting of special relief from the previous removal order and, therefore, his application was refused.

Issue and standard of review

[10] The sole issue is whether the Officer's decision is reasonable. The parties agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23-24).

Analysis

[11] In his written submissions, which were prepared by his prior counsel, the Applicant submits that the considerations that required the Applicant's removal from Canada occurred 27 years ago and do not reasonably justify the Officer's decision to deny the ARC. Further, that visiting a family member in Canada is a compelling reason for the issuance of an ARC, referencing *Manoo v Canada (MCI)*, 2015 FC 396 [*Manoo*], and *Monroy v Canada (MCI)*, 2019 FC 811 [*Monroy*]. The Applicant takes issue with the Officer's finding that his ties in Albania and Greece are not strong and submits that the Officer erred in speculating about who resides in the Applicant's apartment as the most relevant consideration is that the Applicant owns property in Greece, whether or not he lives there himself. Finally, the Applicant asserts that the Officer erred in fact as the Applicant's son's education program is not 5 months in duration. Rather, it began in September 2019 and continues to August 2021. Thus the period of separation is not brief and does not justify the refusal of the ARC.

[12] When appearing before me, the Applicant represented himself. He set out the information largely contained in his January 21, 2020 letter submitted in support of his ARC application. The Applicant emphasized that he was very young when he had first entered Canada and did not fully understand the immigration system. He had understood from his lawyer that he was entitled to remain in Canada while his refused refugee claim was under appeal. Further, he did not receive notice of his removal order – he was working, not hiding – and he was not aware that he was required to leave Canada until, as requested, he attended at an immigration office meeting. At that time, he was informed that because he had failed to leave Canada he was being detained

until his removal. He submits that he later jumped the fence while playing basketball at the detention facility, as he wanted to find his wife. He acknowledges that this was an error in judgment. He submits that upon being returned to Albania he suffered a mental breakdown, having lost everything. Eventually, he returned to Greece with his brother and started a new life. When he was interviewed in 2014 in relation to his work permit application he responded “no” when asked if he had ever been in Canada before because he had never told his new wife that he had been in Canada or of his experiences there. When he later did tell his wife, she was furious because he had kept so much from her and because he had ruined the opportunity for the family. She could not forgive him and they later divorced. The Applicant submits that he has remained very close with his children, who are his life, and that the reason he wants an ARC is so that he can visit his son now and in the future should his son settle in Canada, and visit his daughter should she come to Canada where she has family, including a grandmother. He emphasised that he knew he had made mistakes but that he wanted the Court to know that he is not a bad person; he makes a good living in Greece, can afford all of his needs and is settled there; and, that he seeks an ARC simply to enable him to visit his son.

[13] The Respondent submits that ARCs are highly discretionary decisions, that the Officer considered all of the circumstances presented and the refusal was reasonable (citing *Del Rio v Canada (Citizenship and Immigration)*, 2011 FC 737 at para 10 [*Del Rio*]; *Parra Andujo v Canada (Citizenship and Immigration)*, 2011 FC 731 at para 23). Further, that it is appropriate for the Officer to consider the possibility of the Applicant repeating the behaviour which led to the removal order. And, although the initial removal order was issued 27 years ago, the Applicant had a more recent finding of inadmissibility on grounds of misrepresentation. Nor was

the Officer ambivalent about their conclusion as the Applicant asserts. Finally, the Respondent submits that *Manoo* and *Monroy* are distinguishable. The Officer's decision demonstrates that they considered the relevant factors, and their reasons disclose no reviewable error.

[14] In my view, the Applicant's submissions cannot succeed. ARC decisions are highly discretionary, fact-driven, and are subject to considerable deference (*Dirir v Canada (Citizenship and Immigration)* 2019 FC 1547 at para 24; *Parra Andujo v Canada (Citizenship and Immigration)*, 2011 FC 731 at paras 23, 31; *Umlani v Canada (Citizenship and Immigration)*, 2008 FC 1373 at para 60; *Del Rio* at para 7). An application for an ARC is not a "mini humanitarian and compassionate application", and there is no single approach or mandatory list of factors that must be considered by the officer (*Quintero Pacheco v. Canada (Citizenship and Immigration)*, 2010 FC 347 at para 51; *Akbari v. Canada (Citizenship and Immigration)*, 2006 FC 1421, [2006] F.C.J. No.1773 [*Akbari*] at paras 8, 11). Officers must consider all the circumstances of the case, and the underlying objectives of the IRPA, in particular the rationale underlying s 52(1) (*Akbari* at para 11; *Khakh v. Canada (Citizenship and Immigration)*, 2008 FC 710 at para 26).

[15] The Officer did not err in considering or addressing the Applicant's immigration history. The Applicant escaped from detention, which fact is undisputed, and is significant to the Officer's analysis as it demonstrates a willingness to avoid Canada's immigration laws. The Officer acknowledged that the removal occurred 27 years ago but also noted that more recently, in 2014, the Applicant was found to be inadmissible because he did not disclose his immigration history when applying for a work permit. I note that when interviewed and asked about his

history, the Applicant denied ever previously entering Canada. It was only when the interviewing officer put Canada's records to him that he acknowledged his past immigration history. In his written submissions to this Court, the Applicant states that he did this because he "thought that since over 20 years had passed since he had been there, that no records would exist". I see no error in the Officer's finding. In effect, the Applicant seeks to have the Court afford different weight to this evidence, however, that is not the role of this Court (*Vavilov* at para 125).

[16] As to the compelling reason to visit Canada, while the Applicant's wish to visit his son may be a valid reason for the Applicant to want to come to Canada, the Officer was entitled to consider whether it was important enough to override the other considerations arising from the application. The Officer reasonably considered the length of separation, the fact that it was voluntary, and that the Applicant's son could likely visit the Applicant in a month or two. While the Applicant asserts that the Officer erred in finding the Applicant's son's education program was only 5 months in duration, no such error occurred. The reviewing officer explicitly states that the Applicant's son's study permit is valid to August 31, 2021. The reviewing officer also states that the son is enrolled in a post-secondary program where, typically, the winter semester ends in April, which was the following month. There is no evidence in the record to suggest that that there would not be breaks in between semesters. It was reasonable for the Officer to assume that it would be possible for the son to visit his father, in Greece or elsewhere outside of Canada, during the break.

[17] In any event, even if the Applicant's son's program did last until August 2021, and he elected not to visit his father outside Canada during that period, as the Officer found, the separation was temporary and voluntary.

[18] I agree with the Respondent that *Manoo* and *Monroy* are distinguishable on their facts. In *Manoo*, the applicant had, in Canada, "a [102 year old] sick mother, a sister who had had a stroke, a niece who is in a wheelchair, and a brother who had been in a car accident" (*Manoo* at para 12). There Justice Simpson held that the officer minimized the importance of the Applicant's trip when they said that the "purpose of travel is to visit family" (*Manoo* at para 12). In *Manoo,* the applicant's separation from his family in Canada was much more pressing and permanent than in the matter before me, given the applicant's mother's age and status as Canadian citizen and circumstances of his other relatives.

[19] In *Monroy*, the applicant was 61 years old, had not seen her daughter in 10 years and had never attempted to enter Canada illegally. This can be contrasted to this situation where the Applicant escaped from detention to avoid removal and was later was found to be inadmissible as a result of his misrepresentation of his immigration history. Nor is there any evidence of urgency nor of an overwhelming humanitarian reason why the Applicant must travel to Canada now. Further, the Applicant does not point to a specific error in the Officer's assessment of this factor, only suggesting that the Officer should have found that the Applicant had a compelling reason to visit Canada. In my view, the Officer was not required to make that finding and reasonably declined to do so.

[20] With respect to the Applicant's ties to Greece or Albania, the reviewing officer considered the information that was in the record and, on the positive side, noted that the Applicant has obtained citizenship in Greece, is employed there and had provided a document stating that he has savings there. However, while the Applicant provided a 2009 document to show ownership of an apartment in Greece, the reviewing officer noted that the Applicant's former wife and daughter appear to be living in the apartment and that it was not clear that the Applicant was the sole owner of the property subsequent to his 2017 divorce. I note that the divorce degree indicates that the Applicant is to some extent financially supporting his son and daughter. Further, that in his ARC application form, the Applicant confirms that lives at a different address.

[21] The Officer's point was simply that the evidence did not address ownership of the apartment post divorce. Further, this was not the only aspect of the Applicant's ties to Greece that was considered. The reviewing officer noted that a bank document provided by the Applicant does not show the legal provenance or availability of the funds, that the Applicant has been in his current employment for one year and that he has a relatively low income (CDN$31,858 equivalent) to support his own household and his son and daughter as required by the divorce decree.

[22] Finally, as to the Applicant's various written submissions that the reasons display that the Officer was ambivalent about whether to recommend the issuance of an ARC, there is no merit to this submission. The Applicant appears to be referring to the reviewing officer's GCMS notes entries. Viewed in whole, it is clear that the reviewing officer was attempting to fairly set out the

factors both for and against a recommendation as to the issuance of an ARC, concluding that it appeared to the reviewing officer that there could be more factors weighing against the Applicant than those in his favour. The deciding Officer reviewed the file and unambiguously agreed.

[23] A decision is reasonable if it is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker. Courts are to defer to such decisions (*Vavilov* at para 85). In this matter, the reasons are clear and the highly discretionary decision is justified. The Officer reasonably found that there were no compelling reasons to consider an ARC when weighed against all of the circumstances that necessitated the issuance of the removal order against the Applicant and that the Applicant's immigration history did not support that he would not again contravene Canada's immigration laws if an ARC were granted.

[24] To the extent that the Applicant, when appearing before me, referred to facts not captured in the January 21, 2020 letter he submitted in support of his ARC application or are not otherwise found in the certified tribunal record (no affidavit was filed in support of his application for judicial review), these are not properly before this Court. If the Applicant is entitled to submit a new ARC application, then he can include any new or further facts in support of that application.

JUDGMENT IN IMM-2324-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Altin Dheskali	FOR MR. DHESKALI (ON HIS OWN BEHALF)
David Cranton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice Toronto, Ontario	FOR THE RESPONDENT