Federal Court  Cour fédérale

Date: 20211224

Docket: IMM-6805-20

Citation: 2021 FC 1471

Ottawa, Ontario, December 24, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

JUAN FRANCISCO CANO GRANDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by a Minister's Delegate ("MD") dated December 6, 2020, to issue a departure order pursuant to s. 40.1(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*]. The MD found there were grounds to believe the Applicant was a foreign national who was inadmissible on a final determination that their refugee protection had ceased under s. 108(2) of the *IRPA.*

II. Background

[2] The Applicant is a citizen of Mexico. On June 2, 2006, he was determined to be a Convention refugee by the Refugee Protection Division ("RPD") of the Immigration and Refugee Board ("IRB"). On October 25, 2007, he became a permanent resident of Canada. On April 24, 2012, he applied for Canadian citizenship and was waiting to take his citizenship oath as the final step in his citizenship application process.

[3] On January 20, 2016, the Minister filed an application with the RPD to cease the Applicant's refugee status. The Applicant had voluntarily returned to Mexico in 2008, 2013 and 2014. The Applicant had used his Mexican passport to travel, and renewed his Mexican passport in 2014. On March 30, 2020, the RPD determined that the Applicant had ceased to be a Convention refugee as he had voluntarily reavailed himself of Mexico's protection pursuant to s. 108(1)(a) of the *IRPA*. The Applicant sought leave to judicially review the cessation decision, but the application was dismissed at the leave stage.

[4] On June 29, 2020, an s. 44 report was issued against the Applicant on the ground of inadmissibility under s. 40.1(1) of the *IRPA*.

[5] By letter dated December 1, 2020, the Applicant was notified to attend the MD proceeding on December 16, 2020.

[6] On December 11, 2020, the Applicant submitted a written request and submissions seeking a deferral of the MD's proceeding. On December 16, 2020, the Applicant submitted an amended request to defer his removal or defer the issuance of a departure order.

A. *Decision under Review*

[7] On December 16, 2020, the Applicant attended a MD's proceeding with his current Counsel present. The MD concluded that the Applicant was inadmissible under s. 40.1(1) of the *IRPA* on the ground that he is a foreign national who is inadmissible on a final determination under s. 108(2) that his refugee protection had ceased. After confirming the report was valid, a departure order was issued.

III. Issue

[8] The issue is whether the MD's decision to issue the departure order was unreasonable.

IV. Standard of Review

[9] As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 23 [*Vavilov*], "where a court reviews the merits of an administrative decision … the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness." This is the general presumption, and I am not of the opinion that it is rebutted on the facts of this case.

[10] In conducting reasonableness review, a court is to begin with the principle of judicial restraint and respect for the distinct role of administrative decision-makers (*Vavilov* at para 13). When conducting reasonableness review, the Court does not conduct a *de novo* analysis or attempt to decide the issue itself (*Vavilov* at para 83). Rather, it starts with the reasons of the administrative decision-maker and assesses whether the decision is reasonable in outcome and process, considered in relation to the factual and legal constraints that bear on the decision (*Vavilov* at paras 81, 83, 87, 99).

[11] A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the administrative setting, the record before the decision-maker, and the submissions of the parties (*Vavilov* at paras 81, 85, 91, 94-96, 99, 127-128).

V. Analysis

A. *Prematurity*

[12] The Applicant argues that it was unreasonable for the MD to find that the deferral requests were premature, given that there was no departure order against the Applicant. Here, I briefly note that the Applicant uses the terms "departure order" and "removal order" interchangeably. The order by the MD was in fact a departure order. Thus, I have and will use "departure order" in this decision. Regardless, the Applicant argued this was unreasonable because once the departure order was issued later in the proceedings, the deferral request should have been determined.

[13] I find that it was reasonable for the MD to find the deferral request premature. The MD at the proceeding was assessing the inadmissibility report and removal. Similarly, Justice Gascon dealt with those arguments in a stay application in *Okojie v Canada (Citizenship and Immigration)*, 2019 FC 880 [*Okojie 1*]. In that case, Ms. Okojie sought a stay of her scheduled admissibility hearing until the final determination of an application for leave, as her refugee status was under review by the RPD because of reavailment. A s. 44(1) report was prepared, saying she was inadmissible because of s. 40.1(1), and finding her to be a foreign national who was inadmissible because her refugee status had ceased. She was referred for an MD admissibility hearing pursuant to s. 44(2) of the *IRPA*. The applicant in *Okojie 1* argued that she is not a foreign national because s. 46(1)(c.1) provides for a loss of Permanent Resident ("PR") upon a determination under s. 108(2) when the refugee status ceased for reason in s. 108(1) (a–d). In her case, she argued she had not lost her status because the reavailment occurred prior to December 2012 when the provision came in to force, and the provision is not retroactive or retrospective in application. In her underlying judicial review, she challenged the process because she did not lose her PR status under the operation of s. 46(1)(c.1).

[14] Justice Gascon, in detailed reasons, determined that Ms. Okojie's application for a stay of the admissibility hearing was premature, relying on several cases from this court, and the principles of judicial non-interference and judicial restraint. He found that absent exceptional circumstances, this Court should not interfere with the on-going administrative process until after that process has been completed or until any available, effective remedies under the *IRPA* have been exhausted.

[15] This same principle applies here, as it was not for the MD, in their completion of an s. 44 report, to grant a deferral. As the administrative process runs its course, there would be an

opportunity to request a deferral and judicial intervention once, and only if a removal was actually scheduled.

[16] In the reasons, the MD dealt with counsel's deferral request and mentioned specifically the documents provided by email on December 11, 2020, and previous submission provided before the interview. The MD indicated that the Applicant was not under a departure order and then said: "…if you were issued a departure order to leave Canada, the discretion of a Minister's Delegate is limited and I cannot speculate on how and when a future removal will take place. That is handled by our removals unit."

[17] I find it reasonable that the MD found it premature to consider deferral of removal at the admissibility proceeding. The MD considered all the material and rendered a reasonable decision with sufficient explanation based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law (*Vavilov* at para 85). This conclusion is in line with the reasoning of Justice Gascon in *Okojie 1*, though in a different context. To have entertained the deferral at the time the Applicant wishes would have been an assessment of the timing of a future removal, which is handled by a separate and different department called the Removal Unit. We do not entertain stay motions until the Removal Unit has actually scheduled the removal, as it is seen as being premature, which would seem to mirror the situation here.

B. *IRPA and Jurisdiction of the Officer*

[18] The Applicant's second ground of argument was that it was unreasonable for the decision-maker to state that the *IRPA* did not stipulate that an officer had jurisdictional authority to consider

whether to defer the MD's proceeding until a decision on his Humanitarian and Compassionate ("H&C") application had been made. The Applicant points to a Canada Border Services Agency directive with regard to the resumption of removal operations on November 30, 2020, to support its position that the MD does have this authority. While the directive states that "individuals will be able to avail themselves of the various recourse mechanisms, where applicable under the legislation, such as appeals, judicial reviews, and permanent resident applications on humanitarian & compassionate grounds…, as well as deferral requests," it does not state that MDs have the authority to defer inadmissibility proceedings in light of a pending H&C application. The Applicant does not point to any further evidence to support its position.

[19] As the Federal Court of Appeal ("FCA") held in *Sharma v Canada (MPSEP)*, 2016 FCA 319, while the MD has limited discretion to consider H&C factors, the MD's focus is on security and not on H&C considerations (at paras 23-24; *Melendez v Canada (MPSEP)*, 2018 FC 1131 at paras 27-34; *Slemko v Canada (MPSEP)*, 2020 FC 718 at paras 21-22). Again, at an admissibility proceeding, Parliament has not seen fit to legislate that outstanding H&C applications are a consideration at an admissibility hearing.

[20] Of note, the MD did answer the question posed by counsel at the admissibility hearing. Counsel asked "when he [the applicant] was asked if he had citizenship and/or permanent residence status,-he answered no. My only consideration is that when he applied for H&C, the application was returned because it stated that he is still a permanent resident status. I would like you to consider that in your decision." The reasons did address this point, saying, "I have considered all the comments presented to me by your counsel as well as your counsel's oral consideration regarding the IRCC letter stating that your current status is a Permanent Resident. I was informed at the

beginning of this month by Canada Border Services Agency Legal Services the outcome of the Federal Court decision for your application of leave and judicial review regarding the cessation hearing. My only explanation for the letter sent by IRCC dated November 30, 2020 is that the status in the system has not been updated yet to reflect it."

[21] The MD confirmed that the admissibility report said, "that you are a person who is a foreign national who has been authorized to enter Canada. The definition of a foreign national is someone who is not a Canadian Citizen and is not a permanent resident of Canada. According to s. 40.1(1) of the IRPA, there are grounds to believe that you are a foreign national who is inadmissible on a final determination under s. 108(2) that your refugee protection has ceased. That you ceased to be a convention Refugee or Person in Need of Protection on March 30, 2020, when a final determination under s. 108(12) of the Act was made that your refugee protection had ceased." She later validated that report and that the Federal Court had not granted leave on the cessation hearing.

[22] I do not find it unreasonable that the MD did not defer until a decision on the Applicant's H&C application had been made and gave reasons why in the decision.

C. *Removal Process*

[23] The Applicant argued that the incorrect removal process was followed in this case. He asserts that the departure order should not have been issued by the MD, and instead the s. 44 report should have been referred to the ID for determination. To do otherwise treats the Applicant's permanent resident status as if it never existed or mattered.

[24] S. 108(1) sets out the circumstances under which a person's refugee protection has ceased. Pursuant to s. 46(1)(c.1), a person loses permanent resident status on a final determination under s. 108(2) for any of the reasons described in s.108(1)(a) to (d). Namely, if they have "(a) … voluntarily reavailed themselves of the protection of their country of nationality; (b) … voluntarily reacquired their nationality; (c) … acquired a new nationality and enjoys the protection of the country of that new nationality; (d) … become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada." This provision is clear and unambiguous and has been confirmed by the jurisprudence (*Siddiqui v Canada (MCI)*, 2016 FCA 134 at para 21 [*Siddiqui*]; *Nilam v Canada (MCI)*, 2017 FCA 44 at paras 24-25). The Applicant applied to this Court for leave to judicially review the cessation finding and was not granted, so by operation of law he is a foreign national.

[25] S. 40.1(1) states that a *foreign national* is inadmissible on a final determination under s. 108(2) that their refugee protection has ceased. S. 40.1(2) states that a *permanent resident* is inadmissible on a final determination that their refugee protection has ceased for any of the reasons described in s. 108(1)(a) to (d). The primary difference is that while a foreign national is inadmissible if any of the 5 cessation grounds (including (e) of 108(1)) has been found, permanent residents are only inadmissible on 4 of those grounds (excluding (e)).

[26] To summarize, in this case the s. 44(1) report stated that, in this case, the Applicant was A) not a Canadian Citizen; B) not a permanent resident, as the Minister applied to the RPD to cease refugee protection under s. 108(1)(a) of the *IRPA*. The RPD found he had voluntarily reavailed himself of the protection of his nationality. It was found that his refugee protection ceased on March 30, 2020, under s. 108(2); and that C) as a result, the s. 44(1) report recommended an MD

proceeding and a departure order as per Rule 228(1)(b.1) of *the Immigration and Refugee Protection Regulations*, SOR/2002-227.

[27] Under s. 44(1) of the *IRPA*, an officer may prepare a report setting out why they are of the opinion that a permanent resident or foreign national is inadmissible. The s. 44 report is then transmitted to the Minister. If the MD is of the opinion that the report is well founded, the MD may issue a departure order or refer the report to the ID for an inadmissibility hearing pursuant to s. 44(2) of the *IRPA*.

[28] The Applicant's primary issue is with s. 40.1. He submits that where a permanent resident ceases to be a refugee and in turn loses their permanent resident status, it is an unreasonable interpretation of s. 40.1 to treat the applicant as a foreign national (having just lost their permanent resident status). He argued that this interpretation would render s. 40.1(2) meaningless, as it would never apply to anyone. It is the Applicant's submission that it is at the removal stage where a refugee PR's status is finally given some meaning. The Applicant's position is that the MD does not have authority to issue a departure order for permanent residents, and instead must refer the report to the ID.

[29] I cannot agree with the Applicant's interpretation, as it is clear and unambiguous, pursuant to s. 46(1)(c.1), that an individual loses their permanent resident status when their refugee protection ceases. I understand the Applicant's submission when he asks in what circumstances s. 40.1(2) would apply, and while I could speculate and come up with examples, it is nonetheless clear in this case that the process, as legislated, was followed, and that the Applicant is now a foreign national.

[30] The cases of *Tung v MPSEP*, 2019 FC 917 [*Tung*] (Brown J.) and (the same-person, but different case of) *Okojie v MCI*, 2020 FC 948 (Little J) [*Okojie 2*] both dealt with cessation but are distinguishable in the fact that both were sent back to be re-determined because the MD did not grapple with the questions asked of them, and thus the decisions were not reasonable. That is not the case here, as the reasons are clear, the MD justified her determination, and dealt with the submissions by counsel. In addition, the *Okojie 2* case had arguments related to timing. In *Okojie 2*, the applicant argued that the incidents of reavailment that caused her to lose her PR status happened before s. 46(1)(c.1) came into force and it was that question that needed to be answered. S. 46(1)(c.1) came into force on December 15, 2012. The MD specifically mentions the two cases of *Tung* and *Okojie 2* and that they are being re-determined.

[31] In this case, those arguments regarding timing were not presented at the MD hearing, and a review of the cessation hearing at the RPD shows it was not an argument there, so the RPD did not, nor do I need to address it. However, I note that in *Tung* (IMM-1047-20) which was argued on December 15, 2021, retrospective arguments were made. I cannot agree with the Applicant that the MD failed to engage with the Applicant's argument on the interpretation of s. 40.1(2) and 44(2). I find the MD did. The MD referred to the provisions under the *IRPA*, which specifically provides for the loss of permanent resident status where refugee protection has ceased and for the MD to issue a departure order upon the finding of inadmissibility and not to refer the matter to the ID.

[32] The FCA has interpreted this provision (s. 46(1)(c.1)) in several cases, and found it to be clear language, so it was not necessary for the MD to give more justification than what she did. I note that the argument was different, in that the Applicant in *Siddiqui* argued that because they were country of asylum refugees rather than a convention refugee, that s. 46(1)(c.1) could be interpreted

as not being applicable to them. After finding that the *IRPA* made no differentiation between the route you received your refugee status, Justice Rennie writing for the FCA said (*Siddiqui*):

> [12] The answers to the challenges to the decision lie in a principled reading of the statute. If the relevant provisions of IRPA are read in their grammatical and ordinary sense, harmoniously with the scheme of the Act, it is clear that there is no merit to the appellant's arguments. (…)
>
> [21] This argument has no foundation in the legislative scheme. Paragraph 46(1)(c.1) expressly provides that permanent resident status is lost after a successful application pursuant to subsection 108(2). The appellant's argument that paragraph 46(1)(c.1) would not apply to him as a member of the country of asylum class would render the provision meaningless. (…)
>
> [22] In an effort to avoid the clear language of the Act, the appellant urges that the cessation provision be read narrowly, so as to exclude country of asylum class refugees from the cessation provisions. The appellant contends that this interpretation would be consistent with the objectives of IRPA and the Convention**.** But it is settled law that where the language of Parliament is unequivocal, as it is here, no resort can be had to principles of international law to undermine what Parliament has expressly provided. As noted in *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, [2014] 3 S.C.R. 431, broad statements of purposes and objectives, whether found in international or domestic statute, do not justify interpretations that are unsupported by, or inconsistent with the language of Parliament.

[33] Again in another context but still applicable as a statement of principle, the FCA emphasised in *Nilam v Canada (MCI),* 2017 FCA 44 at paragraph 25 that:

> [25] The loss of both refugee and permanent residency status has consequences for an individual's admissibility to Canada and may result in their removal from the country. More particularly, subsection 40.1(2) of IRPA states that a permanent resident whose refugee status is found to have ceased on a final determination under subsection 108(2) of IRPA becomes inadmissible to Canada. Furthermore, section 44 of IRPA and paragraph 228(1)(*b*.1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 authorize removal proceedings against an individual who is inadmissible to Canada pursuant to section 40.1 of IRPA.

[34] When applied to these facts, a principled reading of the statutes, read in their grammatical and ordinary sense are harmonious with the scheme of the *IRPA*, makes it clear that the Applicant – after the cessation of his status – is a foreign national, and that the validation of the admissibility report and departure order by the MD are reasonable.

D. *Application of the MD's Policy Manual*

[35] The Applicant submits that the MD ignored its own policy manual in asserting that the limited scope of her authority did not include the discretion not to issue a departure order even where she found the Applicant to be inadmissible. The Applicant's argument mischaracterized the MD's reasons on this point. The MD did not state that she did not have authority to not issue a departure order—she simply stated that her discretion to do so was limited and she could not disregard the fact that a person is inadmissible to Canada.

[36] Enforcement manual ENF 06 states at page 20:

> Where the MD reviews the A44(1) report and finds that it is well-founded, there are circumstances in which the objectives of the IRPA may be achieved without the issuance of a removal order. The MD has the discretion to take other action within the exercise of their delegated authority as set out in the IRPA and the IRPR. However, as will be seen in this section, the scope of discretion of the MD is limited.
>
> […]
>
> This discretion under A44(1) and A44(2) does not mean that officers and MDs can disregard the fact that someone is, or may be, inadmissible. The discretion under A44 is meant to give officers and MDs some flexibility in managing cases where circumstances warrant that no removal order will be sought and where the objectives of the IRPA may or will be achieved without the need to write a formal inadmissibility report under A44(1) or issue a removal order/refer the case to the ID under A44(2).

[37] In turn, I believe the MD reasonably interpreted and applied the legislative provisions and Enforcement Manual in declining to exercise her discretion in this case.

[38] The FCA in *Sharma v Canada*, 2016 FCA 319, though discussing the MD's discretion in a different context – one which mainly focused on procedural fairness in disclosure – did touch on the fact the MD has limited discretion:

> [22] Applying these principles, it is clear that an officer's decision under subsection 44(1) and the Minister's decision under subsection 44(2) bear none of the hallmarks of a judicial or quasi-judicial decision. It is true that officers and the Minister or his delegate appear to have some flexibility when deciding whether or not to write an inadmissibility report or to refer it to the ID. As this Court found in *Cha v.* Canada *(Minister of Citizenship and Immigration), 2006 FCA 126, [2007] 1 F.C.R. 409* (*Cha*), at paragraph 35, however, there are limits to the discretion afforded to officers and Minister's delegates despite the use of the word "may" in the wording of subsections 44(1) and (2). In that case, the Court determined that the particular circumstances of the foreign national, along with the nature of the offence, conviction and sentence, were beyond the scope of the discretionary powers exercised pursuant to subsections 44(1) and (2).
>
> [23] The extent of the discretion will therefore be dependent on a number of factors, including the alleged grounds of inadmissibility and whether the person concerned is a permanent resident or a foreign national. (…)

[39] The MD exercised their limited discretion and did not send this to the ID, and in this case, given the Applicant was a foreign national, this was reasonable.

VI. Certified Question

[40] The FCA reiterated the criteria for certification in *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paragraph 36. The question must be a serious

question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v Canada (Public Safety and Emergency Preparedness),* 2015 FCA 21 at para 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v Canada (Citizenship and Immigration),* 2016 FCA 178 at paras 15, 35).

[41] The questions presented to be certified are:

> 1. Is a permanent resident who has been found by the Refugee Protection Division to have ceased to be a protected person pursuant to IRPA s. 108 (2) and (3) by way of s. 108 (1)(a), (b), (c) or (d), thereafter inadmissible pursuant to IRPA s. 40.1 (1) or s. 40.1(2)?
>
> 2. If such a person is inadmissible pursuant to s. 40.1 (1) to whom does s. 40.1(2) apply to, if anyone?
>
> 3. If such a person is inadmissible pursuant to s. 40.1(2) which entity, the Minister, or the Immigration Division, has the authority to make a removal order?

[42] I will not certify these questions. The FCA has given definitive answers to the interpretation of these sections already, for instance in the aforementioned cases of *Nilam v Canada (MCI),* 2017 FCA 44 and *Siddiqui*. As a result, they are not of general importance and not of broad significance dispositive of this matter. Similarly, as noted earlier in this decision, I am of the opinion that, when read in its grammatical and ordinary sense harmoniously with the scheme of the *IRPA*, this section makes it clear that the Applicant – after the cessation of his

status – is a foreign national, and that the authority to issue such a departure order is reasonably with the MD. As such, it is not a proper question to certify; as well, it reads more as a reference question, and reference questions are not proper certified questions (*Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15, 35).

VII. Costs

[43] The Applicant sought costs in the amount of $1,000.00 because of the initial Rule 9 Letter's lacking of providing the reasons for the decision, which were later provided. The Respondent opposed this, given they corrected the issue as soon as it was apparent.

[44] According to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, no costs shall be awarded on an application for judicial review unless the Court has special reasons to do so. Justice Bell in *Singh v Canada*, 2021 FC 638 summarized the test well as follows:

> [13] Mr. Singh seeks costs. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, *SOR/93-22* states that no costs will be awarded in an immigration judicial review, except where special reasons exist. The threshold for establishing special reasons is high and must be assessed in the context of the particular circumstances of each case. This Court has found special reasons to exist in situations where, for example, a party has unnecessarily or unreasonably prolonged legal proceedings, acted in an unfair, oppressive or improper manner, or acted in bad faith (*Taghiyeva v. Canada (Citizenship and Immigration)*, 2019 FC 1262 at paras. 16-23; and *Garcia Balarezo v. Canada (Citizenship and Immigration)*, 2020 FC 841 at para. 48). I am not satisfied that costs are appropriate in the circumstances. The errors noted do not rise to special circumstances, which would justify an award of costs.

[45] At the hearing, the Applicant explained that they are seeking costs because the initial Rule 9 Letter dated February 26, 2021 did not contain reasons for the decision. This error was corrected when the Minister contacted them indicating that an error had been made, and providing them with a certified copy containing reasons for the decision on April 26, 2021. Due to this delay, the Applicant submits they had to rework their Memorandum of Argument. However, a review of the transcript shows that Mr. Cannon was present at the MD proceeding (interview) regarding the admissibility report, and as a result would have heard all of the proceeding and the decision, so he should have been aware of the relevant facts of the matter and would not have suffered any prejudice. This is particularly the case given that the Respondent corrected the error, and given how far in advance of the hearing this occurred. The Applicant seeks costs of $1,000.00 due to the extra work they had to do as a result of this, and say that this is sufficiently special circumstances to meet the Rule 22 threshold. The Respondent vehemently disagreed.

[46] The authority of this Court to award special costs is highly discretionary, and Rule 22 is a high threshold. In my view, the Respondent's actions in this case do not meet the test to grant special costs pursuant to Rule 22. First, the Applicant was not successful in this application. Second, the Respondent rectified the issue as soon as possible and in no means was it bad faith or subterfuge. Third, Applicant's counsel was present throughout the earlier stage (i.e. before the MD) so would be well aware of all the circumstances. In exercising my aforementioned highly discretionary authority, I will not award any special costs in this matter.

JUDGMENT IN IMM-6805-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified;

3. No costs are awarded.

"Glennys L. McVeigh"
Judge

APPENDIX A : RELEVANT PROVISIONS

Immigration and Refugee Protection Act, SC 2001, c 27

Cessation of refugee protection — foreign national

40.1 (1) A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.

Cessation of refugee protection — permanent resident

(2) A permanent resident is inadmissible on a final determination that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d).

Loss of Status and Removal

Report on Inadmissibility

Preparation of report

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.

Referral or removal order

(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, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign

Perte de l'asile — étranger

40.1 (1) La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant la perte de l'asile d'un étranger emporte son interdiction de territoire.

Perte de l'asile — résident permanent

(2) La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile d'un résident permanent emporte son interdiction de territoire.

Perte de statut et renvoi

Constat de l'interdiction de territoire

Rapport d'interdiction de territoire

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.

Suivi

(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

national. In those cases, the Minister may make a removal order.

Loss of Status

Permanent resident

46 (1) A person loses permanent resident status

(a) when they become a Canadian citizen;

(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;

(c) when a removal order made against them comes into force;

(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);

(d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection; or

(e) on approval by an officer of their application to renounce their permanent resident status.

Cessation of Refugee Protection

Rejection

108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

Perte du statut

Résident permanent

46 (1) Emportent perte du statut de résident permanent les faits suivants :

a) l'obtention de la citoyenneté canadienne;

b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;

c) la prise d'effet de la mesure de renvoi;

c.1) la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile;

d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection;

e) l'acceptation par un agent de la demande de renonciation au statut de résident permanent.

Perte de l'asile

Rejet

108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

(a) the person has voluntarily reavailed themself of the protection of their country of nationality;

(b) the person has voluntarily reacquired their nationality;

(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

(e) the reasons for which the person sought refugee protection have ceased to exist.

Cessation of refugee protection

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Effect of decision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

b) il recouvre volontairement sa nationalité;

c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

e) les raisons qui lui ont fait demander l'asile n'existent plus.

Perte de l'asile

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

Effet de la décision

(3) Le constat est assimilé au rejet de la demande d'asile.

Exception

(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

Specified Removal Order

Subsection 44(2) of the Act — foreign nationals

228 (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

(a) if the foreign national is inadmissible under paragraph 36(1)(a) or (2)(a) of the Act on grounds of serious criminality or criminality, a deportation order;

(b) if the foreign national is inadmissible under paragraph 40(1)(c) of the Act on grounds of misrepresentation, a deportation order;

(b.1) if the foreign national is inadmissible under subsection 40.1(1) of the Act on grounds of the cessation of refugee protection, a departure order;

(c) if the foreign national is inadmissible under section 41 of the Act on grounds of

(i) failing to appear for further examination or an admissibility hearing under Part 1 of the Act, an exclusion order,

(ii) failing to obtain the authorization of an officer required by subsection 52(1) of the Act, a deportation order,

(iii) failing to establish that they hold the visa or other document as required

Mesures de renvoi à prendre

Application du paragraphe 44(2) de la Loi : étrangers

228 (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déférée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :

a) en cas d'interdiction de territoire de l'étranger pour grande criminalité ou criminalité au titre des alinéas 36(1)a) ou (2)a) de la Loi, l'expulsion;

b) en cas d'interdiction de territoire de l'étranger pour fausses déclarations au titre de l'alinéa 40(1)c) de la Loi, l'expulsion;

b.1) en cas d'interdiction de territoire de l'étranger au titre du paragraphe 40.1(1) de la Loi pour perte de l'asile, l'interdiction de séjour;

c) en cas d'interdiction de territoire de l'étranger au titre de l'article 41 de la Loi pour manquement à :

(i) l'obligation prévue à la partie 1 de la Loi de se présenter au contrôle complémentaire ou à l'enquête, l'exclusion,

(ii) l'obligation d'obtenir l'autorisation de l'agent aux termes du paragraphe 52(1) de la Loi, l'expulsion,

(iii) l'obligation prévue à l'article 20 de la Loi de prouver qu'il détient les visa

under section 20 of the Act, an exclusion order,

(iv) failing to leave Canada by the end of the period authorized for their stay as required by subsection 29(2) of the Act, an exclusion order,

(v) failing to comply with subsection 29(2) of the Act as a result of non-compliance with any condition set out in paragraph 183(1)(d), section 184 or subsection 220.1(1), an exclusion order,

(vi) failing to comply with the requirement under subsection 20(1.1) of the Act to not seek to enter or remain in Canada as a temporary resident while being the subject of a declaration made under subsection 22.1(1) of the Act, an exclusion order, or

(vii) failing to comply with the condition set out in paragraph 43(1)(e), an exclusion order;

(…)

et autres documents réglementaires, l'exclusion,

(iv) l'obligation prévue au paragraphe 29(2) de la Loi de quitter le Canada à la fin de la période de séjour autorisée, l'exclusion,

(v) l'une des obligations prévues au paragraphe 29(2) de la Loi pour non-respect de toute condition prévue à l'alinéa 183(1)d), à l'article 184 ou au paragraphe 220.1(1), l'exclusion,

(vi) l'obligation prévue au paragraphe 20(1.1) de la Loi de ne pas chercher à entrer au Canada ou à y séjourner à titre de résident temporaire pendant qu'il faisait l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi, l'exclusion,

(vii) une condition prévue à l'alinéa 43(1)e), l'exclusion;

(…)

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Costs

22 No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

Dépens

22 Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6805-20
STYLE OF CAUSE:	JUAN FRANCISCO CANO GRANDA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 1, 2021
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	DECEMBER 24, 2021

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