Federal Court Cour fédérale

Date: 20230313

Docket: IMM-8187-21

Citation: 2023 FC 334

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 13, 2023

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

PIERRE AROLD AGNANT

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review is related to a decision of the Immigration Appeal Division [IAD] to dismiss the applicant's appeal against a removal order because of insufficient humanitarian and compassionate grounds. For the following reasons, the application for judicial review is dismissed.

I. Background and facts

[2] The applicant is a citizen of Haiti. He became a permanent resident of Canada in December 1996. The applicant was working as a correctional officer in a prison.

[3] He was arrested in June 2007 and charged with five counts, including conspiring to traffic in controlled substances, trafficking in controlled substances (cocaine and over 3 kg of cannabis), bribing officers and trafficking in controlled substances for the benefit of, at the direction of, or in association with a criminal organization. His first criminal trial was in December 2009, and it resulted in his being sentenced to nine years of imprisonment.

[4] The applicant appealed the outcome of his criminal trial in 2009, citing, among other things, both the incompetence of his lawyer and that of the translator who translated the wiretap evidence from Creole to French. The Quebec Court of Appeal allowed the appeal and ordered a new trial.

[5] In his new criminal trial in March 2019, the applicant pleaded guilty to conspiring to traffic in controlled substances while he was working as a correctional officer. He was sentenced to six months less one day in prison.

[6] In November 2020, the Immigration Division made a removal order against the applicant, after determining that the applicant was a person referred to in paragraph 36(1)(a) of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The applicant appealed the removal order before the IAD.

[7] In October 2021, the IAD dismissed the applicant's appeal [Decision]. After reviewing all the criteria for assessing humanitarian and compassionate grounds, the IAD concluded that the seriousness of the crime and the lack of potential for rehabilitation outweighed the criteria of establishment, family presence, best interests of children and repercussions of returning to Haiti.

II. Analysis

[8] At issue in this case is whether the IAD's Decision is reasonable, in other words, whether 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 85 [*Vavilov*]).

[9] The Decision is reasonable in my view. The applicant has not established that the IAD has made a reviewable error, particularly in view of the broad discretion granted to the IAD under section 67 of the IRPA to assess the humanitarian and compassionate considerations raised in appeals against removal orders (*Chieu v Canada (Minister of Citizenship and Immigration*), 2002 SCC 3 at para 66 [*Chieu*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 60 [*Khosa*]). It is not for this Court to re-examine the evidence and substitute the panel's findings of fact with those desired by the applicant (*Vavilov* at para 125). And in *Khosa* at para 61, which also deals with a judicial review of the IAD's analysis of humanitarian and

compassionate considerations, the Supreme Court held, “I do not believe that it is the function of the reviewing court to reweigh the evidence.”

[10] The applicant criticizes the IAD for failing to take sufficient account of all the developments in his criminal record and is of the view that it was not reasonable for the IAD to rely more on the judgment resulting from his first criminal trial in 2009 than on the applicant’s guilty plea in 2019. The applicant argues that the IAD’s Decision is not justified in light of this error and that a reading of the IAD’s reasoning suggests that the administrative decision maker started by determining that the removal order appeal should be rejected and then chose the evidence that supported this conclusion while ignoring the rest, which is completely unreasonable.

[11] More specifically, the applicant is of the opinion that it was not reasonable for the IAD to rely on the findings of Justice Charbonneau in the applicant’s first criminal trial in 2009, given that the Quebec Court of Appeal had ordered a new trial because of the incompetence of the applicant’s first counsel. The applicant also alleges that the IAD erred in referring to the translations of conversations that were filed as wiretap evidence before the court in 2009 because these translations were allegedly false and fraudulent. The applicant argues that the IAD ignored the translator’s admission to the prosecutor, in which the translator stated that she had lied when the translations of the conversations were verified. This admission, made in February 2010, was not considered in the applicant’s criminal trial in 2009 but was brought to the attention of Justice Charbonneau in a motion for a stay of proceedings filed by the applicant and rejected by the judge in August 2010.

[12] The applicant's concerns about the reliability of the translations are unfounded. This argument was rejected by the Quebec Court of Appeal, at paragraph 7 of *Agnant v R*, 2015 QCCA 465:

> [TRANSLATION]
>
> This second ground must immediately be rejected. Even if one accepts that the described situation seems problematic in some respects, the evidence on the record does not support a finding that the trial judge committed a reviewable error in refusing the stay of proceedings.

[13] The Quebec Court of Appeal therefore supported Justice Charbonneau's rejection of the motion for a stay of proceedings. The IAD reasonably concluded that the wiretap evidence and its translation were reliable, stating that "if the translation of the intercepted telephone conversations really posed a problem, the Court of Appeal judges would have intervened in this sense and would not have taken the time to reject this ground of appeal." It was open to and reasonable for the IAD to rely on the Quebec Court of Appeal's decision to conclude that the wiretap evidence was reliable and that "the facts as found by the 2009 trial judge, including the intercepted telephone evidence, are true."

[14] The IAD also did not err in giving more weight to the facts accepted at the 2009 trial than to the applicant's guilty plea in 2019. The IAD explained why, before it, the applicant testified that he had pleaded guilty only because he did not have the money to defend himself and stated that he had been [TRANSLATION] "too naive" in feeling sorry for the inmates to whom he genuinely thought he was only bringing food (while he was in fact bringing them controlled and illegal substances). The applicant therefore did not accept any responsibility, despite his guilty plea, which constitutes a formal admission of guilt to an offence upon which an administrative

decision maker can rely (*Gracia v Canada (Citizenship and Immigration*), 2021 FC 158 at para 28, citing *R v Faulkner*, 2018 ONCA 174 at para 85; *Acikgoz v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 772 at para 32). With respect to the conduct of the previous legal proceedings in the Quebec courts, the member stated:

> [9] During the recording of the guilty plea in criminal court in 2019, the judge asked the accused whether he was pleading guilty, to which he replied: [translation] “I plead guilty.” The transcript of the criminal events read out to the criminal court judge by the criminal and penal prosecuting attorney sets out the acts acknowledged by Mr. Agnant.
>
>> [Translated as it appears in the French version]So in January 2006, Your Honour, the Department of Public Safety asked the Sûreté du Québec to investigate allegations of corruption and drug trafficking within certain Quebec detention facilities, and this was the starting point of the project (inaudible). Following various investigations, wiretaps, search warrants, the public prosecutor came to the conclusion that Mr. Agnant had conspired with the people listed in the indictment in order to (inaudible) Montréal. So each person had a role to play. So, Mr. Agnant was a provincial correctional officer at the time.
>>
>> The criminal court judge then asked:
>>
>> [translation]
>>
>> So, Mr. Agnant, you have heard the brief summary of the facts, do you agree that these facts reflect what happened?
>>
>> And the appellant replied:
>>
>> [translation]
>>
>> Yes (inaudible).
>>
>> The criminal court judge continued:
>>
>> [translation]

Mr. Agnant, I understand that you are pleading guilty today and I understand that before pleading guilty, you had meetings with your lawyer. I am also aware that you have had meetings with an immigration lawyer. You have therefore been informed of all the consequences that lead to a conviction in this type of case. Is that right?

And Mr. Agnant stated:

[translation]

Yes, Your Honour.

The criminal court judge added:

[translation]

After receiving advice from your lawyer, Mr. Agnant, I must make sure today, and I want it to be clear that the decision to plead guilty must not be that of your lawyer or your other lawyer. The decision to plead guilty is yours. Is this indeed your decision?

And the appellant replied:

[translation]

Yes, Your Honour.

Before finding Mr. Agnant guilty, the criminal court judge continued the recording of his guilty plea by asking further questions regarding the negotiations related to the facilitation process set out in the rules of practice of the Court of Quebec. The appellant was aware of all this and the criminal court judge concluded by stating:

[translation]

You are therefore pleading guilty to this charge, is that right?

And Mr. Agnant responded:

[translation]

> Yes.
>
> [10] The panel therefore notes that this judicial admission of criminal activity was recorded freely and voluntarily by a conscious mind. The appellant admitted to conspiring with other individuals to traffic drugs in the prison where he worked. This is a crime punishable by life imprisonment. Given his position as a peace officer, this is an extremely serious crime. He had the trust of the prison system authorities, and of society as a whole, in this important public security position. Mr. Agnant's crime affected the prison—a public institution—for months, as he had access to and knowledge of the mechanisms for bringing in drugs unnoticed. Because his position of authority allowed him to obtain confidential information, he was able to act in the interests of the criminal organization.

[15] This excerpt demonstrates that both the judge at the 2019 criminal trial and the applicant were aware of and considered the collateral immigration consequences of the applicant's guilty plea (*Tran v Canada (Public Safety and Emergency Preparedness*), 2017 SCC 50 at para 45, citing *R v Pham*, 2013 SCC 15, [2013] 1 SCR 739).

[16] The IAD did not err in giving little weight to the applicant's guilty plea or in concluding that, by attempting to deny the validity of his admission before the criminal court, the applicant did not show any remorse, thereby greatly diminishing his potential for rehabilitation.

[17] Contrary to the applicant's arguments, given the applicant's lack of remorse and his continued failure to accept responsibility for his criminal behaviour after the offence (*Rezaie v Canada (Public Safety and Emergency Preparedness*), 2021 FC 912 at para 13; *Chung v Canada (Citizenship and Immigration)*, 2017 FCA 68 at para 22), it was open to the IAD to give less weight to the time that has elapsed since the offence in 2007 without the applicant being charged with other crimes.

[18] The applicant alleges that the administrative decision maker erred because of [TRANSLATION] "muddled reasoning." The applicant argues that in stating that "[i]n this case, the panel considers the wiretap evidence to be much more reliable than Mr. Agnant's general denial of guilt before the IAD", the administrative decision maker assessed the probative value of one piece of evidence against the probative value of another piece of evidence. In addition, the applicant submits that the administrative decision maker erred in concluding that since the wiretap evidence was reliable, the applicant's testimony before the IAD was necessarily less credible. The IAD explained this reasoning:

> If a member can rely on police reports and witness statements, for example, to assess an appellant's credibility, it seems fairly obvious that the panel should be able to rely on transcripts and written analyses by a judge of the Superior Court sitting in the criminal division, using evidence of telephone communications presented in court, to do the same.

[19] It is understandable that, after concluding that the facts of the offence revealed by the first criminal trial in 2009 are reliable, the IAD found that the applicant's testimony was necessarily made less credible by the fact that he denied these facts before it. This is not [TRANSLATION] "muddled reasoning" but a coherent and rational analysis.

[20] The applicant also criticizes the IAD for not considering his family's presence in Canada as a positive element even though he testified that he has close ties with his two daughters and grandchildren and that he is a caregiver to his spouse. However, the IAD noted that the lack of corroborative testimony from his daughters and spouse undermined the credibility of the applicant's testimony—which the IAD considered to be exaggerated—and the importance given to the applicant's relationship with his loved ones, despite the sworn statements. Considering

these circumstances, the IAD reasonably held that while it "clearly note[d] that the presence of appellant's family in Canada [was] positive, it d[did] not give it as much weight as the appellant would like." I must add that the three days of hearings before the IAD were held by videoconference and that it would not have been difficult for the applicant to have at least one family member testify to corroborate his statements.

[21] Finally, the applicant argues that the IAD's analysis of dislocation in the event of removal demonstrates that the IAD attempted to obscure the situation in Haiti and downplay the risks that the applicant would face if he returned to his country. The IAD considered the documentary evidence submitted by the applicant in relation to the situation in Haiti and the reasons provided by the applicant against being removed and reasonably concluded that while there would be dislocation in the event of removal, it was not determinative.

[22] While the documentary evidence describes a less stable political and social situation and a much lower standard of living in Haiti than in Canada, the IAD reasonably concluded that these were not sufficient to warrant relief on humanitarian and compassionate grounds (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 23 [*Kanthasamy*]). The documentary evidence submitted by the applicant about the risks in Haiti is mixed: for example, the responses to information requests [RIRs] filed indicate that, in 2017, the United Nations Secretary-General stated in a report of the United Nations Stabilization Mission in Haiti that "substantial headway [had been] made, and today the Haitian people enjoy a considerable degree of security and greater stability." Furthermore, the RIRs demonstrate that the situation is not the same across the country and that some areas or neighbourhoods are less dangerous than

others. I also note that, while the applicant was in prison, the applicant's spouse and daughters returned to Haiti on vacation in 2018.

[23] The IAD reasonably concluded that the ambiguous situation in Haiti was not sufficient to demonstrate the existence of "unusual and undeserved" or "disproportionate" hardship within the meaning of the Guidelines for assessing humanitarian and compassionate considerations under subsection 25(1) of the IRPA (*Kanthasamy* at para 26). The IAD also noted that the applicant's personal circumstances—his education, his teaching experience in Haiti before coming to Canada, and his [TRANSLATION] "resourcefulness" in finding work despite his criminal record—will help him re-establish himself in his country of nationality.

[24] In short, the IAD considered and applied all relevant humanitarian and compassionate considerations established in the case law (see *Khosa* at para 7, citing *Ribic v Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No. 4 (QL) and *Chieu* at paras 40, 41 and 90). Essentially, the applicant would like this Court to repeat the test, but give different weight to some of the evidence and more weight to the humanitarian and compassionate considerations that are in his favour. *Vavilov* notes, as *Khosa* has done previously, that such an exercise is not part of the Court's role in judicial review.

III. Conclusion

[25] For the above reasons, the applicant has not established that the IAD made a reviewable error and, therefore, I dismiss this application for judicial review.

JUDGMENT in IMM-8187-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

"Alan S. Diner"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8187-21
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