Federal Court Cour fédérale

Date: 20240202

Docket: IMM-4622-22

Citation: 2024 FC 168

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 2, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

MAMADOU SEID PALENFO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Immigration Appeal Division (IAD) granted the applicant, Mamadou Seid Palenfo, a five-year stay with conditions. The applicant required a stay to remain in the country because a removal order for serious criminality had been issued against him. The applicant is seeking judicial review of the length of the stay and of one of the conditions.

[2] For the reasons that follow, the application for judicial review will be dismissed.

I. Background

[3] The applicant was born in Côte d'Ivoire in 1989. He became a permanent resident on May 25, 2016. On February 15, 2019, he was convicted of assault with a weapon (punishable by up to 10 years in prison) following an incident on August 13, 2018. He was sentenced to 90 days in prison and one year's probation. Because of this conviction, the Immigration Division issued a removal order against him under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA).

[4] The applicant's criminal record includes other offences:

(1) February 15, 2019—Breach of probation, theft under $5,000 and possession of a narcotic following an incident on July 14, 2018 (resulting in a suspended sentence and one year's probation).

(2) March 12, 2019—Possession of a narcotic following an incident on September 22, 2016 (resulting in a conditional sentence of two years' probation and 150 hours of community service).

(3) May 23, 2019—Three counts of theft under $5,000 following incidents on January 1, 2018 (resulting in a suspended sentence for the first offence and a $400 fine for each of the other two offences).

(4) March 9, 2020—Two counts of breach of probation following incidents on March 1 and 13, 2019 (resulting in a suspended sentence for both counts as well as two years' probation and 170 hours of community service for the second count).

[5] The applicant's criminal history is closely linked to his opioid use, for which he is receiving treatment that requires taking methadone at a pharmacy each day. He also spent four months in therapy in 2020.

II. Decision under review

[6] The IAD's decision was delivered orally on May 2, 2022, after hearings held on November 1, 2021, and April 20, 2022, where the applicant gave testimony, and counsel for both parties made submissions. The panel member stated that he had to decide whether there were humanitarian and compassionate grounds for granting the applicant a stay and, if so, whether the joint submission of counsel was reasonable.

[7] Although Mr. Palenfo and the Minister made a joint submission suggesting a one-year stay with conditions, the panel member decided to grant a five-year stay with the condition that Mr. Palenfo live with his mother for the first three years.

[8] The following remarks by the IAD provide important context for the subsequent analysis in the decision:

> [7] I must also tell you that if I had had to render the decision without hearing their joint suggestion, I would have dismissed your appeal. Unlike them, I am not at all impressed with your progress. Yes, admittedly, there are positive aspects. That is favourable and frankly what is hoped for, but there are still a considerable number of problematic aspects in your case and when looking at the risk of re-offending criterion, the panel is still not very reassured at this stage, in that regard. Therefore, I will proceed in order to share my analysis of the various criteria.

[9] The IAD then analyzed the relevant criteria in its assessment of humanitarian and compassionate grounds and identified a number of factors weighing against the applicant:

- Seriousness of the offences: Assault with a weapon against a person doing his job providing security for a store; other offences in the applicant's criminal record.
- Community work: The applicant had been ordered to perform 80 hours of community work, and he stated at the hearing on November 1, 2021, that he intended to comply but did nothing in the six months that followed.
- Drug use: The main factor in the risk of reoffending was drug use; the applicant told the IAD that he was aware of this and did not intend to continue, but admitted to the IAD that he had used cocaine between the first and second hearings. The IAD stated, "Such a situation is very worrisome for a panel member. You still fail to realize the seriousness of your situation."

[10] The IAD also analyzed evidence of the applicant's rehabilitation efforts, including following a treatment program, taking methadone daily, participating in a rehabilitation program and taking steps to find a job. Overall, the IAD drew the following conclusion regarding rehabilitation:

> [20] Your level of rehabilitation is, at this point, quite convoluted, and the panel is unable to state that your rehabilitation has a definite chance of success. I will simply state that I see potential and that is the criterion for rehabilitation, but it will take a lot of effort on your part, Mr. Palenfo, probably even more than what you are doing now.

[11] The IAD also considered other factors, including the applicant's limited establishment in Canada in terms of education or employment, the positive influence of his family, his

relationship with his nephew, and the challenges he would face if he were to return to Côte d'Ivoire.

[12] Despite its concerns about the applicant's risk of reoffending, the IAD decided to grant a stay of removal, primarily because of the joint submission:

> [37] I am ultimately required to weigh all the analytical factors. I told you earlier that if it had been up to me alone, I would have dismissed your appeal, and you would have had to return to Côte d'Ivoire. Now, as I told you earlier, you have had a chance to benefit from a joint suggestion. This means that the panel must give some deference to this suggestion.
>
> [38] I have to analyze it and determine whether it is reasonable. And in this case, as I am unable to state that it is unreasonable, I will accept a stay of the removal order. What does that mean, Mr. Palenfo? That means that you are being given a chance to retain your permanent residence in Canada and not be deported on grounds of serious criminality.

[13] However, the IAD disagreed with the recommendation in the joint submission for a one-year stay, opting instead for a longer stay of five years. It added conditions, including a requirement that the applicant live with his mother for three years.

[14] The applicant is disputing two aspects of the decision: the five-year stay and the requirement to live with his mother for three years.

[15] The issues raised are as follows:

A. Does this Court have jurisdiction to determine the application on its merits?

B. Is the IAD's decision reasonable?

[16] The standard that applies to the second issue (the only one I will address on the merits) is reasonableness, under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[17] In order to determine whether a decision is reasonable, a reviewing court must develop an understanding of the reasoning process and ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99).

[18] There is a preliminary issue regarding the name of the respondent. With the consent of the parties, the style of cause is amended to identify the respondent as "The Minister of Citizenship and Immigration", effective immediately.

III. Analysis

A. *Does this Court have jurisdiction to determine the application on its merits?*

[19] The respondent submits that, if the applicant wishes to vary the length of the stay or the conditions imposed, he should apply directly to the IAD, in accordance with subsection 68(3) of the IRPA and subsection 26(1) and section 43 of the *Immigration Appeal Division Rules*, SOR/2002-230. Relying on *Medovarski v Canada (Minister of Citizenship and Immigration)*, [2005] 2 SCR 539 at para 37, the respondent submits that the IAD retains supervisory jurisdiction over this issue at all times.

[20] In light of the conclusions I have reached on the second issue, I need not decide this one. However, I would point out in passing that, although I have no doubt that the IAD has

jurisdiction to review and revise the conditions of the stays it issues, I am not persuaded that this fact alone should prevent any of the parties from seeking judicial review of the decision. On this issue, I should mention that the Minister recently asked this Court to review a decision by the IAD to stay a removal order under subsection 68(1) of the IRPA and that the application was allowed by the Court: see *Canada (Public Safety and Emergency Preparedness) v Imalenowa*, 2022 FC 1286.

B. *Is the IAD's decision reasonable?*

[21] The applicant submits that the IAD's decision is unreasonable for two main reasons: (i) it failed to give sufficient reason for rejecting the joint submission; and (ii) having decided to reject the joint submission, the IAD failed to justify its decision to extend the stay to five years and to impose a condition requiring that the applicant live with his mother for three years.

[22] The applicant submits that joint submissions should be given serious consideration and should not lightly be disregarded by the courts: *Malfeo v Canada (Citizenship and Immigration)*, 2010 FC 193 [*Malfeo*] at paras 12–16. He states that the IAD failed to seriously consider the joint submission and failed to provide in its decision a valid reason for disregarding the joint submission. The applicant believes that the entire reasoning of the IAD on this issue is as follows:

> [39] Despite the joint suggestion that I grant a one-year stay, the panel cannot get behind that and considers that such a period would be unreasonable. Such a length of time is far from sufficient to reassure the Immigration Appeal Division (IAD) that you have genuinely changed. For a stay, the panel must be satisfied that the potential for change exists and, while precarious and fairly slim, it does exist at this stage. As a result, I will grant you a five-year stay, Mr. Palenfo.

[23] In addition, the applicant claims that there was a breach of procedural fairness. Before rejecting the joint suggestion, the IAD should have afforded the parties an opportunity to make submissions on the elements it was rejecting regarding the length of the stay and the attached conditions: *R v GWC*, 2000 ABCA 333 at para 26.

[24] The crux of the applicant's argument on this point is that the IAD failed to explain why it had rejected the joint submission. The courts have stated that joint submissions must be given serious consideration, and there was ample evidence in this case to support the granting of a one-year stay. The IAD failed to refer to any of the evidence presented by the applicant in support of the joint submission, including the evidence provided by health care professionals regarding his progress in therapy, his receiving ongoing treatment and taking methadone daily, as well as other evidence that supported his position.

[25] The applicant points out that the lack of reasons to explain why the IAD departed from the joint submission is an error that is sufficiently serious to render the entire decision unreasonable. At the hearing before the Federal Court, counsel for the applicant pointed out that the appropriate remedy for errors by the IAD was to refer the matter back for reconsideration on the direction that the parties be afforded an opportunity to address the IAD's concerns.

[26] I disagree.

[27] Under the framework in *Vavilov*, the burden is on the applicant to satisfy the Court that a flaw in the decision is sufficiently significant to render the entire decision unreasonable (*Vavilov* at para 100). Reasons need not be perfect: it is sufficient that they reflect the assessment of the evidence given the applicable legal framework and that the reasoning justifies the outcome

(*Vavilov* at paras 85–86). Reasons must be read holistically and in light of the record; as long as the reviewing court can connect the dots on the page and readily discern the direction they are headed, it should not set aside the decision (*Vavilov* at para 97).

[28] Although it would have been preferable for the IAD to have explained its departure from the joint proposal in a more structured way, I can readily discern its reasons for not following what was proposed. In my opinion, it would be unduly formalistic to require that the IAD analyze the factors relevant to deciding whether a stay should be granted (often referred to as the "Ribic factors" (see *Ribic v MEI*, [1985] IABD No 4 (QL)) and then conduct an entirely separate analysis to explain its reasoning as to the length and conditions of the stay. The two are often inextricably linked, as in this case.

[29] It is clear from the reasons in this case that the IAD gave the joint submission serious consideration and, in this regard, it should be noted that there were two aspects to the submission: first, whether the stay should be granted and, second, that it should last for one year and be subject to conditions. The IAD expressed discomfort with the idea of granting a stay, but ultimately decided to endorse the joint submission. However, it did not have to accept the conditions that had been agreed: *Rupinta v Canada (Citizenship and Immigration)*, 2021 FC 918.

[30] The IAD's reasons for questioning the applicant's degree of rehabilitation and his determination in this regard are clearly explained in the decision. The applicant told the panel member that he would carry out part of the community work required; however, he failed to do so. He acknowledged that his drug use was the source of his problems and stated that he had stopped using drugs; however, he then admitted that he had used cocaine in the period between the first two hearings. He expressed a desire to continue his studies in order to find a stable job;

however, he did not take any action to that end. All these factors are relevant in deciding whether to grant a stay and in determining the length and conditions of the stay.

[31] The IAD had doubts about the applicant's degree of rehabilitation and his commitment. It therefore imposed stricter conditions than those proposed in the joint submission. The IAD's reasoning on this is unassailable. From a legal point of view, the IAD is presumed to have examined the entire record and was not required to list and analyze each piece of evidence separately. I note in this regard that the IAD commended the applicant for continuing to receive treatment and take methadone, which suggests that it did not completely ignore this evidence.

[32] In the same vein, the applicant points out that the IAD failed to explain why it chose a five-year stay and why it required the applicant to live with his mother for three years instead of one, as had been jointly proposed. The applicant argues that the IAD was required to explain these choices and could not simply state that a longer period was necessary.

[33] Again, I disagree.

[34] The IAD has very broad discretion to determine the length and conditions of the stays it grants. It bears repeating that, under section 68(1) of the IRPA, the IAD must be satisfied that "sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case". The IAD's decision on such an issue is owed considerable deference by the Court.

[35] Many factors are relevant when it comes to assessing a person's risk of reoffending and degree of rehabilitation. Choosing the length of time and the conditions necessary to allow the person to demonstrate that they have left their criminal past behind them and are ready and able

to contribute productively to Canadian society requires both expertise and good judgment: *Malfeo* at para 12. This is a task that Parliament has entrusted to the IAD, and there is no reason to intervene through judicial review.

[36] The extension of the stay and the requirement that the applicant live with his mother for continued stability and support to facilitate his rehabilitation are logical outcomes of the reasoning in the IAD's decision. I see no basis for concluding that the decision is unreasonable.

IV. Conclusion

[37] For the reasons above, the application for judicial review will be dismissed.

[38] None of the parties has proposed any questions of general importance to be certified, and I agree that there are none.

JUDGMENT in IMM-4622-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There are no questions of general importance to be certified.

"William F. Pentney"
Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4622-22
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