

Federal Court



Cour fédérale

Date: 20231205

Docket: IMM-9376-21

Citation: 2023 FC 1637

Ottawa, Ontario, December 5, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

AHAM DWAYNE LAWRENCE

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Aham Dwayne Lawrence, became a permanent resident of Canada approximately 25 years ago when he was 16 years old. He has lived in Canada continuously since that time. Mr. Lawrence has a common-law partner in Canada and four minor children, two of whom live with him.

[2] Mr. Lawrence is facing removal from Canada because he was convicted of a criminal offence that led to the Immigration Division finding that he is inadmissible because of serious criminality under section 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Because Mr. Lawrence was sentenced to six months of imprisonment, he is barred from asking for an appeal at the Immigration Appeal Division, where humanitarian and compassionate factors could be assessed (s 64 of IRPA).

[3] In two separate applications heard concurrently, Mr. Lawrence challenges both the Minister's Delegate's decision to refer him for an admissibility hearing and, on the basis of that referral, the Immigration Division's decision to find him inadmissible.

[4] The Applicant framed his argument around an allegation that the Minister's Delegate's reasons for referral demonstrate a reasonable apprehension of bias. I find it unnecessary to determine the case on this basis because of my determination that a number of findings in the Minister's Delegate's review are unsupported by the record. The decision is unreasonable because the conclusions reached are not justified in light of the facts (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 126). It is unnecessary to address the arguments on procedural fairness.

[5] Given that I have found that the referral decision has to be redetermined, the Immigration Division's determination based on that referral is also quashed (*Hernandez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 429 at para 5; *Abdul v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 154 (CanLII) at para 24).

[6] Based on the reasons below, I grant the applications for judicial review.

II. Procedural History

[7] In 2020, Mr. Lawrence was convicted of one count of “possession of a schedule 1 substance for the purpose of trafficking” contrary to section 5(2) of the *Controlled Drugs and Substances Act of Canada*, SC 1996, c 19. He was sentenced to six months of imprisonment. He was released on April 25, 2020 and was given a call-in notice to attend an interview with a Canada Border Services Agency [CBSA] Enforcement Officer on May 12, 2020. The notice advised Mr. Lawrence that he may be criminally inadmissible under section 36(1)(a) of *IRPA* and “a decision to allow you to remain in Canada or to seek to have a removal order issued against you will be made in the near future.” Further, the notice indicated that the “circumstances of your case” would be considered prior to making this decision and that “information such as your age, the length of time you have been a permanent resident, your family support and related responsibilities, your degree of establishment, and any other relevant factors will be considered in the decision making process.” Mr. Lawrence was also advised he could bring counsel to the interview, submit documents, and make written submissions to CBSA.

[8] Mr. Lawrence attended the interview on May 12, 2020 with a CBSA Officer, who passed away the following year. On July 21, 2021, another CBSA Officer wrote a report under section 44(1) of *IRPA* recommending that Mr. Lawrence be found criminally inadmissible under section 36(1)(a) of *IRPA*. The Minister’s Delegate reviewed the section 44 (1) report, Mr. Lawrence’s submissions, evidence, and notes of the interview with Mr. Lawrence. The Minister’s Delegate stated that he conducted a review of the humanitarian and compassionate factors in the case and

decided that instead of issuing a warning letter to Mr. Lawrence, he would refer his case to the Immigration Division for an admissibility hearing under section 44(2) of *IRPA*.

[9] Mr. Lawrence's admissibility hearing was held on December 14, 2021; he was found inadmissible under section 36(1)(a) of *IRPA* and a removal order was issued against him.

III. Minister's Delegate's Review is Unreasonable

[10] The Minister's Delegate's discretion on whether to refer to an admissibility hearing is very limited and there is no obligation to consider humanitarian and compassionate factors (*Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 29). In this case, the Minister's Delegate clearly indicated at the outset of their reasons that they would be reviewing humanitarian and compassionate factors in order to decide whether they would be referring Mr. Lawrence's case for an admissibility hearing or issuing him a warning letter.

[11] In an "Enforcement Process Overview" chart produced by CBSA included in the Certified Tribunal Record, the Minister's Delegate's decision of whether to refer to the Immigration Division is framed in these terms: the first option is to refer to an admissibility hearing and the second is to issue a warning letter. Further, in preparation for the Minister's Delegate's review, the CBSA initiated an information-gathering process about Mr. Lawrence's general circumstances in Canada. The CBSA asked Mr. Lawrence to attend an interview to describe his circumstances in Canada, including the length of his time in Canada and his connections in Canada. The CBSA also asked for submissions and evidence on these issues.

[12] In the context of this review, the Minister's Delegate made a number of statements in their decision to refer Mr. Lawrence to an admissibility hearing that are unsupported by the evidence. As noted above, Mr. Lawrence referenced these statements as examples supporting a reasonable apprehension of bias finding. In my view, it is unnecessary to decide the case on this basis. The examples demonstrate that the Minister's Delegate made a decision based on facts that were unsupported by the record. Even in the context of a limited discretion, it is unreasonable for a decision-maker to decide to engage in a particular type of review and then make conclusions unsupported by facts in the record before them.

[13] The Minister's Delegate finds that "Mr. Lawrence continues to engage in the illegal drug subculture" despite there being no evidence in the record that Mr. Lawrence continued to do so. In fact, Mr. Lawrence's evidence was to the contrary. The Respondent asked the Court to consider that if the Minister's Delegate actually believed Mr. Lawrence was still involved, evidence of this would certainly have been relied on in the Minister's Delegate's reasons. I find this reasoning to be unpersuasive and circular. The problem with the finding that Mr. Lawrence continues to be engaged in criminal activity is that there is no evidence to support it; I cannot assume that the Officer's wording was a mistake because there was no evidence to support it.

[14] Second, the Minister's Delegate unreasonably interpreted a statement they attributed to Mr. Lawrence as demonstrative of his failure to take responsibility for his actions. Mr. Lawrence's statement does not support the Minister's Delegate's inference about its meaning. The Minister's Delegate notes:

Mr. Lawrence shows minimal acceptance of responsibility for his offending behaviour. When interviewed he indicated, "Not going

to blame anyone, put self in a bad situation, knew better, should have made a better choice”. This seems to indicate that he was more upset with being caught, than truly taking accountability for his actions.

[15] It appears this statement came from Mr. Lawrence’s only interview in this process. This interview was conducted in May 2020 by another CBSA officer who, by the time of the Minister’s Delegate’s review over a year later, had passed away.

[16] I do not find this interpretation of Mr. Lawrence’s statement to be reasonable; it does not follow from a plain reading of Mr. Lawrence’s words that the Minister’s Delegate relies upon. The Respondent pointed to Mr. Lawrence’s affidavit, filed on judicial review, as demonstrating a similar attitude as described by the Minister’s Delegate. This affidavit was not before the Minister’s Delegate. It is therefore not relevant to understanding how the Minister’s Delegate interpreted the particular statement they cited from an earlier interview with Mr. Lawrence.

[17] Lastly, the Minister’s Delegate draws unfounded inferences on the level of commitment Mr. Lawrence has to his current spouse and whether Mr. Lawrence is a good father. The Minister’s Delegate notes: “Letters of support indicate that he is a good father, however, one has to question his commitment to his current partner as it seems that his youngest child was conceived with another woman while he was still with his current spouse.” Again, the negative inference the Minister’s Delegate is making is unsupported by the evidence in the record and relies on assumptions about how committed partners and good fathers behave.

[18] Overall, a number of the Minister's Delegate's conclusions and inferences are unsupported by the evidence before them, rendering the decision unreasonable. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-9376-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the Minister's Delegate dated July 21, 2021 is quashed;
3. The decision of the Immigration Division dated December 14, 2021 is quashed;
4. The matter is sent back to a different Minister's Delegate to be redetermined; and
5. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9376-21

STYLE OF CAUSE: AHAM DWAYNE LAWRENCE v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 31, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: DECEMBER 5, 2023

APPEARANCES:

Khatidja Moloo-Alam FOR THE APPLICANT

Bernard Assan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green and Spiegel LLP FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario