

Federal Court



Cour fédérale

Date: 20110527

Docket: T-1202-10

Citation: 2011 FC 625

Vancouver, British Columbia, May 27, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ALEXIE RANDHAWA

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] In June 2008, the Applicant, a citizen of Canada, was sentenced to five years imprisonment in California on a guilty plea to the charge of conspiracy to traffic in narcotics. In December 2008, the Applicant made a request pursuant to the *International Transfer of Offenders Act*, SC 2004 c 21 (*Act*) to be transferred to Canada in order to serve the remainder of his sentence. In a decision dated July 8, 2010, the Respondent Minister rejected the request. The present Application is a judicial review of that decision.

[2] The issue for determination is whether the decision is reasonable having regard to the purpose of the *Act*, and the factors found to be relevant to the Applicant's transfer request. Section 3 of the *Act* states its purpose:

The purpose of this Act is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

La présente loi a pour objet de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux

[10] Section 10 of the *Act* states the factors to be considered:

10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister shall consider the following factors:

(a) whether the offender's return to Canada would constitute a threat to the security of Canada;

(b) whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;

(c) whether the offender has social or family ties in Canada; and

(d) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.

(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:

(a) whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization

10. (1) Le ministre tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien :

a) le retour au Canada du délinquant peut constituer une menace pour la sécurité du Canada;

b) le délinquant a quitté le Canada ou est demeuré à l'étranger avec l'intention de ne plus considérer le Canada comme le lieu de sa résidence permanente;

c) le délinquant a des liens sociaux ou familiaux au Canada;

d) l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou ses droits de la personne.

(2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger:

a) à son avis, le délinquant commettra, après son transfèrement, une infraction de terrorisme ou une infraction

offence within the meaning of section 2 of the *Criminal Code*; and
 (b) whether the offender was previously transferred under this Act or the *Transfer of Offenders Act*, chapter T-15 of the Revised Statutes of Canada, 1985.

d'organisation criminelle, au sens de l'article 2 du *Code criminel*;
 b) le délinquant a déjà été transféré en vertu de la présente loi ou de la *Loi sur le transfèrement des délinquants*, chapitre T-15 des Lois révisées du Canada (1985).

[Emphasis added]

[3] The Minister's decision reads as follows:

[1] The purposes of the *International Transfer of Offenders Act* (the Act) are to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals. These purposes serve to enhance public safety in Canada. For each application for transfer, I examine the unique facts and circumstances as presented to me in the context of the purposes of the Act and the specific factors enumerated in section 10.

[2] The applicant, Alexie Randhawa, is serving a sentence of imprisonment of five years in the United States for the following offence: conspiracy. On June 3, 2008, following a controlled traffic stop of his accomplice's vehicle, approximately 107 kilograms of cocaine were found concealed in cardboard boxes and suitcases. The applicant was apprehended with his accomplice.

[3] The Act requires that I consider whether, in my opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the *Criminal Code*. In considering this factor, I note that the applicant worked with an accomplice and the nature of their activity suggests that other accomplices were involved who were not apprehended. Furthermore, the applicant had ties to a drug trafficking organization believed to be involved in the transportation of drugs from Canada into the United States. The applicant was involved in the commission of a serious offence that, if successfully committed, would likely result in the receipt of a material or financial benefit by the group he assisted.

[4] The Act also requires that I consider whether the offender's return to Canada would constitute a threat to the security of Canada. In considering this factor, I note the applicant's links to a drug trafficking organization, the absence of evidence that the applicant has severed ties from the criminal organization, the serious nature of the offence and the amount of drugs involved. The applicant's offence involves a premeditated criminal enterprise involving multiple actors. It is my belief that, if the transaction had been successfully completed, it would have had long term implications on society.

[5] I recognize the family factors involved in this file, including the fact that the applicant's family members remain supportive. I also recognize the applicant's lack of a criminal record in Canada, his expression of remorse and his rehabilitation efforts while incarcerated.

[6] Having considered the unique facts and circumstances of this application and the factors enumerated in section 10, I do not believe that a transfer would achieve the purposes of the Act.

Vic Toews, P.C., Q.C, M.P.
JUL 08 2010

[Emphasis added]
[Paragraph numbers added]
(Application Record, pp. 8 - 9)

It is agreed that the Minister purports to address the factors considered relevant to the Applicant's request: paragraph 3 in respect of section 10(2)(a), and paragraph 5 in respect of section 10(1)(c). Regarding paragraph 4 which purports to address section 10(1)(a), during the course of the hearing of the present Application, without objection by Counsel for the Applicant, Counsel for the Minister withdrew reliance on this factor for the admitted reason that the Minister's decision does not conform to the law as stated by Justice Kelen in the decision in *Getkate v Canada (Public Safety and Emergency Preparedness)* 2008 FC 965. Nevertheless, Counsel for the Minister argues that the Minister's analysis of the section 10(2)(a) factor supports the essence of the decision under review

which is the Minister's stated belief that a transfer of the Applicant to Canada would not achieve the purposes of the *Act*. I disagree with the proposition advanced.

[4] The Minister's decision is required to be reviewed on the standard of reasonableness which is described in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at paragraph 47:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. [Emphasis added]

I find that the Minister's section 10(2)(a) analysis provides no justification for his stated belief because he has failed to comply with the requirements of section 10(2)(a). Paragraph 3 states known facts, and an assumed fact, about the Applicant's act of criminal conduct resulting in his incarceration, but does not provide what is required: an opinion, supported by cogent evidence, as to whether the Applicant, after the transfer, will commit a terrorism offence or criminal organization offence. As a result, I find that the Minister's decision is not defensible in respect to the facts and law.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back to the Minister for redetermination on the direction that the redetermination be conducted within 60 days of the date of this order.

As he is successful in the present Application, I award costs to the Applicant.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1202-10

STYLE OF CAUSE: ALEXIE RANDHAWA v. MPSEP

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: May 25, 2011

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: May 27, 2011

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