

Federal Court



Cour fédérale

Date: 20150922

Docket: T-2605-14

Citation: 2015 FC 1098

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, September 22, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

REGIS JOSEPH NICOLAS CHARLEBOIS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review to set aside the decision of the Minister of Transport (Minister) to revoke the applicant's security clearance.

[2] The impugned decision was rendered under the supposed authority of section 4.8 of the *Aeronautics Act*, RSC, 1985, c A-2 (Act), which sets out the following:

4.8. The Minister may, for the purposes of this Act, grant or refuse to grant a security clearance to any person or suspend or cancel a security clearance.

4.8. Le ministre peut, pour l'application de la présente loi, accorder, refuser, suspendre ou annuler une habilitation de sécurité.

[3] The applicant is a pre-flight mechanics technician. For his work at the Mirabel airport, he has access to restricted areas. He has worked for the company L-3 MAS since September 25, 1997, and has been granted a valid security clearance for the past eleven years. On November 29, 2013, the applicant applied for a renewal of his security clearance. Checks were done with the Canadian Security Intelligence Service and the Royal Canadian Mounted Police (RCMP).

[4] In a letter dated June 2, 2014, the applicant was informed by Transport Canada about the content of the information gathered by the police authorities raising some concerns about his connection to persons with ties to a criminal biker gang. In particular, the letter describes three incidents of interest:

[TRANSLATION]

- On February 1, 2011, three subjects travelling in the applicant's vehicle went to and entered a home in Mont-Laurier where there was drug trafficking. Sûreté du Québec officers seized an amount of \$1,350 from one of the subjects, but none of the subjects had any narcotics in their possession. The applicant was not present;
- On April 5, 2013, a Blainville municipal police officer stopped the applicant's vehicle for a highway code violation. The applicant was one of the three passengers;
- On April 15, 2013, two (if not three) subjects of interest were spotted by a Sûreté du Québec officer in Mont-Laurier leaving

a restaurant in the applicant's vehicle, and the applicant was not present. The subjects have criminal records, including associations with the Hell's Angels group.

[5] The applicant was asked to provide comments and any useful explanations regarding that information. In a letter dated June 16, 2014, his counsel specified that the applicant had, on a few occasions, lent his vehicle to his former neighbour. She wrote the following:

[TRANSLATION]

It seems as though Mr. Charlebois left his vehicle in Ms. Lopez's possession on each of the dates listed in your letter dated June 6. He confirmed that he was at work during all of the incidents, including the one on April 5, 2013. He can provide documentary evidence on this matter if required.

Counsel also stated that the applicant was not aware that the neighbour in question was in any way involved in criminal activities, and that he would cease all communication with her. Those explanations did not satisfy the Minister (or his delegate), hence this application for judicial review.

[6] First, the applicant argues that he has a right to know the case to be met and that he must be given a meaningful opportunity to make representations. He points out that, even though he was informed of the concerns raised in the checks done with the RCMP, the Minister did not give him a meaningful opportunity to rebut the negative information. He criticizes the Minister for not assigning any credibility to his counsel's reply, since a higher standard of procedural fairness applies in cases where an existing security clearance is not renewed (*Lorenzen v Canada (Transport)*, 2014 FC 273 (CanLII) at para 19 (*Lorenzen*); *DiMartino v Canada (Minister of Transport)*, 2005 FC 635 (CanLII) at paras 22, 23, 24 and 33). Finally, the applicant states that

he offered to provide proof of his presence at work on April 5, 2013, to Transport Canada, but that it did not act on that offer.

[7] The respondent acknowledges that in cases where a security clearance is revoked or not renewed, procedural fairness requires that the applicant be informed of the Minister's concerns and have the opportunity to make his case. However, the opportunity to make written submissions satisfies the procedural fairness requirements, including for decisions to cancel a security clearance that has already been obtained (*Lorenzen*, at para 51; *Rivet v Canada (Attorney General)*, 2007 FC 1175 (CanLII) at para 25). In this case, the respondent points out that the applicant was informed of the reason for the review of his file. The respondent notes that the letter from Transport Canada contained specific details from the report received from the RCMP, including the dates and locations of the three incidents cited. The respondent points out that it was up to the applicant to respond in a way that made it possible to address the police's concerns regarding his associations with individuals involved in organized crime.

[8] With respect to adherence to the principles of procedural fairness, the applicable standard of review is correctness (*Russo v Canada (Transport, Infrastructure and Communities)*, 2011 FC 764 (CanLII) at para 22; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 (CanLII) at para 43). There was no failure to comply with procedural fairness in this case. The applicant was informed of the three incidents that concerned Transport Canada. Specific details (locations, dates, the subjects identified and the nature of the connection suspicions) were provided in the letter from Transport Canada. The applicant was asked to provide explanations or

additional information in this regard. In fact, the applicant made his case, while the Minister had no obligation to request that the applicant make additional submissions.

[9] Second, the applicant claims that he addressed each of the concerns expressed in the letter dated June 2, 2014, and as a result, that the ministerial decision is otherwise unreasonable. To the contrary, the respondent asserts that the decision-maker has broad discretion under section 4.8 of the Act, that the decision-maker may take into account any factor he or she considers relevant (*Fontaine v Canada (Transport)*, 2007 FC 1160 (CanLII) at para 78), and that it is exclusively up to the Minister to determine the weight to give to the various pieces of evidence before him.

[10] The onus was on the applicant to address the concerns of the Minister's delegate—which he did not do to his satisfaction. The applicant challenges the Minister's finding, which is essentially a factual one. However, the impugned decision seems reasonable to me, so this application must fail (*Sylvester v Canada (Attorney General)*, 2013 FC 904 (CanLII) (*Sylvester*) at para 10; *Clue v Canada (Attorney General)*, 2011 FC 323 (CanLII) at para 14). It is not in dispute that the applicant's car was used by subjects identified with a criminal biker gang (Hell's Angels).

[11] Note that according to the uncontradicted evidence in the record, the applicant works at the Mirabel airport, that is, a location of some interest for organized crime. The Minister must ensure that these locations are not used for organized crime. The *Transportation Security Clearance Program Policy* (Policy) states the following:

Objective

The objective of this Program is to prevent the uncontrolled entry into a restricted area of a listed airport by any individual who;

1. is known or suspected to be involved in activities directed toward or in support of the threat or use of acts of serious violence against persons or property;
2. is known or suspected to be a member of an organization which is known or suspected to be involved in activities directed towards or in support of the threat or use of acts of serious violence against people or property;
3. is suspected of being closely associated with an individual who is known or suspected of,
 - being involved in activities referred to in paragraph (a);
 - being a member of an organization referred to in paragraph (b); or
 - being a member of an organization referred to in subsection (e) hereunder.
4. the Minister reasonably believes, on a balance of probabilities, may be prone or induced to;
 - commit an act that may be unlawfully interfere with civil aviation; or
 - assist or abet any person to commit an act that may unlawfully interfere with civil aviation.
5. is know or suspected to be or to have been a member of or a participant in activities of criminal organizations as defined in Subsection 467.1 and 467.11 (1) of the Criminal Code of Canada;
6. is a member of a terrorist group as defined in Section 83.01 (1)(a) of the Criminal Code of Canada.

The Program is in place to determine whether a person poses a risk to transportation security.

[12] Justice Russell noted the following in *Lorenzen* (para 31):

Air safety is an issue of substantial importance and access to restricted areas is a privilege, not a right. The Minister's broad discretion is guided by the TSCP Policy [Policy], which does not require proof of any unlawful act or past activity, or a belief that an applicant will do something. It simply requires that the Minister, in the circumstances, have a reasonable belief that the person may be prone or induced to do some acts.

[13] In this case, the reasons for the impugned decision are clear and intelligible. In the absence of objective evidence corroborating the applicant's statements that he lent his vehicle to a neighbour or that he was at work, it was reasonably open to the decision-maker to find that the applicant's explanations were not sufficient to depart from the inferences drawn from the RCMP report. It is clear that the impugned decision is based on the evidence in the record, including the information described in the letter dated June 2, 2014, the written statement provided by counsel for the applicant (dated June 16, 2014), the recommendation by the Transportation Security Clearance Advisory Body and the Policy. The three incidents described in the letter dated June 2, 2014, are apt to raise serious concerns about the applicant's judgment, reliability and trustworthiness. As a result, it was not unreasonable to find that in light of the information presented in the RCMP report, there was reason to believe, on a balance of probabilities, that the applicant [TRANSLATION] "[is] prone or induced to commit an act, or to assist or abet another person to commit an act, that may unlawfully interfere with civil aviation."

[14] Because no reviewable error was committed by the Minister or his delegate, this application for judicial review will be dismissed with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the applicant's application for judicial review is dismissed with costs.

"Luc Martineau"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2605-14

STYLE OF CAUSE: REGIS JOSEPH NICOLAS CHARLEBOIS v
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 9, 2015

JUDGMENT AND REASONS: MARTINEAU J.

DATED: SEPTEMBER 22, 2015

APPEARANCES:

Marie-Philippe Lavoie FOR THE APPLICANT

Michelle Kellam FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marie-Philippe Lavoie FOR THE APPLICANT
Counsel
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec