

Federal Court



Cour fédérale

Date: 20180518

Docket: IMM-3109-17

Citation: 2018 FC 526

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 18, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

WALTER MANCILLA OBREGON

Applicant

and

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

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Walter Mancilla Obregon, is a citizen of Colombia. In 2012, he obtained refugee status in Guatemala. He left Guatemala in May 2013 for the United States, Chile, Mexico, and then Canada.

[2] On June 26, 2017, the applicant crossed the Canadian border on foot without going through a border crossing. He made a claim for refugee protection that same day and was asked to come for an eligibility interview on July 5, 2017.

[3] On July 5, 2017, an officer from the Canada Border Services Agency [CBSA] prepared a report pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The officer found the applicant inadmissible under paragraph 20(1)(a) and section 41 of the IRPA.

[4] Upon receipt of the report, the Minister's delegate issued an exclusion order against the applicant, based on the same reasons as those of the CBSA officer.

[5] The applicant is seeking judicial review of that exclusion order. He contends that the Minister's delegate erred in law in his interpretation of the IRPA by failing to consider subsection 49(2) of the Act and subsection 228(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. He also contends that insufficient reasons were provided for the decision of the Minister's delegate to be considered transparent and intelligible.

II. Analysis

[6] The standard of review applicable to a decision by the Minister's delegate to issue an exclusion order is that of reasonableness (*Mbaye v. Canada (Citizenship and Immigration)*, 2016 FC 1037 at paragraph 12; *Sibomana v. Canada (Citizenship and Immigration)*, 2012 FC 853 at paragraph 18). The same standard applies in the assessment of the adequacy of reasons

(Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at paragraph 14 [*Newfoundland Nurses*]).

[7] Where the reasonableness standard applies, this Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law." If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility," it is not for the Court to replace the outcome with one that would be preferable (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 59).

[8] The Court finds no reason to intervene in this case.

[9] The exclusion order against the applicant was issued by the Minister's delegate on July 5, 2017, upon receipt of the report prepared by the CBSA officer under subsection 44(1) of the IRPA. The Minister's delegate clearly indicates that the order was issued against the applicant because he is satisfied, on a balance of probabilities, that the applicant is a foreign national who is inadmissible under paragraph 20(1)(a) and section 41 of the IRPA.

[10] Pursuant to section 41 of the IRPA, a foreign national may be inadmissible for failing to comply with the Act. The failure to comply in this case is set out in paragraph 20(1)(a) of the IRPA, which stipulates that a foreign national who seeks to enter or remain in Canada must establish that they hold the visa or other document required under the regulations and have come

to Canada in order to establish permanent residence. The applicant does not dispute the application of these provisions.

[11] In addition to the reference to paragraph 20(1)(a) and section 41 of the IRPA, the Minister's delegate also indicates that the exclusion order was issued under section 228 of the IRPR. In this regard, the applicant criticizes the Minister's delegate for failing to specify under which subparagraph the exclusion order was issued. While it would have been preferable for the Minister's delegate to specify the subparagraph, upon reviewing section 228 of the IRPR, there is no doubt that the Minister's delegate issued the order under subparagraph 228(1)(c)(iii) of the IRPR. This provision stipulates that, for the purposes of subsection 44(2) of the IRPA, an exclusion order applies if the foreign national is inadmissible under section 41 of the IRPA for failing to establish that they hold the visa or other document as required under section 20 of the Act.

[12] The applicant contends that the Minister's delegate failed to consider subsection 228(3) of the IRPR and subsection 49(2) of the IRPA. Subsection 228(3) of the IRPR provides that if a claim for refugee protection is made and the claim has been determined to be eligible or no determination has been made, a departure order is the applicable removal order. Subsection 49(2) of the IRPA stipulates that a removal order made with respect to a refugee protection claimant is conditional and specifies when it comes into force. The applicant states in his memorandum that, in the absence of a determination on eligibility in the decision, the reasons or the file, a conditional departure order was the appropriate measure.

[13] The Court cannot accept the applicant's argument because the Certified Tribunal Record demonstrates that the applicant was informed that his claim for refugee protection had been deemed ineligible under section 101 of the IRPA. Although the document given to the applicant does not indicate on which paragraph the ineligibility decision is based, it appears from the officer's notes and the form the applicant completed that he obtained refugee status in Guatemala in December 2012. Therefore, the ineligibility of the applicant's claim would be based on his prior refugee status pursuant to paragraph 101(1)(c) of the IRPA.

[14] Considering that the applicant's refugee claim was deemed ineligible, subsection 49(2) of the IRPA and subsection 228(3) of the IRPR are of no help to him.

[15] Although the reasons are brief, the Court finds that the exclusion order was sufficiently detailed to enable the applicant to understand the basis of the decision of the Minister's delegate. In this regard, it is relevant to refer to the principles set forth by the Supreme Court of Canada in *Newfoundland Nurses*, indicating that the reasons do not have to be comprehensive or perfect or refer to all of the arguments, statutory provisions or other details that the reviewing judge would have preferred. A reviewing judge may also, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome (*Newfoundland Nurses* at paragraphs 15 and 16). In light of these principles, the Court finds that the decision of the Minister's delegate is reasonable because it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law." It is also justified in a manner that satisfies the criteria of transparency and intelligibility within the decision-making process (*Dunsmuir* at paragraph 47).

[16] At the hearing, counsel for the applicant argued that the applicant did not have the opportunity to demonstrate why he could not return to Guatemala. The Court does not intend to rule on this argument because the decision finding the claim for refugee protection to be ineligible is not the subject of this application for judicial review.

[17] For all of these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court believes that this case does not raise any.

[18] The style of cause was modified to replace “The Minister of Citizenship and Immigration” with “The Minister of Public Safety and Emergency Preparedness” to reflect the correct respondent.

JUDGMENT in file IMM-3109-17

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The style of cause was modified to replace “The Minister of Citizenship and Immigration” with “The Minister of Public Safety and Emergency Preparedness”;
3. No questions of general importance were certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3109-17

STYLE OF CAUSE: WALTER MANCILLA OBREGON v THE MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 7, 2018

JUDGMENT AND REASONS: ROUSSEL J.

DATED: MAY 18, 2018

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