Federal Court  Cour fédérale

Date: 20180709

Docket: IMM-4488-17

Citation: 2018 FC 706

Ottawa, Ontario, July 9, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

AHMED BALADIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ahmed Baladie, brings this application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. He seeks judicial review of a determination by the Minister's Delegate [Delegate] that he is a danger to the public in Canada and that it is not likely his removal to Iran would expose him to a risk persecution or ill treatment

contrary to section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[2] Mr. Baladie argues that the Delegate erred by: (1) applying the wrong test in assessing danger to the public; (2) reaching an unreasonable danger determination; (3) applying the wrong test in assessing personal risk; and (4) reaching an unreasonable risk determination.

[3] I am unable to conclude that the Delegate committed a reviewable error in finding Mr. Baladie poses an unacceptable present and future risk to the Canadian public and that on a balance of probabilities he would not personally face a risk to life, liberty or security if returned to Iran. The application is dismissed for the reasons that follow.

II. Background

[4] Mr. Baladie is an Iranian citizen and ethnic Arab. He came to Canada in 1990 and was recognized as a Convention refugee. In 1995 he became a permanent resident. Between 1993 and 2015 he accumulated a lengthy criminal record, including convictions for: assault, mischief under $5,000, dangerous operation of a motor vehicle, theft, theft under $5,000, failure or refusal to provide a sample, and causing a disturbance. The record indicates that much of Mr. Baladie's criminality involved the theft of wallets, purses and credit cards from individuals in targeted locations.

[5] In June 2002 he was convicted of, among other things, two counts of possessing a stolen credit card. The maximum term of imprisonment for that offence under subsection 342(1) of the

Criminal Code is ten years. On the basis of the subsection 342(1) convictions, Mr. Baladie was deemed inadmissible to Canada on grounds of serious criminality and a deportation order was issued against him in 2006. In 2007 Mr. Baladie was granted a stay of removal, to be reconsidered in 2012. He failed to appear for the 2012 reconsideration hearing; his appeal was considered abandoned and the deportation order became effective.

[6] On September 14, 2017 the Delegate concluded that Mr. Baladie was a danger to the public in Canada [the danger opinion]. It is that decision that is now before the Court for review.

III. Decision under Review

[7] The Delegate reviewed the relevant provisions of the IRPA and noted that: (1) IRPA subsection 115(2) constitutes an exception to the principle of non-refoulement; and (2) that even if Mr. Baladie were found to be a danger to the public, section 7 of the *Charter* requires that the danger he poses be balanced against the risk to him of being returned to Iran.

[8] The Delegate then reviewed the details of Mr. Baladie's immigration history and summarized his criminal record. The Delegate concluded that his conviction relating to stolen credit cards rendered him inadmissible to Canada for serious criminality.

A. *Danger analysis*

[9] Regarding Mr. Baladie's criminal activity, the Delegate stated:

> With few breaks, Mr. Baladie has had a continuous pattern of criminality since arriving in Canada some 27 years ago. Mr.

> Baladie appears to be a professional thief, lacking a moral compass when it comes to property crimes. He has worked in concert with several co-conspirators, targeting specific locations and victims…There is nothing spontaneous about these thefts – they are planned and executed carefully and strategically.
>
> In addition to this propensity for theft, Mr. Baladie appears to be reckless as to the wellbeing of others during his attempts to flee situations where his victims or security guards have reacted to the thefts.

[10] The Delegate then quoted extensively from a 2009 police investigation report that reported upon Mr. Baladie's involvement in criminal activity and his involvement in: theft and fraudulent use of credit cards that the report indicates led to the seizure from his safety deposit box of over $200,000 "derived directly or indirectly from the proceeds of the criminal activities"; domestic assault against his common law spouse; insurance fraud; theft; and involvement with an "Algerian crime ring." The Delegate then noted:

> While I recognize that occurrence reports and charges do not amount to convictions, the above information is useful in shedding light on Mr. Baladie's way of life. I note that the above report is from 2009 but that Mr. Baladie has acquired several convictions of a similar nature since then and as recently as mid-2015. There also appear to be pending charges from July 2017 which remain unresolved.

[11] The Delegate found there was little evidence to support the conclusion that Mr. Baladie had abandoned his criminal activities and that evidence of rehabilitation was limited. The Delegate concluded Mr. Baladie was not rehabilitated.

[12] The Delegate then turned to consider whether Mr. Baladie's criminal activities could be characterized as a danger to the public. The Delegate addressed the question of whether Mr.

Baladie was a "nuisance-variety, non-dangerous criminal" and concluded he was not. The Delegate distinguished "pickpockets" from "shoplifters" because of their interaction with the victims of their crimes and noted:

> A victim may realise what is happening, become angry and the situation may deteriorate to one where either the pickpocket or victim may feel the need to resort to violence – as in the Starbucks case from 2001. In addition, Mr. Baladie uses accomplices and "getaway" cars to remove himself quickly from the scene of where he pickpockets. Dangerous driving has ensued. As described by Vancouver Police in their 2006 report: "He has demonstrated that he is willing to go to extreme measures to evade the police, driving extremely recklessly and even running red lights during busy traffic times. This type of behaviour is now putting innocent people in grave physical danger."

[13] The Delegate found it was "not speculative but easily foreseeable" that the applicant could cause death or injury in evading the police given his history of dangerous driving and volatile personality. The Delegate further found that the financial impact of the applicant's crimes has an impact on the public at large, concluding:

> Based on the evidence before me that Mr. Baladie's criminal activities were both serious and dangerous to the public, in addition to the lack of evidence of rehabilitation, I find, on a balance of probabilities, that Mr. Baladie represents a present and future danger to the Canadian public, whose presence in Canada poses an unacceptable risk.

B. *Risk assessment*

[14] Having concluded that Mr. Baladie represents a present and future danger to the Canadian public, the Delegate then proceeded to assess the risk to Mr. Baladie if he were to be removed to Iran.

[15] The Delegate considered Mr. Baladie's identity as an Arab Iranian but found after a review of the country condition documentation that he was not at risk of persecution based on ethnicity alone.

[16] The Delegate then considered Mr. Baladie's prior involvement with an activist group in Iran. Iran's "problematic" record in respect of the treatment of political prisoners was recognized but the Delegate noted that Mr. Baladie's involvement with an activist group in Iran had occurred more than thirty years ago and there was no indication that he was in any type of leadership role at the time. The Delegate concluded that the evidence did not support a conclusion that he would be actively sought by authorities, and that there was no more than a mere possibility of his arrest and mistreatment because of his prior activism.

[17] The Delegate then addressed the possibility that Mr. Baladie's illegal exit from Iran would result in his detention on his return. Again the Delegate cited documentary evidence to conclude that the mere fact of leaving the country illegally does not put individuals at risk for persecution or ill treatment on return. The Delegate noted that persons abroad could inquire as to whether they are wanted by authorities and would be subject to arrest on return but found that "it does not appear that Mr. Baladie has made such efforts."

[18] The Delegate concluded that "[w]hile he may have left Iran fearing for his life in 1989 there is insufficient evidence on which to base a finding that he is more likely than not to be ill-treated upon return if he were to return now."

C. *Humanitarian and Compassionate factors*

[19] The Delegate also considered humanitarian and compassionate factors, including the applicant's family, establishment, and health, and concluded that they did not warrant a stay of removal.

D. *Conclusion*

[20] In concluding the analysis, the Delegate: (1) cited the IRPA objectives of protecting Canadians and maintaining the security of Canadian society, and of denying serious criminals access to Canada, and (2) acknowledged the requirement that IRPA be construed and applied in a manner that furthers Canada's domestic and international interests and complies with Canada's international human rights obligations. The Delegate stated:

> After fully considering all facets of this case, including the humanitarian aspects, and an assessment of the possible risks that Mr. Baladie might face if returned to Iran and the need to protect Canadian society, I find that the latter outweighs the former. In other words, upon consideration of all the factors noted above, I am of the opinion that the need to protect members of the Canadian public weighs in favour of Mr. Baladie's removal from Canada. It is therefore my opinion that Mr. Baladie may be removed pursuant to s.115(2)(a) of IRPA.
>
> I find that Mr. Baladie's removal would not shock the conscience of Canadians and he may therefore be deported despite subsection 115(1) of *IRPA*, since his removal to Iran would not, on a balance of probabilities, violate his rights under s. 7 of the *Charter*.

IV. Issues and Standard of Review

[21] The application raises the following issues:

A. Did the Delegate apply the wrong test in assessing danger to the public?

B. Is the danger determination reasonable?

C. Did the Delegate apply the wrong test in assessing personal risk? and

D. Is the Delegate's decision with respect to the risk analysis reasonable?

[22] In considering whether the Delegate erred in applying the incorrect test when assessing danger to the public and risk, a correctness standard of review applies (*Galvez Padilla v Canada (Citizenship and Immigration)*, 2013 FC 247 [*Galvez*] at para 31).

[23] The issues raised in respect of the Delegate's assessment of danger and risk are findings of mixed fact and law or fact and are subject to review against a standard of reasonableness (*Cheikh v Canada (Citizenship and Immigration)*, 2017 FC 896 at para 11; *Alkhalil v Canada (Citizenship and Immigration)*, 2011 FC 976 at para 16; *Nagalingam v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 153 at para 32; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51). In conducting a reasonableness review, it is not the role of a reviewing court to reweigh the evidence. Where a decision reflects the principles of justification, transparency and intelligibility and falls within the range of possible, acceptable outcomes based on the facts and the law a reviewing court should not intervene (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59-67).

V. Analysis

A. *The Law*

[24] A permanent resident is inadmissible to Canada on the grounds of serious criminality where convicted in Canada of an offence punishable under an Act of Parliament by a maximum term of imprisonment of ten years or more (IRPA paragraph 36(1)(a)).

[25] However, where an individual is a protected person IRPA subsection 115(1) prohibits the removal of that individual from Canada to a country where the protected person will be at risk of persecution. This reflects Canada's obligation, as a Contracting State to the 1951 *Convention Relating to the Status of Refugees* [Convention], to respect the principle of non-refoulement.

[26] The Convention recognizes an exception to the principle of non-refoulement where there are reasonable grounds to believe the protected person, after having been convicted of "a particularly serious crime" is reasonably determined to constitute a danger. The Convention exception is reflected in subsection 115(2) of the IRPA. The relevant portions of section 115 read as follows:

Protection	Principe
115 (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a	115 (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée

particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.
Exceptions	Exclusion
(2) Subsection (1) does not apply in the case of a person	(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire :
(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or	a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;

[27] Section 115 of the IRPA does not expressly require the Minister or a Delegate to undertake an assessment of risk when conducting a danger assessment; however this requirement has been grafted onto the process (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1). A risk analysis is required to assess whether a protected person's removal from Canada would "so shock the conscience as to constitute a breach of the person's rights under section 7 of the Charter" (*Galvez* at para 62).

B. *Did the Delegate apply the wrong test in assessing danger to the public?*

[28] Mr. Baladie has framed this issue as the application of an incorrect legal test. The respondent has submitted that the issue raised involves the Delegate's application of the test to the facts, not the identification or application of the wrong test. I agree with the respondent.

[29] The Delegate accurately noted that paragraph 115(2)(a) of the IRPA creates "an exception to the general protection provided to Convention refugees" and considered the meaning of the phrase "danger to the public" as interpreted in *Williams v Canada (Minister of Citizenship and Immigration)*, [1997] 2 FC 646, 147 DLR (4th) 93 (CA). The Delegate recognized that in assessing danger it was necessary to rely on evidence relating to past conduct but that the Delegate was required to assess Mr. Baladie's "present and future danger to the public". This was not an error and Mr. Baladie does not argue that it was.

[30] The issue raised is not whether the Delegate misstated or misapprehended the test but whether the Delegate's finding that the nature of his criminal conduct, related to pickpocketing activity, was serious enough to justify finding him to be a danger to the public. As noted in *Galvez* at para 37 this is a question of mixed fact and law that is to be reviewed against a standard of reasonableness. This question is considered below.

C. *Is the danger determination reasonable?*

[31] Mr. Baladie submits that the Delegate unreasonably concluded that: (1) he had not been rehabilitated, and (2) pickpocketing may lead to violence, a finding he argues was based solely on unsubstantiated allegations contained in the 2009 police report and a dangerous driving conviction from 1998.

(1) Rehabilitation

[32] In his written submissions, Mr. Baladie points to the absence of any convictions for violent crime over the last 15 years in arguing that the Delegate's rehabilitation finding was unreasonable. I am unpersuaded.

[33] In addressing the question of rehabilitation the Delegate was not required to restrict the consideration of criminal activity to incidents of violent criminal offences. Instead it was open to the Delegate to consider whether the evidence satisfied him that Mr. Baladie had demonstrated he had become or was becoming a law-abiding and productive member of society.

[34] The Delegate considered Mr. Baladie's conviction history. He noted that convictions for criminal conduct had been entered between 2009 and "as recently as mid-2015". The Delegate further noted that "there appeared to be charges pending from July 2017". Finally the Delegate acknowledged the assertion made by counsel, on behalf of Mr. Baladie, to the effect that he had acquired no new convictions in the previous two years and that he was rehabilitated.

[35] In assessing this evidence the Delegate noted that the duration of the conviction-free period was "relatively short", that Mr. Baladie's record demonstrated several other periods of similar duration, and that the evidence of rehabilitative programming was limited to certificates certifying completion of two self-improvement courses. The Delegate also acknowledged a "slow-down" in criminality but was not convinced Mr. Baladie had abandoned criminal pursuits.

This conclusion is not inconsistent with the evidence. The Delegate's finding that Mr. Baladie was not rehabilitated cannot be faulted.

(2) Pickpocketing may lead to violence

[36] Mr. Baladie argues, relying on *Galvez,* that an exception to the principle of non-refoulement must meet a high threshold. He submits that a finding of "danger to the public" must be based on acts of substantial gravity. Mr. Baladie further argues the Delegate erred by relying on allegations of connections to organized crime and the possession of large sums of money derived from criminal activity contained in the 2009 police investigation report to conclude that his established criminal conduct, which involved pickpocket type offenses, satisfied this high threshold.

[37] In *Galvez* the applicant also had a lengthy record of convictions that had been entered over a fourteen-year period arising from a crack cocaine addiction. The convictions included: fifteen charges for theft under $5,000; seven charges for failure to attend court; three charges for communication for the purposes of engaging in prostitution; failure to comply with probation; aggravated assault; two counts of trafficking cocaine; uttering threats; and assault with intent to resist arrest. In reviewing the danger decision in that case, Justice de Montigny relied on the phrase "particularly serious crime" as used in the 1951 *Convention Relating to the Status of Refugees* to inform his interpretation of section 115 of the IRPA. In doing so he found the Delegate erred by failing to describe how Mr. Galvez's convictions amounted to particularly serious crime, and by giving much weight to a factor that was not clearly criminal (the danger the applicant posed to the public because of his HIV-positive status and history of prostitution).

[38] The facts in *Galvez* are, in my opinion, readily distinguishable from those before me. In this case the police investigation report, although considered, did not form the basis of the Delegate's decision. Unlike in *Galvez*, the Delegate did not give "much weight" to a factor that was not clearly criminal. Instead, after noting the value of the investigation report for the purpose of shedding light on Mr. Baladie's way of life, the Delegate then turned to consider whether Mr. Baladie's criminality could be described as a mere nuisance or could be characterised as a danger to the public. The Delegate considered the organized nature of the criminal activity, the direct interaction with victims, the possibility of violence where a victim resists and the risk posed to the public when fleeing. The Delegate reviewed the circumstances surrounding a number of Mr. Baladie's interactions with police where the risks identified had materialized. This included incidents of dangerous driving that involved "extreme measures to evade police, driving extremely recklessly and even running red lights during busy traffic times".

[39] It was on the basis of this analysis, coupled with a consideration of the emotional and financial impact Mr. Baladie's criminal activity had on victims, that the Delegate concluded his criminal conduct was to be characterized as a danger to the public. Contrary to the circumstances in *Galvez*, the Delegate did describe how Mr. Baladie's convictions amounted to particularly serious crime. The Delegate's conclusion that his continued presence in Canada posed an unacceptable present and future risk is one that was reasonably available to the Delegate.

D. *Did the Delegate apply the wrong test in assessing personal risk?*

[40] Mr. Baladie submits that in considering risk, the Delegate improperly limited the analysis to those risks set out in sections 96 and 97 of the IRPA. He also submits the Delegate adopted

confusing and contradictory language in respect of the standard of proof and the legal test to be applied. In doing so he argues the scope of the risk assessment was impermissibly narrowed and the Delegate failed to "assess whether the individual, if removed to his country of origin, will personally face a risk to life, security or liberty, on a balance of probabilities." I am unable to agree.

[41] Before the Delegate, Mr. Baladie argued that the risks to life, liberty and security he faces in Iran arise from "his minority Arab ethnicity status, his political opinion, his history of illegally escaping political detention in Iran, and illegally fleeing the country." The risks identified fall within the scope of section 96 and 97 risks. The Delegate addressed those risks. The Delegate cannot now be faulted for failing to address risks that were not raised. In this respect I note and adopt the words of Justice de Montigny in *Galvez* where he states at para 67:

> The fact that the Delegate focused her decision on an assessment of the risks described in sections 96 and 97 of IRPA is easily explainable in the context of the Applicant's file. The Applicant did not present evidence of any risks other than those envisioned by these two provisions.

[42] Similarly, the Delegate clearly and accurately articulated the test to be applied in assessing risk at the outset of the decision where it is stated:

> A determination that Mr. Baladie constitutes a danger to the public permits him to be refouled to Iran if to do so is in accordance with section 7 of the *Canadian Charter of Rights and Freedoms (Charter).* As outlined in the Supreme Court decision in *Suresh,* to comply with section 7 of the *Charter* requires a balancing of the risk Mr. Baladie faces should he be refouled to Iran and the danger to the public should he remain in Canada. Where the evidence demonstrates a substantial risk of torture or the death penalty, the individual cannot be removed save in exceptional circumstances.

[43] I am satisfied that the Delegate understood and applied the appropriate legal test and the standard of proof to be applied. The Delegate's analysis was neither confusing nor contradictory, nor does it demonstrate a lack of understanding of the obligation to assess risk pursuant to section 7 of the *Charter*.

E. *Is the Delegate's decision with respect to the risk analysis reasonable?*

[44] Mr. Baladie acknowledges that a decision-maker need not refer to every document on file but submits that in this case the Delegate minimized the risk he faced on return to Iran by selectively referring to the country condition documentation. He relies on this Court's decision in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 1998 CanLII 8667 (TD) to argue that the Delegate erred in failing to address the contradictory documentary evidence. In advancing this argument Mr. Baladie points to extracts from a series of reports that indicate minority groups including those who identify as Ahwazi or Arab Iranians are disproportionately targeted for arbitrary arrest, detention and physical abuse, and suffer systemic discrimination.

[45] In assessing risk, the Delegate quotes extensively from the documentary evidence to the effect that "ethnic Arabs" in Iran face systematic oppression and discrimination and that those involved or perceived to be involved in activism are at greater risk of arrest, detention and even execution. The evidence quoted addresses Iran's human rights practices and the Delegate recognized that Iran has a problematic human rights record. The Delegate also noted that despite Iran's problematic human rights record and the systemic discrimination faced by ethnic Arabs

the documentary evidence indicated “an Iranian from the Arab areas would not “risk persecution for that reason alone in the event of his return””.

[46] This is not, in my opinion, a case where the Delegate has ignored contradictory evidence. The Delegate identified the risks as demonstrated in the documentary evidence. The documentary evidence cited in Mr. Baladie’s submissions is not inconsistent with the conditions described in the evidence cited by the Delegate. There was no obligation to refer to each piece of evidence, as Mr. Baladie has acknowledged.

[47] The Delegate considered each ground of risk identified and assessed those risks against the conditions in Iran and Mr. Baladie’s personal circumstances. I am in agreement with the respondent’s submissions in this regard – the argument advanced is one that disputes the Delegate’s weighing of the evidence rather than a failure to address crucial and contradictory evidence. It is trite to note that it is not the role of this Court on judicial review to engage in a reweighing of the evidence.

VI. Conclusion

[48] The Delegate’s decision reflects the required elements of transparency, intelligibility and justifiability in the decision-making process and the outcome is within the range of reasonable, possible outcomes based on the facts and the law. The application is dismissed.

[49] The parties have not identified a question of general importance for certification and none arises.

JUDGMENT IN IMM-4488-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4488-17
STYLE OF CAUSE:	AHMED BALADIE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	APRIL 23, 2018
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JULY 9, 2018

APPEARANCES:

Mr. Robin D. Bajer	FOR THE APPLICANT
Ms. Cheryl D. Mitchell	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robin D. Bajer Law Office Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT