Federal Court  Cour fédérale

Date: 20210820

Docket: IMM-3090-20

Citation: 2021 FC 856

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 20, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

CARLOS ANTONIO MENDEZ CABALLERO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated February 18, 2020, by a delegate of the Minister of Immigration, Refugee and Citizenship finding that the applicant constitutes a danger to the public in Canada, within the meaning of the *Immigration and Refugee Protection Act*, SC 2001, c 27, para 115(2)(a) [IRPA or Act].

[2] The applicant is a citizen of Chile, having lost permanent resident status as a refugee in Canada for being inadmissible on grounds of serious criminality. Between 2003 and 2012, the applicant was the subject of three reports on inadmissibility on grounds of serious criminality. A deportation order was issued against him in March 2009 and upheld in May 2011.

[3] On November 28, 2014, the Canada Border Services Agency notified the applicant of its intention to initiate a request for the Minister's opinion under paragraph 115(2)(a) of the IRPA. The applicant made submissions in March 2015 and provided additional evidence in August 2019, followed by other submissions the following month. On February 18, 2020, the Minister's delegate concluded that the applicant constitutes a danger to the public. This is the decision that is under judicial review.

[4] In this application, the applicant makes many arguments and also confuses the respective applicable standards of review. In sum, the applicant submits that the offences committed do not meet the high threshold of serious criminality of paragraph 115(2)(a) of the Act, pursuant to the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137, Article 33(2). In addition, by determining that the applicant did not present objective evidence to support the alleged risk, the delegate breached procedural fairness since he drew a negative inference on his credibility without giving him an opportunity to respond.

[5] Except in respect of the procedural fairness argument, the standard of review to be applied by this Court is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77).

[6] Under paragraph 115(2)(a), a refugee or protected person is inadmissible on grounds of serious criminality, as defined by subsection 36(1) of the IRPA, thus making an exception to the principle of non-refoulement. It is also necessary to determine whether the individual constitutes a danger to the public in Canada. The Minister's delegate must then weigh this danger against the individual's risk of return; this includes a consideration of the individual's own humanitarian and compassionate circumstances (*Nagalingam v. Canada (Citizenship and Immigration)*, 2008 FCA 153 at paras 44, 70 [*Nagalingam*]).

[7] First, the Minister's delegate concluded that the applicant posed an unacceptable risk to the public and was a present or future danger to Canadian society.

[8] The applicant, 42 years old, has a significant criminal record with more than forty offences from 1991 to 2017, with no significant breaks. His criminal record includes several incidents related to domestic violence, breach of conditions and failure to comply with orders, and numerous incidents of a repetitive nature related to theft of goods—including three offences that carry a maximum sentence of ten years. The delegate examined the circumstances of these offences and the resulting consequences. He also noted that there was insufficient evidence that the applicant had corrected his criminal behaviour. The delegate thus determined that he currently poses a present and future risk to the public (*Williams v Canada (Minister of Citizenship and Immigration)*, [1997] 2 FC 646 at para 29).

[9] The Court finds that the delegate applied the appropriate test in assessing the element of danger to the public by analyzing the seriousness of the crimes and the possibility of recidivism

on review of the evidence. Serious criminality includes a wide range of offences, which meet the threshold of danger to the public under the Act (see *Ramanathan v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 834 at paras 45-51; *Shababy v. Canada (Citizenship and Immigration)*, 2018 FC 810 at paras 8-9). In this case, the crimes were not ancillary and were found to be particularly serious; it was reasonable for the delegate to conclude that the applicant is a danger to the public.

[10] Second, the delegate concluded that the applicant will not face a risk of persecution upon his return to Chile. Apart from the applicant's statement that he fears revenge from two individuals who allegedly committed robberies in Canada and were deported to Chile, and who believe that he is responsible for their removal, the applicant did not present any objective evidence to support the alleged risk. The delegate concluded from the documentary evidence on the conditions of the country and the judicial system that the evidence submitted by the applicant was not sufficient to demonstrate that he would not receive the protection of the Chilean authorities if necessary.

[11] In light of the documentary evidence and in the absence of evidence demonstrating the existence of a current personalized risk, the delegate could reasonably conclude in this case that the facts relied upon do not constitute risk factors. (What was before the Minister's delegate must be considered on an application for judicial review; see *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCC 654).

[12] In this case, it is a finding of insufficient evidence and not, as alleged, a finding of veiled credibility. Notwithstanding the foregoing, a presumption of veracity is not equivalent to a presumption of adequate probative evidence (see *Garces Canga v. Canada (Citizenship and Immigration)*, 2020 FC 749 at paras. 39-42).

[13] The burden fell to the applicant to show that he would be at risk; the determination cannot in itself depend on his refugee status (*Mworosha v Canada (Citizenship and Immigration)*, 2017 FC 983 at paras 25-26; *Nagalingam*, above, at para 44). To this end, the onus is not on the delegate to seek out additional information (*Barre v Canada (Citizenship and Immigration*), 2017 FC 1091 at paras 20-21).

[14] Third and lastly, the delegate analyzed the applicant's personal circumstances and concluded that there were not sufficient humanitarian and compassionate considerations, such as the degree of establishment in Canada, both social and economic, including the best interests of the children, to lead him to conclude that the applicant should be prevented from returning to Chile. The applicant does not challenge this determination before this Court.

[15] The delegate thus concluded, after weighing the above factors, that the need to protect Canadian society justifies the applicant's removal and, therefore, he may be deported under paragraph 115(2)(a) of IRPA.

[16] For the reasons set out above, the Court is satisfied that the decision is reasonable and that there was no breach of procedural fairness. The application for judicial review is dismissed.

JUDGMENT in IMM-3090-20

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed; there is no question of general importance to certify (following the abundant case law considered by the Court, according to the authorities cited and submitted by counsel for both parties and argued by counsel for both parties).

"Michel M.J. Shore"
Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3090-20
STYLE OF CAUSE:	CARLOS ANTONIO MENDEZ CABALLERO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MATTER HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 18, 2021
JUDGMENT AND REASONS:	SHORE J.
DATED:	AUGUST 20, 2021

APPEARANCES:

Nazar Saaty	FOR THE APPLICANT
Michel Pépin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Simard Saaty Beaudoin Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT