

Federal Court



Cour fédérale

Date: 20231228

Docket: IMM-4988-22

Citation: 2023 FC 1763

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 28, 2023

PRESENT: Madam Justice St-Louis

BETWEEN :

SUGAR ERIC YUMBA

Applicant

and

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

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] On May 16, 2022, an officer of the Canada Border Services Agency [the Officer] prepared a new report setting out the relevant facts pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27).

[2] In his report, the Officer states that Sugar Eric Yumba, the applicant, is inadmissible on grounds of serious criminality under paragraph 36(1)(b) of the *Immigration and Refugee Protection Act* (SC 2001, c 27), as there are reasonable grounds to believe that Mr. Yumba has been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten years. The Officer reports that Mr. Yumba was convicted of fraud in France in 2009 and received a one-year prison sentence. The Officer adds that this offence, if committed in Canada, would amount to fraud, an offence under subsection 380(1) of the *Criminal Code* (RSC 1985, c C-46).

[3] On May 20, 2022, the Minister's Delegate referred the matter to the Immigration Division [ID] for an admissibility hearing under subsection 44(2) of the *Immigration Act*.

[4] On May 25, 2022, Mr. Yumba submitted this application for judicial review challenging the Officer's decision to prepare the report setting out the relevant facts pursuant to subsection 44(1) of the *Immigration Act*. Mr. Yumba states that he was unaware at the time that the report had been referred to the ID.

[5] The respondent, the Minister of Public Safety and Emergency Preparedness, points out that the impugned decision in this application for judicial review is not the final decision and that the application is consequently premature. The respondent notes that the merits of the section 44 report for serious criminality will be examined by the ID during an admissibility hearing, and that Mr. Yumba's submissions will also be examined by the ID, if necessary.

[6] Mr. Yumba had not addressed the issue of the prematurity of the application for judicial review in his initial submissions. On December 7, 2023, in response to the Court’s invitation, Mr. Yumba submitted additional written submissions in which he essentially confirms that this application is indeed premature.

[7] I agree that the application for judicial review is premature and will therefore be dismissed.

[8] The Federal Court of Appeal dealt with this issue in *Lin v (Public Safety and Emergency Preparedness)*, 2021 FCA 81 and stated the following, in particular, at paragraphs 5 and 6 of its decision:

[5] The general rule is that judicial review should not be brought until all available and adequate administrative recourses are pursued: *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R. 332; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557 at para. 84; *Dugré v. Canada (Attorney General)*, 2021 FCA 8; and in the immigration context, see *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 260, 19 Imm. L.R. (3d) 113, cited with approval in *Somodi v. Canada (Citizenship and Immigration)*, 2009 FCA 288, [2010] 4 F.C.R. 26 at para. 19. Buttressing this is the prohibition in para. 72(2)(a) of the *Immigration and Refugee Protection Act* that forbids judicial review until all administrative appeals are exhausted.

[6] The general rule will not apply where there are exceptional circumstances. This is a “very rare” exception set at a high threshold akin to the threshold for prohibition: *C.B. Powell* at paras. 33; *Dugré* at paras. 35-36; *Wilson v. Atomic Energy of Canada Limited*, 2015 FCA 17, [2015] 4 F.C.R. 467 at para. 33, rev’d on a different point, 2016 SCC 29, [2016] 1 S.C.R. 770. The threshold makes the bar as close to absolute as possible so that judicial reviews do not disrupt the orderly and efficient course of administrative proceedings: *C.B. Powell* at para. 32; *Dugré* at para. 37. As well, it must be remembered that legislators have entrusted the merits of decision-making to administrators, not the courts, and so, absent exceptional circumstances or legislation providing to the contrary,

reviewing courts should not interfere until the administrators have completed their tasks: *C.B. Powell* at para. 32.

[9] In this case, all available and appropriate administrative remedies have not been exercised, and no exceptional circumstances have been demonstrated. The application for judicial review is therefore premature, which the applicant has also confirmed.

II. Conclusion

[10] The application for judicial review will be dismissed.

JUDGMENT in IMM-4988-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.
3. No costs are awarded.

“Martine St-Louis”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4988-22

STYLE OF CAUSE: SUGAR ERIC YUMBA v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: OCTOBER 11, 2023

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: DECEMBER 28, 2023

APPEARANCES:

Dieudonné Kandolo FOR THE APPLICANT

Sonia Bédard FOR THE RESPONDENT

SOLICITORS OF RECORD:

DDK Law Chambers FOR THE APPLICANT
Edmonton, Alberta

Department of Justice Canada FOR THE RESPONDENT
Montréal, Quebec