Federal Court  Cour fédérale

Date: 20120725

Docket: IMM-8848-11

Citation: 2012 FC 929

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 25, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

THOMAS GUY SUFANE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review filed by Thomas Guy Sufane (applicant) in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of the decision by Sabine Daher, the Minister's delegate, dated November 4, 2011, that the

applicant is inadmissible to Canada under subsection 36(1) and paragraph 115(2)(*a*) of the IRPA because he constitutes a danger to the public in Canada.

[2] For the following reasons, the application for judicial review is dismissed.

II. Facts

[3] The applicant is a citizen of Sierra Leone.

[4] On September 8, 2000, the United Nations High Commissioner recognized the applicant as a refugee from Sierra Leone.

[5] He arrived in Canada on November 24, 2001, and claimed refugee protection immediately. He was 16 years of age at the time. On May 14, 2003, the Immigration and Refugee Board allowed the applicant's refugee claim.

[6] Since August 29, 2002, the applicant was convicted of, among other things, the following criminal offences: breaking and entering, theft, possession of substances listed in Schedule I, as described in subsections 4(1) and 4(5) of the *Controlled Drugs and Substances Act*, SC 1996, c 19, obstructing a peace officer, robbery, theft under $5,000.00, failure to comply with an undertaking, assaults, breaking and entering with intent, breach of stay order, obstruction and possession of property obtained by crime not exceeding $5,000.00, uttering threats and possession of substances listed in Schedule I of the *Controlled Drugs and Substances Act*.

[7] On July 10, 2007, the applicant was inadmissible on grounds of serious criminality pursuant to subsection 36(1) of the IRPA.

[8] On December 5, 2011, the applicant filed an application for leave and judicial review of the decision by the Minister's delegate.

[9] In her decision, the Minister's delegate found that the applicant [TRANSLATION] "can be deported despite subsection 115(1) of the IRPA because his removal to Sierra Leone would not violate his rights under 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* (U.K.), 1982, c 11 (Charter)]".

III. Legislation

[10] Subsection 36(1) and section 115 of the IRPA specify the following:

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36.** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
(*a*) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	*a*) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

(*b*) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

(*c*) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

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 particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.

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 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.

(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

a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;

public in Canada; or

(*b*) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

b) pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité du Canada.

IV. Issue and standard of review

A. Issue

- ***Did the Minister's delegate err by finding that the applicant represents a danger to the Canadian public under paragraph 115(2)(a) of the IRPA?***

B. Standard of review

[11] In *Jeyamohan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1081 at paragraphs 34 and 35, the Court stated the following:

> [34] The standard of review that applies to the issue of an administrative decision maker's assessment of the evidence is the reasonableness standard (*Dunsmuir v. New Brunswick*, 2008 SCC 9; *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 39; *Joseph v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 344).

> [35] Therefore, this Court will not substitute its decision for that of the Minister's delegate unless it is satisfied that she made abusive or arbitrary findings without taking into account the evidence before her, and only if her decision does not fall within the range of possible, acceptable outcomes in respect of the facts and law . . . .

[12] Thus, the Court must inquire into "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir*, above, at paragraph 47).

V. Position of the parties

A. Position of the applicant

[13] The applicant argues that the Minister's delegate did not consider that he suffers from post-traumatic stress disorder because of events surrounding the civil war in Sierra Leone. In fact, the applicant points out that he submitted several pieces of evidence demonstrating that he suffers from serious psychological problems that require medical follow-up.

[14] The Minister's delegate notes that there is a legislation and a cooperation strategy between Sierra Leone and the World Health Organization (WHO) to ensure the provision of medical care. However, the applicant states that the finding is unreasonable because Sierra Leone is unable to provide psychiatric care to its citizens.

[15] Furthermore, the Correctional Service of Canada noted in the correctional plan that the applicant [TRANSLATION] "was at the RMHC to benefit from care specific to his case. The psychological service recommends stabilization of his mental state before considering a referral to correctional programs because his current condition would not allow for an investment in those types of efforts" (see page 132 of the Tribunal Record, volume 1).

[16] The applicant alleges that the lack of adequate treatment in Sierra Leone would lead to harmful consequences on his health. For these reasons, the Court must review the decision by the Minister's delegate.

B. Position of the respondent

[17] The respondent notes that the applicant does not challenge the findings that he constitutes a danger to the Canadian public. The respondent also points out that the applicant committed several criminal offences. The Correctional Service of Canada also states that the applicant's reintegration potential is low.

[18] Furthermore, the documentation on the situation in Sierra Leone demonstrates that free elections took place in 2007 and that the civil war is over. The applicant would therefore not be at risk if he were to return to Sierra Leone. The respondent points out once again that the applicant does not challenge this important finding in the decision.

[19] The applicant alleges that the Minister's delegate erroneously assessed the evidence concerning his mental health condition. The respondent replies that the applicant did not submit any medical evidence in support of his position.

[20] According to the respondent, the findings by the Minister's delegate are reasonable because health care is available in Sierra Leone. The delegate took into account all of the evidence in the record and her findings were reasonable in light of *Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 (*Ragupathy*), of the Federal Court of Appeal.

VI. Analysis

a. Did the Minister's delegate err by finding that the applicant represents a danger to the Canadian public under paragraph 115(2)(a) of the IRPA?

[21] The Federal Court of Appeal specified the following in *Ragupathy* with respect to the Minister's delegate's analysis under paragraph 115(2)(*a*) of the IRPA:

> [16] . . . First, paragraph 115(2)(*a*) expressly requires that the protected person is inadmissible on grounds of serious criminality. It is not disputed that the offences committed by [the applicant] render him inadmissible on this ground.
>
> [17] Second, paragraph 115(2)(*a*) provides that, before being liable to deportation, a protected person must also be, in the opinion of the Minister, a danger to the public. This determination is to be made on the basis of the criminal history of the person concerned, and means a "present or future danger to the public": *Thompson v. Canada(Minister of Citizenship and Immigration)* (1996), 118 F.T.R. 269 at para. 20. At this stage of the inquiry, the delegate's task is to form an opinion on whether the person concerned is a danger to the public, rather than to determine the relative gravity of

> any danger that he may pose, in comparison to the risk of persecution: *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2000] 2 F.C. 592 (C.A.) at para. 147.
>
> [18] If the delegate is of the opinion that the presence of the protected person does not present a danger to the public, that is the end of the subsection 115(2) inquiry. He or she does not fall within the exception to the prohibition in subsection 115(1) against the *refoulement* of protected persons and may not be deported. If, on the other hand, the delegate is of the opinion that the person is a danger to the public, the delegate must then assess whether, and to what extent, the person would be at risk of persecution, torture or other inhuman punishment or treatment if he was removed. At this stage, the delegate must determine how much of a danger the person's continuing presence presents, in order to balance the risk and, apparently, other humanitarian and compassionate circumstances, against the magnitude of the danger to the public if he remains.
>
> [19] The risk inquiry and the subsequent balancing of danger and risk are not expressly directed by subsection 115(2), which speaks only of serious criminality and danger to the public. Rather, they have been grafted on to the danger to the public opinion, in order to enable a determination to be made as to whether a protected person's removal would so shock the conscience as to breach the person's rights under section 7 of the Charter not to be deprived of the right to life, liberty and security of the person other than in accordance with the principles of fundamental justice. See *Suresh v. Canada(Minister of Citizenship and Immigration)*, especially at paras. 76-9.

[22] On July 10, 2007, the applicant was found to be inadmissible under paragraph 36(1)(*a*) of the IRPA on grounds of serious criminality. However, in order to be deported from Canada, a protected person must constitute, according to the Minister, a danger to the public by virtue of subsection 115(2) of the IRPA, which constitutes an exception to the principle of *non-refoulement*. The Minister's delegate analyzed the applicant's criminal record and found that he represents a present or future danger to the Canadian public. She subsequently determined that the balance of convenience favoured the Canadian public and that removal of the applicant was necessary.

According to her, removal of the applicant did not violate section 7 of the Charter. Finally, the delegate weighed the humanitarian and compassionate considerations under which the applicant suffers from post-traumatic stress disorder because of the civil war in Sierra Leone. She also found that the applicant would not be at risk if he were to return to Sierra Leone.

[23] It is important to note that the applicant is challenging only the Minister's delegate's analysis of the humanitarian and compassionate considerations. In short, the applicant states that the delegate did not take his psychological health into account. He maintains that he would not be able to receive medical care in Sierra Leone. Even though there is a legislative framework and a cooperative program between the government of Sierra Leone and the World Health Organization, the applicant alleges that the services offered are insufficient.

[24] The respondent contends that the applicant did not submit any evidence demonstrating that he suffers from post-traumatic stress. He also points out that the solutions advanced by the State of Sierra Leone are sufficient of themselves to allow the applicant to benefit from certain medical treatments. The delegate's decision is therefore reasonable because it relies on the evidence in the record.

[25] The Court would like to point out that the Correctional Service wrote several reports on the applicant's mental health. The initial correctional plan states, among other things, that [TRANSLATION] "Mr. Sufane had a difficult childhood in a country in the midst of war, and he therefore emerged with many psychological after-effects, including a possible post-traumatic stress disorder" (see page 128 of the Tribunal Record). The Correctional Service added the

following: [TRANSLATION] "we believe it was Mr. Sufane's psychological and emotional state that led him to a marginal lifestyle, substance abuse and the constitution of a utilitarian and maladjusted social network" (see page 128 of the Tribunal Record).

[26] Mathieu Goyette, psychologist, wrote the following in his psychological and psychiatric assessment report:

> [TRANSLATION]
>
> We are of the opinion that Mr. Sufane could benefit from psychological support through regular establishment of IMHIs or regular psychological services with respect to his relationship problems, emotions management and, if need be, the consequences of his trauma. It should be noted that he verbalized his fears with respect to discussing this topic in a relationship where no trust was established and where he doubted the possible results of discussing his suffering. Insofar as his PTSD symptoms seem to be of secondary importance, it does not seem necessary to discuss the problem at this time. It would not be surprising to observe a marginal increase in activity level and slight instability after a transfer. We will be willing to do psychological follow-ups until June 2011 insofar as his transfer to the Archambault Institution materializes. Also, in accordance with his correctional plan, a substance abuse program would still be appropriate (see page 153 of the Tribunal Record).

[27] The Correctional Service points out that the applicant must benefit from supervision before being able to return to the community. The parole officer stated the following:

> [TRANSLATION]
>
> We believe that it would instead be beneficial to continue with his program while benefiting from the structure of incarceration. He must first stabilize his mental situation completely before returning to the community. . . . We think transitional leave of the community project type would be a progressive, structuring and guiding strategy, but that option is not encouraged at this time. In fact, the many pending proceedings, the possibility of deportation, the low RP and the high risk of recidivism leads us to believe that the prognosis for Mr. Sufane is poor. (see page 142 of the Tribunal Record).

[28] The Minister's delegate found the following:

> [TRANSLATION]
>
> Through his counsel, Mr. Sufane states that he suffers from post-traumatic stress disorder and head trauma. His counsel states that he would not have any psychological or social assistance under the circumstances of the country. She adds that it is impossible to think that Mr. Sufane could rehabilitate himself in a country like Sierra Leone. However, I note that there are more than 550,000 people in the country that require psychiatric care for post-traumatic stress disorder caused by the civil war of 1991 to 2002, depression or substance abuse. That being said, I do not believe that the fact that Mr. Sufane suffers from post-traumatic stress disorder represents a risk of return in itself. Even though the medical resources in mental health services remain limited, Sierra Leone nevertheless benefits from a legislative act to that effect. The treatment of mental health illnesses is part of the country's health system and many non-governmental organizations participate in treating and rehabilitating people suffering from mental illnesses. Therapeutic drugs are also available for treating patients. In order to better manage the country's medical situation, Sierra Leone, together with the World Health Organization, put in place a Cooperation Strategy (2008-2013). The strategy considers the country's objectives and ensures the harmonization and alignment of action by the WHO on those objectives (see pages 24 and 25 of the Tribunal Record).

[29] The Minister's delegate rejected the connection alleged by the applicant between his post-traumatic stress and the risk he faces if he were to return to Sierra Leone. However, the Federal Court of Appeal specified, in *Ragupathy*, above, at paragraph 18, that "the delegate must determine how much of a danger the person's continuing presence presents, in order to balance the risk and, apparently, other humanitarian and compassionate circumstances, against the magnitude of the danger to the public if he remains". In this case, it is clear that the applicant requires close supervision and that his continued presence in Canada constitutes a risk to the Canadian public. Even though there are therapeutic drugs in Sierra Leone, the Minister's delegate, in the absence of

evidence submitted on this point by the applicant, cannot determine the amount of supervision offered by non-governmental organizations or how the cooperation strategy between Sierra Leone and the World Heath Organization takes into account that country's health objectives.

[30] Upon reading the decision and the evidence in the record, the finding by the Minister's delegate regarding the humanitarian and compassionate considerations can, however, fall within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir*, above, at paragraph 47) in this case. The delegate considered all of the evidence submitted. She noted that [TRANSLATION] "the medical resources in mental health services remain limited" (see page 24 of the Tribunal Record) in Sierra Leone but that [TRANSLATION] "treatment of mental health illnesses is part of the country's health system and many non-governmental organizations participate in treating and rehabilitating people suffering from mental illnesses. Therapeutic drugs are also available for treating patients."

[31] Our role, as a reviewing court, is not to substitute our assessment of the evidence for that of the decision-maker, but rather to ensure that the delegate's decision falls within the possible outcomes in respect of the facts and law. In this case, it is clear that the Minister's delegate considered every piece of evidence in the record when she weighed the risk for the Canadian public versus the psychological care available in Sierra Leone for the applicant and the impact of the quality of that care on his state of health. There is therefore no reason for the Court to intervene.

[32] For the above-mentioned reasons, this application for judicial review is dismissed.

VII. Conclusion

[33] The decision by the Minister's delegate falls within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" in this case.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. the application for judicial review is dismissed; and

2. there is no question of general interest for certification.

"André F.J. Scott"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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