Federal Court  Cour fédérale

Date: 20140604

Docket: T-559-13

Citation: 2014 FC 539

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 4, 2014

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

MUSTAFA AMARI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review concerns a decision by the Minister of Public Safety and Emergency Preparedness (Minister) dated March 4, 2013, confirming the decision by a customs officer to confiscate a sum of $78,523.55 in US currency because the applicant had not reported the amount when he entered Canada.

[2] For the reasons that follow, I have concluded that the Minister's decision must be maintained.

I. Facts

[3] The applicant, a Canadian citizen, arrived at the Pierre Elliott Trudeau International Airport on March 22, 2012, from Libya. On his customs declaration card, given to the customs officer, he answered "no" to the question asking if he was bringing an amount equal to or greater than CAN$10,000.00 to Canada.

[4] When the customs officer at the primary inspection line specifically asked him how much money he was bringing back, the applicant answered US$5,000.00, while refusing to say where this amount came from. The officer noted this information on the applicant's customs declaration card and directed him to the secondary inspection line.

[5] The officer at the secondary inspection line asked the applicant to show him the US$5,000.00 he had declared. The applicant showed him the money, composed of US$100 bills. The officer then proceeded to examine the applicant's baggage and found another US$5,000 that was not reported. The applicant informed the officer that this amount was for a friend.

[6] The customs officer found another US$10,000.00 in US$100 bills between two jackets in a bag. Confronted by the customs officer, the applicant admitted that this US$10,000.00 was also his friend's, someone called El Hadi Ashwin. When questioned by the officer, the applicant

clarified that the total amount of US$15,000.00 was from his friend's brother, so his Canadian brother could buy furniture and send it to Libya.

[7] After examining each piece of luggage, an officer asked the applicant if he was in possession of other currency, and the applicant always answered no. The examination of the applicant's baggage continued and led to the discovery of the following non-reported amounts:

- US$10,000.00 in a briefcase;
- US$10,000.00 in a Winners brand bag;
- US$18,500.00 in a laptop computer bag;
- US$40,000.00 in a small black suitcase;
- 226 Libyan dinars and 25 Tunisian dinars in the applicant's pants pockets.

[8] When asked about the origin of this money, the applicant vaguely stated that it was from Libyans to purchase cars in Canada and then to re-export them to Libya. The applicant refused to identify who was to receive these cars. The applicant also declared a sum of US$30,000.00 from his brother, and he refused to provide any other information about the origin of the other currency.

[9] The customs officer therefore decided to seize as forfeit the above-listed currency in the applicant's possession, pursuant to subsection 18(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC-2000, c 17 (the Act), on the ground that this currency had not been reported in accordance with section 12 of the Act.

[10] The officer did not grant the applicant a release under subsection 18(2) of the Act because he had reasonable grounds to believe that the seized currency was proceeds of crime. To reach this conclusion, the customs officer took a number of factors into consideration, including: (a) many acts of laundering proceeds of crime and terrorists funding occur in Libya; (b) the applicant is an employment insurance recipient and therefore has limited income; (c) the applicant hid money in various places in his baggage; and (d) the applicant was unable to explain where the money in his possession came from and lied a number of times.

[11] On or around April 30, 2012, the applicant filed an application for review with the Minister pursuant to section 25 of the Act. In this application, the applicant identified the alleged owners of the amounts seized, and what they were to be used for. He also submitted bank documents in support of his claims that show bank withdrawals and currency exchange and sale of foreign currency operations.

[12] On July 5, 2012, an adjudicator provided the applicant with the notice of the circumstances of the seizure. The adjudicator first revealed that after an initial review of the file, it seemed that the seizure was valid since the amounts seized were not reported as required under subsection 12(1) of the Act. The adjudicator also specifically asked the applicant to submit documentation or evidence that clearly show the legitimate origin of the seized currency and evidence that the currency in his possession at the time of the seizure was from third parties. On August 2, 2012, September 7, 2012, and January 22, 2013, the applicant sent the adjudicator additional written submissions in support of his application.

[13] On April 5, 2013, the applicant filed his application for judicial review of the decisions rendered by the Minister that he contravened the Act with regard to the currency seized and that it should be held as forfeit. It is important to note that the applicant did not file an action under section 30 of the Act to challenge the Minister's decision rendered under section 27 according to which there was indeed a violation of the Act (non-report) with regard to the currency seized as forfeit.

II. The impugned decision

[14] The Minister's delegate rendered a decision based on the "case synopsis and reasons for decision" drafted by the adjudicator. First, the delegate concluded that there was a violation of subsection 12(1) of the Act because the evidence shows the applicant neglected to declare the amounts seized during his return to Canada on March 23, 2012. As a result, the seizure of these amounts was authorized and valid considering subsection 18(1) of the Act.

[15] The delegate then reviewed the grounds that led the officer to confiscate the amounts seized, and concluded that the reasons were sufficient to justify this measure. Although the applicant invoked his ignorance of the obligation to declare the currency seized, it seems that the applicant had reported in writing that he was not bringing back an amount equal to or greater than CAN$10,000.

[16] The delegate also made note of the explanations the applicant provided regarding the origin of the funds and the evidence submitted to this effect, but nonetheless concluded that this evidence did not establish the legitimate origin of the funds seized:

> However, the evidence provided does not establish the legitimate origins of the currency. Specifically, you submitted that the majority of the seized funds had been entrusted to you by your immediate and extended family members. You indicated that $30,000.00 USD had been given to you by one of your brothers, $8,500.00 USD from another brother and $10,000.00 USD from your brother-in-law's son. You supplied banking records, proof of currency exchange and confirmations of employment to support this contention. However, the documentation submitted does not show a source of revenue or income that would account for this currency. The documentation supplied also does not show how the funds you were entrusted with were deposited in your family members' banking accounts. Therefore, as no documentation was supplied show how their revenue or income sources were deposited into their respective banking accounts, a documentary gap is present that generates additional suspicion as to the legitimacy of the seized funds because it creats [sic] an undocumented void between a potential legitimate origin and the seized funds.
>
> You suggested that the remainder of the seized funds originated from your own personal assets and your family's assets in Libya. However, the documentation submitted does not show a source of revenue or income that would account for this currency. As the documentation supplied does not identify the legitimate origins of the aforementioned amounts of currency, the suspicion regarding the legitimate origin of these particular seized funds remains as the Agency was not able to definitively ascertain their origin.

[17] Considering the gaps in the evidence the applicant submitted, the delegate therefore refused to exercise the discretion conferred on him under section 29 of the Act to return the seized currency and confirmed the forfeiture.

III. Issue

[18] The only issue in this case is to determine whether the decision by the Minister's delegate is reasonable considering all the evidence on file.

IV. Analysis

[19] The Act aims to establish a mandatory reporting regime for suspicious financial transactions and cross-border movements of currency and monetary instruments. To achieve these objectives, Part 2 of the Act provides for a system of currency reporting under which importers and exporters must report to a customs officer any importation or exportation of currency of a value that is equal to or greater than an amount prescribed by regulation.

[20] The currency reporting requirement is set out in subsections 12(1) and 12(3) of the Act and sections 2, 3 and 11 of the *Cross-Border Movements of Currency and Monetary Instruments Regulations*, SOR/2002-412 (the Regulations). These provisions require anyone importing or exporting currency or monetary instruments worth CAN$10,000.00 or more to declare such importation or exportation to a customs officer forthwith. This declaration must be made in writing.

[21] If a person fails to comply with this reporting requirement, the unreported currency will then be subject to seizure as forfeit by an officer pursuant to subsection 18(1) of the Act, if the latter believes on reasonable grounds that subsection 12(1) of the Act has been contravened.

[22] Under subsection 18(2) of the Act, the officer must then decide whether he suspects on reasonable grounds that the unreported currency is the proceeds of crime or funds used to finance terrorist activities. If the officer concludes that he has such suspicions, the seized currency cannot

be returned. Otherwise, the officer returns the currency seized as forfeit, subject to a penalty in accordance with section 18 of the Regulations.

[23] Under section 24 of the Act, the forfeiture of currency seized under Part 2 of the Act is final and not subject to review, or to be set aside or otherwise dealt with except to the extent and manner provided by sections 25 to 30 of the Act. Section 25 allows for a request to the Minister to decide whether subsection 12(1) was contravened, by providing written notice to the officer within 90 days after the date of the seizure. If the Minister decides that subsection 12(1) was contravened, he may either return the currency or monetary instruments seized or an amount equal to their value, upon reception of the regulatory penalty or without a penalty, or return all or part of the penalty paid under subsection 18(2), or confirm the forfeiture of the currency or monetary instruments to Her Majesty in right of Canada (see section 29 of the Act).

[24] Under section 30 of the Act, a person who makes a request under section 25 may, in the 90 days after being notified of the Minister's decision, appeal the decision by way of an action before the Federal Court. In such a proceeding, the Court can only determine whether section 12 of the Act was contravened. A person who wishes to challenge the Minister's decision made under section 29 of the Act must proceed by an application for judicial review in accordance with section 18.1 of the *Federal Courts Act*, RSC (1985), c F-7*: Tourki v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FCA 186.

[25] It is not in dispute in this case that the standard of review that applies to a decision made under section 29 of the Act is reasonableness: *Dag v Canada (Minister of Public Safety and*

Emergency Preparedness), 2008 FCA 255, at para 4; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255, at para 25 [*Sellathurai*]; *Yang v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 281, at paras 9-13. In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, the Supreme Court of Canada noted that 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."

[26] The applicant argues that he provided ample evidence showing the source and legitimate nature of the money forfeited. This evidence includes bank statements, currency conversion or sale of foreign currency operations, declarations by family members and letters confirming the employment of these people. The applicant alleges that this evidence clearly shows the source of the forfeited amount and argues that the Minister erred by not considering this evidence and finding that the forfeited currency was proceeds of crime.

[27] It has been clearly established in the case law of this Court that bank statements are not sufficient to establish a legitimate source for the funds. As my colleague Justice Gleason stated in *Tran v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 600 (at para 26), "[i]t is possible that proceeds of crime can be funnelled through and withdrawn from a bank account." Although the applicant was asked to submit documentation or evidence that clearly shows the legitimate source of the forfeited funds, he was unable to show how these amounts had been generated. The statement that the applicant was from a wealthy family and had

a large bank account is not sufficient to prove in a satisfactory manner that the funds were from a legitimate source.

[28] Additionally, it must be taken into consideration that the applicant lied repeatedly and contradicted himself. He did not report in his customs declaration card that he was bringing to Canada an amount equal to or greater than CAN$10,000.00, he lied at the primary inspection line by stating he was only bringing in US$5,000, and he lied again by indicating that the sum of US$5,000.00 was for his friend El Hadi Ashwin, then he stated that another unreported amount of US$10,000.00 also belonged to this same friend, and again lied to the customs officers by repeating after the discovery of each new bundle of unreported bills that he had no other currency in his baggage. He then contradicted himself later in the statements he made to the Minister.

[29] Moreover, the applicant's financial and professional situation cannot be overlooked. The evidence on file does not show any known income source other than employment insurance. As for his business, ATS, he apparently did not know its address or phone number at the time of the seizure, and this allegedly new vehicle import-export business, registered in 2005, did not seem to have any activity at the time of the seizure. The applicant was unable to explain how he could have generated savings of US$15,000.00 in a bank account in Libya.

[30] As for the claim that a sum of US$5,000.00 was allegedly destined for his friend El Hadi Ashwin to purchase furniture and re-export it to Libya, it is also not credible. This friend did not provide any evidence confirming the applicant's version or explaining how his brother in Libya

was able to legitimately obtain such an amount nor what type of arrangement the two brothers, one in Canada and the other in Libya, had agreed to for the alleged purchase of furniture and their re-exportation.

[31] Lastly, the applicant's transporting such an amount of money in cash seems suspicious. Considering the risks of proceeding in such a manner, it is clearly insufficient for the applicant to state that members of his family do not trust banks and especially do not rely on them for international transactions.

[32] In short, I feel that the Minister's delegate could reasonably conclude that there was a lack of credible evidence showing the legitimate source of the seized funds. As noted in *Sellathurai* at para 50, it is the applicant's responsibility to show, with reliable and credible evidence, the legitimate source of the money seized:

> The issue is not whether the Minister can show reasonable grounds to suspect that the seized funds are proceeds of crime. The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show that the funds come from a legitimate source.

[33] In these circumstances, the Minister's delegate was entitled to confirm the forfeiture of the seized currency, as authorized under paragraph 29(1)(*c*) of the Act. As a result, the application for judicial review is dismissed, with costs.

JUDGMENT

THIS COURT ORDERS that:

- This application for judicial review be dismissed, with costs;
- The style of cause be amended so that the respondent is identified as "The Minister of Public Safety and Emergency Preparedness".

"Yves de Montigny"
Judge

Certified true translation
Elizabeth Tan, translator

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Fareed Halabi	FOR THE APPLICANT
Jacques Mimar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fareed Halabi Counsel Saint-Laurent, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT