

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191218

Docket: A-174-19

Citation: 2019 FCA 316

**CORAM: NEAR J.A.
LASKIN J.A.
MACTAVISH J.A.**

BETWEEN:

HAMID ALAKOZAI

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on November 26, 2019.

Judgment delivered at Ottawa, Ontario, on December 18, 2019.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**LASKIN J.A.
MACTAVISH J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191218

Docket: A-174-19

Citation: 2019 FCA 316

**CORAM: NEAR J.A.
LASKIN J.A.
MACTAVISH J.A.**

BETWEEN:

HAMID ALAKOZAI

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

NEAR J.A.

I. Overview

[1] The appellant, Mr. Hamid Alakozai, appeals from a decision of the Federal Court dated May 1, 2019, dismissing his application for judicial review on the basis of its finding that the Royal Canadian Mounted Police's (RCMP) decision to deny the appellant's application for an Enhanced Reliability Status was reasonable.

II. Background

[2] The appellant, a dual citizen of Canada and Afghanistan, is presently employed with the Corps of Commissionaires and holds a Secret security clearance with the public service as defined in the Treasury Board of Canada's *Standard on Security Screening* (TBS Standard). In September 2015, the appellant submitted an application to become a Regular Member of the RCMP. As a prerequisite to employment as a Regular Member, which requires Top Secret security clearance, it was necessary for the appellant to obtain an Enhanced Reliability Status. Upon the appellant's application, the RCMP began its internal security screening process. The process required the appellant to undergo a Pre-Employment Polygraph and security interview and to be assessed by an RCMP Risk Investigator to verify his identity, his education and professional qualifications, and his honesty and loyalty.

[3] The RCMP's screening process revealed a number of concerns with the appellant, particularly with respect to his online presence and social media accounts. These concerns were documented in the Continuation Report written by the RCMP's Risk Investigator, which was continuously updated with entries dating from November 27, 2017 to March 7, 2018. They included the appellant's representations of himself as, among other things, an "Ambassador of Humanity", a doctor, a senior legal advisor, an international legal and political consultant, and the leader of the National Uprising Party of Afghanistan.

[4] The Continuation Report also highlighted the appellant's appearances in a variety of YouTube videos, including one identifying the appellant as the "next President of Afghanistan".

The Continuation Report further found that the appellant had over 2,000 Facebook friends, one of whom national security experts identified as likely belonging to an extremist group.

[5] The Risk Investigator decided to provide the appellant with a follow-up interview to allow the appellant the opportunity to provide explanations with respect to the areas of concern. On January 15, 2018, the appellant attended a second interview. During this interview, the appellant attributed the misrepresentations to differences in culture and language use between Canada and Afghanistan. The appellant told the Risk Investigator that he did not personally know most of his Facebook friends, and that his wife had access to his account and may have accepted friend requests indiscriminately. He also stated that, despite his representations on Facebook, he was no longer involved in the Afghan political party he had founded and no longer resided in Kabul. He indicated that he was cleaning up his Facebook account and had discussed the importance of scrutinizing friend requests with his wife.

[6] The Risk Investigator requested a re-examination of the appellant's social media accounts two months after the second interview. The re-examination found that the appellant had not corrected any of the misrepresentations nor deleted the problematic Facebook contact, and had in fact acquired more concerning Facebook friends. A further re-examination conducted on March 22, 2018 indicated that the appellant had still not corrected the misrepresentations.

[7] In a memorandum addressed to the Director General of the Departmental Security Branch of the RCMP ("the Director") dated April 16, 2018, the Risk Investigator recommended that the appellant's application for an Enhanced Reliability Status be denied. This recommendation was

based on the appellant's apparent Afghan political ambitions, security concerns relating to the appellant's family in Afghanistan, the numerous inaccuracies and misrepresentations on the appellant's social media accounts, his acceptance of Facebook friends appearing to participate in violent extremism, and his failure to take remedial action with respect to the social media concerns identified by the RCMP, which the Risk Investigator assessed as indicative of poor judgment.

[8] On June 4, 2018, the RCMP sent a letter to the appellant informing him that the Director had denied his application for an Enhanced Reliability Status on the basis of the appellant's involvement in behaviours and activities with security or reliability implications. These included association, affiliation, or contact with individuals who have been involved in criminal activities, and a lack of honesty in providing evasive, misleading, or false information during the security process. The appellant sought judicial review of the denial decision.

III. Decision of the Federal Court

[9] On judicial review, the Federal Court determined that the applicable standard of review was reasonableness.

[10] The Federal Court noted that the TBS Standard grants deputy heads of all departments the discretion to determine department-specific security screening requirements. As such, it is the responsibility of RCMP officials to assess the trustworthiness of applicants for RCMP positions in accordance with the RCMP's internal policies. The Federal Court also noted that the appellant

was afforded procedural fairness throughout the process, and was given the opportunity to respond to the Risk Investigator's concerns in a second interview and to make changes to the problematic social media accounts.

[11] The Federal Court found that the Director had sufficiently strong evidence to conclude that the appellant should be denied an Enhanced Reliability Status and that the decision was therefore reasonable. It accordingly dismissed the application for judicial review.

IV. Issue

[12] The issue on appeal is whether the Federal Court chose the correct standard of review and applied it properly (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47).

V. Analysis

[13] The role of the Federal Court on judicial review is not to re-weigh the evidence. Rather, it is to determine whether the Director's decision was reasonable given the evidence before him. Similarly, this Court on appeal is restricted to considering whether the Federal Court identified the correct standard of review and applied it properly.

[14] In my view, the Federal Court correctly identified the standard of review for decisions relating to security status as reasonableness (*Varin v. Canada (Public Works and Government*

Services Canada), 2016 FC 213 at para. 19; *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56 at para. 86). The Federal Court also properly applied the standard of review. A reasonable decision must be transparent, justified, and intelligible, and must fall within the range of acceptable outcomes on the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47).

[15] The appellant's loyalty to Canada, which he emphasized in his memorandum and throughout the hearing, is not at issue in this proceeding and did not inform the Director's decision. Rather, as communicated to the appellant in the RCMP's letter dated June 4, 2018, the decision was based on the appellant's involvement in behaviours and activities with security or reliability implications. The letter highlighted two examples. The first was the appellant's association, affiliation, or contact with individuals who have been involved in criminal activities. Specifically, the RCMP was concerned about the fact that the appellant had Facebook friends that national security experts identified as likely belonging to an extremist group. The second example was the appellant's lack of honesty in providing evasive, misleading, or false information during the security process. In my view, these grounds constitute sufficient justification for the decision. Furthermore, in my opinion the decision was also transparent and intelligible.

[16] The Director's decision was open to him on the facts and law: there was ample evidence before the RCMP to support a denial of an Enhanced Reliability Status. This evidence included the two examples specifically identified in the letter to the appellant as well as the additional concerns noted in the Risk Investigator's recommendation, which included the appellant's

apparent Afghan political ambitions and security concerns relating to his family members in Afghanistan. I therefore see no error in the Federal Court's application of the standard of review.

VI. Conclusion

[17] For these reasons, I would dismiss the appeal without costs.

"D. G. Near"

J.A.

"I agree
J.B. Laskin J.A."

"I agree
Anne L. Mactavish J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED MAY 1, 2019,
CITATION NO. 2019 FC 550, DOCKET NO. T-1267-18**

DOCKET: A-174-19

STYLE OF CAUSE: HAMID ALAKOZAI v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 26, 2019

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: LASKIN J.A.
MACTAVISH J.A.

DATED: DECEMBER 18, 2019

APPEARANCES:

Hamid Alakozai ON HIS OWN BEHALF

Gregory Tzemenakis FOR THE RESPONDENT
Elsa Michel

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada