

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140610

Docket: A-315-13

Citation: 2014 FCA 157

**CORAM: NADON J.A.
STRATAS J.A.
SCOTT J.A.**

BETWEEN:

NOE GAMA SANCHEZ

Appellant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Heard at Vancouver, British Columbia, on June 10, 2014.
Judgment delivered from the Bench at Vancouver, British Columbia, on June 10, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on June 10, 2014).

STRATAS J.A.

[1] This is an appeal from the judgment of the Federal Court (*per* Justice Russell) dated August 29, 2013: 2013 FC 913. The Federal Court dismissed the appellant's application for judicial review from the Refugee Protection Division's decision dated October 30, 2012.

[2] In its decision, the Refugee Protection Division found that the Applicant had committed a “serious non-political crime” outside Canada and, thus, was excluded from refugee protection pursuant to Article 1F(b) of the United Nations *Convention Relating to the Status of Refugees* and section 98 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[3] The central issue before the Federal Court was when the seriousness of the crime under article 1F(b) of the Convention should be assessed. Should it be assessed at the time of the commission of the crime or at the time of the Refugee Protection Division’s determination? The Federal Court concluded that the relevant time for assessment is the time of determination.

[4] One factor to be assessed when considering the seriousness of the crime is to examine the penalty in Canada for an equivalent crime. In this case, at the time of the Division’s determination, the penalty in Canada for the equivalent crime was much higher than it was at the time the appellant committed the crime abroad.

[5] On this point, we substantially agree with the Federal Court’s reasons and conclusion at paragraphs 59-62 of its reasons.

[6] In assessing the seriousness of the crime, the Refugee Protection Division must consider all relevant considerations pertaining to the factors set out in *Jayasekara v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404, [2009] 4 F.C.R.164 at paragraph 44. In assessing the penalty for the equivalent crime under Canadian law, the Refugee Protection Division cannot close its eyes to the law that is on the books at the time of its determination.

[7] The appellant submitted that this Court in *Febles v. Canada (Minister of Citizenship and Immigration)*, 2012 FCA 324 at paragraph 52 held that the seriousness of the crime should be assessed at the time of commission. But in making that comment, this Court was responding to the submission that the offender's later rehabilitation could affect the assessment of the seriousness of the crime. This Court did not deal with the question before us, which is the relevance of a later change in the penalty for the equivalent crime in Canada.

[8] The appellant accepts that if the Federal Court's decision on this point is correct, the decision of the Refugee Protection Division was reasonable.

[9] Accordingly, despite the able submissions of counsel for the appellant, we will dismiss the appeal. We will answer the certified question as follows:

Question: When assessing the Canadian equivalent of a foreign offence in the context of exclusion under Article 1F(b) of the Convention Relating to the Status of Refugees and the Jayasekara factors, should the Refugee Protection Division Member assess the seriousness of the crime at issue at the time of commission of the crime or, if a change to the Canadian equivalent has occurred in the interim, at the time when the exclusion is being determined by the Refugee Protection Division?

Answer: If a change to the penalty for the Canadian equivalent offence has occurred, the assessment should be done at the time when the Refugee Protection Division is determining the issue of the section 1F(b) exclusion.

[10] There are no special reasons for an award of costs in this case and so there will be no award of costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-315-13

APPEAL FROM A JUDGMENT OF THE FEDERAL COURT (THE HONOURABLE MR. JUSTICE RUSSELL) DATED AUGUST 29, 2013, DOCKET NO. IMM-11894-12

STYLE OF CAUSE: NOE GAMA SANCHEZ v. THE
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: JUNE 10, 2014

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
STRATAS J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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