Federal Court Cour fédérale

Date: 20150515

Docket: IMM-2163-14

Citation: 2015 FC 641

Ottawa, Ontario, May 15, 2015

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

HOSSEIN AL KHALIL
SOUMAYYA AZZAM

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Hossein Al Khalil and Soumayya Azzam challenge four separate but related decisions rendered by the Chief of Operations at the Canada

Border Services Agency [CBSA], which declared a total of $170,000 in cash and performance bonds forfeited.

[2] As a preliminary matter, the parties are agreed and I accept that the style of cause should be amended, so that the Minister of Public Safety and Emergency Preparedness is substituted for the Minister of Citizenship and Immigration. The amendment will be included in this judgment.

II. **Background**

[3] The applicants are the parents of Nabil Al Khalil. He and three of their other sons have been implicated in gang and drug related violence. Two have been killed. A third, Rabih, has been charged with two murders committed in 2012. He fled to Greece and has since been extradited to Canada to face trial.

[4] Nabil was convicted of cocaine trafficking. As a result, a removal order was issued against him but the CBSA could not give it effect because he lacked travel documents. Nabil was released from immigration detention in November 2010, after his parents had posted a total of $170,000 in cash and performance bonds. He was ordered to abide by strict conditions.

[5] In a statutory declaration sworn in January 2014, Nabil's wife Louisa states that he carefully respected his conditions of release. She says he wished to cooperate with the CBSA and leave Canada because he was afraid that rival gangs wanted to target him and his family. He once visited the Lebanese Embassy to obtain a passport but was instructed to follow a longer immigration process.

[6] Louisa further states that the Ottawa police warned Nabil that there were people who wished to have him killed. Nabil then noticed that a private investigator was watching their home. He was afraid that rival gangs were behind this and were planning to kill him due to their grievances against Rabih. Nabil complained to the police, Louisa states, but they refused to act because there was no evidence that anyone had broken the law.

[7] Nabil left his home on November 4, 2013. He called Louisa three days later and told her that he had left Canada with the aid of a smuggler and false documentation. He claimed to be somewhere in the Middle East. He said that he had fled because he felt that his life was in danger. According to Louisa, he is willing to meet Canadian officials abroad to confirm that he has left the country.

[8] It is unclear when Louisa or the applicants first notified the CBSA of Nabil's disappearance. In her declaration, Louisa states: "As soon as I realized that Nabil was missing I contacted my lawyer and he advised me to contact CBSA. I immediately contacted CBSA and told them that Nabil was missing." The earliest date she mentions specifically is November 7 (the date of the telephone call from Nabil). The respondent suggests that Louisa first contacted the CBSA on that date. Indeed, the Certified Tribunal Record contains a statement given by Louisa to the CBSA dated November 7.

[9] On December 2, 2013, the CBSA sent four letters to the applicants advising that Nabil had breached the conditions of the performance and cash bonds.

[10] The CBSA requested that the applicants send cheques for the amounts of the performance bonds and explained that the cash bonds were forfeited. The applicants were advised that they could make submissions with respect to all four letters.

[11] The applicants retained counsel. On January 9, 2014, they submitted a reply package containing extensive written submissions, statutory declarations sworn by Louisa and Hossein, and an affidavit sworn by Nabil's brother Hisham in the context of Rabih's extradition proceedings.

[12] Through four letters dated January 20, 2014, the Chief of Operations at the CBSA upheld the decisions communicated in the previous letters.

III. **Issues**

[13] The respondent's argument that the application was not timely was abandoned at the hearing.

[14] The only remaining issue is whether the officer erred in estreating the bonds.

IV. **Standard of Review**

[15] The assessment of whether a bond should be forfeited is highly discretionary. The law is settled that these decisions are reviewable on reasonableness: *Domitlia v Canada (Public Safety*

and Emergency Preparedness), 2011 FC 419 at paras 22-27; *Khalife v Canada (Minister of Citizenship and Immigration)*, 2006 FC 221 at para 19.

[16] The four letters dated January 20, 2014 constitute the final decision under review. A first letter is addressed to Hossein. It states that Nabil failed to comply with the conditions of the performance bond for $100,000 signed by Hossein on December 2, 2010. The letter states that the CBSA received Hossein's submissions and decided to maintain the decision to estreat the bond. It contains the following explanation.

> Nabil Al Khalil failed to report as per his conditions to CBSA on November 4, 2013. He also failed to always be in the company of the bonds person and reside with Louisa Al Khalil, respect curfew of 9 am to 6 am while at the residence of Louisa Al Khalil. To only use the telephone in presence of the bonds person and must report in person to any change of address prior to the change being made.

[17] A second letter is addressed to Soumayya for a performance bond for $10,000. It contains identical wording.

[18] A third letter is addressed to Hossein with respect to a cash bond of $50,000. It explains that Nabil committed the following violations of his conditions of release.

> As per the order for release and conditions imposed on November 3, 2010, Nabil Al Khalil was ordered:
>
> - Sign in at CBSA office once per month.
>
> - Always be in the company of the bond person and reside with Louisa Anne Al Khalil.
>
> - Curfew of 9:00 PM to 6:00 AM while at residence of Louisa Al Khalil.
>
> - To only use telephone in presence of bond person.

- Must report in writing of any change in address prior to the change being made.

Mr. Al Khalil failed to notify CBSA that he was departing Canada.

Mr. Al Khalil has not provided CBSA with a forwarding address.

[19] The letter states that the CBSA received Hossein's submissions and decided to maintain the decision to declare the cash bond forfeited. A fourth letter is addressed to Soumayya with respect to a cash bond of $10,000. It contains identical wording.

V. **Relevant Legislation**

[20] The authority to require deposits or guarantees in the context of release from immigration detention is found in the *IRPA* at subsection 58(3).

58(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.	58(3) Lorsqu'elle ordonne la mise en liberté d'un résident permanent ou d'un étranger, la section peut imposer les conditions qu'elle estime nécessaires, notamment la remise d'une garantie d'exécution.

[21] Section 49 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], governs the consequences of a failure to comply with conditions with respect to deposits and guarantees.

49. (1) A person who pays a deposit or posts a guarantee must acknowledge in writing	49. (1) La personne qui fournit une garantie d'exécution

confirme par écrit :

(a) that they have been informed of the conditions imposed; and

a) qu'elle a été informée des conditions imposées;

(b) that they have been informed that non-compliance with any conditions imposed will result in the forfeiture of the deposit or enforcement of the guarantee

b) qu'elle a été informée que le non-respect de l'une des conditions imposées entraînera la confiscation de la somme donnée en garantie ou la réalisation de la garantie.

(2) An officer shall issue a receipt for the deposit or a copy of the guarantee, and a copy of the conditions imposed.

(2) L'agent délivre un reçu pour la somme d'argent donnée en garantie ou une copie de la garantie ainsi qu'une copie des conditions imposées.

(3) The Department shall return the deposit paid on being informed by an officer that the person or group of persons in respect of whom the deposit was required has complied with the conditions imposed.

(3) Si l'agent informe le ministère que la personne ou le groupe de personnes visé par la garantie s'est conformé aux conditions imposées, le ministère restitue la somme d'argent donnée en garantie.

(4) A sum of money deposited is forfeited, or a guarantee posted becomes enforceable, on the failure of the person or any member of the group of persons in respect of whom the deposit or guarantee was required to comply with a condition imposed

(4) En cas de non-respect, par la personne ou tout membre du groupe de personnes visé par la garantie, d'une condition imposée à son égard, la somme d'argent donnée en garantie est confisquée ou la garantie d'exécution devient exécutoire.

[22] Although operational manuals are not sources of law, I reproduce section 7.8 of manual *ENF 8: Deposits and Guarantees*, last updated on February 1, 2007.

The rules of procedural fairness require that a CIC or CBSA officer not recommend forfeiture of a deposit or realize a guarantee executed by a third party until that person is given an opportunity to make a written representation concerning the decision to be made.	Les règles d'équité en matière de procédure veulent qu'un agent de CIC ou de l'ASFC ne recommande pas la confiscation d'un dépôt de garantie ou l'exécution d'une garantie d'exécution souscrite par un tiers avant que cette personne ne puisse faire une observation par écrit à propos de la décision en instance.
CIC and CBSA managers and officers have discretionary power to decide whether a breach of conditions is severe enough to warrant the forfeiture of the deposit or the guarantee. However, CIC as well as CBSA managers and officers do not have discretionary power to reduce or otherwise alter the amount of the deposit or guarantee.	Les gestionnaires et agents de CIC et de l'ASFC possèdent le pouvoir discrétionnaire de décider si le non-respect des conditions est suffisamment grave pour justifier la confiscation du dépôt de garantie ou la réalisation de la garantie d'exécution. Toutefois, les gestionnaires et agents de CIC et de l'ASFC ne possèdent pas le pouvoir discrétionnaire de réduire ou de modifier autrement le montant du dépôt de garantie ou de la garantie d'exécution.
When a breach of conditions occurs that will result in forfeiture of a deposit or action to realize on a guarantee, the depositor or guarantor must be informed in writing of the breach and the possible forfeiture or enforcement action, and be granted an opportunity for written representation. If the final decision is to forfeit the deposit or guarantee, the depositor or guarantor will be	Quand une violation des conditions peut avoir pour conséquence la confiscation d'un dépôt de garantie ou l'exécution d'une garantie d'exécution, le déposant ou le garant doit être informé par écrit de l'infraction aux conditions et d'une possible confiscation ou exécution et doit se voir accorder la possibilité de présenter ses observations par écrit. Si la décision finale vise la

held accountable for the entire amount of the deposit or guarantee.	confiscation du dépôt ou la réalisation de la garantie d'exécution, le déposant ou le garant sera tenu responsable de l'intégralité du montant du dépôt ou de la garantie.
When the guarantor refuses or is unable to honour a commitment in a guarantee, CIC or CBSA officers should refer the matter to the regional office of the Justice Department for civil prosecution.	Si le garant refuse ou est incapable d'honorer un engagement de garantie d'exécution, les agents de CIC ou de l'ASFC doivent renvoyer l'affaire au bureau régional du ministère de la Justice pour une poursuite au civil.

VI. **Submissions of the Parties**

A. *Did the officer err in estreating the bonds?*

(1) Applicants' Submissions

[23] The applicants argue that the officer erred in fettering his discretion and in failing to consider their submissions.

[24] In *Khalife*, the Court held that an immigration officer has discretion with respect to the estreatment of a bond. In that case, the officer estreated only a portion of the applicant's deposit. The Court was left in doubt as to how the officer had reached the conclusion that $50,000 was appropriate, as opposed to some other amount, but it was unable to conclude that the decision was unreasonable. Accordingly, the application for judicial review was dismissed.

[25] In *Kang v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 652, the Court set aside a decision to estreat a bond of $5,000 because the officer had fettered his discretion by asserting that he did not have the ability to estreat only a portion of the bond.

[26] The Court again set aside a decision to estreat a bond in *Hussain v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 234. The Court found that the officer had erred in failing to consider the applicant's submissions to the effect that he had not breached any conditions. The Court further observed that the officer had erred in concluding that he did not have any discretion to estreat only a portion of the bond. At paras 10-12, the Court noted that there had been a change in the relevant policy manual but declared that the respondent's policy did not have the force of law.

[27] More recently, the Court repeated that officers have discretion and that the policy manual is not binding in *Etienne v Canada (Public Safety and Emergency Preparedness*), 2014 FC 1128.

[28] The applicants contend that the jurisprudence makes it clear that an immigration officer has the discretion to order no forfeiture, partial forfeiture or full forfeiture once he is satisfied that there has been a breach of conditions. This discretion is grounded in subsection 49(4) of the Regulations, which has the force of law. Since the legislator has not changed the legislation, a change in policy cannot displace the existing jurisprudence. It is an error for an officer to fetter his discretion on the basis of the policy manual: *Yhap v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 205 (TD).

[29] In the criminal context, the applicants submit, the degree of the surety's fault is a central criterion to consider when exercising discretion in the matter of forfeiture: see e.g. the Ontario Court of Appeal's decision *R v Huang*, [1998] OJ No 2991 at para 11, citing British jurisprudence.

[30] Moreover, the applicants submit that the officer rendered an unreasonable decision. There is no evidence that he considered any of the detailed submissions made by the applicants in reply to the letters dated December 2, 2013. The officer did not consider whether the applicants had exercised due diligence; whether Nabil's self-removal from Canada had achieved the purpose of the bonds; the reasons why he left; the need to protect his family; or the previous three years of compliance.

[31] While the Court can supplement the officer's reasons on the basis of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*NL Nurses*], there is a wealth of jurisprudence holding that the Court cannot provide its own reasons for decision where none exist or where the decision-maker ignored central facts or issues. See e.g. *Pathmanathan v Canada (Citizenship and Immigration)*, 2013 FC 353 at para 28; *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11; *Korolove v Canada (Citizenship and Immigration)*, 2013 FC 370 at paras 42-46; *Abbasi v Canada (Citizenship and Immigration)*, 2013 FC 278 at paras 7-8; *Canada (Citizenship and Immigration) v Raphaël*, 2012 FC 1039 at para 28; *Fook Cheung v Canada (Citizenship and Immigration)*, 2012 FC 348 at para 17; *Canada (Citizenship and Immigration) v B451*, 2013 FC 441 at paras 33-37; *Vilvaratnam v Canada (Citizenship and Immigration)*, 2013 FC 154 at para 36.

(2) Respondent's Submissions

[32] The respondent points out that there is no reference in section 49 of the Regulations to any discretion on the part of the CBSA to demand only partial forfeiture of a bond. Similarly, the policy manual expressly instructs CBSA officers that they must demand full forfeiture.

[33] The respondent submits that guarantees are fundamental to the implementation of conditional release in the immigration context. In *Uanseru v Canada (Solicitor General)*, 2005 FC 428 at para 18, Justice Mactavish held that "[t]he reason for using bonds is to allow for the release of individuals in immigration detention on terms that will ensure compliance with immigration legislation". See also *Ferzly v Canada (Citizenship and Immigration)*, 2007 FC 1064.

[34] The forfeiture procedure is carried out in two steps. First, a CBSA officer recommends enforcing the guarantee. The CBSA provides notice to the persons affected in order to comply with the duty of fairness, as is acknowledged in the policy manual. Afterwards, the CBSA may exercise its discretion to order repayment. If the final decision is to forfeit the deposit or guarantee, the bondspersons are held accountable for the entire amount.

[35] There is no discretion to demand only partial forfeiture. The respondent submits that the Federal Court has accepted that this is the case since changes were made to the policy manual in 2007: *Domitlia*, above, at paras 34-36. Therefore, he contends, the CBSA did not act unreasonably in ordering full forfeiture, since it had no discretion to estreat a lesser amount.

[36] The question of discretion aside, the respondent further argues that the decision under review is reasonable. The applicants concede that Nabil breached his conditions in the manner described in the letters sent by the CBSA. Moreover, the CBSA gave notice of its position to the applicants and received their submissions. It is clear from the record, the Minister submits, that the CBSA considered their submissions before making a final decision.

[37] The respondent argues that the breach of Nabil's conditions was not technical or insignificant. It undermines the integrity of the *IRPA*. Nabil breached his conditions deliberately. He committed criminal behaviour by leaving the country under an assumed name with fraudulent documents. The CBSA is not in a position to confirm that he has left the country, nor can it lend credence to the applicants' vague claim that he is somewhere "in the Middle East".

[38] Pursuant to the Regulations, certain criteria must be satisfied when enforcing a removal order. The Court has held that an individual cannot unilaterally enforce a removal order by voluntarily leaving Canada: *Nagalingam v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 362 at paras 60-78. The Court confirmed in *Ferzly* that the CBSA had acted reasonably in forfeiting the full amount of a bond after an individual had breached his conditions by "effecting his own removal".

[39] Whether or not the applicants are at fault for the breach is of no consequence, the respondent submits. A refusal to enforce guarantees where the guarantor asserts that he is not at fault would undermine the usefulness of requiring guarantees. In this case, the breach of the release conditions was severe enough to warrant forfeiture of the bonds. Even if the CBSA

officer had the discretion to order partial forfeiture (an argument that the respondent rejects), the severity of the breaches would militate against a reduction in the forfeited amount.

VII. **Analysis**

[40] The Court must first determine whether the officer improperly fettered his discretion. The law is settled that fettering discretion is a reviewable error. See *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 60:

> [D]ecision-makers who have a broad discretion under a law cannot fetter the exercise of their discretion by relying exclusively on an administrative policy: *Thamotharem*, *supra* at paragraph 59; *Maple Lodge Farms*, *supra* at page 6. An administrative policy is not law. It cannot cut down the discretion that the law gives to a decision-maker. It cannot amend the legislator's law. A policy can aid or guide the exercise of discretion under a law, but it cannot dictate in a binding way how that discretion is to be exercised.

[41] The old version of the policy manual in the present matter expressly told officers that they held the discretion to forfeit only a portion of the total amount of a deposit or guarantee. In *Khalife* and *Kang*, I read section 49 of the Regulations together with the manual as it stood at that time, concluding that officers erroneously fettered their discretion if they asserted that they could not estreat any amount inferior to the full amount.

[42] The policy manual changed in February 2007 but the legislation has remained the same. Has this change affected the scope of discretion? The only case cited by either party which answers this question directly says that it has. Indeed, in *Domitlia*, above, at paras 35-36, Justice Beaudry wrote:

> The respondent refers to the Guide and specifies that before February 1, 2007, there was some discretion for officers, who were able to require forfeiture of an amount less than the guarantee provided.
>
> Given that the condition was breached on May 12, 2010, the new directives must apply. In fact, since February 1, 2007, officers no longer have the discretion to require forfeiture of an amount less that the guarantee provided. Evidently, the officer did not commit an error.
>
> [Emphasis added]

[43] In *Hussain*, above, at paras 10-12, Justice Hughes acknowledged that changes to the policy manual do not have the force of law. Yet when he discussed the scope of the officer's discretion, at para 16, Justice Hughes suggested that that discretion extended only so far as to permit the officer to apply the old manual's guidelines to the case before him – because that case had arisen before the new manual's publication.

[44] The amount of forfeiture (full or partial) was not at issue in *Etienne*. Justice Shore made no comment upon an officer's purported discretion to forfeit a partial amount as opposed to the full amount. He allowed the application upon finding that the CBSA had breached the duty of fairness by refusing to grant the bondsperson an extension of time to make submissions. In so doing, Justice Shore suggested that the manual is binding on officers with respect to the procedural protections they must afford to affected parties: see especially paras 28-29.

[45] The legislative text does not expressly mention discretion to estreat a sum inferior to the total amount of a deposit or guarantee. In the past, the policy manual expressly recognized the existence of such discretion, a position endorsed by this Court in *Khalife* and *Kang*. The manual

now tells officers that they do not have discretion to estreat less than the full amount. There can be no question that such manuals do not have the force of law. As I see it, the real issue is whether the policy manual can affect the scope of discretion in the face of legislative silence.

[46] I am not inclined to agree with the respondent that officers no longer have the discretion alleged by the applicants. It seems to me that such a change would require legislative endorsement. It is not clear how discretion may be granted by the manual to estreat all or none but not a portion of the bond when that is not expressly authorized by the legislation. However, in the circumstances of this case, it is not necessary for me to arrive at a conclusion on that question. I would prefer to leave it open for a case in which it squarely arises on the facts.

[47] There is no indication in the record that the officer believed that he lacked the ability to estreat a lesser fraction of the bonds. The Minister has made arguments to that effect but he cannot speak on behalf of the decision-maker. In the absence of any evidence to the contrary, I infer that the CBSA officer decided that estreating the full amount was appropriate in the circumstances. I would prefer to decide the case by focusing on the reasonableness of that decision as opposed to the rule against fettering discretion.

[48] The applicants argue that the decision to estreat the full amount is unreasonable because the officer ignored several relevant factors. In particular, the applicants insist on two points: first, Nabil's breach was not serious because he gave effect to the removal order against him; second, they were not at fault for his breach.

[49] The officer did not explicitly respond to the applicants' arguments. Yet this does not mean that the Court must necessarily quash his decision. If the ultimate outcome is reasonable in light of the record, *NL Nurses* instructs the Court to supplement the officer's reasons and uphold his decision.

[50] At the same time, the applicants are right that it is not the Court's task to correct erroneous reasoning or engage in boundless speculation. From the many authorities cited by the applicants, I have selected three passages which express the limits which the Court should respect.

[51] In *Pathmanathan*, above, at para 28, Justice Rennie (then a member of this Court) explained:

> *Newfoundland Nurses* does not authorize a court to rewrite the decision which was based on erroneous reasoning. The reviewing court may look to the record in assessing whether a decision is reasonable and a reviewing court may fill in gaps or inferences reasonably arising and supported by the record. *Newfoundland Nurses* is a case about the standard of review. It is not an invitation to the supervising court to re-cast the reasons given, to change the factual foundation on which it is based, or to speculate as to what the outcome would have been had the decision maker properly assessed the evidence.
>
> [Emphasis added]

[52] In *Komolafe*, above, at para 11, it was again Justice Rennie who commented:

> *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn. Here, there were no dots on the page.

[53] Finally, in *Korolove*, above, at paras 45-46, Justice Strickland observed:

> In my view, the Respondent in the present case is essentially asking the Court to undertake its own assessment of the record and, to paraphrase *Kane*, attribute a justification to the Citizenship Judge. The Respondent's submissions require the Court to examine the record with a fine-tooth comb, pull out the relevant dates, undertake its own calculation of the Applicant's absences and assume that this constitutes the justification underlying the Citizenship Judge's conclusion. This is precisely the exercise undertaken by the Respondent in its written submissions.
>
> In my view, such 'reverse-engineering' of the Citizenship Judge's Decision crosses the line between supplementing and substituting reasons.
>
> [Emphasis added]

[54] In the case at bar, the record and the jurisprudence provide ample justification to the decision under review. By upholding the decision, the Court would be merely filling in the gaps and connecting the dots – a task which falls squarely within its mandate on judicial review. It would not be "reverse engineering" a decision with erroneous reasoning.

[55] To begin, the applicants concede that Nabil breached the conditions listed in the decision letters. Therefore, it cannot be said that any error of fact tainted the officer's decision.

[56] Contrary to the applicants' submissions, the fact that Nabil left the country on his own initiative does not mitigate the severity of his breach of conditions. The case law is unequivocal that a person who is subject to a removal order and leaves Canada without the permission of the Minister of Citizenship and Immigration does not thereby execute the order issued against him. In *Nagalingam*, above, at paras 68-75, Justice Russell summarized four authorities which stand for this principle: *Mercier v Canada (Minister of Employment and Immigration)*, [1986] FCJ No

739 (TD); *Saprai v Canada (Minister of Employment and Immigration)*, [1986] FCJ No 273 (TD); *Bhawan v Canada (Minister of Employment and Immigration)*, [1987] FCJ No 573 (TD); and *Raza v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1826 (TD).

[57] Moreover, Justice Shore upheld a decision to fully estreat a bond on similar facts in *Ferzly*. The applicant's boyfriend had been released from immigration detention on the condition that he take a specific flight to Burkina Faso from the Montreal airport. Instead of doing so, he went to the Ottawa airport and tried to take an airplane to Boston but was arrested. The applicant argued that the cash bond she had posted should be returned to her because her boyfriend had attempted to give effect to the removal order. Justice Shore rejected this argument, finding that the boyfriend's unilateral attempt to leave the country amounted to a breach of conditions and that, in the circumstances, the decision to estreat the deposit was reasonable in light of the statutory purpose: see paras 25 and 34-35.

[58] The applicants have not argued that these cases are incorrect or distinguishable. They have merely asserted, without any jurisprudential support, that a secret escape from the country with illegal documents amounts to a technical or insignificant breach which actually promotes the proper administration of the *IRPA*. The opposite view was reasonably open to the officer.

[59] The applicants' second main argument is that the bonds should not be estreated because they were not at fault for Nabil's flight. They extract this principle by analogy to the criminal law. To begin, the propriety of the analogy is questionable. In *Khalife*, above, at paras 27-38, I cited *Uanseru* and expressed a wariness to draw parallels with the criminal law, due to the

particular statutory provisions and purposes of the immigration regime. The applicants' argument that reliance on the criminal law is now appropriate, because changes were made to the policy manual in 2007, is not persuasive. The amended manual does not set out a process that is any closer to the criminal process. Moreover, the underlying statutory and regulatory provisions have not been amended. As such, I see no reason to abandon the position I took in *Khalife*. The culpability of the bondspersons should not be a primary consideration for a CBSA officer deciding whether to estreat a bond.

[60] In any event, I agree with the respondent that the officer could reasonably form the opinion that Hossein and Soumayya were not wholly without guilt. It is true that there is no evidence that they facilitated his flight. Yet they knew that their son was supposed to reside with his wife and respect a strict curfew. Louisa has sworn a statutory declaration that she contacted Nabil's parents as soon as she realized that he was missing from their home. Consequently, Hossein and Soumayya should have discovered their son's disappearance within a day. Yet they and Louisa waited three days before informing the CBSA, despite being aware that it was essential that Nabil respect his conditions. Their alleged belief that Nabil's life was in danger does not render their behaviour more excusable. Moreover, they have not shown the immigration authorities any corroborating evidence that Nabil is outside of Canada or even told them where he is actually located, other than offering the vague generality that he is somewhere in the Middle East. On these facts, the conclusion that the applicants did not exercise due diligence was reasonably open to the decision-maker.

[61] Nabil's purported willingness to meet with Canadian authorities abroad to confirm his departure does not excuse his breach of the conditions of his release nor his parents' lack of diligence.

[62] The facts and the jurisprudence point towards the outcome reached by the officer. Although the applicants contend that he ignored their submissions, it is more likely that he took them into account and dismissed them because they found almost no support in the case law and the record before him.

[63] The applicants have not met the onus of establishing a reviewable error. The decision to estreat the full amount of the performance and cash bonds was reasonable in view of the facts and the law. Accordingly, the application will be dismissed.

[64] The parties were given an opportunity to propose questions for certification. None were proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application is dismissed without costs
2. no question is certified, and
3. the style of cause is changed to substitute the Minister of Public Safety and Emergency Preparedness as respondent.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2163-14
STYLE OF CAUSE:	HOSSEIN AL KHALIL, SOUMAYYA AZZAM v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 6, 2015
JUDGMENT AND REASONS:	MOSLEY J.
DATED:	MAY, 15, 2015

APPEARANCES:

Tara McElroy	FOR THE APPLICANT
Hilary Adams	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Tara McElroy Waldman & Associates Toronto, Ontaro	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT