Federal Court  Cour fédérale

Date: 20180621

Docket: IMM-4358-17

Citation: 2018 FC 640

Ottawa, Ontario, June 21, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

HANAD AHMED IBRAHIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Hanad Ahmed Ibrahim (the "Applicant") seeks judicial review of the decision, made on September 20, 2018 by a Delegate of the Minister of Citizenship and Immigration (the "Respondent"), pursuant to paragraph 115 (2)(a) the I*mmigration and Refugee Protection Act,* S.C. 2001, c. 27 (the "Act"). The decision in question is known colloquially as a "danger opinion".

[2] The Applicant is a citizen of Somalia. A prior danger opinion made by another delegate of the Respondent was set aside by this Court in 2015; see the decision in *Ibrahim v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1033.

[3] In the present application for judicial review, the Applicant submits that the Delegate breached his rights to procedural fairness by relying on a news article that was extrinsic evidence that was not publicly available at the time the danger opinion was issued. He also argues that the Delegate unreasonably concluded, among other things, that adequate mental health care would be available for the Applicant in Somalia.

[4] The statutory scheme for determining a danger opinion has three steps. First, the delegate is to determine if the person meets the criteria of paragraph 115(2)(a) of the Act that the person concerned is inadmissible on the grounds of serious criminality and constitutes a danger to the public. If this established, the burden shifts to the person concerned to show risk as contemplated by 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* (UK), 1982, c. 11 (the "Charter").

[5] If the second stage is established, the delegate must balance between the danger posed and the risk contemplated by section 7 of the Charter.

[6] In the present case, the Applicant does not challenge the Delegate's finding that he falls within the scope of paragraph 115(2)(a) of the Act. Rather, he argues that the Delegate erred in finding that he would not face a risk in Somalia if removed.

[7] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339. The danger opinion, on its merits, is reviewable on the standard of reasonableness; see the decisions in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 and *Padilla v. Canada (Minister of Citizenship and Immigration)*, [2014] 4 F.C.R. 24.

[8] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that the decision of a statutory decision-maker be justifiable, transparent and intelligible and fall within a range of possible, acceptable outcomes, that is defensible upon the facts and the law.

[9] On the basis of the affidavit evidence provided by the Applicant, that is the affidavit of Amanda Bitton, I am satisfied that the newspaper article relied upon by the Delegate about the availability of mental health services at the Amisom Hospital is “extrinsic evidence” as discussed by Justice Noel in the decision *Ogunyinka v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 595 at paragraphs 21-21.

[10] The Delegate erred in relying on this evidence without prior notice to the Applicant and without providing the opportunity for him to address it.

[11] I am also satisfied, on the basis of the evidence, that the Delegate failed to consider all the relevant evidence submitted about the availability of mental health services in Somalia, in particular the conflicting evidence about the availability of such health services.

[12] In my opinion, these errors render the decision unreasonable within the meaning of *Dunsmuir*, *supra*.

[13] In the result, the application for judicial review is allowed, the decision of the Delegate is set aside and the matter is remitted to a different delegate for redetermination. There is no question for certification arising.

JUDGMENT IN 4358-17

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Delegate is set aside and the matter is remitted to a different delegate for redetermination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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