Federal Court  Cour fédérale

Date: 20200116

Docket: IMM-4199-19

Citation: 2020 FC 59

Vancouver, British Columbia, January 16, 2020

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

SEIFESLAM DLEIOW

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review challenges a decision made by the Immigration Division of the Immigration and Refugee Board of Canada (Board) by which the Applicant Seifeslam Dleiow, a foreign national, was found to be inadmissible to Canada under paragraph 34(1)(e) of the *Immigration and Refugee Protection Act* (IRPA). The determinative issue presented is whether the Board's interpretation of that provision was reasonable having regard to the nature of Mr. Dleiow's criminal conduct.

[2] The Board carefully examined Mr. Dleiow's conduct in relation to a former domestic partner identified as KH. The Board concluded that he was unlawfully in her home with intent to commit an indictable offence, had caused damage to a door and had uttered threats. It also noted that he had pleaded guilty to three of four charges that had been laid against him in connection with this event. However, those convictions did not meet the test for serious criminality under the IRPA.

[3] The Board also had considerable evidence before it in relation to several domestic assaults by Mr. Dleiow on another woman. That woman testified before the Board but, contrary to her earlier statements made to police and as testified to by Staff Sergeant Jones, she denied any abuse. Notwithstanding this recantation of her statements to police, the Board found reasonable grounds to believe that Mr. Dleiow had assaulted and caused injury to the woman on a number of occasions. Because no convictions had been entered in relation to these events, paragraph 36 of the IPRA had no application. In the result, the Minister proceeded to have Mr. Dleiow declared inadmissible under paragraph 34(1)(e). That paragraph states:

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants :
[…]	[…]
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	**e)** être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

[Emphasis added]

[4] The Board found that paragraph 34(1)(e) of the IRPA applies to acts of violence that would or might endanger the lives or safety of Canadian residents and does not require any link to national security. The Board's interpretation of this provision is succinctly summed up at paragraphs 21 and 22 of its decision:

> [21] Relying on the rationale provided by the IAD in *Mason*, inadmissibility under paragraph 34(l)(e) does not require that the conduct have a link to national security or the security of Canada, but rather applies to security in the broader sense including ensuring that individual Canadians are secure from acts of violence that would or might endanger their lives or safety. While section 36 of the IRPA creates a class of inadmissibility requiring (for offences in Canada) a conviction, paragraph 34(l)(e) creates a class of inadmissibility for engaging in acts of violence, criminal or not, that would or might endanger the lives or safety of persons in Canada. Finding that paragraph 34(l)(e) applies to individual acts of violence that would or might endanger the lives or safety of persons in Canada is consistent with the objectives in paragraphs 3(1)(h) and (i) of the IRPA and is not inconsistent with Canadian values.
>
> [22] A plain language interpretation of the phrase "acts of violence" suggests that to be described in paragraph 34(l)(e), the permanent resident or foreign national must have engaged in more than one act of violence.

[5] At the time the Board rendered its decision, there was very little jurisprudence considering the scope of paragraph 34(1)(e) of the IPRA. The Board did, however, take some guidance from a decision of the Immigration Appeal Division (IAD) in *Canada v Mason*, IAD file No. VB8-02097. In that case, the IAD held that this provision does not require that the conduct in question be related to a national security concern. The Board declined to depart from the IAD's interpretation and held that Mr. Dleiow's established conduct was sufficiently egregious to support a finding of inadmissibility.

[6] The IAD decision in *Mason* was more recently the subject of judicial review in *Mason v. Canada*, 2019 FC 1251, 311 ACWS (3d) 601,. In that decision, Justice Sébastien Grammond set aside the IAD's decision. In a very thorough contextual and purposive analysis, Justice Grammond found that the IAD's interpretation of paragraph 34(1)(e) was unreasonable because the provision did not apply to criminal conduct that did not involve a national security aspect. In the result, he set aside the IAD's decision and certified the following question:

> Is it reasonable to interpret section 34(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in a manner that does not require proof of conduct that has a nexus with "national security" or "the security of Canada?"

[7] I understand that the case is now on appeal.

[8] Having appropriate regard to the principle of comity, I am required to apply Justice Grammond's reasoning in *Mason*, above, unless I am convinced that the decision is distinguishable or manifestly wrong. Examples of manifest error typically include a failure to apply binding authority or relevant legislation or where the judgment is, on its face, ill-considered: see *Apotex Inc v Pfizer Inc*, 2013 FC 493, [2013] FCJ No 562.

[9] The Minister's Further Memorandum of Argument mentions Justice Grammond's decision in *Mason* and notes that it is on appeal. Apart from maintaining the argument that the Board's decision is reasonable, the Minister did not directly address the issue of comity or identify where Justice Grammond's decision is legally deficient. In oral argument, counsel for the Minister took issue with Justice Grammond's analysis on a number of points by raising issues that he addressed and rejected. The fact that arguments may exist for arriving at a different

interpretation of paragraph 34(1)(e) does not meet the threshold of manifest error and, in my view, comity applies.

[10] For the foregoing reasons, this application is allowed and the Board's decision is set aside. The matter is to be reconsidered on the merits by a different decision-maker.

[11] The Minister is appropriately seeking the certification of the same question that was presented in *Mason*, above, and the Applicant agrees. In the result, I will certify that question.

JUDGMENT in IMM-4199-19

THIS COURT'S JUDGMENT is that this application is allowed with the matter to be redetermined on the merits by a different decision-maker.

THIS COURT'S FURTHER JUDGMENT is that the following question is certified:

> Is it reasonable to interpret section 34(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in a manner that does not require proof of conduct that has a nexus with "national security" or "the security of Canada"?

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4199-19
STYLE OF CAUSE:	SEIFESLAM DLEIOW v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 14, 2020
JUDGMENT AND REASONS:	BARNES J.
DATED:	JANUARY 16, 2020

APPEARANCES:

Robert J. Kincaid	FOR THE APPLICANT
Helen Park	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robert J. Kincaid Law Corporation Barristers and Solicitors Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT