Federal Court Cour fédérale

Date: 20200923

Docket: IMM-6601-19

Citation: 2020 FC 924

Ottawa, Ontario, September 23, 2020

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

Applicant

and

JIN YUAN YE

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Minister applies under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] seeking review of the decision of the Immigration Division [the Division] of the Immigration and Refugee Board releasing the Respondent, Mr. Jin Yuan Ye, from detention.

[2] Mr. Ye is a citizen of China. He arrived in Canada in 2011. In 2018, his claim for refugee protection was ultimately refused. Mr. Ye failed to report for his scheduled removal from Canada. Pursuant to section 55 of the IRPA, a warrant was issued for his arrest on August 6, 2019. Mr. Ye was arrested on October 19, 2019. The Division member [Member] conducting the statutorily mandated 48 hour detention review hearing concluded Mr. Ye was a flight risk but also found there was a viable alternative to detention. The Member ordered Mr. Ye's release on his own recognizance subject to a series of conditions, including that Mr. Ye pay a $5,000 deposit, report to a Canada Border Services Agency [CBSA] Officer every two weeks, and present for removal.

[3] The Minister argues that the decision is unreasonable because the Member failed to assess the effectiveness of the $5,000 deposit in reducing the flight risk posed. In written submissions the Minister also argued that the Member erred by improperly speculating as to the length of the detention period Mr. Ye faced. In oral submissions, counsel advised that this argument was not being pursued, and I have not addressed it.

[4] Mr. Ye did not file written submissions in this matter but did appear at the hearing assisted by an interpreter.

II. Analysis

A. *Standard of Review*

[5] When selecting the standard of review, a reviewing court starts from a presumption of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). While the presumption may be rebutted, there is no reason to conclude a different standard of review is to be applied in this instance (*Vavilov* at para 34—72). In the post-*Vavilov* context, the Division's decisions relating to detention remain reviewable against a standard of reasonableness (*Canada (Minister of Public Safety and Emergency Preparedness) v Taino*, 2020 FC 427 at para 35).

[6] Reasonableness review focuses on both the reasons for the decision and the outcome. A decision will be reasonable if it "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Vavilov* at para 85). To be reasonable a decision must be justifiable, intelligible, and transparent to those subject to the outcome (*Vavilov* at para 95).

B. *The Decision is Reasonable*

[7] Subsection 55(1) of the IRPA permits a CBSA officer to issue a warrant for the arrest and detention of a foreign national in certain circumstances, including where there are reasonable grounds to believe the foreign national is unlikely to appear for removal from Canada.

[8] Upon arrest, CBSA maintains discretion to continue the detention or to release the detainee (IRPA, s 56). Where CBSA does not release an individual, the Division must, within 48 hours, review the reasons for continued detention. A further review is to be conducted within the following 7 days and then again once every 30-day period that follows (IRPA, s 57).

[9] In conducting a detention review, the Division is required to order the release of a detained individual unless one of the grounds prescribed for ongoing detention is established (IRPA, s 58). The prescribed grounds include a finding that the individual is unlikely to appear for removal. In effect, where the Division is satisfied that an individual poses a flight risk, a ground for detention has been established.

[10] Where grounds for detention exist, the Division must consider a series of additional factors before a decision on detention or release is made (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s 248 [IRPR]). These factors include the reasons for detention, the length of time in detention, whether there are any elements that can assist in determining the anticipated period of detention, any unexplained delays or unexplained lack of diligence caused by the CBSA or the person concerned, the existence of alternatives to detention, and the best interests of any directly affected child.

[11] In this instance, the Member found Mr. Ye to be a flight risk but concluded that the payment of a $5,000 deposit coupled with the imposition of a series of standard conditions, including regular in person reporting to CBSA, provided an alternative to detention.

[12] The Minister relies on *Canada (Minister of Citizenship and Immigration) v B001*, 2012 FC 523 [B001] in arguing that the Member failed to engage in a meaningful consideration of the release plan. The Minister submits that the jurisprudence recognizes, as a general principle, that a decision maker considering a release plan must address the circumstances of the person providing a deposit or bond and how those circumstances will promote compliance *(Canada (Minister of Citizenship and Immigration) v Zhang*, 2001 FCT 521 at para 22). A release plan "should be structured in a way that allows it to be successful" *(Radmand v Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 CanLII 22176 at para 29 (CA IRB)).

[13] The Minister argues that the Member did not fully consider the source and quantum of the deposit and therefore was not in a position to assess whether the conditions would reasonably ensure Mr. Ye appeared for removal if required to do so.

[14] I take no issue with the general principles or the jurisprudence the Minister relies upon. However, I am not persuaded that the Member failed to consider Mr. Ye's circumstances in determining that the release plan was a meaningful alternative.

[15] In addressing release as a possible alternative to detention, Minister's counsel identified a single concern in submissions provided to the Member. Mr. Ye's reported savings of approximately $8,000 had been obtained in the course of his work in Canada, work that he had continued without authorization after the issuance of a removal order. Relying upon subsection 47(3) of the IRPR, Minister's counsel took the position before the Member that the funds Mr. Ye had saved were unlawfully obtained and could not be used to provide the proposed $5,000

deposit. Minister's counsel did not argue that the proposed quantum or source of the deposit would fail to promote compliance.

[16] The Member addressed the submission of Minister's counsel, noting that he was not convinced that Mr. Ye's savings had been unlawfully obtained. The Member further noted that Mr. Ye had access to a credit card that according to Mr. Ye had a limit of approximately $6,000 which could be used to make the $5,000 deposit. Mr. Ye in fact paid the deposit using a credit card.

[17] In addressing the plan that Mr. Ye be released on his own recognizance with a $5,000 deposit, the Member addresses Mr. Ye's personal circumstances. The Member notes that Mr. Ye is a homeowner and that he has children. The Member also finds Mr. Ye is unlikely prepared to lose the $5,000 deposit concluding "…it highly unlikely that you would just get up and abscond when you have heavily invested in real estate here."

[18] The Member's analysis and conclusions were reached in the context of the evidence heard and the submissions made and must be read in that light (*Vavilov* at para 94). Mr. Ye's uncontested evidence was that he was responsible to pay the mortgage on his home, that his wife does not earn an income, that his savings were approximately $8,000, and that he had access to a credit card with a $6,000 credit limit that he had used to pay taxes. In light of this evidence relating to financial means and responsibilities it was not unreasonable for the Member to conclude that it was unlikely Mr. Ye would abscond and lose the $5,000 deposit.

[19] The Member's reasons for concluding the release plan was a meaningful alternative to continued detention might well have been more detailed and comprehensive, and may have been, had the issues raised on judicial review been identified by Minister's counsel at the detention review hearing. Nonetheless, the limited reasons reflect a meaningful analysis of the issue before the Member: whether the $5,000 deposit was a meaningful incentive to promote compliance with the conditions of release. The decision is internally coherent, demonstrating a rational chain of analysis that is justifiable, intelligible, and transparent to those impacted (*Vavilov* at para 95).

III. Conclusion

[20] The application is dismissed. No serious question of general importance was identified and none arises.

JUDGMENT IN IMM-6601-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and

2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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