Federal Court  Cour fédérale

Date: 20220805

Docket: IMM-1670-21

Citation: 2022 FC 1169

Ottawa, Ontario, August 5, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ADAM THOMAS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS AND JUDGMENT

[1] Mr. Adam Thomas (the "Applicant") seeks judicial review of the decision of the Minister of Public Safety and Emergency Preparedness (the "Respondent"). By the decision, the Respondent refused the Applicant's application for ministerial relief pursuant to section 42.1 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of the United States of America. He became a permanent resident of Canada in May 2000.

[3] In 2002, the Applicant and one Mr. Benjamin Nicoletti were indicted in the United States by a grand jury on numerous gambling charges. Among other things, the indictment alleged that the Applicant and Mr. Nicoletti were part of a “criminal enterprise”. The indictment was ultimately withdrawn by the American authorities.

[4] In 2004, the Applicant entered a plea agreement and pleaded guilty to a charge of using extortionate means to collect an extension of credit. He received a 24 month sentence of imprisonment and supervised probation for 2 years. Before his release from prison in the United States, the Applicant requested permission from the Chief US District Judge who had presided over his case, to reside in Canada.

[5] The request was granted on March 22, 2006 and the Applicant returned to Canada on April 7, 2006.

[6] On May 16, 2013, the Applicant submitted an application to Immigration, Refugees and Citizenship Canada (“IRCC”) for criminal rehabilitation.

[7] On May 26, 2014, the Refugee Protection Board, Immigration Division (the “ID”) determined that the Applicant is inadmissible to Canada on grounds of serious criminality and

for membership in a criminal organization, pursuant to paragraphs 36(1)(b) and 37(1)(a), respectively, of the Act.

[8] In June 2015, the Applicant's application for criminal rehabilitation was approved and the inadmissibility bar for serious criminality was no longer an issue.

[9] On July 15, 2015, the Applicant applied for ministerial relief pursuant to subsection 42.1(1) of the Act, seeking a declaration that he was no longer inadmissible pursuant to paragraph 37(1)(a).

[10] The Canada Border Services Agency (the "CBSA") recommended that the Respondent refuse the application.

[11] On February 21, 2021, the Respondent refused the application.

[12] The Applicant argues that the Respondent's analysis of national interest is unreasonable, that the consideration of the grand jury indictment was unreasonable and that the Respondent made findings that were unsupported by the evidence.

[13] The Respondent submits that the decision is reasonable.

[14] The decision attracts review on the standard of reasonableness, following the teachings in in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[15] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov*, *supra* at paragraph 99.

[16] In his decision, the Respondent reviewed the broad question of “national interest”, relative to the Applicant’s history, including the conviction in the United States. The Applicant argues that in denying his request for relief under subsection 42.1(1), the Respondent erred by failing to consider any of the evidence and arguments that he submitted relating to the element of “danger” in the assessment of national interest.

[17] The Respondent submits that relief can be denied without a finding that a person is a present or future danger. He notes that subsection 42.1(3) of the Act provides that he is not limited to considering the danger that a foreign national presents to the public or to the security of Canada, and suggests that the proper interpretation of this subsection means that he need to consider “danger” at all.

[18] The following provisions of the Act are relevant to this application:

Exception – application to Minister	**Exception — demande au ministre**
42.1 (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign	**42.1 (1)** Le ministre peut, sur demande d’un étranger, déclarer que les faits visés à l’article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n’emportent pas interdiction de territoire à l’égard de l’étranger si celui-

national if they satisfy the Minister that it is not contrary to the national interest.	ci le convainc que cela ne serait pas contraire à l'intérêt national.
…	...
Considerations	**Considérations**
42.1 (3) In determining whether to make a declaration, the Minister may only take into account national security and public safety considerations, but, in his or her analysis, is not limited to considering the danger that the foreign national presents to the public or the security of Canada.	**42.1 (3)** Pour décider s'il fait la déclaration, le ministre ne tient compte que de considérations relatives à la sécurité nationale et à la sécurité publique sans toutefois limiter son analyse au fait que l'étranger constitue ou non un danger pour le public ou la sécurité du Canada.

[19] The Applicant proposes that a "proper" interpretation of subsection 42.1(3) means that the Respondent is required to consider danger but is at liberty to consider other factors as well.

[20] In *Ragupathy v. Canada (Minister of Citizenship and Immigration)* (2006), 350 N.R. 137 at paragraph 17, the Federal Court of Appeal held that "danger to the public" means a "present or future danger to the public".

[21] Considering this jurisprudential guideline, the Respondent's analysis of "national interest" was unreasonable because it failed to consider the Applicant's submissions on "danger", in particular the evidence of his criminal rehabilitation.

[22] The word "danger" is part of the text of subsection 42.1(3). It is elementary law that all the words of a statutory provision are to be considered.

[23] I refer to paragraph 122 of *Vavilov, supra*:

> It can happen that an administrative decision maker, in interpreting a statutory provision, fails entirely to consider a pertinent aspect of its text, context or purpose. . . . [If] it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances.

[24] In seeking ministerial relief pursuant to subsection 42.1(1), the Applicant presented substantial submissions, showing how he is not a present or future threat or danger to Canadians or national security of Canada. The submissions included evidence of his earlier temporary residence permit, his Authorization to Return to Canada**,** and his criminal rehabilitation.

[25] In my opinion, where substantial submissions were made on the subject of "danger" and "danger" is included in the relevant provision of the Act, a reasonable analysis by the decision-maker, that is the Respondent, requires consideration of the evidence and an explanation for any rejection of that evidence.

[26] It is not necessary for me to address the other issues and arguments raised by the parties since, in my opinion, the decision is unreasonable.

[27] Further to a Direction issued on March 25, 2022, the Applicant submitted two questions for certification by letter dated March 29, 2022. By letter dated April 1, 2022, the Respondent set out his opposition to those questions. The Applicant filed a reply by letter dated April 8, 2022.

[28] The test for certifying a question, for the purposes of subsection 74 (d) of the Act, is whether there is a serious question of general importance that is dispositive of an appeal; see the decision in *Zazai v. Canada (Minister of Citizenship and Immigration)* 318 N. R. 365 (F.C.A.).

[29] In view of my disposition of this matter, the threshold for certifying a question is not met. The pending determination by the Supreme Court of Canada about the interpretation of "national security" in *Canada (Minister of Citizenship and Immigration) v. Mason*, No. 39855, albeit relative to section 34 of the Act, may be relevant to the redetermination of this matter.

[30] The application for judicial review will be allowed, the decision will be set aside and the matter remitted to the Respondent for redetermination.

JUDGMENT in IMM-1670-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to the Respondent for redetermination. There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1670-21
STYLE OF CAUSE:	ADAM THOMAS v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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DATED:	AUGUST 5, 2022

APPEARANCES:

Neerja Saini Ravi Jain	FOR THE APPLICANT
Gregory George	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green and Spiegel, LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT