

Federal Court



Cour fédérale

Date: 20220712

Docket: IMM-1821-21

Citation: 2022 FC 1017

Ottawa, Ontario, July 12, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

DANIEL RAY LAROCHE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of the United States, residing in Niagara Falls, New York.

They are seeking judicial review of a decision made a Program Manager of the Respondent dated September 16, 2020, (the Decision) denying them an Authorization to Return to Canada (ARC).

II. **Background Facts**

[2] On February 12, 2002, the Applicant was convicted of three counts of possession of a credit card for which he was sentenced to 18 days in jail, 12 months probation and a restitution order of \$1149.63. The Applicant has had no criminal convictions since the completion of his sentence.

[3] On November 22, 2019, the Parole Board of Canada (PBC) ordered a Record Suspension for the 2002 convictions after finding the Applicant had been law-abiding since.

[4] On March 3, 2020, the Applicant applied for the ARC. When it was denied, an appeal was filed at the Immigration Appeal Division. The appeal was dismissed on November 20, 2020.

[5] A spousal sponsorship application was subsequently filed on December 31, 2020 and is currently pending.

III. **Determinative Issue**

[6] The determinative issue in this application is the failure of the Program Manager to consider all the evidence in the Certified Tribunal Record (CTR).

[7] Specifically, no reference was made anywhere in the Decision to the Record Suspension issued by the PBC months before the Decision. Not only was the Record Suspension in the CTR, the Applicant also referred to it in their written materials.

[8] Section 2.3 of the *Criminal Records Act*, RSC 1985 c C-47 (CRA), stipulates that a record suspension “removes any disqualification or obligation to which the applicant is, by reason of the conviction, subject under any Act of Parliament”.

[9] While a record suspension under the CRA does not apply retrospectively to clear the conviction, it “operates as an expression of the fact that although the conviction continues to exist, future consequences are to be minimized”: *RH v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 1274 at para 23 [*RH*] citing *Therrien (Re)*, 2001 SCC 35.

[10] As was the case in *RH*, the record suspension in the Applicant’s case was ordered after the issuance and enforcement of a removal order. Therefore, the record suspension does not render the removal order invalid and the requirement for an ARC still stands: *RH* at para 26.

[11] Nonetheless, it was incumbent on the Officer to consider the record suspension in their assessment of the Applicant’s application for an ARC as the Record Suspension is a critical piece of information that appears not to have been taken into consideration.

[12] When directly relevant evidence is not considered or analyzed by a decision-maker, the door is opened to an inference that the decision-maker made an erroneous finding of fact without regard to the evidence or ignored contradictory evidence: *Cezair v Canada (Citizenship and Immigration)*, 2018 FC 886 at para 27.

[13] I find the Decision was unreasonable for the foregoing reasons.

IV. **Conclusion**

[14] For all the above-noted reasons, this application is granted and the Decision is set aside.

[15] This matter is to be returned to another Program Manager for redetermination.

[16] There is no serious question of general importance on these facts.

JUDGMENT in IMM-1821-21

THIS COURT'S JUDGMENT is that:

1. The application is granted and the Decision is set aside.
2. The matter is to be returned to a different Program Manager for redetermination.
3. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1821-21

STYLE OF CAUSE: DANIEL LAROCHE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JULY 11, 2022

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JULY 12, 2022

APPEARANCES:

Daniel LaRoche	FOR THE APPLICANT (ON HIS OWN BEHALF)
Alisa Vipari	FOR THE APPLICANT
Idorenyin Udoh-Orok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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