Federal Court  Cour fédérale

Date: 20230510

Docket: IMM-8504-21

Citation: 2023 FC 666

Ottawa, Ontario, May 10, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

EDWARD MICHAEL FAZEKAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 50 year-old citizen of the United States. Between 1991 and 2003, when he was between the ages of 18 and 30, the applicant was convicted of almost 40 criminal offences in the State of Connecticut. Most of the offences involved theft (including shoplifting and breaking into automobiles), failure to attend court, or failure to comply with probation. According to the applicant, this essentially unbroken streak of criminality came to end when he was finally able to come to grips with his addictions and when he took on the responsibility of

caring for his aging parents. Since then, he has matured, he has been steadily employed, and he has gained valuable insight into the causes of his criminal behaviour as well as the harm that behaviour caused. The only blemish on his record since 2003 is a 2012 conviction for driving while suspended for which the applicant received a suspended sentence and probation for one year.

[2] As a result of his US criminal record, the applicant is inadmissible to Canada on grounds of criminality and serious criminality under section 36 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[3] After developing a romantic relationship with a Canadian citizen who resides in Canada, in May 2020 the applicant submitted an application for criminal rehabilitation under paragraph 36(3)(c) of the *IRPA*. The applicant would like to be able to visit his girlfriend in Canada from time to time. An officer with Immigration, Refugees and Citizenship Canada ("IRCC") refused the application in a decision dated November 1, 2021, because the officer was not satisfied that the applicant had established that he is unlikely to reoffend.

[4] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*.

[5] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard. A reasonable decision "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 that constrain

the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[6] The onus is on the applicant to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[7] The applicant's principal submission is that the decision lacks the requisite degree of justification, intelligibility and transparency because there is no analysis supporting the conclusion that he had not established that he is unlikely to reoffend. The officer simply lists a variety of factors relating to the applicant (some positive, many negative) and then states the conclusion without any intervening analysis of the relevance or probative value of these factors on the fundamental question of whether the applicant is likely to reoffend.

[8] I agree with the applicant that the decision is flawed in this way. I also agree that this flaw undermines the overall reasonableness of the decision. The officer simply states a conclusion without any explanation of why the evidence did not establish that the applicant is unlikely to reoffend. Contrary to the respondent's submission, the applicant is not asking me to reweigh the factors considered by the officer. The fundamental problem with the decision is that it provides no insight into how the officer weighed the various factors mentioned in the decision or related them to the central question of the risk of recidivism. This leaves the decision altogether lacking in transparency, intelligibility and justification on the critical issue: see *Ramirez Velasco v Canada (Citizenship and Immigration)*, 2019 FC 543 at paras 8-9; *De Campos Gregorio v Canada (Citizenship and Immigration)*, 2020 FC 748 at paras 27-28.

[9] In terms of sheer number of convictions, the applicant's criminal record is substantial. At the same time, it is now very dated. When the officer considered the matter, taking into account the 2012 conviction, the applicant's last involvement in criminality was almost ten years earlier. Apart from the 2012 incident, it was almost 18 years earlier. The contrast between the applicant's life before and after 2003 is striking. The applicant presented substantial evidence of the changes in his life since 2003, including his essentially clean record since then. He argued that this clear and lasting break in an entrenched pattern of reoffending demonstrated that he was unlikely to reoffend. In the absence of any explanation for why the officer was not satisfied that the applicant had turned his life around and, as a result, was now unlikely to reoffend, the decision is unreasonable.

[10] The applicant also submits that the officer erred in relying on several irrelevant or unsubstantiated considerations. Since the flaw I have identified is sufficient to require that this matter be reconsidered, it is not necessary to address these additional submissions.

[11] For these reasons, the application for judicial review is allowed. The decision of the IRCC officer dated November 1, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.

[12] Neither party proposed any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-8504-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Immigration, Refugees and Citizenship Canada officer dated November 1, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8504-21
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