Federal Court  Cour fédérale

Date: 20230726

Docket: IMM-8190-22

Citation: 2023 FC 1021

Toronto, Ontario, July 26, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

VALENKENO HAVIN BOWLEG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of the Bahamas who arrived in Canada on July 22, 2019, claiming a fear of persecution from members of a criminal organization. Amongst other past offences, the Applicant testified to trafficking cocaine and cannabis, and being in possession of cocaine and cannabis for the purpose of trafficking while working in association with the criminal organization. He claimed that once the leader of the organization was released from US prison, he began receiving threats, which led to his refugee claim.

[2] The Refugee Protection Division [RPD] denied his claim on the basis that he was excluded from refugee protection under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*, 1951, CTS 1969/6; 189 UNTS 150 [Convention], as there were serious reasons for considering the Applicant had committed serious non-political crimes prior to entering Canada. The decision of the RPD was upheld by the Refugee Appeal Division [RAD] in a decision dated July 26, 2022 [Decision].

[3] The RAD found that the Applicant's drug trafficking and possession for the purpose of trafficking crimes met the threshold of seriousness for the purposes of Article 1F(b), rejecting the Applicant's argument that the RPD mechanistically applied the factors set out in *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404 [*Jayasekara*] without properly considering mitigating factors.

[4] At paragraph 44 of *Jayasekara*, the Federal Court of Appeal held that the interpretation of the exclusion clause in Article 1F(b) of the Convention, as regards the seriousness of a crime, requires an evaluation of the elements of the crime, the mode of prosecution, the penalty prescribed, the facts and the mitigating and aggravating circumstances underlying the conviction. In *Jayasekara* and *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68, as noted by the RAD, it was established that while there is a presumption of seriousness that attaches to a crime where a maximum sentence of ten or more years could have been imposed if the crime were committed in Canada, the presumption is rebuttable and must not be applied in a "mechanistic, decontextualized or unjust manner."

[5] The Applicant argues that the RAD erred in its treatment of the mitigating factors by taking too simplistic an approach and failing to consider the impact of the Applicant's difficult childhood on his choices. He argues that the RAD further erred by not conducting a more detailed assessment when considering sentencing after acknowledging that a sentencing range applied.

[6] The parties assert and I agree that the standard of review is reasonableness as none of the situations that would rebut the presumption that all administrative decisions are reviewable on a reasonableness standard are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17 and 25. A reasonable decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[7] In this case, I agree with the Respondent that the Applicant has not shown that the Decision was unreasonable or that the RAD committed a reviewable error in its exclusion analysis.

[8] The RAD considered the Applicant's personal history and upbringing but found that while this would be a mitigating factor in respect of crimes committed as a minor, it was not a persuasive mitigating factor for the drug-related crimes committed as an adult. As noted by the

RAD, there was no evidence that the Applicant was forced to conduct these criminal acts. The Applicant was previously convicted of possession of dangerous drugs and was aware that possession and trafficking were against the law and dangerous, yet he chose to involve himself in such criminal activities working with a criminal organization. As he later chose to cease this work in 2010, he could have done so earlier. In my view, this was a conclusion that was open to the RAD to make. The RAD's reasoning exhibits a transparent and intelligible chain of analysis. There is no basis to intervene. The Applicant's argument amounts to a request for the Court to reweigh the evidence.

[9] Further, I do not agree that it was unreasonable for the RAD not to have conducted a more detailed sentencing analysis after acknowledging that a sentencing range applied. The RAD noted that the Applicant had trafficked in cocaine, which was a dangerous drug, in amounts that were moderately large (1 – 2 kilograms monthly) as opposed to small or insignificant, on multiple occasions over the span of years, in association with a criminal organization, all of which spoke to the seriousness of the acts. Under such circumstances, in combination with the fact that the Applicant was a repeat criminal offender who had been charged, convicted and punished for other crimes, the RAD found it was unlikely that the Applicant's conduct would attract a sentence at the low end of the sentencing range. While the Applicant disagrees with this finding, the Applicant has not pointed to any evidence that was before the RAD to support its assertion that a lower sentence would have been likely.

[10] In my view, the RAD presented clear and cogent reasons as to why the sentence would not be at the lower end. There is no reviewable error with this analysis.

[11] For all of these reasons, the application is dismissed. There was no question for certification raised by the parties and I agree none arises in this case.

JUDGMENT IN IMM-8190-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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