

Federal Court



Cour fédérale

Date: 20241008

Docket: T-2300-22

Citation: 2024 FC 1580

Ottawa, Ontario, October 8, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

AHMAD ABOU SHHADI

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the October 6, 2022 decision of a Senior Program Advisor with the Canada Border Services Agency [CBSA], as the delegate [Delegate] for the Minister of Public Safety and Emergency and Preparedness [Minister], pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [Act]. The decision confirms the enforcement action of a CBSA officer [Officer] who seized currency as forfeit.

Background

[2] On April 16, 2021, the Applicant, who was 19 years old at that time, was at Trudeau International Airport bound for Lebanon when he was stopped by CBSA. As reported in the Seizure Narrative Report, the Applicant was asked how much money he was transporting. He indicated \$27,000 and, upon request, showed the Officer two bundles of currency held together with elastic bands. When asked why he was transporting this amount, he said it was not his money but belonged to approximately 10 family members and that \$20,000 of it belonged to his father. The Applicant gave a list of the people who provided him with the currency, detailing the amounts that belonged to each, totaling \$8,240, plus the \$20,000 from his father.

[3] The Applicant stated that his father's money would be used to purchase an Infinity vehicle and that, at his father's request, he had taken the sum of \$20,000 from a safe in Prestige Jewellers, his father's jewelry store. The Applicant also stated that his father had told him to declare the money, and that he had tried to do so, but no one had been able to give him any proper information.

[4] The Officer counted the funds in the Applicant's possession, which totalled \$31,290.

[5] The Applicant authorized the Officer to contact his father, who was in Lebanon, to explain the situation and ask him about the funds in the Applicant's possession. The Applicant's father first stated that he did not know how much money was in the Applicants' possession but later said his son was supposed to transport \$27,000, of which \$20,000 belonged to the father.

When asked if the funds were to be used for a specific purpose, the Applicant's father said it would not – contradicting the Applicant's statement that it would be used to buy a vehicle. When asked from what bank the Applicant had withdrawn the \$20,000, the father responded that it was Scotiabank, at his request, and that he and his son had a joint account there – contradicting the Applicant's version that he had taken the funds out of the Prestige Jewellers' safe.

[6] Given that the Applicant had not reported the \$31,290 in his possession, and therefore believing that there had been a contravention of s 12(1) of the Act, which together with the *Cross-Border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412 [Regulations] requires reporting of the importing or exporting of sums exceeding \$10,000, the Officer seized the funds as forfeit pursuant to s 18(1) of the Act. Pursuant to s 18(2) of the Act, the Applicant was not offered the possibility of paying a penalty in exchange for the return of the funds, as the Officer considered he had reasonable grounds to suspect that the funds were proceeds of crime within the meaning of subsection 462.3(1) of the *Criminal Code* or funds for use in the financing of terrorist activities.

[7] Subsequently, the Applicant, through his counsel and pursuant to s 25 of the Act, requested a ministerial review of the seizure.

[8] On June 30, 2021, counsel for the Applicant provided submissions in support of this request. These indicated that the Applicant was aware that he needed to declare the funds but did not know how to do so. The Applicant had approached an individual dressed in a white shirt with a badge in the airport international lounge and asked how to make the declaration. He was told

by this person that this only had to be done at his final destination. When the Applicant was approached by CBSA and asked whether he was transporting funds, he voluntarily, candidly and honestly revealed the entire amount. Counsel stated that the Applicant and his family are faithful followers of Islam. At the time of the seizure, the Applicant was observing Ramadan, which is a month where Muslims are encouraged to give charity and support those in need. The submissions further state that two thirds of the funds in the Applicant's possession were from his father's legitimate jewelry business, Prestige Jewellers, and were being sent as Ramadan gifts to members of the family, most of whom were struggling financially due to the economic crisis in Lebanon. The remaining one third was from the Applicant's friends and extended family and was being sent to Lebanon for their loved ones as Ramadan gifts or to provide financial assistance due to the economic crisis.

[9] Counsel also provided nine brief statements from individuals indicating that they had given the Applicant the stated amounts of money to take to family members in Lebanon. One of these statements included a withdrawal slip from a bank and another contained what appears to be an excerpt from a bank statement.

[10] On August 2, 2021, a Senior Appeals Officer with CBSA's Recourse Directorate sent the Applicant a Notice of Circumstances of Seizure [Notice of Circumstances], pursuant to s 26 of the Act. It enclosed various documents, including the seizing Officer's Narrative Report, described the relevant provisions of the Act as well as the information that the Applicant had provided to CBSA as of that time. The Notice of Circumstances stated:

Further, I should explain that in order to grant discretion regarding the forfeiture of the seized funds, the Minister's delegate (decision

maker) has to be satisfied that the funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show (with documentary evidence) that the funds come from a legitimate source. An explanation as to the origin of the seized funds must be proven in sufficient detail and with enough credible, reliable and independent documentary evidence. The onus is on you to persuade the decision maker to exercise his or her discretion.

Therefore, in support of your appeal, please provide documentary evidence to link the seized funds to a legitimate source. Please note that the documentation must provide a complete paper trail tracking all of the seized funds from its origin to finally being in your possession.

In the absence of sufficient documentary evidence to link the seized funds to a legitimate source, the Minister's delegate may not grant discretion and the forfeiture of the seized funds may be decided.

I would also like to explain that the submissions provided so far do not appear to include sufficient documentary evidence to demonstrate the lawful origin for all of the seized funds.

[11] On April 25, 2022, counsel for the Applicant made further submissions including:

- i. A summary of the supporting documents which included a list of the individuals who provided the Applicant with funds to bring to Lebanon and of each individual amount (between \$200 and \$3,000 each for a total of \$11,200);
- ii. Clearer copies of the written statements from those individuals initially provided on June 30, 2021; and
- iii. Bank account statements for 889627 Alberta Ltd (Prestige Jewellers) from October 2019 to March 2022 as well as copies of various cheques. No specific transactions within the bank statements were identified as being related to the seized currency.

[12] On May 4, 2022, counsel for the Applicant stated that Prestige Jewellers wanted to advise that it had been maintaining a significant amount of cash reserves in safety deposit boxes. These

were meant for its business operations that included purchasing precious stones and refunding customers, all of which were commonly done with physical cash. Further, that the cash reserve was possible due to their significant revenue, as shown on their account statements.

[13] On June 3, 2022, the Senior Appeals Officer wrote to counsel for the Applicant describing in detail all of the submissions that had been received up until that time and pointing out that they currently failed to establish the legitimate origin of the funds:

- For all of the individuals who provided money to the Applicant to bring to Lebanon, the supporting documentation – their brief letters – indicated the amount and purpose of the money given to the Applicant but did not provide any information about the origin of the funds;
- Two of the individuals also provided some banking documentation. However, this documentation still did not explain the origin of the funds. One provided a cash withdrawal slip that did not identify the account holder. The second provided an excerpt of a bank statement showing a ATM withdrawal but it did not provide the name of either the financial institution or the account holder;
- With respect to the Prestige Jewellers documents indicating that the \$20,000 was taken from the cash reserve in its safety deposit boxes and not from its bank account, the Senior Appeals Officer explained that they did not consider this as sufficient documentation of the cash flow from the safety deposit boxes. The \$20,000 did not have a financial footprint, and as such the origin of the remained undocumented.

[14] The Senior Appeals Officer then stated:

I would like to explain that the submissions provided so far do not appear to include sufficient documentary evidence to demonstrate the lawful origin for all of the seized funds.

Please be advised that in order to grant discretion regarding the forfeiture of the seized funds, the Minister's delegate (decision maker) has to be satisfied that the funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show (with documentary evidence) that the funds come from a legitimate source. An explanation as to the origin of the seized funds must be proven in sufficient detail and with enough credible, reliable and independent documentary evidence. The onus is on you to persuade the decision maker to exercise his or her discretion.

Also copies of bank statements purportedly confirming the source of the currency but which provide no detail regarding the originating source of the currency are insufficient to establish a legitimate source. The bank statements demonstrate "E-Transfers," "Withdrawal," "Credit Memo," and "Purchase" transactions; however, this does not prove where the money originally came from. (*Tran v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 600 at para 26).

As previously requested, please provide documentary evidence to link the seized funds to an ultimate and legitimate source. Please note that the documentation must provide a complete paper trail tracking all of the seized funds from the ultimate origin to finally being in your possession. In the absence of sufficient documentary evidence to link the seized funds to an ultimate and legitimate source the Minister's delegate may not be able to grant discretion and the forfeiture of the seized funds may be deemed to be warranted.

Please note that failure to provide such documentation may result in the enforcement action being maintained as originally assessed. An explanation as to the origin of the seized funds must be proven in sufficient detail; otherwise, the reasonable suspicion that the currency is proceeds of crime remains, resulting in the forfeiture to be maintained. I would like to explain that **any evidence you submit should be accompanied by documentation supporting your position.**

[15] On June 20, 2022, the Applicant's counsel made further submissions:

- a. Counsel stated that the \$11,200 was from the individuals' personal accounts. The funds were withdrawn from the accounts in the form of monetary instruments and given to the Applicant. However, no further supporting documentation was provided.
- b. Prestige Jewellers' Business Financial Statements and T2's from 2017 to 2021 supported its history of charity and philanthropy and the assertion that it had been a profitable and solvent business for many years.
- c. The Certificate of Incorporation for Prestige Jewellers demonstrated that the Applicant's father is its director and sole shareholder and that, as such, he determines who, when and how to make donations or gifts from the companies' profits.
- d. Photos of the Prestige Jewellers' safes and store to show that the safes were large enough to contain a significant number of monetary instruments, along with the store's inventories. The photos were said to support that the company is solvent and that large monetary instruments are kept in the store at all times.

[16] On October 6, 2022, the Delegate issued the decision maintaining the finding of contraventions for failure to report under s 12 of the Act and the seizure. That decision is the subject of this judicial review.

Decision Under Review

[17] The Delegate determined that the Applicant contravened s 12(1) of the Act. As a result, pursuant to s 27 of the Act, the enforcement action was maintained. As to the forfeiture, due to

the lack of evidence demonstrating the legitimate origin of the funds, the Delegate found that it would remain forfeit pursuant to s 29 of the Act.

[18] The Delegate began their reasons by setting out the background to the matter as well as the legal framework. The Delegate acknowledged the Applicant's submission that he had relied on incorrect information provided by an airport employee concerning the declaring of the funds and that he did not intend to circumvent the reporting requirement. However, the Delegate found that intent is not relevant in the determination of whether an infraction occurred as the onus is on the traveller to be informed of their reporting obligation.

[19] The Delegate noted that at the time of the seizure, the Applicant was unable to substantiate the legitimate source of the funds with documentary evidence, failed to report the funds, and that he and his father gave contradictory statements about the acquisition and the purpose of the funds. This gave rise to the Officer's conclusion that there were reasonable grounds to suspect that the funds were the proceeds of crime and his decision to seize it as forfeit, pursuant to s 18 of the Act.

[20] The Delegate stated that the ministerial review process was an opportunity for the Applicant to obtain relief from forfeiture. Specifically, under s 29 of the Act, if an applicant can demonstrate that the seized funds are not the proceeds of crime, then the Minister may decide to return all or a portion of it upon payment of a statutory penalty. To obtain that relief, an applicant must demonstrate the legitimate origin of the seized funds.

[21] The Delegate determined that the explanation provided by the Applicant about the source of the seized funds failed to clearly demonstrate its legitimate origin, and was specifically not substantiated with documentary evidence.

[22] The Delegate first dealt with the \$11,200 said to have been given to the Applicant by a number of individuals. The Delegate found that the Applicant failed to substantiate the legitimate origin of the \$11,200 portion of the funds with satisfactory explanations and documentary evidence. The Delegate noted the submissions of the Applicant, and referred to the June 3, 2022 Notice of Circumstances which expressed the deficiencies in the submissions. The Delegate noted that the Senior Appeals Officer had explained that she needed to know the source of the funds given to the Applicant and confirmation that this source was legitimate. For the first nine individuals listed in the Applicant's submissions, it was therefore important that the Applicant explain: (1) how the individuals acquired the funds; (2) the identity of the source of the funds, and (3) documentary evidence that the source was legitimate. The Delegate reiterated that the Senior Appeals Officer had also explained that providing a bank statement without the name of the owner of the account and an explanation as to the source of the money deposited in that account did not constitute proof of legitimate origin. The Delegate found that although the Applicant had reiterated that the source of the \$11,200 was withdrawals from the individuals' personal accounts, this was insufficient, as the explanation needed to be substantiated with documentary evidence clearly demonstrating a legitimate origin. The Delegate found that the documentary evidence provided was not sufficient to convince her that the \$11,200 came from one or several legitimate sources and therefore it was seized as forfeit.

[23] As to the \$20,000 said to have come from the safe of Prestige Jewellers, the Delegate stated that it was not disputed that Prestige Jewellers was a profitable solvent business, whose safes could hold a large amount of currency or monetary instruments. However, in the June 3, 2022 Notice of Circumstances, the Senior Appeals Officer had requested that the Applicant provide documentary evidence linking the \$20,000 to an ultimate and legitimate source which required a complete paper trail documenting how it ultimately came into the Applicant's possession. The Delegate pointed out that, at the time of the seizure, contradictory statements were provided regarding the source of the funds. She further found that during the review process, the Applicant had indicated that the funds came from Prestige Jewellers' safe but that this had not been supported with any documentary evidence. The Delegate found that it remained unclear how the Applicant came in possession of the funds from the safe. She noted that in the normal operations of a jewelry store, not everyone has access to a safe. As the Applicant's father was in Lebanon, he must have had given someone instructions to grant the Applicant access to the safe, and it was to be expected that money placed in the safe would be carefully accounted for and logged. However, there was no documentation provided to clearly link the \$20,000 to the safe. Given the lack of evidence demonstrating the legitimate origin of the \$20,000, the Delegate determined that the funds would remain seized as forfeit.

Issue and Standard of Review

[24] There is one preliminary issue and one issue on the merits arising in this matter.

[25] The preliminary issue concerns the admissibility of portions of the Applicant's affidavit filed in support of this application.

[26] The substantive issue is whether the Delegate's decision was reasonable. The parties submit and I agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

Positions of the Parties

The Applicant

[27] As to the \$11,200 portion of the seized currency, the Applicant submits that the test of legitimate origin is not contemplated in s 29(1)(a) of the Act. The Applicant submits that the standard of reasonable grounds to suspect the criminal origin of the funds is consistent throughout the Act, and is thus the applicable standard to review currency seizures at airports.

[28] Further, the provided documentary evidence includes a combination of affidavit evidence, bank statements, withdrawals records and receipts which demonstrated the legitimate source of the \$11,200, and its acquisition by the Applicant. The Applicant submits that while the "value" of the documentary evidence may vary between the contributing individuals, the "total weight" of the evidence is sufficient to rebut the Minister's assumption that the funds are the proceeds of crime. He submits that this evidence demonstrates that the \$11,200 was: (1) acquired as donations by family members for the purpose of providing charity and economic relief to relatives abroad; (2) originating from personal savings; and (3) held in legitimate bank accounts and withdrawn for the stated purpose.

[29] The Applicant also takes issue with this part of the decision on three other bases. First, that the decision is vague as to the precise meaning of “legitimate origin”, the Delegate uses that term interchangeably with the term “legitimate sources” and, in doing so, relies on a circular reasoning. Second, the Delegate was not clear about what information was needed to constitute proof of origin. The Applicant submits that personal savings are a legitimate origin and that the Minister did not indicate what, beyond personal savings, was necessary to meet his onus. The Applicant also complains that the Delegate failed to utilise the contact information provided by the individuals to make further inquiries. And, third, that *Ali v Canada (Attorney General)*, 2024 FC 19 [*Ali*] supports that bank statements accompanied by affidavits or letters of explanation from the lender would be sufficient to conclusively establish the legitimacy of the funds. The Applicant submits that the ultimate point of origin was not raised as an issue in *Ali*. Further, at least a portion of the funds were provided to the Applicant close to the time of the seizure and are accompanied by affidavit evidence and/or banking records, which, as was the case in *Ali*, should thereby satisfy the requirements under s 29 of the Act.

[30] The Applicant also submits that the Delegate failed to make a distinction when assessing the evidence of each of the individual contributions that total \$11,200, as two of those were supported by bank statements.

[31] As to the \$20,000 portion of the funds, the Applicant essentially argues that he provided substantial evidence that was broadly comparable to that provided in *Ali*, and that it should have been accepted as sufficient. As it was not, this renders the Delegate’s decision arbitrary and

unreasonable. He submits that the Delegate failed to provide a reasonable explanation for the dismissal of the business records as the legitimate source and origin of the funds.

[32] The Applicant also submits that there are sufficient transactions documented in early April 2021, prior to the seizure, that can account for the \$20,000. In particular, there was a withdrawal of \$18,154.45 on April 1, which constitutes a “clear link” between the business accounts, the safe and the Applicant. He submits that the Delegate unreasonably considered the intermediary step, after withdrawal, of placing the funds in the safe before instructing the Applicant to remove them for transport as a breakdown in the paper trail.

[33] The Delegate also failed to account for the nature of the relationship between the Applicant and his father. It could be reasonably inferred that this was why the Applicant failed to heed business accounting procedures that an employee might otherwise follow, such as a withdrawal log.

[34] Finally, the Applicant submits that while he is not challenging the decision to seize the funds under s 27 of the Act, *Chen v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 477 [*Chen*] (upheld on appeal 2019 FCA 170) indicates that CBSA enforcement policies stated the benefit of the doubt should be granted when a traveller is unaware of reporting requirements. The Applicant was aware of the need to declare the funds but was a young and inexperienced traveller who undertook reasonable best efforts to fulfill the requirements. These mitigating factors as well as the charitable nature of the seized funds must be considered in the review of the Delegate’s decision.

Respondent's Position

[35] The Respondent states that the onus was on the Applicant to provide sufficient evidence to demonstrate the legitimacy of the source of the funds but that he failed to do so (referring to *Sandwidi v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 995 at para 57 [*Sandwidi*]).

[36] With regard to the \$11,200 portion of the funds, the Applicant failed to provide an explanation and reliable documentation establishing a legitimate source, despite specific requests from the Senior Appeals Officer.

[37] Further, the Delegate addressed the submissions and the deficiencies for each of the individuals and did not consider them as a block. She addressed the evidence and reasonably concluded that it was not enough for Applicant's counsel explain that these were savings: the explanation had to be substantiated with documentary evidence to clearly demonstrate a legitimate origin. The Respondent submits that the Delegate's finding was in keeping with the jurisprudence holding that: reasonable explanations must be supported by verifiable evidence (*Walsh v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 883 at para 29 [*Walsh*]); and, that withdrawals from a bank account do not prove a legitimate source (*Tran v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 600 at para 25 [*Tran*] and cases cited therein: *Sandwidi* at para 62; *Rihane v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 875 at para 41 [*Rihane*]). The Respondent describes the evidence and its deficiencies, which the Respondent submits reasonably grounds the Delegate's determinations.

[38] The Respondent submits that *Ali* does not stand for the proposition that bank statements accompanied by affidavits or letters of explanation from the lender would be sufficient to establish the legitimacy of the funds. Rather, in *Ali*, the Court pointed to evidence that would have assisted the applicant in addition to the documents already provided, which included evidence of a bank loan obtained by a business. An applicant has to identify and document the legitimate source of all the currency (for example, income from employment) (*Ali* at paras 12, 15, 39-40). Further, the Court noted in *Ali* that the delegate had rendered a very “generous assessment of the evidence” given the jurisprudence establishing that withdrawals from a bank account do not prove the source of currency (*Ali* at para 36). Moreover, the evidence submitted by the applicant in *Ali* differs from the Applicant’s, who provided neither full bank statements or evidence demonstrating the legitimate origin of the currency within the bank accounts.

[39] The Respondent submits that the terms “legitimate origin” and “legitimate sources” are correctly used by the Delegate, and are interchangeably used in the jurisprudence (noting *Evans v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1516 at paras 8, 14, 35, 42 for “origin” and paras 8, 32, 36 “source” [*Evans*]; *Walsh* at paras 8, 15, 17, 21, 24 for “origin” and paras 25, 29 for “source”). This does not render the decision vague.

[40] As for the \$20,000 portion of the seized funds, the Respondent submits that the Senior Appeals Officer specifically requested documentation to link the \$20,000 to an ultimate and legitimate source and documentation tracking the currency from its ultimate origin to being in possession of the Applicant. However, the Applicant provided no such documentation. That is,

there is no documentation as to how the currency traveled from its origin to Prestige Jewellers' bank account or safe, and then to finally the Applicant.

[41] The Respondent submits that the Applicant's Memorandum of Fact and Law appears to assert that an April 1, 2021 withdrawal of \$18,154.45 documented on Prestige Jewellers' bank statements went towards the \$20,000. However, this submission is new and was never made before the Delegate. Further, the withdrawal of \$18,154.45 on April 1, 2021 appears to have been a regular occurrence as the same amount was withdrawn on January 4, 2021, February 1, 2021, March 1, 2021, June 1, 2021 and July 2, 2021. Therefore, these withdrawals are not similar to the withdrawals accepted by the Minister in *Ali*.

[42] As to *Chen*, the Respondent submits that the Applicant has failed to establish that mitigating circumstances, to the extent that they existed, were not properly taken into account by CBSA officers. The Delegate could not ignore the contradictory statements made by the Applicant and his father as to the purpose and origin of the funds, and the belated submission that the seized currency was not intended to buy an Infinity car as originally stated, but for charity.

Preliminary Issue – Admissibility of the Applicant's Affidavit

[43] It is well established that, as a general rule, the evidentiary record before a reviewing court on judicial review is restricted to the what was before the decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible. The identified exceptions are an affidavit that: provides

general background in circumstances where that information might assist the court in understanding the issues relevant to the judicial review; brings to the attention of the reviewing court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker; or, highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20). None of these exceptions apply to the present case.

[44] Accordingly, I agree with the Respondent that evidence in the Applicant's affidavit that was not before the Delegate is not admissible. Accordingly, I will disregard paragraph 15 of the affidavit which states that to the best of the Applicant's knowledge, the individual amounts provided to him "had a lawful and legitimate origin", as well as paragraph 18 which states that to the best of the Applicant's knowledge, the \$20,000 was "from the in-store cash reserve of Prestige Jewellers originated from the day-to day sales and regular business operations of that business."

The Delegate's Decision was Reasonable

[45] I would first note that the jurisprudence is clear that the onus is on the Applicant to prove that the seized funds were not the proceeds of crime (*Ali* at para 34 citing *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 at para 50). To do this, he was required to "establish the legitimate source of the amount seized using decisive evidence" (*Ali* at para 34 citing *Sandwidi* at para 63, citing *Sebastiao v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 527 at para 54). In other words, he was required to prove

the legitimate origin of the seized funds in order to remove suspicion that it was derived from crime by providing reasonable explanations supported by verifiable evidence (*Walsh* at paras 24, 29).

The \$11,200

[46] The evidence provided to demonstrate the legitimate origin of the \$11,200 was limited. There were nine individual sums given to the Applicant which I will refer to as Sums 1 to 9 (Sum 7 was contributed to by 5 siblings).

[47] I first turn to Sums 1 to 7. Brief signed letters were provided with respect to Sums 1 to 6, and an unsigned letter was provided with respect to Sum 7. These letters are informal, mostly hand-written and succinct. For example, the letter pertaining to Sum 1 states “I... gave Ahmed Aboushadi \$400 to take to Lebanon to give my dad support.” The letter pertaining to Sum 2 states “I,, have given Adhmad Abou-Shhadi \$500 Canadian to take to Lebanon as a Ramadan gift to family. My contact info is”.

[48] The letter concerning Sum 8 explains that the money was provided to the Applicant for a donation because many people are poor in Lebanon and there is “no government in Lebanon right now”. It requests that the seized funds be returned. It states that it attaches a bank receipt – this is a withdrawal slip for \$3000 dated April 15, 2021. The letter concerning Sum 9 states that it provides a print out from the individual’s bank account showing three transactions totalling \$1000 and that they had given the Applicant an additional \$300 (for a total of \$1300). The body

of the letter includes what appears to be a cut and paste of three lines of a bank statement showing three withdrawals on April 1, 2021.

[49] The June 3, 2022 Notice of Circumstances clearly indicated that these letters and the banking information for Sums 8 and 9 did not provide any information about the origin of the currency. The withdrawal slip did not identify the account holder and the bank statement excerpt did not identify the financial institution or the account holder. The Notice of Circumstances explained to the Applicant why this information was deficient and what was needed – documentary evidence to link the seized funds to an ultimate and legitimate source. It advised that the failure to provide this could result in the Delegate not exercising their discretion, so that the forfeiture may be deemed warranted.

[50] Despite this, the only further information provided was an email from counsel for the Applicant stating: “Regarding the \$11,200.00 from multiple individuals, those funds originated from their own personal accounts. Those funds were withdrawn from their personal accounts in the form of monetary instruments and passed onto our client to bring to their relatives in Lebanon.”

[51] Contrary to the Applicant’s written submissions in support of the application for judicial review, there was no “combination of affidavit evidence, bank statements, withdrawal records, and receipts” provided with respect to the \$11,200. There were no affidavits before the Delegate. Both the withdrawal receipt and the “bank statement” – the above-described three cut-and-paste lines – had the deficiencies noted by the Senior Appeals Officer.

[52] The Applicant submits that while the value of the documentary evidence may vary for each individual portion of the \$11,200, in total the weight of the evidence is sufficient to reasonably rebut the Minister's assumption that the funds are the proceeds of crime. There is no merit to this submission. What was required was sufficient evidence of the legitimate origin of the seized funds in order to remove the suspicion that it was derived from crime. None of the evidence met that burden.

[53] Nor did the Delegate err in failing to make a distinction between the individual contributions – which seems to contradict the Applicant's prior argument. The decision includes a table listing each individual by name and the amount given to the Applicant. It describes the June 3, 2022 Notice of Circumstances from the Senior Appeals Officer explaining that she needed to know the source of the amounts given to the Applicant and that their source was legitimate. The Delegate noted that the letter explained that it was important that the Applicant explain for each of the nine individuals how they had themselves acquired the money, identify its source and demonstrate with documentary evidence that the source was legitimate. The letter also explained that providing a bank statement without a name of the owner of the account and an explanation of the source of the money deposited in the account did not constitute proof of legitimate source. The Delegate acknowledged the Applicant's submission by this counsel that these sources were withdrawals from personal accounts, and determined that this explanation was not sufficient in the absence of documentary evidence to clearly demonstrate the legitimate sources for each of the nine donations.

[54] The circumstances here are similar to those of *Admasu v. Canada (Public Safety and Emergency Preparedness)*, 2012 FC 451, where the applicant also provided letters from friends that purported to account for portions of the seized funds. The Court dismissed his application, and held:

[19] The adjudicator made it clear to the applicant what was required of him. He had to identify the source of all the currency and provide evidence to link the currency to its legitimate origin (for example, income from employment). It was insufficient to supply only statements from the individuals or to substantiate the source of only portions of the currency. [...]

[55] And although the Applicant heavily relies on *Ali* and submits that it stands for the principle that bank statements with affidavits are definitive documentary evidence to establish the legitimate source of seized funds, I do not agree with the Applicant's interpretation of that case.

[56] In *Ali*, the applicant claimed that the seized currency was a loan from a friend who owned a business. He submitted an unsecured promissory note from the lender; the business' articles of incorporation; the business' employer identification number from the US Internal Revenue Service; bank statements for the lender's business; bank documentation showing the lender to be the sole owner of the business; documentation confirming a business loan; and screenshots and photocopies of the applicant's financial statements showing significant credit card and line of credit debts with Canadian financial institutions. Among other findings, this Court held:

[39] It should not have been difficult for Mr. Ali to conclusively establish the legitimacy of the source of the funds he was carrying on December 5, 2021. The friend who loaned him the money was prepared to give Mr. Ali access to his bank statements, and it is unclear why these were not accompanied by an affidavit or letter of explanation from the lender. Despite being given numerous

opportunities to provide the necessary information respecting the source of the seized funds, Mr. Ali failed to do so.

[57] Further, this Court specified that the delegate in that case had made a “generous assessment of the evidence” when giving Mr. Ali the benefit of the doubt and accepting that bank withdrawals made in the weeks before the seizure were sufficient to meet his burden of proof (*Ali* at para 36). The Court noted that it had “previously held that withdrawals from a bank account do not prove the source of currency” (*Ali* at para 36 referencing *Sandwidi* at para 62, citing *Tran* at para 36).

[58] However, even if *Ali* was held to mean that bank statements accompanied by affidavits or letters of explanation from a lender were sufficient, it remains unhelpful to the Applicant as no loan was involved in this matter and he provided no affidavit evidence or bank statements with respect to the \$11,200.

[59] Nor does *Tran* assist the Applicant. There the Court held:

[25] In the context of requests for relief from forfeiture under the Act, the case law establishes that a refusal to grant relief from forfeiture is made on a reasonable factual basis if all that an applicant does is show that the funds were drawn from a bank account because this does not prove where the money originally came from (*Kang* at para 40; *Satheesan v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 346 at paras 50-52; *Sidhu v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 911 at para 41; *Dupre v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1177 at para 31). As Justice Mosley recently noted in *Kang* at paras 40-41:

I do not accept the applicant’s argument that he is being held to an impossible standard of proof. The evidence submitted by the applicant does not establish the lawful origin of the funds. Although

the bank withdrawals of the applicant's uncle and cousin were amounts that could, theoretically, provide for loans to the applicant, there is nothing in the record, apart from their statements, to link those sums of money to that which was ultimately seized at the airport in Calgary. Evidence that cannot establish the lawful origin of the funds cannot be used as proof of such [...]

The lack of proof, the contradictory stories which cast doubt on the applicant's credibility and the prior enforcement actions for smuggling controlled substances, taken together, make it reasonable that the Minister could not be persuaded that the currency did not come from proceeds of crime. It follows that the Minister's decision to hold the currency as forfeit was reasonable.

[Citations omitted.]

[26] The evidence provided by Mr. Tran to the delegate regarding the funds he claims to have received from third parties consisted entirely of photocopies of bank statements or withdrawal slips, purportedly confirming the source of the withdrawal but which provided no detail regarding the originating source of the funds. Based on the foregoing case law, this is insufficient to establish a legitimate source for these funds. It is possible that proceeds of crime can be funnelled through and withdrawn from a bank account. Thus, the fact that cash is withdrawn from a bank account and provided to a claimant does not establish that the cash is from a legitimate source. Accordingly, the evidence filed by Mr. Tran does not establish that the funds he claimed he received from others were from legitimate sources.

[60] Contrary to the Applicant's submission, *Ali*, and this Court's jurisprudence more generally, do not hold that the ultimate origin point of the funds is not a definitive issue in a s 29 analysis, or that letters of explanation with partial bank statements fulfill the Applicant's burden.

[61] Finally, the Applicant's concern with the Delegate's use of the terms "legitimate origin" and "legitimate source" is unclear. It seems apparent that they have the same meaning, and can and are used interchangeably. Nor is the use of the terms indicative of circular reasoning.

[62] In my view, the record demonstrates that it was clearly explained to the Applicant what was required, and that he was given ample opportunity to provide documentation of the legitimate source or origin of these funds. He simply did not meet his onus.

\$20,000 from Prestige Jewellers

[63] As set out above, the documentary evidence submitted by the Applicant for this portion of the seized funds were bank statements, copies of checks, business financial statements and T2s from 2017 to 2021, certificate of incorporation, and photos of the store's safes. However, the Court has previously held that general business records are insufficient to establish the legitimate origin of funds: the documentary evidence must be precise, contemporary to the seizure, and provide a complete paper trail.

[64] For example, in *Walsh*, the applicant argued that the Minister imposed too great a burden onto him. He submitted that he had met his burden by producing photographs of casino chips and Global Securities financial statements which proved that he had access to significant sums of money. The Federal Court disagreed and found the Minister's determination that the applicant had failed "to provide sufficient evidence of the legitimate origin of the seized currency in order to remove suspicion that it was derived from crime – a much more specific burden" was reasonable (*Walsh* at para 24). Similarly, in *Rihane*, the applicants provided banking and tax

documentation of the businesses that they claimed were the legitimate source of the seized funds. However, the Court held as reasonable the delegate's finding that this documentation was insufficient to identify the origin of the funds and that there was an absence of documentary evidence to indicate the seized funds had been provided to one applicant by the other applicant or to explain what happened to the funds between its withdrawal and its seizure (*Rihane* at paras 39-40). And in *Sandwidi*, the applicant offered evidence of commercial activity, which was deemed insufficient to establish the legitimacy of the source. The Court confirmed that exchange slips and other business documentation "do not demonstrate the legitimacy of the monies because this evidence just tends to demonstrate the existence of a business" (*Sandwidi* at para 64).

[65] The Delegate's finding in this matter is consistent with this jurisprudence. Even if the evidence shows that Prestige Jewellers is a profitable solvent business, this does not establish a complete paper trail tracking from the ultimate origin source of the \$20,000 to finally being in the Applicant's possession.

[66] As to *Ali*, as the Respondent points out, this matter can be distinguished because in *Ali* the withdrawn funds could be directly linked to the applicant. Here, the Applicant was unable to produce evidence pertaining to the withdrawal of \$20,000 from Prestige Jewellers' account, and the manner in which that money was then put in his possession. As the Delegate reasonably found, the required paper trail has not been established.

[67] The Applicant also asserts that the informality of familial relationship, viewed in a business context, adequately explains why there is no document linking the removal of the funds from Prestige Jewellers' safe. I do not agree. First, as the Respondent submits, there was no submission concerning or evidence about this familial relationship before the Delegate. Further, the onus was on the Applicant to satisfy the Delegate that the seized funds were not the proceeds of crime and a similar argument was dismissed in *Docherty v. Canada (Public Safety and Emergency Preparedness)*, 2013 FCA 89. There, the applicant argued that the seized currency came from an inheritance used by his daughter and himself in the course of their business, which was conducted in cash. The applicant did not produce any business or banking records, and relied on a declaration by his daughter affirming she gave him an undetermined amount of US currency immediately before the seizure. The Federal Court of Appeal held:

[19] Individuals are free to arrange their affairs so as to leave the smallest possible financial footprint consistent with their obligations under federal and provincial tax laws. The disadvantage of doing so is that when a question arises as to the source of large amounts of cash found in their possession, they have very few means of establishing the legitimacy of those funds. In the context of the issues sought to be addressed by the Act - money laundering and the financing of terrorism - the government is entitled to ask for a reasonable explanation of the source of currency in excess of the prescribed limit found on persons leaving Canada. In this case, Mr. Docherty's explanations were unverifiable and, as such, amounted to no explanation at all. [...]

[68] In my view, the same reasoning applies in this case.

[69] The Applicant also raises *Chen* to substantiate his argument that this Court should consider mitigating factors upon reviewing the decision. *Chen* refers to a CBSA enforcement policy that states that the CBSA should consider an individual's unawareness of reporting

requirements. I find that this argument is ill-founded as it attaches to the validity of the enforcement act, which is not the object of this judicial review, rather than to the legitimate source of the seized currency, which is the burden to meet at this stage.

[70] Given the foregoing, the Delegate reasonably found that due to a lack of evidence demonstrating the legitimate origin of the \$20,000, those funds too would remain forfeit.

Conclusion

[71] The application for judicial review is dismissed.

[72] The Minister seeks costs. Neither party made submissions as to the amount of costs.

[73] Accordingly, and given that the Minister was the successful party, I will grant costs according to column III of Tariff B (Rule 407 of the *Federal Courts Rules*, SOR/98-106) or an amount as may otherwise be mutually agreed by the parties.

JUDGMENT IN T-2300-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed; and
2. Unless an amount is otherwise mutually agreed by the parties, costs in accordance to column III of Tariff B are granted in favour of the Respondent.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2300-22

STYLE OF CAUSE: AHMAD ABU SHHADI v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

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JUDGMENT AND REASONS: STRICKLAND J.

DATED: OCTOBER 8, 2024

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