Federal Court Cour fédérale

Date: 20241210

Docket: IMM-4113-23

Citation: 2024 FC 2003

Toronto, Ontario, December 10, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SEBASTIAN AGUILAR RAMOS

Applicant

and

THE CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sebastian Aguilar Ramos, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") dated March 21, 2023 refusing his application for permanent residence due to criminal inadmissibility pursuant to paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the Officer erred by determining that he had participated in "a pattern of criminal activity" during two incidents in which he trafficked narcotics as a minor in the United States (*IRPA*, s 37(1)(a)).

[3] I agree. For the reasons that follow, I find the Officer's decision is unreasonable and grant this application for judicial review.

II. **Facts**

[4] The Applicant is a 33-year-old citizen of Honduras. He is the father of two children, who were born in Canada. His spouse of five years is a Canadian citizen.

[5] The Applicant grew up in abject poverty and was not able to afford schooling. Consequently, he is illiterate in English and Spanish.

[6] In 2006, the Applicant entered the United States as an unaccompanied minor. He was 15 years old at the time. "In a desperate situation," he purchased drugs from a Mexican man who he referred to as a member of the Mexican Mafia. While attempting to sell the drugs, he was threatened by a member of the Mara Salvatrucha 13 gang ("MS-13"), who told him that he would "be beaten" or "far worse" if he did not pay the member a fee for the use of the MS-13's territory. Roughly a year after his arrival, the Applicant was deported.

[7] In 2008, the Applicant again entered the United States, this time as a 17-year-old minor. He engaged in substantively the same activities as in the 2006 incident. Within 2-3 months in the US, he was again deported to Honduras.

[8] In 2017, the Applicant arrived in Canada and submitted a refugee claim. In 2019, the Applicant applied for permanent residence under the Family Class.

[9] In October 2022, the Officer sent the Applicant a procedural fairness letter concerning potential criminal inadmissibility under paragraph 37(1)(a) of *IRPA*. According to the Officer, the Applicant "indicated that [he] may have been involved with [the MS-13] and the Mexican Mafia to sell narcotics while [he] resided in [the] USA."

[10] In January 2023, the Applicant responded to the procedural fairness letter, stating that he never claimed to be a member of the Mexican Mafia or MS-13. The Applicant clarified that "Mafia Mexicana" is a colloquial term applied to any Mexican person in the drug trade. He was not aware of any actual link between his dealer and the Mexican Mafia. The Applicant also reiterated that he paid the MS-13 member after being threatened with violence, but "never had any intention or desire to join or be a member of the MS-13 or any other gang." He stated that he fled Honduras as a minor "due to extreme poverty and a desire to have a better future to help his family." When he left Honduras, the Applicant was unable to secure a job, as he was illiterate in Spanish and could not understand English. He sold drugs because he was "[i]n a desperate situation, as a minor and without a parent or guardian to assist him."

[11] In March 2023, the Officer found the Applicant inadmissible to Canada on the basis of organized criminality and refused his application for permanent residence under the Family Class (*IRPA*, s 37(1)(a)). This is the decision that is presently under review.

III. **Issue and Standard of Review**

[12] The sole issue in this application is whether the Officer's decision is reasonable.

[13] The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 ("*Vavilov*")). I agree.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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 (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing

evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

IV. **Analysis**

[16] The Applicant submits that the Officer's decision is unreasonable. According to the Applicant, the Officer disregarded his response to the procedural fairness letter, rendering a decision that was neither responsive to the Applicant's submissions nor justified in light of its factual constraints.

[17] The Respondent submits that the Officer's decision is reasonable, as the Applicant's response to the procedural fairness letter failed to displace the essential facts on which the inadmissibility finding was made. All that was required to establish inadmissibility pursuant to paragraph 37(1)(a) of the *IRPA* was the Applicant's participation in "a pattern of criminal activity," which the Applicant conceded by "readily admit[ting]" to paying the MS-13 for permission to sell drugs on their territory in the United States.

[18] I agree with the Applicant.

[19] In my view, the Officer misapprehended the Applicant's submissions about the MS-13. Despite accepting the Applicant's statement that he "was forced to pay" the MS-13 and that he was a minor at the time of the two incidents in the United States, the Officer concluded that "the [A]pplicant [was] able to buy drugs from one criminal organization and then request[ed]

permission to sell this drug within the territory" of "another criminal organization, demonstrat[ing]…sufficient mental capacity and knowledge to understand the criminal illicit nature of the actions."

[20] Several reviewable errors are discernible in this line of reasoning. The Officer's statement that the Applicant "request[ed] permission to sell" drugs on MS-13 territory does not accord with the Applicant's evidence, which is that he only paid the MS-13 after being threatened with violence by a gang member. The Officer relies on a circular argument, equating the mere commission of illegal acts with the capacity to appreciate the acts' criminal nature. The Officer also does not show adequate regard for the Applicant being an unaccompanied minor fleeing extreme poverty at the time of the two incidents. Consequently, I agree with the Applicant that the Officer failed to "meaningfully account" for his submissions on this issue (*Vavilov* at para 127).

[21] Moreover, I find the Officer's treatment of the Applicant's submissions about the Mexican Mafia to be incoherent and unintelligible. The Officer acknowledged the Applicant's statement that he did not know if his dealer in the United States was actually a member of the Mexican Mafia or "affiliated in any way to cartels or organized crime." Without further explanation, the Officer then determined that the Applicant "purchase[d] cocaine from the Mexican Mafia," "sold drugs…for six months with a relationship with the Mexican Mafia," and "specifically indicat[ed] he purchased drugs from an individual who he believed was part of the Mexican Mafia." The Applicant rightly notes that the Officer's analysis is "squarely…contradict[ed]" by the evidence and fails to identify "compelling and credible information" warranting a criminal inadmissibility finding under paragraph 37(1)(a) of the *IRPA*

(*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17 (FC); *Ghazala Asif Khan v Canada (Citizenship and Immigration)*, 2017 FC 269 at para 24, citing *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *IRPA*, s 33).

[22] Consequently, I agree with the Applicant that the Officer's decision is unreasonable. The reasons provided are incoherent and call into question whether the Officer was "actually alert and sensitive to the matter before [them]" (*Vavilov* at para 128). This Court has determined that inadmissibility findings "should be carried out with prudence, and established with the utmost clarity" (*Daud v Canada (Citizenship and Immigration)*, 2008 FC 701 at para 8, cited in *Zahw v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1112 at para 35). The Officer's decision falls short of this standard.

[23] This is particularly concerning given the severe consequences that a finding of criminal inadmissibility would have on an applicant. Administrative decision-makers are required to "demonstrate that they have actually *listened* to the parties" (*Vavilov* at para 127 [emphasis in original]). It is troubling that the Officer failed to discharge this basic duty given the evidence on the record, which demonstrates that an inadmissibility finding would "ha[ve] particularly harsh consequences for" the Applicant in this case (*Vavilov* at para 133).

V. **Conclusion**

[24] For these reasons, this application for judicial review is granted. The decision is unreasonable, as it was internally incoherent and failed to account for the Applicant's

submissions (*Vavilov* at paras 85, 127-128). No questions for certification were raised, and I agree that none rise.

JUDGMENT in IMM-4113-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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