Federal Court  Cour fédérale

Date: 20250217

Dockets: IMM-4523-22
IMM-12694-22

Citation: 2025 FC 299

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 17, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

SANDY COMPÈRE

Applicant

and

THE MINISTER OF PUBLIC SAFETY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Sandy Compère, seeks judicial review of three decisions that led to him being found inadmissible to Canada on grounds of serious criminality. At the heart of his applications is the decision of the Minister's Delegate, made under subsection 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], to refer Mr. Compère's case for

an admissibility hearing before the Immigration Division [ID] of the Immigration and Refugee Board of Canada [IRB]. Mr. Compère contends that the decision of the Minister's Delegate is unreasonable in its analysis of Mr. Compère's personal circumstances, including the consequences of his removal to his country of origin, the best interests of his children, and his risk of reoffending.

[2] Mr. Compère also challenges the inadmissibility report prepared by an officer of the Canada Border Services Agency [CBSA] under subsection 44(1) of the *IRPA*, which led to the Minister's Delegate's decision, as well as the ID's decision to find him inadmissible and issue a deportation order against him. He claims the ID's decision is unreasonable because it is based on the unreasonable decision of the Minister's Delegate.

[3] For the reasons that follow, I find that the decision of the Minister's Delegate does not meet the requirements of a reasonable decision. Although the discretion conferred on the Minister's Delegate by subsection 44(2) of the *IRPA* is limited, the Minister's Delegate had the necessary discretion to consider Mr. Compère's personal circumstances. As the Minister accepts, once the Minister's Delegate chose to exercise this discretion, his analysis had to be reasonable. Here, the analysis regarding Mr. Compère's risk of reoffending is not justified in relation to the evidence, and the unreasonableness of this analysis requires that the decision be set aside, regardless of the Minister's Delegate's other findings. The applications for judicial review are therefore allowed.

II. Issue and standard of review

[4] The parties agree, and I concur, that the standard of reasonableness applies to the judicial review of the three impugned decisions: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Yavari v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 469 at paras 22–26.

[5] The determinative issue in these applications is therefore whether the decision of the Minister's Delegate was reasonable.

[6] In applying the reasonableness standard, the Court does not undertake its own analysis of the evidence to come to its own conclusions, nor does it, absent exceptional circumstances, interfere with the factual or discretionary findings of the decision maker: *Vavilov* at paras 83, 108, 125–126. It determines only whether the decision is reasonable, that is, whether it is justified in relation to the constellation of law and facts that are relevant to the decision, and the decision maker did not fundamentally misapprehend or fail to account for the evidence before them: *Vavilov* at paras 105–107, 126.

III. Analysis

A. *Factual background*

[7] Mr. Compère was born in Haiti in 1990. He obtained permanent residence in Canada in 1996, at the age of five, and never obtained Canadian citizenship in the time since then. In September 2011, he was arrested after attempting to commit robbery at a commercial

establishment. In November 2013, Mr. Compère was sentenced to 22 months of imprisonment for several criminal offences, including attempted robbery, use of an imitation firearm, and conspiracy. He was released in 2015 after serving 18 months of imprisonment.

[8] Pursuant to paragraph 36(1)(a) of the *IRPA*, a permanent resident or foreign national is inadmissible on grounds of serious criminality for having been convicted of an offence punishable by a maximum term of imprisonment of at least 10 years, or of an offence for which a term of imprisonment of more than six months has been imposed. Subsection 44(1) provides that an officer who is of the opinion that a permanent resident is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister. Subsection 44(2) then provides that the Minister may refer the report to the ID for an admissibility hearing, if of the opinion that the report is well-founded:

Referral or removal order	**Suivi**
44 (2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.	**44 (2)** S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.
[Emphasis added.]	[Je souligne.]

[9] In 2015, an initial report on inadmissibility against Mr. Compère was prepared by a CBSA officer. A Minister's Delegate referred Mr. Compère's case to the ID, which found him inadmissible on grounds of serious criminality. These three decisions were challenged before this Court in IMM-898-18.

[10] However, that application for judicial review was resolved through an agreement signed by the parties, since the Minister had failed to consider the best interests of Mr. Compère's children. The agreement provided that, among other things, Mr. Compère would have the chance to present written submissions if the CBSA prepared a new report on inadmissibility.

[11] In 2018, a new report on inadmissibility was prepared by the CBSA. This report was brief and only established the criminal convictions justifying inadmissibility on grounds of serious criminality. After this report was prepared, the CBSA sent a letter to Mr. Compère inviting him to present written submissions:

> [TRANSLATION]
>
> You may send us additional information in writing to provide us with the reasons why we should not refer your case to the IRB. The submissions may include, without being limited to, details relevant to your case, such as the age at which you obtained permanent resident status in Canada, how long you have been in Canada, where the members of your family live and your responsibilities in relation to them, the conditions in your country of origin, your degree of establishment, your criminal history, any history of non-compliance and your current behaviour, as well as any other relevant factor. You may also provide details specific to the reported offence.
>
> [Emphasis added.]

[12] Through his counsel, Mr. Compère presented written submissions to the CBSA addressing, among other things, the best interests of his two children; his role as main provider for his family; his establishment in Canada; his lack of ties to his country of origin, given that he arrived in Canada at the age of five; the risks he would face were he to return to Haiti; and the isolated nature of the crimes he had committed, with no signs of reoffending.

B. *Decision of the Minister's Delegate*

[13] In July 2021, the Minister's Delegate referred Mr. Compère's case to the ID for an admissibility hearing. In his decision, the Minister's Delegate considered Mr. Compère's establishment in Canada; the consequences for Mr. Compère if he were to return to Haiti; the best interests of his two children; the seriousness of his criminal convictions; and his risk of reoffending.

[14] First, the Minister's Delegate acknowledged that Mr. Compère has spent his entire adult life in Canada and that he has very few ties to his country of birth. However, the Minister's Delegate concluded that any inconvenience that might be caused by his return to Haiti is a normal consequence of removal.

[15] He then considered the best interests of his two children, born in Canada in 2016 and 2018, respectively, and noted that the children are not obligated to leave Canada since their biological mother is a Canadian citizen. In addition, she would have access to several social programs to help her care for her children in the absence of Mr. Compère's financial support. The Minister's Delegate found that family separation is a normal consequence of removal.

[16] Lastly, the Minister's Delegate stated that he had taken into account the seriousness of Mr. Compère's criminal convictions and the sentence he had been given. He concluded as follows:

> [TRANSLATION]
>
> After weighing the balance between the hardship that [Mr. Compère] would suffer if he were deported from Canada, the risk of reoffending and the risk to the Canadian public if he were to reoffend, I have come to the conclusion that this section 44 report should be referred for an admissibility hearing.
>
> [Emphasis added.]

C. *Decision of the ID*

[17] In November 2022, the ID issued a deportation order against Mr. Compère on grounds of serious criminality. The member reviewed his criminal convictions and determined that there were reasonable grounds to believe that he had been convicted of several offences punishable by a maximum term of imprisonment of at least 10 years, as provided for in paragraph 36(1)(a) of the *IRPA*.

D. *Discretion of the Minister's Delegate*

[18] The issue of the reasonableness of the Minister's Delegate's decision also raises that of his discretion under subsection 44(2) of the *IRPA*. Both Mr. Compère and the Minister contend that the Minister's Delegate had the necessary discretion to consider Mr. Compère's personal circumstances before deciding to refer his report to the ID. For the reasons that follow, I agree.

[19] Subsection 44(2) provides that the Minister *may* refer the report to the ID for an admissibility hearing if he is of the opinion that the report is well-founded. As confirmed by the Supreme Court of Canada, even if the Minister (or his Delegate) is of the opinion that the report on inadmissibility is well-founded, he still retains some discretion not to refer it to the ID: *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 6; *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262 at para 6.

[20] However, this discretion has been described as "very limited" and the Federal Court of Appeal recently confirmed that there is no general obligation for the Minister's Delegate to consider humanitarian and compassionate factors in his or her reasons: *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at paras 29–33, 55 citing, among others, *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 at paras 35, 37, and *Sharma v Canada (Public Safety and Emergency Preparedness*), 2016 FCA 319 at para 23; *McAlpin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422 at paras 63–70.

[21] Since the Federal Court of Appeal's decision in *Obazughanmwen*, this Court's decisions have been divided as to whether the Minister's Delegate has discretion to consider these types of factors within the context of subsection 44(2) and, if so, to what extent: see for example *Lawrence v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1637; *Sidhu v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1681; *Dass v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 624; *Marogi v Canada (Public Safety and*

Emergency Preparedness), 2024 FC 418; *Ramsuchit v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1019.

[22] At the hearing, both parties argued that the Minister's Delegate had the necessary discretion to consider Mr. Compère's personal circumstances, although the Minister described this discretion as [TRANSLATION] "very narrow". In his reasons, the Minister's Delegate did in fact exercise his discretion to consider these factors, implicitly concluding that he had such discretion. I note that this interpretation seems to be shared within the CBSA, even after the Federal Court of Appeal's decision in *Obazughanmwen*: see *Dass* at para 41; *R v Gonzalez-Ramirez*, 2023 ONSC 5468 at para 19 and Appendix "A".

[23] In applying the standard of reasonableness, this interpretation of subsection 44(2) of the *IRPA* appears consistent with the relevant legal constraints, namely the subsection itself and the jurisprudence that interprets it: *Vavilov* at paras 105, 108 to 112, 123; *Tran* at para 6; *Revell* at para 6; *Sharma* at paras 23, 45 and 46; *Obazughanmwen* at para 55. I add that, in the present case, where the CBSA expressly invited Mr. Compère to present written submissions addressing his personal circumstances as a condition for the resolution of an application for judicial review, it seems reasonable to expect that those circumstances will be taken into account: *Akkari v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1811 at para 7.

[24] As the Minister recognizes, having decided to exercise his discretion to consider Mr. Compère's personal circumstances, the Minister's Delegate was required to do so reasonably: *Revell* at paras 116 and 117; *Lawrence* at para 12; *Dass* at para 52; *Ramsuchit* at

paras 25, 36 to 38. As Justice Ahmed stated in *Dass*, holding otherwise would see the exercise of public power go unchecked, offending an elemental principle of administrative law that "the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it": *Dass* at para 52, citing *Vavilov* at para 95.

E. *The decision of the Minister's Delegate is unreasonable*

[25] Mr. Compère alleges that the decision of the Minister's Delegate is unreasonable in its analysis of the consequences of his removal to Haiti, his children's best interests, and his risk of reoffending. For the reasons set out below, I find that the analysis of the risk of reoffending is not reasonable, as it is not justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at para 99. There is therefore no need to address the other findings of the Minister's Delegate, since this issue is determinative of this application.

[26] As can be seen in his final determination, reproduced at paragraph [16] above, the Minister's Delegate weighed all of the hardship Mr. Compère would suffer against the [TRANSLATION] "risk of reoffending and the risk to the Canadian public if he were to reoffend," and concluded that the report should be referred to the ID. The risk of reoffending was accordingly granted considerable importance in the analysis. However, the Minister's Delegate offered nothing to further support this conclusion.

[27] The evidence relevant to the risk of reoffending shows that Mr. Compère pleaded guilty to the criminal charges brought against him, that he cooperated with the police and the Crown, that he promptly and successfully completed a six-month social reintegration program as soon as

he was released from prison in 2015, that he had found and kept employment since his release, and that he has not reoffended since the crimes committed in 2011 that led to the issuance of a deportation order against him, almost a decade before the decision of the Minister's Delegate. These factors were highlighted in the written submissions presented by Mr. Compère at the CBSA's invitation.

[28] In this context, and without any explanation from the Minister's Delegate, I find that the decision and, in particular, the mere reference to the [TRANSLATION] "risk of reoffending" do not exhibit the justification, transparency and intelligibility of a reasonable decision. One can understand from his reasons that the Minister's Delegate concluded that Mr. Compère poses a risk of reoffending. But one cannot understand the evidence or facts on which this conclusion is based. Even the [TRANSLATION] "recommendation with reasons" from a CBSA enforcement officer dated January 14, 2019, which the Minister's Delegate seems to have accepted, presents no analysis of the risk of reoffending.

[29] A reasonable decision is one that is justified in light of the facts, and the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at para 126. I find that the Minister's Delegate's decision, which is based on an asserted risk of reoffending that does not take the relevant evidence into account, is unreasonable. Given the importance of this risk in the decision, I conclude that this issue is determinative and renders the decision as a whole unreasonable.

[30] I agree with Mr. Compère's argument that the ID's decision is based on the Minister's Delegate's decision to refer the report to the ID under subsection 44(2). Since I have found the

Minister's Delegate's decision unreasonable, I must also set aside the ID's decision. That said, Mr. Compère presented no argument establishing that the report setting out the relevant facts dated October 24, 2018, prepared by a CBSA officer under subsection 44(1) is unreasonable.

IV. Conclusion

[31] Thus, for the reasons set out above, the applications for judicial review are allowed. In IMM-4523-22, the Minister's Delegate's decision of October 24, 2018, is set aside and the matter is remitted back to a different delegate for redetermination. In IMM-12694-22, the ID's decision determining that the applicant is inadmissible on grounds of serious criminality under paragraph 36(1)(a) of the *IRPA* and the deportation order issued against him under paragraph 45(d) are accordingly also set aside.

[32] At the outset of the hearing, counsel for Mr. Compère had proposed a question to certify on the scope of the Minister's Delegate's discretion under subsection 44(2) of the *IRPA* when an agreement has previously been reached by the parties, but he withdrew this in light of the Federal Court of Appeal's decision in *Obazughanmwen*. I agree that no question for certification arises in the matter.

JUDGMENT in IMM-4523-22 and IMM-12694-22

THIS COURT'S JUDGMENT is as follows:

1. The applications for judicial review are allowed.
2. The decision of the Minister's Delegate pursuant to subsection 44(2) of the *Immigration and Refugee Protection Act* is set aside and remitted for redetermination by a different delegate.
3. The decision of the Immigration and Refugee Board's Immigration Division is set aside in consequence.

"Nicholas McHaffie"
Judge

Certified true translation
Melissa Paquette, Senior Jurilinguist

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Danny Ablacatoff	FOR THE APPLICANT
Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Danny Ablacatoff Montreal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT