Federal Court Cour fédérale

Date: 20250221

Docket: IMM-32-24

Citation: 2025 FC 352

Ottawa, Ontario, February, 21 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

TIMOTHY CRAIG DURKIN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview and Relevant Facts

[1] Timothy Craig Durkin [Applicant] is seeking a Judicial Review of a decision dated November 20, 2023, of an Inland Enforcement Officer [Officer] working for the Canada Border Services Agency [CBSA] not to defer his removal from Canada [Decision]. The Judicial Review is dismissed for the following reasons.

[2] On January 31, 2024, Justice Fothergill of this Court granted a temporary stay of the Applicant's removal from Canada pending the determination of this Judicial Review. In granting the stay, the Court found that the Applicant had established a serious issue because the Decision was silent on his intention to seek judicial review the refusal for his Canadian citizenship application (*Durkin v Canada (Public Safety and Emergency Preparedness)*, 2024 CanLII 7635 (FC) [*Durkin*, 2024]). The Applicant had filed that application for citizenship in November 2019 and it was refused in February 2023.

[3] On May 14, 2024, this Court dealt with the application for leave for judicial review of the refusal of the citizenship application by denying both an extension of time (it was filed some 11 months after the refusal on January 15, 2024) and the leave application itself. Accordingly, the judicial review of the citizenship application was dismissed (Federal Court File No. T-120-24).

[4] The Applicant is a 73-year-old citizen of the United Kingdom who arrived in Canada as a one-year-old infant with his mother and never obtained Canadian citizenship. In January 2023, the Immigration Division [ID] of the Immigration and Refugee Board of Canada found the Applicant inadmissible on grounds of organized criminality under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], on the basis he, along with three other individuals, had orchestrated a sophisticated Ponzi scheme in Alabama between 2009 and 2013. The ID, therefore, issued a deportation order against the Applicant. The Applicant applied to the Federal Court for a judicial review of the ID decision, and the Court ultimately dismissed the application (*Durkin v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 174).

[5] The Applicant also applied for a Pre-Removal Risk Assessment [PRRA], which was rejected in a decision dated October 11, 2023.

[6] On November 1, 2023, the Applicant applied for Ministerial Relief under section 42.1 of IRPA, which continues to be pending. Under this section, the Minister has the undelegated authority to override the finding of inadmissibility under section 34, paragraph 35(1)(b) and subsection 37(1) of IRPA if an applicant satisfies the Minister that it is not contrary to the national interest.

[7] On November 3, 2023, the Applicant's removal was scheduled for December 8, 2023. The Applicant requested for deferral of removal until the conclusion of his Ministerial Relief application. In his deferral request dated November 10, 2022 [Deferral Request], he based his request on the following grounds:

a) His pending application for Ministerial relief under s 42.1 of IRPA;
b) His establishment in Canada;
c) His health issues;
d) His intention to judicially review the refusal of his citizenship (framed as "Appealing the citizenship application")

[8] The Officer granted the request for deferral for one month on the basis of the Applicant's pending eye surgery and set a new removal date of January 15, 2024.

[9] Subsequent to the deferral decision at issue, the Applicant made three further requests for deferral on: November 23, 2023; November 29, 2023; and January 17, 2024. The Officer refused

the first, granted the second due to eye surgery, and refused the third. As stated, Justice Fothergill granted the stay of removal until the disposition of this judicial review.

II. Legal Framework

[10] There is no question that by the time the Applicant applied to the Officer to defer his removal from Canada, he faced an enforceable removal order. The relevant section dealing with this matter is, therefore, section 48 of IRPA:

Immigration and Refugee Protection Act, SC 2001, c 27	***Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27***
Enforceable removal order **48 (1)** A removal order is enforceable if it has come into force and is not stayed.	**Mesure de renvoi** **48 (1)** La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.
Effect **(2)** If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.	**Conséquence** **(2)** L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être exécutée dès que possible.

III. Issue and Standard of Review

[11] The parties submit, and I agree, that the standard of review in this case is reasonableness.

[12] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 12-13 and 15 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8 and 63.

IV. Analysis

A. *Was the Officer's decision to refuse the deferral application reasonable?*

[13] This Court has repeatedly found that an enforcement officer's discretion to defer removal is quite limited, and that the purpose of the deferral temporary. For example, In *Hussain v Canada (Public Safety and Emergency Preparedness)*, 2022 CanLII 74905 (FC), Justice Rochester summarized the principles relating to a removal officer's discretion:

> …the scope of an enforcement officer's discretion to defer removal under subsection 48(2) of the [IRPA] is very limited, as an enforcement officer is required to enforce the removal order as soon as possible. The enforcement officer's discretion is restricted to determining when, and not if, the removal will be executed. This discretion should only be exercised for those cases where there is clear evidence of a "risk of death, extreme sanction or inhumane treatment," or where there are temporary, short-term exigent circumstances such as the need for a child to finish a school year or obtain specialized ongoing medical care in Canada. It is well established that a request for deferral does not oblige an enforcement officer to conduct a preliminary or mini humanitarian and compassionate assessment or to make a pre-removal risk assessment decision.

[14] The Applicant's deferral application was requested for the following reasons: his imminent eye surgery, pending Ministerial Relief application, his long establishment in Canada and financial hardship, and general health conditions. The deferral was already allowed for the Applicant to undergo an eye surgery and recover from it, but it was refused for the other grounds.

(1) Ministerial Relief

[15] The Officer dealt with the Applicant's arguments for a Ministerial relief and found that it might take several years before it is decided, and that this was not compatible with the temporary, short-term circumstances warranting deferral, and that it did not provide a stay:

> I have very little discretion in granting a deferral of removal. Pursuant to section 48(2) of the *Immigration and Refugee Protection Act (IRPA)*, the CBSA has an obligation to enforce removal orders as soon as possible. Section 48(2) reads:
>
> (1) A removal order is enforceable if it has come into force and is not stayed.
>
> (2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.
>
> Deferring a removal is meant to be a temporary measure intended to alleviate exceptional circumstances. To preserve the integrity of Canada's immigration mechanism, it is not the appropriate avenue to circumvent any legislative measures enacted by parliament.
>
> Ministerial Relief applications can take years before they are decided and the existence of an application for Ministerial Relief does not create a stay of removal under Section 50 or any other section of the *IRPA*.
>
> You have submitted proof that the Ministerial Relief application was only accepted for processing on November 1, 2023. Granting a deferral to await a decision on this application is contrary to my limited ability to grant a temporary deferral.
>
> I appreciate that Mr. Durkin has been very rooted in Canada and has spent the majority of his life here. However, I am not able to grant a deferral for an indefinite length of time to await a decision on the Ministerial Relief application.

[16] The Applicant argues that the Ministerial relief application, which has been pending for two years, is particularly strong and that it will likely be granted imminently. I find that the Applicant is speculating as to the timing and the results of the Application. He is also

misinterpreting that the Officer's duty to assess the short-term request for deferral is with respect to a foreseeable and definite timeline. He is conflating the indefinite or the uncertain timeline of the processing with an infinite time, and he argues that because it will likely not take an infinite amount of time, the Officer should have granted it. It was reasonable for the Officer to interpret, that given his narrow discretion, plus his legislative obligation to enforce an enforceable removal order as soon as possible, to be incompatible with viewing an indefinite (meaning not defined and not necessarily infinite) application as persuasive (see *Shpati v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 286 at paras 46–48).

[17] I find that there is a clear chain of analysis in the Officer's reasons that does not warrant this Court's intervention.

[18] At the Judicial Review hearing, counsel for the Applicant agreed that a ministerial relief application can continue to be processed after the Applicant's departure from Canada. Counsel for the Applicant agreed that the pending ministerial application was, therefore, not the determinative issue on the Deferral Request. He argued that it was this issue, together with all else, that the Officer had to analyse cumulatively. I find that the Officer reasonably assessed this issue which was independent of the other issues raised by the Applicant.

(2) Establishment and Financial Hardship

[19] The Officer acknowledged that establishment and life in Canada were submitted as separate criteria that formed the basis of the deferral request. The Officer noted the immigration

history of the Applicant went as far back as May 16, 1952, when he entered Canada as a "landed immigrant with his mother" who "never obtained Canadian citizenship". He also stated that:

> I appreciate that Mr. Durkin has been very rooted in Canada and has spent the majority of his life here. However, I am not able to grant a deferral for an indefinite length of time to await a decision on the Ministerial Relief application.

[20] The Applicant did not provide documentation to support his allegation that he was indigent and unable to support himself, and it is unclear how this, or his claim of family separation could be relevant to the Officer's obligation to consider a temporary, short-term objectives of deferral. Given the Officer's limited discretion and obligation to enforce the removal order as quickly as practicable under section 48(2) of the IRPA, I do not find the absence of a more extensive analysis on the part of the Officer to amount to a break in a logical chain of reasoning. Administrative decision-makers are not obligated to deal with non-determinative issues [*Vavilov* at para 128; see also *Canadian Pacific Railway Company v Sauvé*, 2024 FCA 171 at para 16).

(3) Health Conditions

[21] As stated, the Officer dealt with the concrete health issue that the Applicant faced and needed a temporary deferral, specifically the eye surgery. The other health concerns that the Applicant had raised with respect to his and his wife's needs were more long-term and indefinite, and it was reasonable for the Officer not to find them determinative. I, therefore, find that the Officer's treatment of the Applicant's health concerns was reasonable, aligned with legislative objectives and explained with a rational chain of reasoning.

[22] The Applicant argues that the Officer did not engage with the psychological and medical documentation that established serious and ongoing health concerns. At the hearing, counsel for the Applicant agreed that those concerns would lead to an indefinite removal. There was no suggestion that an acute condition, other than the eye surgery for which the Officer granted the deferral, existed. I, therefore, find that the Officer's reasons for rejecting the long-term health concerns of the Applicant to be transparent, intelligible and justifiable.

(4) Citizenship Application

[23] When the Officer engaged with the Deferral Request, there was no pending application for leave and for judicial review of the refusal of citizenship. However, the Applicant stated that it was his intention to challenge it in Court. As stated, the application for extension of time and leave were both later refused by this Court. At the judicial review hearing, counsel for the Applicant stated that it was his intention to reapply for citizenship as he strongly believes he meets the legislative requirement.

[24] First, with respect to what was before the Officer, namely the Applicant's "intention" to judicially review the refusal of the citizenship application, as counsel for the Applicant agreed during the Judicial Review hearing, it can be pursued from outside of Canada. I, therefore, find it not to be a determinative issue. While administrative decision-makers must grapple with a potentially determinative issue(s), they are not required to deal with the issues that are not determinative in the determination of their decision. In fact, in answer to the question from this Court during the hearing on "how this was determinative" to the deferral request, counsel for the Applicant stated that it was not. He agreed that the application could continue from abroad. He

then added that even though it was not determinative in and of itself, when combined with the Applicant's other submissions, including his health conditions, then it would become relevant and determinative. The Applicant's counsel did not explain how independent unrelated factors were relevant to a cumulative assessment. As the Court in *Vavilov* stated, reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). A reasonable decision is one that is justified in relation to the complete array of relevant facts and law, and their interplay together (*Vavilov* at paras 105 –107). I find that the factors argued by the Applicant are independent of each other and it was therefore reasonable for the Officer not to force a connection between them that did not exist.

[25] I understand that my colleague Justice Fothergill granted the stay of the removal because of the Officer's failure to grapple with his intention to judicially review his citizenship application (*Durkin*, 2024). However, in the context of an urgent stay application, the issue was not fully analyzed. Moreover, the leave has since been denied which has rendered the argument moot.

[26] In summary, at the judicial review hearing, the Applicant agreed that the Officer had dealt with each of the grounds raised reasonably but maintained that what made the decision as a whole unreasonable was the Officer's assessment of each issue individually and in a vacuum. However, the Applicant had raised four independent issues that were not interrelated in any way. I, therefore, do not find that the Officer's assessment of each separately in the circumstances of this case, and given his narrow discretion, to be unreasonable.

V. Conclusion

[27] The Officer's decision is reasonable. The application for judicial review is, therefore, dismissed.

[28] Neither party proposed a question for certification, and I agree that none arises in this matter.

JUDGMENT IN IMM-32-24

THIS COURT'S JUDGMENT is that

1. The Judicial Review is dismissed.

2. There is no certified question.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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