

Federal Court



Cour fédérale

Date: 20251014

Docket: IMM-11638-22

Citation: 2025 FC 1690

Ottawa, Ontario, October 14, 2025

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

BAYANI BIRON

Applicant

and

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

Respondent

JUDGMENT AND REASONS

[1] The applicant, Bayani Biron, is seeking judicial review of an inadmissibility report based on sections 36 and 44 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. I dismiss his application because the Minister's delegate reasonably considered that the humanitarian and compassionate [H&C] factors put forward by Mr. Biron did not counterbalance the seriousness of the offence.

I. Background

[2] Mr. Biron is a citizen of the Philippines and has been a permanent resident of Canada since 2016. He lives in Montréal with his spouse and their two daughters.

[3] In 2021, Mr. Biron pleaded guilty to a charge of sexual assault against a minor. He was sentenced to 20 months in prison.

[4] In May 2022, Mr. Biron was informed that a report under subsection 44(1) of the Act had been prepared, alleging that he could be inadmissible for serious criminality under paragraph 36(1)(a) of the Act. He was invited to make written submissions setting out the reasons why such a report should not be prepared and why he should be allowed to stay in Canada.

[5] In July 2022, Mr. Biron made his submissions through his counsel. He expressed remorse, and relying on the pre-sentence report and a sexologist's expert report, he submitted that his risk of reoffending was low. He stated that he had started therapy and reduced his alcohol consumption. Finally, he stated that he had found a new job, that he provided essential financial and emotional support to his spouse and their two daughters and that he was supported by his extended family.

[6] On August 4, 2022, an officer considered Mr. Biron's written submissions and supporting documents. After providing a detailed summary of the submissions, the officer made the following recommendation:

[TRANSLATION]

Considering the criminal offence, taking into account the sentence imposed by the court, taking into account the client's submissions, and weighing the humanitarian and compassionate considerations in the submissions (such as his family's presence in Canada and the best interests of his daughters), I recommend that an admissibility hearing be held in this case given the circumstances and the nature of the criminal offence described below. The submissions demonstrate several laudable facts in favour of the client, but do not offset the seriousness and the nature of the offence against the minor victim.

[7] On August 12, 2022, a Minister's delegate considered the matter and referred Mr. Biron's file to the Immigration Division [ID], in accordance with the power granted by subsection 44(2) of the Act. The Minister's delegate's reasons read as follows:

After taking into consideration all of the elements in regards to the person concerned in Canada, the section 44 report # N000736038, the criminal history, the degree of establishment in Canada, the submissions of the PC and the notes of the Officer on file, I find the section 44 report to be founded in fact and in law and accept the recommendation of the Officer to refer the file for an admissibility hearing for serious criminality in Canada, according to section 36(1)(a) of the Immigration and Refugee Protection Act.

Considering the conviction and the seriousness of the criminal conviction, and specifically the circumstances of the crime, I am referring this report for an admissibility hearing.

[8] Mr. Biron is now seeking judicial review of the decision of the Minister's delegate. Given the nature of the file, a confidentiality order was made to protect the identity of the victim.

[9] This application was scheduled to be heard on October 1, 2025. A few days before the scheduled hearing, Mr. Biron contacted the registry to ask for a postponement because his counsel was not available and his attempts to find other counsel had been unsuccessful. At the Court's suggestion, both parties agreed to have the application decided without a hearing, solely on the basis of the written representations the parties had filed.

II. Analysis

[10] I dismiss the application for judicial review. For the reasons that follow, and contrary to Mr. Biron's submissions, the reasons for the decision were sufficient, and the Minister's delegate reasonably weighed the relevant factors.

[11] Although section 44 of the Act does not state this explicitly, officers and Minister's delegates have the discretion not to exercise their power to refer to the ID the file of a person likely to be found inadmissible, especially when H&C considerations militate against their removal. In this respect, I have nothing useful to add to the reasons of my colleague Justice Nicholas McHaffie in *Compère v Canada (Public Safety)*, 2025 FC 299.

[12] On judicial review, this Court's role is not to exercise this discretion anew or to substitute its opinion for that of the Minister's delegate. The Court must limit itself to deciding whether the decision of the Minister's delegate is reasonable, in other words, that the delegate has considered the relevant factors and that the decision is supported by the evidence before them. The task of the Minister's delegate is essentially a factual assessment, into which the Court may intervene only "where the decision maker has fundamentally misapprehended or failed to account for the

evidence before it”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653 [Vavilov].

[13] The first argument raised by Mr. Biron concerns the sufficiency of the reasons provided by the Minister’s delegate. The reasons, however, must be read in context. This Court’s case law has established that the reasons provided by an officer in a report under subsection 44(1) are part of the decision of the Minister’s delegate under subsection 44(2); see, for example, *Huang v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 28 at paragraph 88; *Burton v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 753 at paragraphs 16–17.

[14] As I stated above, the officer’s report dated August 4, 2022, contains a detailed summary of the H&C considerations put forward by Mr. Biron, including his guilty plea, his remorse and his low risk of reoffending as well as his family’s support and the best interests of his two children. The officer took into consideration the factors favourable to Mr. Biron but concluded that they were not sufficient to offset [TRANSLATION] “the seriousness and the nature of the offence against the minor victim”. The Minister’s delegate agreed with the officer’s recommendation, also being of the opinion that the seriousness and the circumstances of the crime warranted the referral to the ID.

[15] In my view, the reasons provided by the officer and by the Minister’s delegate are sufficient because they enable the reader to understand why the decision was made and show that the decision makers understood Mr. Biron’s submissions. One cannot expect the degree of detail that would be found in an administrative tribunal’s decision. Accordingly, the Minister’s

delegate did not have to provide a detailed assessment of each ground brought forward by Mr. Biron.

[16] Mr. Biron is relying on *Melendez v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1363, [2017] 3 FCR 354 [*Melendez*] to buttress his contention that the Minister's delegate had to provide a detailed justification for rejecting each H&C factor he had put forward. However, in that matter, it seemed that the contents of the officer's report did not make it possible to adequately understand the reasons for the decision of the Minister's delegate or to demonstrate that the delegate had truly taken into account the H&C factors put forward. In Mr. Biron's case, as I have stated above, the officer's report shows that the H&C factors were understood and considered.

[17] In any case, at paragraph 91 of *Vavilov*, the Supreme Court ruled that insufficiency of reasons is not an independent ground of judicial review. Insofar as *Melendez* disregards this principle, I cannot follow it. However, insufficient reasons may render a decision unintelligible, and therefore unreasonable. I will now address this issue.

[18] In my view, the decision of the Minister's delegate was reasonable. It was his role to weigh the H&C considerations put forward by Mr. Biron and to determine whether they were sufficiently significant to justify that the matter not be referred to the ID. The seriousness of the offence was an essential factor in that exercise.

[19] We should not lose sight of the fact that Mr. Biron committed a sex offence against a child. The seriousness of such offences should never be minimized, as the Supreme Court of Canada very recently reiterated in *R v Sheppard*, 2025 SCC 29 at paragraphs 72–73. It is difficult to accept that the acts Mr. Biron was found guilty of were an isolated incident or that they can be explained or excused by his excessive alcohol consumption. In addition, the information available to the Minister’s delegate showed that the offence that Mr. Biron was convicted of was committed over a period of more than one year and that the acts he was found guilty of were repetitive. Finally, Mr. Biron was sentenced to a significant prison term.

[20] After reviewing the record, I am of the opinion that the Minister’s delegate could reasonably conclude that the seriousness of the offence was such that it counterbalanced the H&C considerations that Mr. Biron had put forward. Contrary to Mr. Biron’s submissions, the Minister’s delegate did not ignore the H&C considerations that he had put forward. On the contrary, the Minister’s delegate weighed the H&C considerations and the seriousness of the offence and concluded that the latter outweighed the former.

[21] Accordingly, Mr. Biron has not demonstrated that the Minister’s delegate “has fundamentally misapprehended or failed to account for the evidence before [him],” to use the language of the Supreme Court in *Vavilov*. The decision is therefore reasonable.

[22] For these reasons, the application for judicial review is dismissed.

JUDGMENT in file IMM-11638-22

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11638-22

STYLE OF CAUSE: BAYANI BIRON v THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

**APPLICATION FOR JUDICIAL REVIEW CONSIDERED ON THE BASIS OF
WRITTEN REPRESENTATIONS AT OTTAWA, ONTARIO, WITH BOTH PARTIES’
CONSENT.**

JUDGMENT AND REASONS GRAMMOND J
BY:

DATED: OCTOBER 14, 2025

WRITTEN REPRESENTATIONS BY:

Marine Cournier FOR THE APPLICANT

Suzanne Trudel FOR THE RESPONDENT

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