Federal Court  Cour fédérale

Date: 20260416

Docket: IMM-20518-24

Citation: 2026 FC 514

Ottawa, Ontario, April 16, 2026

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

NIXON ALBERTO CORTES PAEZ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Nixon Alberto Cortes Paez is a citizen of Colombia. He is 23 years old. He travelled from Colombia to Mexico and then entered the United States of America [USA] illegally. He crossed into Canada on September 25, 2024 between ports of entry. He claims to have fled threats of violence from criminal organizations in Colombia.

[2] Mr. Cortes Paez submitted a refugee claim on October 2, 2024, seven days after he arrived in Canada. On October 21, 2024, an officer of the Canada Border Services Agency [CBSA] prepared an admissibility report pursuant to s 41(a) of the *Immigration and Refugee Protection Act* [IRPA], SC 2001, c 27, concluding that he had failed to comply with s 20(1)(a) of the IRPA. Paragraph 20(1)(a) of the IRPA requires a person who seeks to enter Canada to hold a visa or other document required to establish permanent residence.

[3] Mr. Cortes Paez was interviewed by an inland enforcement officer [Officer] of the CBSA, acting as the Minister's delegate. The Officer determined that Mr. Cortes Paez was inadmissible under s 41(a) of the IRPA, and ineligible to have his refugee claim referred to the Refugee Protection Division [RPD] of the Immigration and Refugee Board pursuant to the Additional Protocol to the Safe Third Country Agreement [Additional Protocol].

[4] The Additional Protocol, enacted pursuant to s 159.4(1.1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], extends the application of s 101(1)(e) of the IRPA to claimants who entered Canada between ports of entry no more than 14 days before making their refugee claim. Several exceptions are prescribed by ss 159.5(a) to (h) of the IRPR. Under s 101(1)(e) of the IRPA, a refugee claim cannot be referred to the RPD if the claimant arrived from a designated country. The USA is a designated country (IRPR, s 159.3). The Officer found that none of the exceptions in ss 159.5(a) to (h) of the IRPR applied to Mr. Cortes Paez.

[5] On October 21, 2024, the Officer issued an exclusion order against Mr. Cortes Paez. He was detained overnight and removed from Canada the following day.

[6] Mr. Cortez Paez seeks judicial review of the exclusion order. He has not challenged the determination that he was ineligible to make a refugee claim. Nevertheless, his Memorandum of Fact and Law sometimes advances arguments respecting his eligibility to make a refugee claim. This is contrary to Rule 302 of the *Federal Court Rules*, SOR/98-106 [Rules], which states that an application for judicial review must be limited to a single order in respect of which relief is sought.

[7] The merits of the exclusion order are subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[8] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[9] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied. The Court must

examine the process followed by the decision maker and determine whether the procedure was fair having regard to all of the circumstances (*Jagadeesh v Canadian Imperial Bank of Commerce*, 2024 FCA 172 at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 44-56).

[10] Mr. Cortes Paez says that he was deprived of his right to legal representation. He maintains that his advisor, whom he knows only as "Jorge" and who may or may not have been a lawyer, failed to provide him with effective assistance. A second representative declined to accept his case at the last moment. He also complains that the exclusion order was not accompanied by written reasons. In addition, he says that he received inadequate interpretation due to a poor telephone connection and the interpreter's deficient language skills.

[11] Mr. Cortes Paez did not have a right to counsel at the interview with the Officer; only once he was detained (*Obodo v Canada (Citizenship and Immigration)*, 2022 FC 1493 at para 79). Upon detention, he was given the opportunity to contact Legal Aid and a Colombian consular official. The Notice of Arrest states that he contacted Legal Aid but did not want his government representative to be contacted.

[12] Mr. Cortes Paez was given copies of the written inadmissibility report and exclusion order. The Officer also provided him with oral reasons for the exclusion order and his ineligibility to make a refugee claim. These reasons were sufficient.

[13] With respect to the assertion that he received inadequate interpretation, the record indicates that Mr. Cortes Paez confirmed during the interview that he understood the interpreter, and there is nothing in the Officer's interview notes to suggest there were any problems of interpretation. Mr. Cortes Paez did not object to the quality of interpretation, nor did he ask for a different interpreter. He has not explained how the outcome might have been different if he had been able to express himself more clearly.

[14] Mr. Cortes Paez says that the Officer unreasonably failed to assess the humanitarian and compassionate [H&C] circumstances of his case. He also maintains that the Officer's explanation of the "14-day rule" was vague and confusing.

[15] Where a foreign national is found to be inadmissible, the Minister's delegate considers the facts of the case, rather than the personal or mitigating circumstances of the individual concerned, when making an exclusion order (*Niare v Canada (Citizenship and Immigration)*, 2021 FC 511 at para 13). The Officer was not obliged to consider H&C factors, nor to explain why they were not found to be sufficient (*Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 29; *Yumba v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1762 at para 34). The exclusion order was issued in compliance with the legislative and regulatory scheme.

[16] Mr. Cortes Paez's arguments respecting the "14-day rule" concern the determination of his ineligibility to make a refugee claim, not the issuance of the exclusion order. They are

therefore outside the scope of this application for judicial review. Regardless, they are without merit.

[17] Subsection 159(1.1) of the IRPR creates an exception to the general rule in s 159.4(1)(a) of the IRPR that the Safe Third Country Agreement does not apply to claimants who enter Canada between ports of entry. The effect of this provision is to extend the scope of the Safe Third Country Agreement to claimants who enter Canada between ports of entry if (a) they make a refugee claim within 14 days of entering Canada, and (b) none of the exceptions in ss 159.5(a) to (h) of the IRPR apply.

[18] Mr. Cortes Paez's counsel describes his circumstances as the "diligent claimant paradox". If he had waited more than 14 days before submitting his refugee claim, it would have been referred to the RPD for determination. Because he reported to the CBSA seven days after his arrival, he was found to be inadmissible.

[19] This argument illustrates an anomaly in the policy underlying the law, and does not render the Officer's decision unreasonable. It is perhaps worth noting that recent amendments to the IRPA dispense with the "14 day rule", and deprive all refugee claimants who enter Canada from the USA of the right to have their claims determined by the RPD, subject to the exceptions noted above (Bill C-12, *An Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures*, 1st Sess, 45th Parl, 2026 (assented to 26 March 2026)).

[20] The Officer reasonably found that Mr. Cortes Paez was subject to the Safe Third Country Agreement pursuant to s 159.4(1.1) of the IRPR, because he submitted his refugee claim within 14 days of entering Canada from the USA. The Officer considered the exceptions in ss 159.5(a) to (h) of the IRPR, and reasonably concluded that none of them applied in the circumstances.

[21] In oral argument, Mr. Cortes Paez's counsel suggested that the Officer failed to apply the "safety valves" that the Supreme Court of Canada found to be essential to upholding the constitutionality of the Safe Third Country Agreement (citing *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17). This argument was not included in Mr. Cortes Paez's written Memorandum of Fact and Law.

[22] The Court should not entertain new arguments at the hearing unless the situation is exceptional (Rule 70(1)). To do so would prejudice the responding party and could deprive the Court of the ability to fully assess the merits of the new argument (*Canadian Nuclear Laboratories Ltd v Adams*, 2024 FC 1697 at para 30). This is not an exceptional circumstance. Furthermore, the interplay between the Safe Third Country Agreement, the Additional Protocol, and the "safety valves" identified by the Supreme Court of Canada raises potentially complex legal issues requiring a proper evidentiary foundation and full argument.

[23] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT IN IMM-20518-24

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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