Date: 20080307

Docket: IMM-2337-07

Citation: 2008 FC 315

Ottawa, Ontario, March 7, 2008

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

AHMED ADEM MOHAMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of an Opinion of the Minister's delegate, dated April 20, 2007, that the applicant should not be allowed to remain in Canada because he constitutes a danger to the Canadian public pursuant to paragraph 115(2)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

FACTS

[2] The applicant, Ahmed Adem Mohamed, is a 29-year-old Canadian permanent resident. In 1982, the applicant left Ethiopia, his country of origin, and was recognized as a Convention refugee

by the United Nations High Commissioner for Refugees. On November 19, 1991, by virtue of his Convention refugee status, the applicant was issued a Canadian "Immigrant Visa and Record of Landing" by the Rome Visa Office in Italy, where he was living with his brother. On December 3, 1991, the applicant entered Canada and became a permanent resident under the Convention Refugee Immigration Category.

[3] Since 1997, the applicant has been convicted of 27 different crimes. Most recently, on March 12, 2005, the applicant was convicted of two counts of robbery and one count of possession of a weapon for dangerous use under the *Criminal Code*, R.S.C. 1985, c. C-46. As a result of the convictions, for which he was sentenced to a 30 month prison term, the applicant became the subject of an admissibility report under subsection 36(1) of the IRPA.

[4] On March 30, 2006 following an admissibility hearing, a Deportation Order was issued against the applicant.

Decision under review

[5] On April 20, 2007, the Minister's delegate issued an Opinion (the Danger Opinion) that the applicant constitutes a danger to the public in Canada pursuant to paragraph 115(2)(a) of the IRPA.

[6] After finding the applicant to be inadmissible to Canada on grounds of serious criminality – as required by paragraph 115(2)(a) – the Minister's delegate conducted a danger assessment to determine whether the applicant's criminal history constituted a danger to the public in Canada. In

conducting the danger assessment, the Minister's delegate reviewed the litany of crimes for which the applicant had been convicted, as well as the accompanying police reports and the submissions of the applicant's counsel. Having reviewed the evidence, the Minister's delegate concluded at page 11 of the Danger Opinion:

> After considering the totality of the evidence before me, I am not satisfied on balance that Mr. Mohamed will turn his life around and leave his life of crime behind. If he commits another offence where weapons are involved, the results could be extremely serious for another member of the Canadian public. The number and regular frequency of offences that he has committed satisfy me, on balance, that he is a threat to other members of Canadian society. His repeat offences and breach of probation show a distinct lack of regard not only for Canadian laws but for other members of Canadian society in general. Based on my consideration of all the information before me, I am of the opinion that Mr. Mohamed's continued presence in Canada poses an unacceptable risk to the Canadian public and as a result I find that he constitutes a danger to the public.

[7] The Minister's delegate then examined the potential risk to the applicant if he was returned to Ethiopia. In examining such risk, the Minister's delegate focused on "those considerations that are specific to Mr. Mohamed that would subject him personally to a risk of torture or a risk to his life or to a risk of cruel and unusual treatment or punishment": Danger Opinion at page 16. The Minister's delegate found that the Ethiopian country conditions were "not ideal" and that the applicant may face "difficulties" arising from his lack of family support and limited grasp of the language. The Minister's delegate also found, on the basis of the documentary evidence, that there was no evidence indicating that the applicant would be persecuted because of his Oromo ethnicity. Further, the Minister's delegate concluded there was insufficient evidence establishing that the applicant would be perceived as a member of the outlawed Oromo Liberation Front (OLF) simply

because of his ethnicity. Accordingly, the Minister's delegate concluded the applicant would be of little interest to the Ethiopian government if returned, and would not be subject to any of the risks identified in section 97 of the IRPA. The Minister's delegate stated at page 17 of the Danger Opinion:

> The risks that Mr. Mohamed fled have ameliorated significantly in the more than 20 years since he left Ethiopia. This satisfies me, on a balance of probabilities, that he would not face a risk of torture, or a risk to his life, or to a risk of cruel and unusual treatment or punishment if returned to Ethiopia. Finally, based on the material that I reviewed, I am satisfied, on balance of probabilities, that he will not face any of the risks identified under section 97 of *IRPA* as a result of the criminal convictions that he incurred while he was present in Canada.

[8] Finally, the Minister's delegate considered whether any humanitarian and compassionate considerations existed that would justify a conclusion that the applicant was not a danger to the public in Canada. The Minister's delegate considered a number of submissions made by the applicant's counsel, including those relating to the applicant's history of drug and alcohol abuse and his lack of family support in Ethiopia. Ultimately, however, the Minister's delegate concluded that none of those factors outweighed the harm caused by the applicant's past criminal conduct and the potential risk he poses to members of the Canadian public should he be allowed to remain in Canada. On this basis, the Minister's delegate concluded the applicant's case did not warrant favourable consideration based on humanitarian and compassionate grounds.

ISSUE

[9] The issue to be considered in this application is whether the Minister's delegate erred in concluding that the applicant constitutes a danger to the public in Canada.

STANDARD OF REVIEW

[10] In *Nagalingam v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 229, [2008] 1 F.C.R. 87 at paragraph 18, I stated the following about the appropriate standard of review to apply to a Danger Opinion made under section 115 of the IRPA:

> ¶ 18 With respect to factual findings, the Minister is entitled to considerable deference in light of his relative expertise in assessing risk of harm and the severity of acts committed. As the Supreme Court of Canada held in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, at paragraph 41, the Court should not reweigh the factors considered by the Minister provided that the decision is not patently unreasonable. The Court's determination of the standard of review in *Suresh* was based on the danger opinion provisions under paragraph 53(1)(*b*) … of the former Act. The same level of deference should apply to a Minister's opinion issued under section 115 of the current Act….

See also *Thuraisingam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 607, 251 F.T.R. 282 per Mactavish J. at paragraphs 26-28.

[11] Accordingly, the Danger Opinion issued by the Minister's delegate in the case at bar will be subject to the standard of patent unreasonableness and will only be set aside if "unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures": *Suresh*, above, at paragraph 41.

ANALYSIS

Issue: <u>Did the Minister's delegate err in concluding that the applicant constitutes a danger to the public in Canada</u>?

<u>Statutory Framework</u>

[12] Subsection 115(2) of the IRPA operates as an exception to the principle of *non-refoulement* in sub-section 115(1) which prevents refugees from being returned to a country where they would face a risk of persecution, torture, or cruel and unusual treatment or punishment. Subsection 115(2) contains two specific exceptions to the principle of *non-refoulement*, and makes it possible for the government to return a Convention refugee or a protected person to the country from which they originally fled.

[13] A decision under subsection 115(2) is a discretionary decision wherein the Minister or Minister's delegate must be satisfied that the conditions in either paragraph have been met. The section states:

(2) Subsection (1) does not apply in the case of a person	**(2)** Le paragraphe (1) ne s'applique pas à l'interdit de territoire:
(*a*) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or	*a*) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;
(*b*) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.	*b*) pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité du Canada.

[14] Under paragraph 115(2)(a), which is the provision at issue in the case at bar, the Minister or Minister's delegate may allow for the removal of a refugee if satisfied that: 1) the individual in question is inadmissible to Canada on grounds of serious criminality; and 2) the individual constitutes a "danger to the public" in Canada. Inadmissibility on grounds of serious criminality is governed by subsection 36(1) of the IRPA and includes any offence committed in Canada punishable by a maximum prison term of at least ten years or an offence for which a prison term of more than six months has been imposed.

[15] The second consideration to be made – whether the individual is a "danger to the public" in Canada – is not defined within the IRPA but has been defined within the jurisprudence. As Madam Justice Mactavish stated in *Thuraisingam*, above, at paragraph 32:

> ¶ 32 The phrase "danger to the public", as it is used in s. 115 of the *Immigration and Refugee Protection Act*, and its predecessor section, has been the subject of judicial consideration. In *La* [*v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 476, 232 F.T.R. 220], Justice Lemieux cited with approval the following passage from the decision of Justice Strayer in *Williams v. Canada (Minister of Citizenship and Immigration)*, [1997] 2 F.C. 646; 212 N.R. 63 (F.C.A.):
>
> > In the context the meaning of "public danger" is not a mystery: it must refer to the possibility that a person who has committed a serious crime in the past may seriously be thought to be a potential re-offender. It need not be proven – indeed it cannot be proven – that the person will reoffend. What I believe the subsection adequately focusses the Minister's mind on is consideration of whether, given what she knows about the individual and what that individual has had to say in his own behalf, she can form an opinion in good faith that he is a possible re-offender whose presence in Canada creates an unacceptable risk to the public.

[16] The mere fact that a refugee has been convicted of a serious criminal offence is not, alone, sufficient to found the conclusion that the individual poses a danger to the public in Canada. Accordingly, Madam Justice Mactavish stated at paragraph 33 of *Thuraisingam* that it is necessary to assess the "circumstances of each case" in order to determine whether there exists "sufficient evidence on which to formulate the opinion that the individual is a potential re-offender, whose presence in Canada poses an unacceptable risk to the public."

Danger to the public in Canada

[17] The applicant argues the Minister's delegate erred in concluding that the applicant poses a danger to the public in Canada. Specifically, the applicant states that the Minister's delegate "under-cuts the applicant's good behaviour in jail by adopting the label of the parole officers, that the applicant can be a 'managed risk.'" The applicant states that adopting the term "managed risk" undermines the fact that society allows people to redeem themselves and move on to "something better."

[18] However, the Court concludes that the finding of the Minister's delegate that the applicant poses a danger to the Canadian public was premised on an extensive review of the evidence and was not patently unreasonable. First, the Minister's delegate provided a comprehensive review of the applicant's criminal history as well as the various reports accompanying his convictions. Next, the Minister's delegate addressed the extensive submissions made by the applicant's counsel, including the submission that the applicant demonstrated good conduct while in prison. However, despite these favourable reports, the Minister's delegate concluded that the applicant poses a danger to the

Canadian public, especially in light of the fact that the seriousness of his crimes have escalated. The Minister's delegate stated at page 9 of the Danger Opinion:

> Mr. Mohamed's counsel submits that I should not find that he represents a danger to the public because of the lack of serious harm that Mr. Mohamed's has, thus far, inflicted on the victims of his offences. I note, however, that the information in relation to the March 12th, 2005 convictions involved the use of a knife which Mr. Mohamed placed at the throat of one of his victims. … [T]he potential existed for very serious harm. The same applies for the incident with the box cutter [in October 2003]. … Based on my assessment of this information relating to Mr. Mohamed's convictions, I find his actions, on balance, demonstrate a propensity toward aggression and violence.

[19] The Minister's delegate also considered the connection between the applicant's criminal history and his substance abuse problems, as well as the effect of those problems on his chances of rehabilitation. The Minister's delegate considered the evidence before her and concluded that the applicant's lack of support in Canada seriously reduced the applicant's chances of successful rehabilitation. Further, the Minister's delegate concluded that his "past history demonstrates a pattern of re-offending in order to support his substance addictions." Finally, the evidence indicates that the applicant's "poor coping skills and lack of marketable skills" make it likely that he will re-offend in the future.

[20] Based on this extensive review of the evidence, the Court concludes that the conclusions of the Minister's delegate were properly based on the evidence before her and cannot be interfered with by this Court.

Risk to the applicant if removed

[21] As part of an assessment under subsection 115(2), the Minister's delegate determined whether the refugee claimant, in returning to their country of origin, would be placed at a "serious" risk of persecution, torture, or cruel and unusual treatment or punishment. This risk must then be weighed against the risk to the Canadian public if the applicant is not removed. I note in *Nagalingam*, above, I held at paragraph 43:

> Since the Minister reasonably concluded that there was no risk of harm, the non-refoulement provisions under subsection 115(1) do not apply. There was accordingly no need to "balance" competing interests under subsection 115(2).

I certified a question on this issue which has not been decided by the Federal Court of Appeal at this time.

[22] In the case at bar, the Minister's delegate assessed the potential risk to the applicant if he was returned to Ethiopia. The Minister's delegate concluded that while the applicant may face resettlement and integration difficulties after being away from the country for 20 years, he would not be at risk of persecution for reasons of his Oromo ethnicity or his perceived political opinion. Accordingly, the Minister's delegate concluded that the risks posed by the applicant to the public in Canada outweighed any risk of harm to the applicant if returned to Ethiopia.

[23] The applicant argues the Minister's delegate erred in concluding that he would not face a risk of persecution, torture, or cruel and unusual treatment or punishment if returned to Ethiopia. Specifically, the applicant argues the Minister's delegate erred in minimizing the extent to which the government harasses and tortures people of Oromo ethnicity merely because of a perception that

such individuals are associated with the OLF. The applicant submits that there was “copious evidence” before the Minister’s delegate establishing that the Oromo people continue to be persecuted, deprived basic human rights, harassed by police, and illegally detained merely because the Ethiopian government associates all Oromo people not belonging to the ruling party as being associated with the OLF.

[24] The respondent, however, submits that the Minister’s delegate properly considered the applicant’s submissions in this regard and states that it was not patently unreasonable to conclude that the applicant would not be subject to potential torture or persecution at the hands of the Ethiopian government since he had no political profile and had been out of the country for 20 years.

[25] Having reviewed the evidence, I conclude that the decision of the Minister’s delegate was not patently unreasonable. The Minister’s delegate provided an extensive review of the documentary evidence before her, including the submissions of the applicant’s counsel that the applicant’s Oromo ethnicity would make him a target of the Ethiopian government because of a perception that he was a supporter of the OLF. In reaching such a conclusion, the Minister’s delegate also considered the applicant’s specific circumstances; namely, the fact that he left Ethiopia when he was five years old and that he has no history of political association with the OLF, either in Ethiopia or in Canada. The thrust of the objective documentary evidence is that the Ethiopian government targets OLF members and sympathizers, not all 35 million people of Oromo ethnicity.

[26] Further, the Minister's delegate specifically considered the difficulties faced by the applicant in returning to Ethiopia after such a long period of time, especially given the applicant's lack of support, his history of drug and alcohol abuse, and the fact that he has limited knowledge of the language. However, the Minister's delegate concluded that none of these difficulties would subject the applicant to any of the enumerated categories of risk outlined in section 97 of the IRPA.

[27] I am not satisfied that the evidence from the applicant demonstrates that the conclusion of the Minister's delegate is patently unreasonable. As the Minister's delegate stated at page 17 of the Danger Opinion, there was significant evidence establishing that the applicant would not be at risk if returned to Ethiopia:

> Upon reading the documentary evidence on Ethiopia, the political situation is improving. Among other things, the government has opened offices of the Institution of Ombudsman in all states. So far there are two opened and plans are underway over the next five years to open more. Many cases have already been resolved by the Ombudsman. … Human rights' training is on-going for judges prosecutors and police as well as community members around the country. From the evidence before me, I am satisfied, on balance, that these government supported improvements will work to Mr. Mohamed's benefit rather than causing him to be at risk.

[28] Accordingly, for the reasons outlined above, this application for judicial review must be dismissed.

[29] Neither party proposed a question for certification and no question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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