

Federal Court



Cour fédérale

Date: 20110202

Docket: T-1535-09

Citation: 2011 FC 114

Ottawa, Ontario, February 2, 2011

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MEHDI VATANI

Applicant

and

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

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review is another of the series of judicial reviews of reconsiderations by the Minister of initial decisions not to approve requests for transfer from U.S. prisons to Canadian prisons pursuant to the *International Transfer of Offenders Act*, S.C. 2004, c. 21. The overarching principles, to the extent relevant to consideration of this and related judicial reviews, are set forth in *Holmes v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 112.

II. FACTUAL BACKGROUND

[2] Vatani was a 30 year old first offender who was sentenced to imprisonment for 10 years in the U.S.A. followed by 5 years of supervised release. He had been stopped for speeding and a search of his vehicle uncovered 48 kgs of cocaine which Vatani was in the process of delivering to another person.

[3] In the 1st transfer decision, the then Minister concluded that based on the volume of drugs involved and Vatani's actions, Vatani will, after transfer, commit a criminal organization offence. On that basis the transfer request was refused.

[4] The Minister's 1st decision was inconsistent with the overall thrust and specific advice of the departmental assessment. That assessment noted the strong and practical family support Vatani had. Most importantly, it advised that there was an absence of any evidence upon which to base a conclusion that he would, after transfer, commit an "act of organized crime". Further, the Department confirmed Vatani's limited role as "a mule" and the absence of any information to suggest that he was a key player in or had links to a criminal organization.

[5] The Minister's decision does not give any explanation for his conclusion in the face of the contradictory evidence from his own Department.

[6] In the reconsideration process, the Department's 2nd assessment was essentially the same as its 1st assessment. It added to the 2nd assessment evidence that it was unlikely that Vatani would re-offend after release.

[7] In the Minister's 2nd decision, on the issue of likelihood that Vatani would commit an organized criminal offence, the Minister noted that Vatani knew he was transporting drugs and that if he had been successful, it would have resulted in financial gain to the group he was assisting. The Minister did note family support, remorse and Vatani's rehabilitation efforts; however, the transfer request was denied.

III. ANALYSIS

[8] In the Minister's decision, there is no explanation of how the Minister arrived at his conclusion that Vatani would commit a criminal organization offence in the face of the Department's assessment, particularly in this regard where there was intelligence information on the issue relied upon by departmental officials.

[9] Quite apart from not addressing the cogent evidence and advice to the contrary of the Minister's conclusion, there is no explanation of how Vatani's knowledge and actions as well as the expected gain would support a conclusion that he would ("will") commit such an offence. There is no apparent logical connection articulated between those factors and the conclusion reached. There is even less support for the Minister's conclusion in view of the other facts reported by the Department.

[10] The Minister does not explain how the purpose of the Act is not achieved by a transfer in this case. In addition to the failure to address key evidence and advice which runs contrary to the Minister's conclusions, those conclusions lack intelligibility, transparency and acceptability under the principles outlined in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[11] The Minister may come to conclusions different from departmental advice but there must be a clear rationale stated; otherwise, the decision is arbitrary.

IV. CONCLUSION

[12] For these reasons, this judicial review will be granted, the Minister's decision quashed and the matter re-determined on its merits within 60 days of the date of judgment. The Applicant shall have his costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review is granted, the Minister's decision is quashed and the matter is to be re-determined on its merits within 60 days of the date of judgment. The Applicant is to have his costs.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1535-09

STYLE OF CAUSE: MEHDI VATANI

and

THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 27 and 28, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: February 2, 2011

APPEARANCES:

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