Federal Court  Cour fédérale

Date: 20131112

Docket: T-291-13

Citation: 2013 FC 1142

Ottawa, Ontario, November 12, 2013

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

CHUCK SUN LAU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Mr Lau, a Canadian citizen, was convicted in Australia in March 2008 of two offences: possession of a commercial quantity of heroin and being knowingly concerned in the importation of a commercial quantity of heroin. He is currently serving two concurrent sentences of 25 years imprisonment.

[2] On December 14, 2012, the Minister of Public Safety and Emergency Preparedness [the "Minister"] refused to consent to Mr Lau's request to serve the remainder of his sentence in Canada pursuant to the *International Transfer of Offenders Act* [the "*ITOA*"].

[3] The applicant now seeks judicial review of the Minister's decision.

[4] For the reasons that follow, the application is dismissed.

Background

[5] In March 1994 Mr Lau travelled to China, met with Mr Ho and made arrangements to deliver heroine from China to Australia. In April 1994, he travelled again to China and collected 47 kilograms of heroine with a street value of $100,000,000 and with two accomplices delivered the drugs to three sailors who he paid and instructed to transport the drugs to Australia. Mr Lau travelled again to China in July 1994 to meet with Mr Ho who instructed him to travel to Australia to collect the heroine. He did so and took possession of the heroin on September 10, 1994. On September 12, 1994, Mr Lau gave approximately 27.5 kilograms of heroin to a police informant who had tipped off the Australian authorities to the transaction. On September 16, 1994, an accomplice was arrested and found in possession of approximately 9.4 kilograms of heroin. On September 17, 1994 Mr Lau was arrested in Australia and held in custody.

[6] On March 27, 1995, with the assistance of his brother-in-law and a police officer in Australia, Mr Lau escaped custody prior to his preliminary hearing and fled to Canada where he remained at large until his arrest by the RCMP in June 1997.

[7] Mr Lau was held in custody in Canada pending extradition to Australia. He resisted extradition for 10 years and ultimately surrendered to Australian authorities in May 2007.

[8] Mr Lau entered a guilty plea and was convicted of two offences in March, 2008 and sentenced to two concurrent terms of 25 years in prison. The commencement of his sentence was backdated to December 31, 2001.

[9] In October 2009 Mr Lau requested a transfer to Canada to serve the remainder of his sentence pursuant to the *ITOA*.

[10] The Correctional Service of Canada ["CSC"] Community Assessment report indicates that if the applicant is not transferred he will be deported from Australia back to Canada on December 30, 2017. This is based on the administration of the Australian sentence. Upon his return, he would not be subject to supervision and there would be no record in Canada of his foreign conviction.

[11] However, if Mr Lau were to be transferred pursuant to the *ITOA*, the CSC would conduct a risk and other assessments, develop a correctional plan and determine where he would be held in custody. His transfer date would become his eligibility date for day and full parole, and his statutory release date would be October 25, 2021.

Decision under Review

[12] The Minister considered the transfer request under the Act as it existed at the time of Mr Lau's application. (The *ITOA* has subsequently been amended).

[13] The Minister refused the applicant's request to the transfer because the transfer would not contribute to the administration of justice, including public safety and security in Canada.

[14] The Minister referred to the purpose of the Act and indicated that he had examined the facts and circumstances in that context and had examined the specific factors set out in section 10. The Minister indicated that he had considered the entire record, including the submissions of the applicant and the letter from the applicant's sister.

[15] The decision reiterated the facts based on the Australian sentencing decision, as summarised above.

[16] With respect to the negative factors, the Minister referred to the Australian sentencing transcript in which the judge indicated that Mr Lau played a leading role in a well-organized conspiracy to import and distribute heroine and that he was a major drug trafficker for personal gain and that "[s]omeone valued your freedom sufficiently to make these arrangements", in reference to Mr Lau's escape.

[17] The Minister also noted the applicant's escape from custody in 1995, his arrest in Canada in 1997, his resistance to extradition for 10 years, the CSC assessment which indicated that Mr Lau

had 10 accomplices, the seriousness of the offence, the significant sentence imposed, and also that Mr Lau had served 11 years of the 25 year sentence.

[18] With respect to more favourable factors, the Minister referred to the Australian sentencing transcript which indicates that Mr Lau cooperated with authorities upon his return to Australia resulting in the identification of the three sailors and that he received a reduced sentence for his cooperation and for his guilty plea. The Minister also mentioned the Australian International Transfer report which indicates that Mr Lau has been of good conduct and has enrolled in programs.

[19] In addition, the Minister referred to the material prepared by CSC including the Executive Summary which indicates that Mr Lau has no criminal record in Canada or outstanding charges in Australia and the CSC Community Assessment which canvassed the family support for Mr Lau's return and the impact on Mr Lau's family, particularly his elderly parents who take care of his children, one of whom is autistic. The Minister observed, however, that Mr Lau's family knew little about his offence.

[20] The Minister acknowledged CSC's assessment that the information does not lead one to believe that Mr Lau would commit a criminal organization offence but clearly indicated that he had reached a different conclusion on the facts:

> "*Mr. Lau was involved in an organized and sophisticated operation; he played, according to the sentencing judge, a 'vital managerial role' in the commission of major trafficking offences 'for personal gain'; large amounts of drugs and money were involved; and approximately ten other individuals participated in the commission of the offence. I have also taken into account certain information, set out below, that leads me to believe that there is a significant risk that*

> *Mr. Lau will, after the transfer, commit a criminal organization offence."*

[21] The information referred to by the Minister includes Mr Lau's travel to China, the direction he took from Mr Ho, the role he played in giving directions to the accomplices, and his role in the delivery and distribution of the heroine in Australia. The Minister noted that this led him to the view that Mr Lau's criminal activities made up a larger criminal enterprise where illicit activities were well planned and executed resulting in financial benefit. The Minister also concluded, based on the facts noted above, that Mr Lau played a significant managerial role and held a position of trust within the organization.

[22] The Minister then stated:

> "*In my view, the organized and sophisticated nature of the offence as well as Mr. Lau's role in the commission of the offence, combined with the fact that Mr. Lau was involved in trafficking the shipment of drugs over the course of several months, enhances the seriousness of the crime and create (sic) a significant risk that Mr. Lau will engage in similar activities if returned to Canada. This factor goes to the public safety of those in Canada, which is foremost in my mind."*

[23] Mr Lau's escape to Canada in 1995 indicated to the Minister that Mr Lau did not abide by the laws of society and attempted to flee justice, which in the Minister's view, is not conducive to the process of rehabilitation or reintegration into the community. This also suggested to the Minister that Mr Lau continued to be involved with other criminal associates who assisted with his escape. The Minister relied on these circumstances to enhance his finding that there is a significant risk that Mr Lau will commit a similar criminal organization offence after his transfer.

[24] The Minister summarised the positive factors which could favour a transfer including that Mr Lau eventually cooperated with the Australian authorities, the CSC Executive Summary, and the Australian report that indicates his good conduct in prison.

[25] The Minister noted Mr Lau's family situation and that the separation from his children has adversely affected the children but commented, as noted by the Australian sentencing judge that the separation is as a result of his own actions. The Minister concluded that the risk to public safety in Canada outweighs the benefits of his transfer for him and his family.

[26] In conclusion, the Minister found that after balancing the positive factors against the serious and organized nature of the offence, the sentence imposed and his belief of the significant risk that Mr Lau will engage in a criminal organization offence if transferred to Canada, the transfer "would not contribute to the administration of justice, including public safety, in Canada."

Issues

[27] The applicant submits that the decision is unreasonable because: the Minister failed to provide sufficient information with respect to the basis for his opinion and violated the duty to act fairly under section 7 of the *Charter*; the Minister only considered part of the *ITOA*; there was insufficient evidence for the Minister to find that the applicant "will" re-offend; and, the evidence showed that the applicant will not re-offend.

[28] The applicant further submits that the Court should issue an order requiring the Minister to consent to the applicant's transfer request because there is no evidence on the record that there is a

significant risk that Mr Lau will commit a criminal organization offence after transfer and it is not likely that any such evidence would come to light if the application were reconsidered by the Minister. In other words, the record will remain the same and if the decision is unreasonable, the appropriate remedy is to direct the Minister to consent to the transfer.

Standard of review

[29] In *LeBon v Canada (Attorney General)*, 2012 FCA 132, 433 NR 310 [*LeBon*] the Federal Court of Appeal confirmed that decisions of the Minister relating to requests for transfer under the *ITOA* are to be reviewed under the reasonableness standard since it is "fact-specific and discretionary in nature" (at para 15).

[30] The Court held, at para 18, that reasonableness, in this context, means "whether the Minister's reasons allow the reviewing Court to understand why the Minister made his decision and then to determine whether the Minister's conclusion was within the range of acceptable outcomes."

[31] Where the standard of reasonableness applies, the role of the Court is to consider the existence of justification, transparency and intelligibility within the decision-making process, as well as whether the Minister's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

Relevant Provisions of the ITOA

[32] The purpose of the legislation is set out in Section 3 of the Act, as it read at the time of the application:

3. The purpose of this Act is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.	3. La présente loi a pour objet de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux.

[33] Section 10 sets out the factors that the Minister is required to consider in deciding whether to approve a transfer request. The provision below reflects the section as it read at the time of the application:

10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister shall consider the following factors:	10. (1) Le ministre tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien :
(a) whether the offender's return to Canada would constitute a threat to the security of Canada;	a) le retour au Canada du délinquant peut constituer une menace pour la sécurité du Canada;
(b) whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;	b) le délinquant a quitté le Canada ou est demeuré à l'étranger avec l'intention de ne plus considérer le Canada comme le lieu de sa résidence permanente;
(c) whether the offender has social or family ties in Canada; and	c) le délinquant a des liens sociaux ou familiaux au Canada;

(d) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.	d) l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou ses droits de la personne.
(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:	(2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger:
(a) whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the Criminal Code; and	a) à son avis, le délinquant commettra, après son transfèrement, une infraction de terrorisme ou une infraction d'organisation criminelle, au sens de l'article 2 du Code criminel;
(b) whether the offender was previously transferred under this Act or the Transfer of Offenders Act, chapitre T-15 of the Revised Statutes of Canada, 1985. [Emphasis added]	b) le délinquant a déjà été transféré en vertu de la présente loi ou de la Loi sur le transfèrement des délinquants, chapitre T-15 des Lois révisées du Canada (1985). (Je souligne]

Was the Minister's decision reasonable?

[34] The applicant, Mr Lau, broadly submits that the decision is not reasonable and that the reasons do not reveal whether the decision was made in conformity with the Minister's statutory obligations because the Minister focused only on paragraph 10(2)(a) of the *ITOA* and the circumstances of the offence.

[35] In the written submissions the applicant also argued that the failure to provide sufficient information with respect to the basis for the Minister's opinion violated the duty to act fairly under section 7 of the *Charter*. This was not pursued in oral argument.

[36] In particular, the applicant submits that the Minister's decision: was backward and speculative, focussing only on the index offence which occurred 19 years ago; failed to take into account his good behaviour in prison, the positive risk assessments, the programming and monitoring by CSC and the Parole Board if he were transferred to Canada; failed to explain why the advice of CSC was rejected or how public safety would be served by denying the transfer instead of permitting the transfer so that CSC could control and monitor his release in conjunction with the Parole Board.

[37] The applicant notes that if he is not transferred pursuant to the *ITOA* he will be deported back to Canada in December 2017, without any conditions, restrictions or supervision and without a Canadian criminal record.

[38] The applicant also argues that there is insufficient evidence to find that he "will" re-offend. He submits that the term "will" in paragraph 10(2)(a) of the *ITOA* requires some certainty or, at minimum, reasonable and probable grounds to believe that an offender will commit a criminal organization offence.

[39] The applicant submits that the CSC assessment and the report from Australia and other evidence support a finding contrary to that of the Minister; the transfer would achieve the purposes of the *ITOA*. Therefore, the decision is not reasonable.

The relevant principles

[40] There is a significant amount of jurisprudence dealing with the reasonableness of the Minister's decisions to refuse transfers of offenders pursuant to the *ITOA*. The applicant and respondent both cited many decisions of this Court to support their respective positions, many of which can be distinguished on the facts, but the principles which have emerged are not in dispute.

[41] As a starting point, in *LeBon*, at para 19, the Federal Court of Appeal confirmed that transfers under the Act are a privilege for Canadian offenders who are incarcerated outside of Canada and that there is no right to be returned to Canada to serve a sentence.

[42] In *Tangorra v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 1433, 401 FTR 246, Justice O'Reilly reviewed the relevant principles from many of the same cases now relied on by the applicant and respondent. Those that are relevant to the present case include:

- The Minister must consider the factors set out in subsections 10(1) and (2) and may also consider other factors relevant to the purposes of the Act (at para 7);

- the Minister is statutorily required to give written reasons and the jurisprudence has established that the reasons must communicate the substance of the decision and the reason why the Minister decided as he did (at para 20);

- the Minister is free to disagree with the CSC analysis or advice but must explain why he disagrees (at para 22);

- where the Minister relies on evidence of an alleged link to organized crime, he must make a finding pursuant to paragraph 10(2)(a) that the applicant will commit a criminal organization offence (at para 23);

- paragraph 10(2)(a) and its use of the term "will, after the transfer, commit…a criminal organization offence" does not require certainty of the applicant's involvement in a criminal organization offence; however, there must be evidence that leads the Minister to reasonably conclude that a criminal organization offence will be committed by the applicant after the transfer (at para 25);

- the court must afford the Minister significant deference, but the Minister's decision must meet the reasonableness standard (at para 21).

[43] To those principles I would add Justice Mactavish's caution in *Del Vecchio v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 1135, 398 FTR 75 that in assessing whether the offender will commit a criminal organization offence, there must be a meaningful examination of the offender's past involvement with organized crime and the ongoing ties of the individual to criminal organizations. In other words, the focus can not be exclusively on the past conduct or the offence which resulted in incarceration in the foreign country.

[44] The most recent guidance comes from the Federal Court of Appeal in *LeBon*. In that case, the Minister disagreed with the advice of CSC and was of the opinion that the likelihood that Mr LeBon would commit a criminal organization offence outweighed the positive factors. The Court found that the Minister's reasons were lacking, noting at paras 21-22, that:

> [21] However, what the reasons leave unanswered are:
>
> i. On what basis did the Minister depart from the CSC's advice?
>
> ii. How did the Minister assess the relevant factors so as to conclude that the factors which did not favor Mr. LeBon's return outweighed those which favored his return?
>
> [22] Dealing with the first unanswered question, in my view there is no bright line test which determines what level of explanation is required when the Minister disagrees with advice he has received. Each case will depend upon the record before the Minister. In some cases the record may make it apparent why the Minister disagreed with the advice he received. In such a case, little or no explanation would be required. This, however, is not one of those cases.

[45] And at para 25, the Court states that:

> [w]here, as in the present case, there are factors that support a transfer, the Minister must demonstrate some assessment of the competing factors so as to explain why he refused to consent to a transfer. Without such an assessment, the Minister's decision is neither transparent nor intelligible. Nor does the decision comply with the statutory requirement imposed by subsection 11(2) that the Minister give reasons.

The Minister's decision meets the reasonableness standard

[46] After considering the applicant's submissions and the principles from the jurisprudence, the issue to address is whether the Minister's decision to refuse the transfer based on his opinion that Mr Lau poses a significant risk of committing a criminal organization offence if returned to Canada is reasonable given the advice of CSC and the other evidence on the record that Mr Lau is doing well in prison and does not pose a risk of re-offending.

[47] Bearing in mind that there is no "bright line' test, I have considered whether the reasons explain why the Minister did not take CSC's advice and how the Minister conducted his assessment

to conclude that the factors favouring Mr Lau's return were outweighed by those which did not. In addition, I have considered whether the reasons reveal that the Minister considered Mr Lau's past and ongoing ties to organized criminal activity in reaching the opinion that Mr Lau would commit a criminal organization offence after his transfer to Canada rather than only Mr Lau's index offence.

[48] In my view, the Minister's decision in this case demonstrates that he has made an effort to follow the guidance provided in the jurisprudence. The decision is carefully worded to address the criteria of the Act, to show some assessment of the competing factors, to explain why the Minister departed from the advice of CSC and to link the past offence with subsequent conduct to inform the Minister's belief that Mr Lau will commit a criminal organization offence after the transfer. However, apart from using the correct words and references, there must be some substance to the decision.

[49] As noted by Justice Barnes in *Goulet v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 65, 403 FTR 234 at para 12:

> [a] decision that contains nothing more than the recitation of a few relevant facts and a bare conclusion is not one that is legally defensible under the Act … Indeed, it is impossible to tell from these reasons what factors caused the Minister to deny [the application].

[50] In that case the Minister disagreed with the CSC assessment and listed the factors in favour and against the applicant's transfer request. The Minister noted the purposes of the *ITOA*; the crime and the number of accomplices, the large quantities of marijuana (approximately 45 kilograms) and the sophistication of the operation; as well as the role of the applicant as a "senior participant" who

had coordinated and organized drug trips in the past. The Minister also acknowledged the applicant's family ties and support and his medical issues.

[51] Justice Barnes added at para 15:

> [i]t is not enough to say that the statutory factors have been considered. Some assessment of the evidence is necessary for the Court to determine if the ultimate conclusion is reasonable in the sense that it was actually based on the relevant statutory considerations. The acceptance as sufficient of a bare conclusion would immunize every decision from effective judicial review and permit administrative decisions that are arbitrary or capricious.

[52] In the present case, the Minister's reasons do more than list the factors and provide a bare conclusion.

[53] The Minister referred to the factors in section 10 and other relevant factors and provided some explanation why he believes that Mr Lau will commit a criminal organization offence if returned and why he believes that the positive factors are outweighed by the negative factors and which support his view that public safety is the paramount or overriding concern.

[54] The Minister acknowledged that he had reached a different conclusion than that provided in the CSC Assessment Report and Executive Summary and he offered an explanation why he departed from that advice. The Minister's reasons do allow me to understand why the Minister made his decision.

[55] Considering that deference is owed to the Minister as long as the decision meets the reasonableness standard and considering that the role of the Court is not to reweigh the factors and

make the decision it would prefer to make, I am led to the conclusion that the Minister's decision falls within the range of acceptable outcomes.

[56] The *ITOA* gives the Minister the discretion to consent to a transfer and guides the exercise of that discretion by setting out factors for consideration. As noted, the Minister is not limited to consideration of those factors and can take into account other relevant factors related to the purpose of the Act.

[57] The Minister acknowledged that that purpose of the *ITOA* is to contribute to the administration of justice and stated that this includes public safety and security as well as the rehabilitation and reintegration of offenders.

[58] The Minister considered all of the relevant factors set out in section 10 of the *ITOA*. In particular, the Minister considered the information obtained by CSC that the applicant's return to Canada would not pose a threat to the security of Canada; that CSC confirmed that the applicant has supportive family ties; and that the CSC Assessment concluded that there is no information leading one to believe that the applicant would commit a terrorism or criminal organization offence pursuant to paragraph 10(2)(a). The Minister noted, however, that the Australian judge had found that the applicant played a vital managerial role in the crime.

[59] The Minister explained why he disagreed with CSC's finding that the applicant would not commit a criminal organization offence after the transfer. He identified the bases for his belief: first,

the seriousness of the crime and the applicant's role in it; and second, the applicant's subsequent conduct, particularly his escape from custody in Australia.

[60] The Minister's reasons indicate that public safety was foremost in his mind. The reasons indicate that the nature and circumstances of Mr Lau's index offence create the significant risk that he will engage in such activities if returned, which in turn relates to public safety. I note that public safety was not a specific factor in section 10 or in the purpose of the *ITOA* in section 3 prior to the 2012 amendments. However, public safety is an additional and relevant factor which the Minister is entitled to consider, and he appears to have placed significant weight on it.

[61] The Minister also considered other relevant factors, particularly: the applicant's involvement in a large criminal enterprise that was sophisticated and well-planned, covered three continents, and involved a large amount of drugs; the applicant's "vital managerial role" and position of trust he held in the operation; the significant sentence imposed; and, his escape to Canada with the assistance of an Australian police officer.

[62] The Minister's opinion was influenced heavily by the organization and sophistication of the offence and the applicant's role in the operation. The Minister specifically noted the Australian judge's comment at the sentencing of Mr Lau about his escape from custody in 1994, that "someone valued your freedom sufficiently to make these arrangements".

[63] In coming to the belief that Mr Lau will commit a criminal organization offence, the Minister relied on the fact that Mr Lau escaped, noting that he did not abide by the laws and that this is not conducive to rehabilitation or reintegration.

[64] As noted in *Del Vecchio*, predicting the future with certainty is not possible. The Minister's reasons must, however, demonstrate a forward looking analysis and a "meaningful examination" of the past involvement and ongoing ties of the offender to organized crime (at para 53).

[65] Relying only on the index offence would make it almost impossible for anyone to succeed in returning to Canada. On the other hand, where an offender is incarcerated, there may be limited opportunity to continue to liaise with past associates and hopefully no opportunity to engage in organized criminal activity outside of the prison. Therefore the circumstances of the index offence, along with other considerations could support the Minister's belief, as it does here.

[66] The information from CSC and Australia did not indicate that Mr Lau continued to have any contact with past associates.

[67] The Minister did not solely rely on the index offence, which occurred in 1994, to form his belief. The Minister linked Mr Lau's conduct subsequent to the offence, including his escape, assisted by others, and flight to Canada coupled with the circumstances of the index offence, which was a very serious offence, involving a large quantity of drugs, and a great deal of planning across three countries along with the significant role played by Mr Lau.

[68] Although the escape occurred in 1995, Mr Lau remained at large in Canada until 1997 and his cooperation with Australian authorities only began after his surrender in 2007. The Minister's decision refers to the past conduct as 'enhancing' the finding that there is a significant risk that Mr Lau will commit a criminal organization offence in the future. While it may appear to be a weak link, it is nonetheless an explanation of how the Minister reached his belief and is based on the Minister's assessment of the evidence before him.

[69] The Minister also considered the factors favouring a transfer including: Mr Lau's cooperation with authorities after his extradition to Australia, his participation in a correctional program in Australia and his good conduct in prison; the challenges faced by Mr. Lau's family given the declining health of his elderly parents; and, the negative impact of his separation from his children, particularly on his eldest son who is autistic.

[70] In reaching his decision, the Minister weighed the factors in favour of a transfer against the serious nature of the offence, the sentence and his belief that there is a significant risk that Mr Lau will engage in an organized crime offence and concluded that a transfer would not contribute to the administration of justice, including public safety in Canada.

[71] As the applicant noted, the Minister did not specifically acknowledge that if Mr Lau is not transferred pursuant to the *ITOA*, he will be deported back to Canada in 2017 and he will not be subject to any supervision. However, if he is transferred, he would continue to be under sentence until 2021 and if he is granted parole, he would remain under supervision until that date.

[72] The Minister is presumed to be aware of this fact as it was noted in the material provided to him by CSC.

[73] Although a transfer may be in the long term best interests of both Mr Lau and the public safety of Canada, as he would remain under sentence until 2021 and either incarcerated or under the supervision of CSC, the issue for the Court is whether the Minister's decision refusing Mr Lau's transfer at the current time falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir)*. The role of the Court is not to substitute a decision that it would prefer.

No Mandatory Order

[74] Because I have found that the Minister's decision is reasonable there is no need to address the applicant's submission, relying on *LeBon v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FCA 55, 444 NR 93, that the Court should order the Minister to approve the applicant's transfer request.

[75] While the Court has the jurisdiction to grant such an order, as confirmed by the Federal Court of Appeal, this is an exceptional remedy.

[76] Moreover, as noted by Justice Mactavish in *Freeman v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1065, [2013] FCJ No 1148 at para 78:

> Section 18.1(3)(b) of the *Federal Courts Act* provides that this Court may refer a matter back to a decision-maker with such directions as the Court may consider appropriate. While this includes directions in the nature of a directed verdict, "this is an exceptional power that

> should be exercised only in the clearest of circumstances": *Rafuse v. Canada (Pension Appeals Board)*, [2002] F.C.J. No. 91 at para. 14, citing *Xie v. Canada (Minister of Employment and Immigration)* (1994), 75 F.T.R. 125, [1994] F.C.J. No. 286, at paragraph 18.

Conclusion

[77] The Minister's decision is reasonable when measured by the *Dunsmuir* standard and by the *LeBon* standard, as noted above. The Minister's reasons do allow the Court to understand why the Minister made his decision and to determine whether the decision was within the range of acceptable outcomes.

[78] The Minister exercises discretion in consenting or refusing transfers pursuant to the *ITOA*. The Minister was not bound by the CSC Assessment and was entitled to come to a different conclusion which he explained based on his assessment and weighing of the statutory and other relevant factors. Although there was evidence to support Mr Lau's transfer to Canada the Minister set out the evidence he relied on in reaching a different conclusion. Again, it is not the role of the Court to reweigh the evidence or remake the decision that the Court may prefer and which would also be in accordance with the purpose of the Act. I do not find any errors in the factors considered by the Minister in forming his belief or in his assessment of the competing factors which led to his conclusion that the transfer would not contribute to the administration of justice in Canada.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There is no Order for costs.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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