Federal Court of Appeal | Cour d'appel fédérale

Date: 20241022

Docket: A-77-24

Citation: 2024 FCA 173

CORAM: **RENNIE J.A.**
LOCKE J.A.
ROUSSEL J.A.

BETWEEN:

NENAD VANOVAC

Appellant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

Heard at Vancouver, British Columbia, on October 22, 2024.
Judgment delivered from the Bench at Vancouver, British Columbia, on October 22, 2024.

REASONS FOR JUDGMENT OF THE COURT BY: ROUSSEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on October 22, 2024).

ROUSSEL J.A.

[1] The Immigration Division of the Immigration and Refugee Board of Canada found Mr. Vanovac to be inadmissible to Canada for being a person described in paragraph 35(1)(*b*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), namely a prescribed senior official in the service of a designated regime.

[2] Before the Immigration Division, Mr. Vanovac and the Minister's representative focussed their submissions, as agreed, on the position enumerated in paragraph 16(c) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (Regulations). However, the Immigration Division found that the position held by Mr. Vanovac did not fit neatly in any of the positions enumerated in section 16 of the Regulations. Instead, the Immigration Division found that his position contained elements of paragraph 16(c) (senior advisors to heads of state or government, or to members of cabinet or governing council), paragraph 16(d) (senior members of the public service) and paragraph 16(f) (ambassadors and senior diplomatic officials). Taking a broader view, the Immigration Division determined that the evidence established that Mr. Vanovac's position, as President of the Central Commission for the Exchange of War Prisoners for the government of the Serbian Republic of Bosnia and Herzegovina from 1992 to 1993, was able to exert significant influence on the exercise of government power.

[3] Mr. Vanovac sought judicial review of the decision and argued that there had been a breach of procedural fairness because the Immigration Division made its findings on a broad view of section 16 of the Regulations, instead of just paragraph 16(c) of the Regulations. Mr. Vanovac did not take issue with the reasonableness of the Immigration Division's decision.

[4] In reasons cited as 2024 FC 148, the Federal Court dismissed Mr. Vanovac's application for judicial review. After noting that the duty of procedural fairness owed to Mr. Vanovac was at the higher end of the spectrum and that the Immigration Division had followed the appropriate procedure for finding someone inadmissible to Canada pursuant to paragraph 35(1)(*b*) of the IRPA, the Federal Court concluded that there was no breach of Mr. Vanovac's right to

procedural fairness. The Federal Court determined that the Immigration Division did not have the obligation to forewarn Mr. Vanovac of the particular paragraphs of section 16 of the Regulations that might be at play given the non-exhaustive list of positions in section 16 of the Regulations. The Federal Court nonetheless certified the following question:

> Does the duty of procedural fairness owed to an applicant in the context of potential inadmissibility under paragraph 35(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, require detailed notice about the specific nature of the allegations against an individual in respect of the broad, non-exhaustive categories of a "prescribed senior official" under section 16 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227?

[5] We are all of the opinion that the certified question must be answered in the negative. While the duty of procedural fairness requires that notice be provided of the specific nature of the allegations made against the individual alleged to be inadmissible under paragraph 35(1)(*b*) of the IRPA, it does not require that notice of a particular category or categories of a "prescribed senior official" under section 16 of the Regulations be provided by the Immigration Division.

[6] The Immigration Division is an administrative tribunal that has specialized expertise in making admissibility findings under the IRPA. Pursuant to sections 165 and 173 of the IRPA, it enjoys a broad discretion in the conduct of a hearing that cannot be fettered or controlled by the submissions of the parties. The focus of the inquiry before the Immigration Division was whether Mr. Vanovac was a prescribed senior official pursuant to paragraph 35(1)(*b*) of the IRPA as supplemented by section 16 of the Regulations. As such, the Immigration Division was not bound by the parties' arguments on the appropriate characterization of Mr. Vanovac's position (*Julien v. Canada (Public Safety and Emergency Preparedness)*, 2015 FC 150 at

para. 23).The Immigration Division did not reject the joint submissions arbitrarily and instead provided clear reasons for doing so.

[7] In any event, we are satisfied that, in the circumstances of this case, there was no breach of procedural fairness.

[8] As the Federal Court noted, the report under subsection 44(1) of the IRPA specifically referred to paragraph 35(1)(*b*) of the IRPA and section 16 of the Regulations, without limitation. The report also signaled that the inadmissibility allegation stemmed from Mr. Vanovac's position as President of the Central Commission for the Exchange of Prisoners of War between July 1992 and March 1993. In addition, Mr. Vanovac received disclosure of the documents the Minister intended to rely on for the purposes of the inadmissibility finding. We find that Mr. Vanovac knew the case he had to meet to overcome the inadmissibility finding. Mr. Vanovac has not discharged his burden of demonstrating that a breach occurred nor has he shown how a more detailed notice would have affected his ability to respond to the inadmissibility allegations.

[9] Contrary to Mr. Vanovac's submission, the Immigration Division did not breach the principles in *R. v. Mian*, 2014 SCC 54 by inviting submissions, without justification, on the application of paragraph 16(f) of the Regulations. Decision makers often ask questions to parties and do so for a variety of reasons. Raising another paragraph of section 16 of the Regulations did not necessarily signal that the Immigration Division would decide the matter on that issue. Mr. Vanovac has provided no persuasive authority to support his position that asking a question

about a specific paragraph in section 16 of the Regulations raised a new issue within the meaning of *Mian* or precluded the Immigration Division from considering the section in its entirety.

[10] For these reasons, we will dismiss the appeal without costs.

"Sylvie E. Roussel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-77-24
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DELIVERED FROM THE BENCH BY:	ROUSSEL J.A.

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