

Federal Court



Cour fédérale

Date: 20250407

Docket: IMM-2445-24

Citation: 2025 FC 638

Ottawa, Ontario, April 7, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

VARINDER SINGH SAHOTA

Applicant

and

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

Respondent

JUDGMENT AND REASONS
(Delivered from the Bench on April 3, 2025.
Edited for syntax and grammar.)

I. Overview

[1] This is a judicial review of the January 11, 2024 Minister’s Delegate (“MD”) decision to refer the Applicant’s case to the Immigration Division (“ID”) for an admissibility hearing (“Decision”).

[2] The Applicant argued that the MD was obligated to consider the humanitarian and compassionate (H&C) factors, that the Decision is an abuse of process and unfair due to delay, and that the Decision is not reasonable.

[3] The Respondent argued that the Decision was reasonable and consistent with the jurisprudence that governs this issue.

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

II. Background

[5] The Applicant is a 64-year-old citizen of India. He is a permanent resident of Canada, having landed on January 19, 1987, at the age of 26. He was sponsored by his spouse.

[6] On June 17, 2011, he was convicted by the United States (“US”) District Court, California Central District Court, of one count of conspiracy to distribute and possess with intent to distribute at least five kilograms of cocaine. He plead guilty and received a sentence of 41 months’ imprisonment and five years of supervised release. In Canada, these offences are indictable and liable for up to life imprisonment.

[7] Information from the US District Court indicates that the Applicant brokered cocaine transactions between suppliers in the Los Angeles area and cocaine traffickers in Canada.

[8] The incidents that led to his conviction occurred in September and October of 2007. The Applicant used coded language in telephone conversations, and he claimed responsibility for the loss of a significant amount of cocaine. He later discussed having to sell his home to pay for the cocaine lost.

[9] He was extradited to the US in 2010. One of the factors noted by the Crown in his extradition was that the Applicant's actions demonstrated that he "knew what was happening, was involved in the conspiracy before the seizure, and shared in the objective to transport narcotics."

[10] In February 2014, following his release from custody in the US, the Applicant applied for a Canadian permanent residence status determination. Immigration, Refugees and Citizenship Canada determined that the Applicant had satisfied the residency requirements based on the documentation submitted and a travel document to return to Canada was issued. The Applicant returned to Canada on March 27, 2014.

[11] On March 28, 2014, an investigation into the Applicant's criminal admissibility was initiated. The Canada Border Services Agency ("CBSA") officer assigned to this matter was not able to secure information from US authorities necessary to prepare a section 44 report. The file was reassigned to a new Officer in February 2020.

[12] The file was reassigned to Officer Szaramajluk ("Officer") on April 1, 2020. In his affidavit, the Officer indicates that he attempted to obtain information regarding the Applicant's conviction from US authorities. On July 28, 2020, he received a copy of the indictment; however, further information concerning the conviction and sentencing was needed by the Officer. On August 28, 2020, the Officer learned that the information was sealed and not available without a court order. Despite this, the Officer made several attempts between 2020 and 2021 to obtain that information.

[13] On May 19, 2023, a third officer reviewed the file and developed a statutory declaration based on the available information and issued a section 44 report, pursuant to paragraph 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], which states:

Serious criminality

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

...

(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

Grande criminalité

36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

[...]

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction sous le régime d'une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

[14] On August 22, 2023, the Applicant was advised that he may be inadmissible to Canada pursuant to paragraph 36(1)(b) of the *IRPA*. The CBSA advised the Applicant to submit a Background and Personal Information form with supporting documentation. The CBSA received submissions and documentation from the Applicant on October 16, 2023.

[15] On January 4, 2024, the Officer prepared a section 44 narrative and recommended that the Applicant be referred to an admissibility hearing.

[16] On January 11, 2024, an MD reviewed the section 44 report, the Applicant's documentation, and agreed with the Officer's recommendation to refer the Applicant to an admissibility hearing. That is the Decision that is the subject of today's application.

III. Issues and standard of review

[17] The issues to be addressed in this application are:

- A. Did the Applicant improperly name the Respondent party?
- B. Was the Decision reasonable?
- C. Was the Decision procedurally fair?

[18] The applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 23).

[19] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95). Reasons will satisfy these criteria if the Court is able to understand why the decision was made (Vavilov at paras 85–86). The Court must be satisfied that any shortcomings in the decision are sufficiently central or significant to intervene and render a decision unreasonable (Vavilov at para 100).

[20] The standard of review applicable to determining if a decision maker complied with the duty of procedural fairness is generally described as correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The question is: did the applicant know the case to be met, and did the applicant have a full and fair opportunity to make submissions?

IV. Analysis

A. *Proper Respondent*

[21] The Respondent noted that this application challenges a decision of an MD made pursuant to subsection 44(2) of the *IRPA*. The Respondent requests that the style of cause for this proceeding be amended. The Applicant consented to the proposed change.

[22] The style of cause for this matter will be amended forthwith and with immediate effect.

B. *Reasonableness*

[23] The parties both submit that the Decision is reviewable on the standard of reasonableness, and I agree. The Respondent argued that the Decision is reasonable. The Respondent noted that the MD was not required to consider the Applicant's personal circumstances, H&C factors, or potential for rehabilitation.

[24] The Applicant submitted evidence that he resides with his wife and daughter and that he is the primary financial provider for the family. He noted that his wife suffered a stroke in 2021, and that he has been her primary caregiver. He provided evidence to support his status within his community, his volunteer work, and his employment. In addition, he submitted evidence of his efforts directed towards rehabilitation, including a number of programs he took while incarcerated.

[25] The jurisprudence is clear, the MD was constrained to considering the facts regarding the Applicant's criminal admissibility alone (*Sidhu v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1681 at paras 60–62).

[26] This was clarified in *Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at paras 29–30, where the Federal Court of Appeal noted that “there [is] no general obligation to consider H&C factors nor to explain why they were not considered sufficient to offset other factors supporting a decision to refer a case for an admissibility hearing” and that MD’s have “limited discretion because of the restricted nature of the inquiry they are tasked to perform, and that they are performing a purely administrative and screening function.”

[27] An MD is “simply on a fact-finding mission, no more, no less... It is their respective responsibility, when they find a person to be inadmissible on grounds of serious or simple criminality, to prepare a report and to act on it” (*Canada (Minister of Public Safety and Emergency Preparedness) v Cha*, 2006 FCA 126 at paras 35, 37).

[28] Therefore, the MD’s Decision to refer the Applicant to an admissibility hearing is reasonable. Unfortunately, the Applicant’s evidence concerning his family relationships and obligations, his history in Canada, his employment and volunteer work, and his efforts to rehabilitate himself were not relevant considerations to the MD’s Decision.

C. *Procedural fairness*

[29] The Respondent submitted that there was no breach of procedural fairness, notwithstanding the delay in issuing the section 44 report in May of 2023, nine years after the Applicant returned to Canada.

[30] The established test to determine if a delay amounts to an abuse of process is the three-step test set out by the Supreme Court of Canada in *Blencoe v British Columbia (Human Rights*

Commission), 2000 SCC 44 [*Blencoe*] at paragraph 121 and affirmed in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at paragraphs 43, 101. First, there must be a determination that the delay was unreasonable. This is a contextual analysis that considers the nature and purpose of the proceedings, the length and cause of the delay, and the facts and issues of the matter. Second, the delay must have caused harm to the party asserting an abuse of process. If those two steps are satisfied, then the Court will consider if there has been an abuse of process, if the delay was so manifestly unfair that it brings the administration of justice into disrepute.

[31] The Applicant submitted that the delay of nine years was inordinate, unfair, and an abuse of process.

[32] The Respondent urged this Court to consider the context of the delay. In this matter, the Applicant has been convicted of serious drug offenses. The record for this proceeding illustrates that CBSA made numerous attempts to obtain the necessary information required to substantiate the issuance of a section 44 report since 2014, when the Applicant returned to Canada.

[33] The Officer's affidavit clearly illustrates that there were a number of delays and obstacles to obtain the necessary information from US authorities.

[34] I am persuaded by the evidence submitted by the Respondents that the delays here, while long, do not meet the threshold of inordinate, nor does the delay equate to an abuse of process.

[35] The Applicant has not demonstrated how he has been prejudiced by this delay in a manner that would put the administration of justice into disrepute or shock the public's sense of decency (*Torre v Canada (Citizenship and Immigration)*, 2015 FC 591 [*Torre*] at paras 33–40;

Finta v Canada (Public Safety and Emergency Preparedness), 2012 FC 1127 at paras 42–45; *Blencoe* at paras 101–102, 120–122).

[36] The Applicant has not demonstrated that he has been impaired in his ability to respond to the allegations made against him. I am persuaded by the Respondent’s submissions that if anything, the Applicant benefited from the delay, as he has been able to enjoy the benefits of residing in Canada with family, and has been employed and active in the community (*Canada (Citizenship and Immigration) v Campbell*, 2014 FC 40 at para 20; *Torre* at paras 37–39, citing *Malik v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 5469 (FC) at para 17).

[37] Simply put, the Applicant failed to show that there has been an abuse of process or that he was seriously prejudiced by the Decision.

V. Conclusion

[38] The MD’s Decision is reasonable. The Applicant did not demonstrate that the Decision is an abuse of process or that it was rendered in a procedurally unfair manner.

[39] I am sympathetic to the situation that the Applicant finds himself in. A poor choice has placed his ability to remain in Canada with family, friends, and community in jeopardy. It is unfortunate, but it is the state of the law and consistent with Canada’s immigration policy and objectives that have underscored an intention to prioritize security and to rigorously manage criminality and security threats (*Medovarski v Canada (Minister of Citizenship and Immigration)*; *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at paras 9–13). The fact of the matter is that the Applicant was convicted of a serious offence

involving a criminal conspiracy to traffic large amounts of cocaine between Canada and the US.

There are consequences that follow his choice to be involved in such activity.

JUDGMENT in IMM-2445-24

THIS COURT’S JUDGMENT is that:

1. The style of cause for this matter has been amended to reflect the correct respondent as the Minister of Public Safety and Emergency Preparedness forthwith and with immediate effect.
2. The application is dismissed.
3. There is no question for certification.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2445-24

STYLE OF CAUSE: VARINDER SINGH SAHOTA v THE
MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2025

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: APRIL 7, 2025

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