Federal Court Cour fédérale

Date: 20250417

Docket: IMM-16596-23

Citation: 2025 FC 706

Ottawa, Ontario, April 17, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

GREGORY ATHLEST ROUSE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a deportation order and decision (the "Decision") by the Immigration and Refugee Board of Canada, Immigration Division ("ID") pursuant to subsection 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act").

II. Background

[2] The Applicant, Gregory Athlest Rouse (also referred to as "Gregory Athelston Rouse" and "Gregory Athelst Rouse" in the record), is a citizen of Barbados. He came to Canada in September 1986 at the age of eleven months old and obtained permanent resident status in 1993.

[3] On April 30, 2021, the Applicant was convicted of offences of resisting arrest and possession of property obtained by crime arising from an incident that took place on September 7, 2017. On January 13, 2022, he was sentenced to 26 months imprisonment.

[4] As a result, the Applicant was the subject of a Canada Border Services Agency (“CBSA”) report under subsection 44(1) of the Act. The CBSA Officer found that there are reasonable grounds to believe that the Applicant is inadmissible on grounds of serious criminality for having been convicted in Canada for an offence for which a term of imprisonment of more than six months has been imposed.

[5] On May 4, 2023, the Minister’s Delegate (“MD”) referred the Applicant to the ID pursuant to subsection 44(2) of the Act.

[6] On December 8, 2023, a hearing officer of the ID (the “ID Hearing Officer”) held an admissibility hearing of the Applicant.

III. The Decision

[7] The ID Hearing Officer gave the Decision orally at the end of the admissibility hearing, after providing an opportunity for the Applicant and his counsel to make submissions.

[8] The Decision explains that the Applicant is inadmissible pursuant to paragraph 36(1)(a) of the Act because: (i) he is not a Canadian citizen, but a permanent resident; and (ii) he was convicted of possession of property obtained by crime over $5,000, which is contrary to section 354(1)(a) of the *Criminal Code of Canada*, RSC 1985, c C-46, and for which he received a term of imprisonment of 26 months, which falls under the penalty requirement in paragraph 36(1)(a) of the Act.

[9] The ID Hearing Officer then addressed the Applicant's request to consider humanitarian and compassionate ("H&C") considerations as well as the request to stay the proceeding pending the appeal of his conviction. With respect to the H&C factors raised, the ID Hearing Officer stated that their jurisdiction is "extremely narrow" and precludes them from considering these factors as raised. Rather, their job is to "assess whether or not a conviction occurred and whether it falls under paragraph 36(1)(a) of the Act". She also explained that the fact that there is a pending appeal of the relevant conviction on criminal charges is generally not a sufficient reason to grant an application to change the date and time of an admissibility or to grant an indefinite stay.

[10] She then advised the Applicant that if he were successful on his appeal, that there would be remedies to deal with at that point regardless of the deportation order.

IV. Issues

[11] This application raises the following issues:

A. Is the Decision reasonable?

B. Was there a breach of procedural fairness?

V. Analysis

[12] The standard of review with respect to the ID Hearing Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[13] Subsection 36(1)(a) of the Act states as follows:

Serious criminality	**Grande criminalité**
36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36 (1)** Emportent interdiction de territoire pour grande criminalité les faits suivants:
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum	**a)** être déclaré coupable au Canada d'une infraction prévue sous le régime d'une loi fédérale punissable d'un emprisonnement maximal

term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	d'au moins dix ans ou d'une infraction prévue sous le régime d'une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

[14] Pursuant to subsection 45(d) of the Act, the ID must make the applicable removal order against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.

[15] As a preliminary matter, I note that many of the errors raised by the Applicant are with respect to the MD's decision referring the Applicant to an admissibility hearing in this matter (the "Referral Decision"), and not with respect to the ID's Decision arising from the admissibility hearing, which is the subject of this judicial review. The Applicant's application for leave and judicial review is only with respect to the ID's Decision dated December 8, 2023, with grounds based on a lack of procedural fairness. The deadline to challenge the Referral Decision, which was open to the Applicant to do so, had passed by the time leave was sought in this proceeding (the Act, s 72(2)(b)). Consequently, the Referral Decision is not before me (*Federal Courts Rules*, SOR/98-106, rules 301, 302).

A. *The Decision is reasonable*

[16] The Applicant asserts that the ID ought to have weighed the H&C considerations in its inadmissibility assessment. Although this was characterized as a procedural fairness argument, I

do not find this argument engages the Applicant's procedural rights, but a reasonableness review. In any event, this argument would fail for the reasons described below.

[17] The Applicant concedes that the ID has no discretion to consider the H&C factors, but maintains that by not doing so, he was deprived of his right to seek special relief based on H&C considerations. The Applicant submits that in the absence of the jurisdiction of the ID to assess the evidence presented for H&C considerations and the absence of a right to appeal the deportation decision to the Immigration Appeal Division, this Court has jurisdiction and authority to assess the evidence presented for such considerations.

[18] The Applicant cites no authority in support of this proposition. This Court's role on a judicial review is limited. It is not open to this Court to reassess and reweigh the evidence and conduct its own analysis. This Court's role is to assess the reasonableness of the Decision and determine whether it is transparent, intelligible and justified in light of the factual and legal constraints that bear on it (*Vavilov* at paras 105-106).

[19] It was reasonable for the ID to refuse to consider the H&C considerations raised by the Applicant because the ID did not have jurisdiction to do so.

[20] Furthermore, the wording in paragraph 36(1)(a) of the Act is mandatory and if the applicable criteria are met, the ID is required to issue a removal order (*Apolinario v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1287 at para 51). There is no dispute that

the Applicant has been convicted in Canada for an offence and sentenced to 26 months. Based on that conviction, the ID was required to deem the Applicant inadmissible.

[21] As an obiter comment, and although the MD's Referral Decision is not before me, I offer a few guiding comments to the Applicant regarding the MD's treatment of the H&C factors since many of his arguments concern this.

[22] The MD is afforded significant latitude in their assessment of H&C factors. In *Matharu v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 902, this Court summarized the principles applicable to the scope of the discretion contemplated by subsections 44(1) and (2) of the Act:

> [14] In brief, key points articulated in these and related decisions are that the Officer and Minister's Delegate's task in section 44 proceedings are "purely administrative," and they basically serve a "screening function" (*Obazughanmwen* at para 30). Their discretion to assess H&C factors is therefore also limited, particularly concerning serious criminality (*Sidhu* at para 60; *Obazughanmwen* at paras 27, 29; *McAlpin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 422 at para 70).
>
> [15] In practice, this means that the Minister's Delegate is not required to look at all circumstances of a case beyond the factors directly related to the inadmissibility (*Shi v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 345 at para 50; *Thavakularatnam v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1245 at para 75; *Lin v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 862 at para 16). Their role is to assess what are "readily and objectively ascertainable facts concerning admissibility" (*Sidhu* at para 37, citing *Obazughanmwen* at para 37). With that said, should the Minister's Delegate choose to consider H&C factors, such consideration does not need to be lengthy (*Dass* at paras 41–42; *Marogi* at para 31).

[23] It follows that it is not unreasonable for the MD to have failed to give greater consideration to the *Ribic* factors that the Applicant would have preferred to be given more weight (*Sidhu v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1681 at para 61). With respect to the Applicant's arguments concerning the MD's factual findings, absent a fundamental error, which the Applicant has not established, it is not open to this Court to reassess and reweigh the evidence (*Vavilov* at paras 125-126).

B. *No breach of procedural fairness*

[24] The Applicant argues that the ID Hearing Officer breached procedural fairness by holding the hearing prior to the resolution of the Applicant's appeal of his convictions that triggered the admissibility hearing.

[25] As mentioned above, the ID Hearing Officer addressed this argument at the hearing and held that the pending appeal is not a sufficient reason to change the date and time or grant an indefinite stay. This is consistent with the wording under section 44 of the Act that requires only that there are *reasonable grounds* to believe that the Applicant is inadmissible [emphasis added]. Further, the wording of paragraph 36(1)(a) of the Act indicates objective requirements for a finding of inadmissibility for serious criminality, which the Applicant has met.

[26] I agree with the Respondent that there was no obligation for the ID Hearing Officer to speculate about the merits of the Applicant's appeal in determining whether to hold the hearing or whether the Applicant is inadmissible. If he had been successful in his appeal of the conviction, he would have recourse under the Act.

[27] Therefore, I find there was no breach of procedural fairness. As conceded by the Applicant, he was informed of his case and participated in the inadmissibility hearing with counsel, where he was provided the opportunity to make submissions.

VI. Conclusion

[28] This application is dismissed.

[29] There is no question for certification.

JUDGMENT in IMM-16596-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-16596-23
STYLE OF CAUSE:	GREGORY ATHLEST ROUSE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 14, 2025
JUDGMENT AND REASONS:	MANSON J.
DATED:	APRIL 17, 2025

APPEARANCES:

Elina Marinosyan	FOR THE APPLICANT
Hannah Shaikh	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lawspec Professional Corporation Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT