

Federal Court



Cour fédérale

Date: 20140422

Docket: IMM-2241-14

Toronto, Ontario, April 22, 2014

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SHALVA PATARAIA

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER

Mr. Shalva Pataraia (the “Applicant”) seeks judicial review of an Order made by Member Valerie Currie (the “Member”) of the Immigration Division pursuant to subsection 58(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). In that decision made on March 31, 2014, the Member continued the detention of the Applicant following his arrest on an immigration warrant on February 13, 2014.

At the commencement of the hearing, I granted leave to commence this application for judicial review.

The Member's Order was made following a hearing held on March 26, and March 31, 2014. The hearing was a 30 day review pursuant to subsection 57(2) of the Act. The first hearing, that is a 48-hour detention review, was conducted by Member Beecham of the Immigration Division on February 17, 2014.

Member Beecham ordered that the Applicant's detention would continue pursuant to paragraphs 58(1)(a) and 58(1)(b) of the Act, on the basis that the Applicant was a danger to the public and unlikely to appear for future immigration proceedings. A copy of the transcript of that hearing, including her decision, was filed as part of the Applicant's application record.

Member Beecham also conducted the 7 day review, pursuant to subsection 57(2) of the Act, on February 24, 2014. She continued the detention of the Applicant.

No transcript of that hearing or of the decision was available.

Member Currie received documentary evidence on behalf of the Minister of Citizenship and Immigration (the "Minister"), represented by Mr. Rustja ("Minister's counsel"). The Minister's counsel also made submissions.

The Applicant was represented by a lawyer, Mr. Chsherbinin. The Applicant provided some evidence and documentary evidence was submitted on his behalf by his lawyer. Mr. Chsherbinin also made submissions on behalf of the Applicant.

The Member continued the Applicant's detention on the grounds that he was unlikely to appear for further immigration proceedings and that he was a danger to the public. These are among the factors identified in subsection 58(1) of the Act for continuing an individual's detention. Those factors are to be assessed having regard to sections 245 and 246 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations").

The Member's decision is reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, [2004] 3 F.C.R. 572 at paragraph 10. Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. X*, [2011] 1 F.C.R. 493 at paragraph 9.

The Applicant now argues that the decision is unreasonable because the Member unfairly relied on evidence that was not properly before her, that is the contents of his Personal Information Form ("PIF") that he filed in support of his claim for refugee status in Canada. He also submits that the decision was made as a result of an unfair process, in that the Member refused his Counsel the opportunity to make submissions relative to new information advanced by Minister's counsel in his reply submissions.

Having reviewed the record, including the transcripts of the hearing on March 26 and March 31, 2014, I am satisfied that the proceedings were unfair and that the decision is unreasonable. It is not clear to me that the Member put aside information contained in the Applicant's PIF. In other words, it is possible that the Member improperly took this information into account, without allowing Applicant's counsel an opportunity to make submissions on that information.

Furthermore, the transcript of the hearing shows that the Minister's counsel was permitted to improperly interrupt submissions made by the Applicant's Counsel, suggesting that the Member failed to control the proceedings.

For these reasons, the application for judicial review is allowed, the Member's decision is set aside, and the matter is remitted to a new panel for a new review of the Applicant's detention in accordance with the Act and the Regulations, and no question is certified.

“E. Heneghan”

Judge