

Federal Court



Cour fédérale

Date: 20131002

Docket: T-1568-12

Citation: 2013 FC 1005

Ottawa, Ontario, October 2, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

PARWINDER SADANA

Applicant

and

MINISTER OF PUBLIC SAFETY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Martin Belanger, the Assistant Manager, Policy Section of the Recourse Directorate of the Canadian Border Services Agency [CBSA], on behalf of the Minister of Public Safety and Emergency Preparedness [the Minister], pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Minister upheld the decision to cancel the Applicant's NEXUS membership in a letter dated August 29, 2012. The Respondent also seeks to correct the style of cause to name the Respondent as the Canada (Minister of Public Safety and Emergency Preparedness).

I. Background

[2] The Applicant was a member of the NEXUS program, and entered Canada through Vancouver International Airport via a flight from Thailand on March 7, 2011. He carried exactly \$10,000 Canadian in his carry-on luggage.

[3] The Applicant did not declare in his E311 Customs Declaration Form that he was bringing \$10,000 or more into Canada as required by section 12(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [the Act] and the applicable regulations.

[4] According to the Respondent, a Border Security Officer approached the Applicant and directed him to a routine customs examination where the \$10,000 was found. The Applicant explained that he did not believe he was required to declare the currency and that he had not read the customs declaration form. The Applicant's NEXUS card was seized and he was fined \$250.

[5] The Applicant appealed the sanctions against him in a letter sent on March 11, 2011. On March 17, 2011, the CBSA informed the Applicant that his NEXUS authorization had been cancelled and that this decision had been referred to the Redress Committee for the CBSA Pacific Region.

[6] Following various reviews of the decision, all of which upheld the initial sanctions, two final letters were sent by the CBSA. The first was sent on July 6, 2012, by J.M. Dupuis, a manager at the Appeals Division of the Recourse Directorate [the Enforcement Decision]. Of relevance to this

decision is that it confirmed that the Applicant contravened section 12(1) of the Act. This decision was made pursuant to 27(1) of the Act.

[7] A second letter was sent to the Applicant on August 29, 2012, from the Minister, confirming that his NEXUS cancellation was being upheld. This decision forms the basis of this judicial review.

[8] This letter cites section 22(1)(a) of the *Presentation of Persons (2003) Regulations*, SOR/2003-323 [the Regulations], which stipulates that the Minister may cancel a NEXUS authorization if a person no longer meets the eligibility requirements of the program. In this case, the Minister concluded that the Applicant was no longer a person of “good character” within the meaning of section 6(b) of the Regulations, owing to his contravention of section 12(1) of the Act.

The Minister described the “good character” requirement as follows:

When defining the term “good character” for purposes of the CBSA’s trusted traveler programs, applicants are assessed as to whether they may pose a risk to the security of the programs. In doing so, an evaluation takes place of factors such as whether there has been a serious infraction of the laws of Canada and, in particular, the laws administered by the CBSA which undermines the confidence of the CBSA that the applicant will comply with all the program requirements.

Membership in any trusted traveler program is a privilege granted to travelers who meet the eligibility requirements both at the application stage and during the course of their membership in the program.

II. Issue

[9] The issue raised in the present application is as follows:

- A. Was the Minister’s decision to cancel the Applicant’s NEXUS authorization on the basis of his contravention of section 12(1) of the Act unreasonable?

III. Standard of review

[10] The Applicant does not make submissions on the standard of review. The standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 at para 51).

IV. Analysis

[11] As part of his argument, the Applicant contests the Minister's decision, under section 27 of the Act that he contravened section 12(1) of the Act. However, the Applicant has not appealed the Minister's decision under section 27 of the Act pursuant to the prescribed process to do so. Judicial review is not the proper process for this complaint.

[12] The Applicant blames ongoing emotional distress for his failure to read the E311 Customs Declaration Form in detail and declare the \$10,000 cash he had in his possession. He also states that he mentioned the \$10,000 to another CBSA officer prior to its discovery, but could not get a videotape of the discussion because it had been deleted. Lastly, he submits it would not make sense to illegally bring \$10,000 into Canada if he could have brought \$9,999 legally.

[13] While the Applicant's submissions have some appeal, a traveller's subjective intention is irrelevant when failing to report currency or goods (*Zeid v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 539 at paras 36, 55).

[14] In considering the “good character” requirement under section 6(b) of the Regulations, the compelling public policy interest in upholding the integrity of the legislative and policy objectives of the Act must be considered together with the need to ensure domestic and international confidence in the NEXUS program.

[15] While I have some sympathy for the Applicant’s position in that his non-declaration of the \$10,000 is a relatively minor offence, based on the evidence before the CBSA Headquarters Redress Committee, the decision to revoke the Applicant’s NEXUS card was reasonable.

[16] The Application is dismissed.

[17] I have determined that given the facts in this matter, no costs shall be awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed;
2. The style of cause be and it is hereby amended to replace the name of the Respondent Minister of Public Safety with Canada (Minister of Public Safety and Emergency Preparedness);
3. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1568-12

STYLE OF CAUSE: Sadana v. MPS

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 26, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MANSON J.

DATED: October 2, 2013

APPEARANCES:

Mr. Parwinder Sadana

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Mr. Mark E.W. East

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Parwinder Sadana

FOR THE APPLICANT
(ON HIS OWN BEHALF)

William F. Pentney
Deputy Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT