Federal Court  Cour fédérale

Date: 20160711

Docket: T-1212-15

Citation: 2016 FC 789

Ottawa, Ontario, July 11, 2016

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

AJWAD AMMAR

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

UPON hearing this application for judicial review at Edmonton, Alberta on Monday, June 7, 2016;

AND UPON reviewing the materials filed and hearing counsel for the parties;

AND UPON determining that this application be dismissed for the following reasons:

[1] The Applicant, Ajwad Ammar, challenges a decision by the Respondent's delegate dated June 23, 2015 declaring the sum of $67,840.97 forfeit to the Crown.

[2] The underlying circumstances leading to the seizure of monies from Mr. Ammar are not in dispute. On June 1, 2014, as he was about to board a flight to Lebanon via London, Mr. Ammar was confronted by Canadian Border Security Agency [CBSA] agents and questioned about the amount of currency he possessed. He admitted to carrying $20,000.00 but, on further examination by the agents, the actual sum was found to be $67,840.97 CAD.

[3] It is not disputed that Mr. Ammar's failure to report these funds was a violation of section 12 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [the Act]. Mr. Ammar was interviewed by the CBSA at the airport. During the interview, Mr. Ammar explained he was carrying some of the money for third parties for charitable or for family purposes. A further $15,000.00 was said to have been paid to him by a former business partner as a partial loan repayment. The interview notes indicate that Mr. Ammar was not forthcoming with plausible explanations for much of the money he was carrying and the funds were seized as suspected proceeds of crime. The seizing CBSA officer justified the seizure on the following grounds:

- Currency was not reported outbound.
- Travelling with currency over reporting threshold.

- Travelling with amount of currency greater than his stated annual income.
- Attempted to distance himself from more than half the currency in his possession.
- Claimed he was taking it for family and friends.
- Travelling with funds that would pay for his current Canadian debt-load of 11000$.
- Received a 15000$ cash payment from former business partner, Alex CARLETON, approximately 5-6 days ago in Lloydminster to affect the transfer. CARLETON drove from Moose Jaw, SK. Half-way destination does not make sense. Text messages on your phone indicate money was found in the back of the safe at the Crushed Can Sports Lounge in Moose Jaw.
- Flight to high risk destination of Yanta, Lebanon. This is located in the Beqaa Valley along the Syrian border.
- Does not seem fazed by examination.
- Admitted money is not from the bank.
- Stated money is kept at home in your drawer or under the mattress.
- Currency was distributed throughout your pockets and carry-on suitcase.
- Bundles wrapped non-conventionally with elastics.
- Only one envelope containing 2500.00$ was from a bank.
- Could not articulate the source of the money.
- Stated an annual income of 20000-30000$ the last two years.
- Unable to prove origin of currency.
- Vague and inconsistent statements during questioning.
- Inconsistent statements regarding travel plans.
- Lone traveller.

- Passport issued recently before travel.
- Very little emotion shown during examination.
- Only emotion shown was a raised voice and exaggerated gestures when discussing Syria.
- State money is for home renovations however current employment as a labourer in a construction business you would be able to complete this work yourself.
- Cell phone has pictures of previous money transfers in his name varying from 6000 to 18000 Euros.
- You did not recall these financial transactions.
- Did not answer why you did not transfer the money.
- Very little emotion shown when told money would be seized.

[4] With the assistance of counsel, Mr. Ammar sought Ministerial relief under section 29(1)(a) of the Act. That provision states:

29 (1) If the Minister decides that subsection 12(1) was contravened, the Minister may, subject to the terms and conditions that the Minister may determine, (a) decide that the currency or monetary instruments or, subject to subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;	29 (1) S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe : a) soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la valeur de ceux-ci à la date où le ministre des Travaux publics et des Services gouvernementaux est informé de la décision, sur réception de la pénalité réglementaire ou sans pénalité;

[5] In support of the claim to relief, Mr. Ammar submitted an unsworn seven page statement declaring that none of the money he was carrying was the product of any criminal activity. He maintained that his personal funds were intended for family use in Lebanon. He also reiterated that he was carrying money to Lebanon on behalf of third parties as family or charitable remittances.

[6] Mr. Ammar claimed that the sources of all of the funds were legitimate. The sum of $30,660.00 was said to be investment proceeds from a family run commercial real estate business, Ironwood Limited Partnership [Ironwood]. In support of this explanation, some banking records were submitted. The source of $15,000.00 in cash was identified as a loan from a former business partner, Alex Carleton, who ran a cash-based business. Mr. Ammar's declaration addressed the proceeds of crime issue for these funds in the following way:

> 35. To my knowledge, none of the $15,000 that was loaned to me by Alex Carleton was obtained by Alex through any criminal activity. As far as I am aware, Alex obtained this money in the ordinary course of his business affairs.
>
> 36. Alex may be contacted at the Crushed Can (306-684-1982) and he has provided a signed statement confirming this loan of $15,000. If there are any concerns respecting the truth of this transaction, I would encourage the Recourse Directorate to contact Alex.

Mr. Carleton's supporting letter confirmed only that he had lent $15,000.00 in cash to Mr. Ammar on May 26, 2014 with an agreed repayment in one year. The third-party cash remittances were verified by a dozen unsworn statements from the beneficial owners stating their motives for sending the funds with Mr. Ammar to Lebanon.

[7] The CBSA took issue with the sufficiency of the evidence Mr. Ammar submitted. On October 30, 2014, it requested income tax records to verify the investment proceeds attributed to Ironwood and sought proof of a legitimate source for more than $46,000.00 of the seized currency. It also advised counsel that the third-party statements were "not proof of legitimate source of the seized currency." In response, Mr. Ammar's counsel sought clarification of what was needed to prove the third-party claims. The CBSA responded as follows:

> In response to your comments, proof of legitimate source of the currency is documentation that demonstrates the initial source of the seized currency, for example proof of legitimate employment along with banking transactions would constitute a proof of legitimate source of the currency. A bank statement on its own cannot be used as proof of legitimate source of currency because it does not show where the currency originated from.
>
> You may, within 30 days from the date of mailing of this correspondence, provide any additional information or documentation that you believe will assist in making the decision in this case. All of the information submitted by mail should quote the file number and be sent to the address below…

[8] In further response, Mr. Ammar's counsel provided some banking records showing periodic deposits from Ironwood into Mr. Ammar's account. He also noted that the requested 2014 tax information had not yet been finalized and sought a 30-day extension to provide further evidence.

[9] On December 9, 2014, the CBSA wrote again to Mr. Ammar's counsel acknowledging the documentation provided up to that point. This letter requested a copy of Ironwood's 2013 Notice of Assessment. This communication also repeated a concern that the records at hand failed to address the source of the seized funds:

> As previously mentioned, proof of legitimate source of the currency is documentation that demonstrates the initial source of the seized currency, for example proof of legitimate employment along with banking transactions would constitute a proof of legitimate source of the currency. A bank statement on its own cannot be used as proof of legitimate source of currency because it does not show where the currency originated from. Additionally, I must be able to associate the documentation to the seized currency. The documentation you provided does not meet these requirements.
>
> You may, within 30 days from the date of mailing of this correspondence, provide any additional information or documentation that you believe will assist in making the decision in this case. All of the information submitted by mail should quote the file number and be sent to the address below…

[10] On February 9, 2015, Mr. Ammar's counsel wrote to the CBSA advising that the requested tax records for Ironwood would soon be available and requested a further extension until the end of April. That extension was granted by letter dated February 25, 2015.

[11] For reasons not explained in the record before me, nothing further was submitted on behalf of Mr. Ammar in answer to the outstanding CBSA concerns.

[12] On June 23, 2015, a senior appeals officer prepared a case synopsis describing, in detail, the chain of communication which had taken place with Mr. Ammar's counsel. That synopsis concluded as follows:

> On February 9, 2015 the claimant's representative forwarded an email asking for an extension until the end of April 2015.
>
> On February 25, 2015 an acknowledgement was sent to the representative indicating that the file will be put in abeyance until April 30, 2015. However, he was informed that if no other information is received by this date, the decision will be rendered based on the information on file.

> No further representations have been received to date.

[13] The officer then finished her report in the following way:

> Based on CBSA official's questioning and the claimant's responses, the officer proceeded to seize the amount of $45,900 CAD, a bank draft of $21,000 CAD, $600.00 USD ($652.02 CAD), 135 € ($200.09 CAD), 91,000 Lebanese Pound ($63.70 CAD) and 85.00 UAE Dirham ($25.16 CAD) at a level 4, as suspected proceeds of crime with no terms of release offered. The reasonable grounds to suspect that the currency was proceeds of crime were previously identified in the case synopsis section and in the issuing officer's narrative report.
>
> In his appeal letter, the claimant's representative provided documentations [*sic*] with regards to the currency, however, the documentations [*sic*] did not demonstrate that the currency was from legitimate sources. Furthermore, the documentation requested to support some of the currency was never provided.
>
> As per the information noted on file, I am of the opinion that the claimant was unable to remove the suspicion that the currency was proceeds of crime as suspected by the issuing officer in the matter. This was concluded after noting that the claimant did not demonstrate the legitimate origin of the seized currency.
>
> As such, as no further documentation was provided to support origin of the seized currency, we are unable to ascertain a legitimate origin of the seized currency.
>
> **Recommendation.**
>
> Therefore, as the claimant failed to properly declare the currency in his possession and failed to demonstrate the proof of lawful origin for the seized currency, a contravention has occurred. In view of the foregoing, it is my recommendation that the currency seizure under proceeds of *crime (money laundering) and terrorist financing act* [*sic*] be maintained as issued.
>
> Under the provisions of subsection 27(3), the minister shall consider and weigh the circumstances of this case and decide with respect to the seized currency or monetary instruments.

[14] Subsequently, the Minister's delegate issued a decision listing all of the circumstances which raised a reasonable suspicion that the seized funds were the proceeds of crime and declared the funds forfeit. The decision letter addressed the evidence submitted on behalf of Mr. Ammar in the following way:

> Your representative appealed this enforcement action on your behalf, however, no specific reasons were provided. You [*sic*] representative also forwarded documentation in relation to the currency, but the documentation did not support the legitimate source of the currency even after he was explained clearly what type of documentation was required.
>
> Following the review of the documentation on file, it was determined that the seizure and forfeiture of $45,900 CAD, a bank draft of $21,000 CAD, $600.00 USD ($652.02 CAD), 135 € ($200.09 CAD), 91,000 Lebanese Pound ($63.70 CAD) and 85.00 UAE Dirham ($25.16 CAD) was lawfully applied as you did not declare the currency equal to or greater than $10,000 CAD prior to entering the security zone at the airport. Furthermore, although you were asked to provided verifiable proof of legitimate source of currency, you did not provide documentation that met the requirements specified in the letters which was documentation that demonstrates the initial source of the seized currency, for example proof of legitimate employment along with banking transactions would constitute a proof of legitimate source of the currency. A bank statement on its own cannot be used as proof of legitimate source of currency because it does not show where the currency originated from. Additionally, the seized currency must be clearly associated to the documentation submitted. Furthermore, with regards to the Ironwood II Limited Partnership Statement of Partnership Income, the copy of the Notice of Assessment received following the submission to Canada Revenue Agency was never presented. Therefore, the reasonable grounds to suspect that the currency was proceeds of crime were never removed.

[15] Mr. Ammar's principal complaint is that the decision-maker ignored crucial evidence. He is particularly critical of the absence of any reference in the decision to his 51 paragraph statement or to the documents he had submitted in corroboration. He argues on this application that the decision-maker either ignored this evidence or discarded it without explanation. The

evidence, he says, was relevant and the decision-maker was required both to consider it and to explain why it was not accepted in proof of the legitimacy of the seized funds. This obligation, he contends, is reflected in a number of Federal Court of Appeal decisions including *Canada (Attorney General) v Bellavance*, 2005 FCA 87, [2005] FCJ No 397, at para 7:

> In our judgment, the board of referees made a first error in restricting its analysis to only one of the faults alleged against the respondent whereas more than one incident provided the reason to the dismissal. It ignored relevant evidence in the record, including evidence of serious breaches of the Code of Conduct and that concerning the breach of the relationships of trust with the employer. It was entitled to discard this evidence for valid reasons after weighing and assessing it but it could not ignore it, especially when it lay at the very core of the dispute concerning the concept of misconduct: see *Maki v. Canada Employment Insurance Commission*, A-737-97, June 11, 2998 (F.C.A.); *Boucher v. Attorney General of Canada*, A-727-96, October 17, 1996 (F.C.A.)…

[16] The suggestion that the decision-maker in this case ignored evidence is, however, not borne out by the record. The communications between the CBSA and counsel for Mr. Ammar clearly indicate the evidence submitted was insufficient to establish a lawful source for the seized funds. Mr. Ammar was repeatedly told to provide reliable documentation on this point and he repeatedly failed to do so. Indeed, it is inexplicable that further and better evidence was not produced as proof of a lawful source of the money supposedly supplied by third parties.

[17] The third-party letters were obviously deficient and better evidence should have been readily available. Counsel asked what was required. He was given direction, and yet nothing further was provided. The same problem was identified in connection with the Ironwood money. Counsel sought and received a number of extensions to provide tax assessment documentation but, after the last extension expired on April 30, 2015, nothing was produced and no further

extensions were requested. On the face of this inactivity, it was neither unfair nor unreasonable to move the matter forward to a decision.

[18] It was implicit in the extensive correspondence on record that the CBSA did not accept Mr. Ammar's bare exculpatory declaration as sufficient. This can hardly be characterized as unreasonable in the face of his deceptive and suspicious conduct. The explanations he gave at the airport were vague and, in places, inconsistent and deceitful. His counsel was well aware from the correspondence that to meet the burden of proof the CBSA required reliable third-party corroboration. This was clearly stated in the CBSA letter to counsel dated December 9, 2014: "[t]he documentation you provided does not meet [our] requirements". This is a clear indication that the CBSA considered the evidence produced by Mr. Ammar and found it insufficient. Nothing turns on the statements in the CBSA synopsis report that the documents produced "cannot be accepted". This was simply an informal way of saying, once again, better evidence of the legitimacy of the monies was required. It was not unreasonable for the CBSA to require better evidence, nor was it unfair to proceed to a decision when nothing further was heard from Mr. Ammar or his counsel.

[19] The circumstances of this case are mirrored by those described in the following passage from *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness*, 2008 FCA 255, 169 ACWS (3d) 565:

> [49] Where the Minister repeatedly asks for proof that the seized currency has a legitimate source, as he did in this case, it is a fair conclusion that he made his decision on the basis of the applicant's evidence on that issue. The underlying logic is unassailable. If the currency can be shown to have a legitimate source, then it cannot be proceeds of crime.

> [50] If, on the other hand, the Minister is not satisfied that the seized currency comes from a legitimate source, it does not mean that the funds are proceeds of crime. It simply means that the Minister has not been satisfied that they are not proceeds of crime. The distinction is important because it goes directly to the nature of the decision which the Minister is asked to make under section 29 which, as noted earlier in these reasons, is an application for relief from forfeiture. The issue is not whether the Minister can show reasonable grounds to suspect that the seized funds are proceeds of crime. The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this issue in other ways, the obvious approach is to show that the funds come from a legitimate source. That is what the Minister requested in this case, and when Mr. Sellathurai was unable to satisfy him on the issue, the Minister was entitled to decline to exercise his discretion to grant relief from forfeiture.
>
> *The Standard of Proof*
>
> [51] This leads to the question which was argued at length before us. What standard of proof must the applicant meet in order to satisfy the Minister that the seized funds are not proceeds of crime? In my view, this question is resolved by the issue of standard of review. The Minister's decision under section 29 is reviewable on a standard of reasonableness. It follows that if the Minister's conclusion as to the legitimacy of the source of the funds is reasonable, having regard to the evidence in the record before him, then his decision is not reviewable. Similarly, if the Minister's conclusion is unreasonable, then the decision is reviewable and the Court should intervene. It is neither necessary nor useful to attempt to define in advance the nature and kind of proof which the applicant must put before the Minister.

[20] Counsel for Mr. Ammar argues that, on the record produced, the Minister's delegate could not have formed a reasonable suspicion that the seized funds were the proceeds of crime. I do not agree. The applicable standard is lower than a balance of probabilities but the decision must still be based on credible and objectively ascertainable facts capable of judicial assessment: see *Sellathurai,* above, at para 112.

[21] Here, the record disclosed not only that Mr. Ammar failed to declare his possession of the seized money but that he also lied about the amount he possessed. On other matters he was vague and inconsistent. These and the other concerns outlined in the decision were substantially the same as those considered and found sufficient by the Court in *Sellathurai*, above, at paras 123-124.

[22] In the absence of corroborating evidence from Mr. Ammar, the decision made by the Minister's delegate was reasonable and unassailable on judicial review: see *Yang v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 281, [2008] FCJ No 1321, at para 13.

[23] Finally, the argument that Mr. Ammar was being held to an impossible burden to produce evidence acceptable to the Minister's delegate is without merit. The evidence requested of Mr. Ammar ought to have been readily available if diligent efforts had been made. There is no reason to think, for instance, that the identified third parties would not have produced evidence of a lawful source of the monies entrusted to Mr. Ammar had they been approached. At one point, counsel for Mr. Ammar requested and received additional time to obtain income tax documentation to verify the source of the Ironwood monies. Why that information was never forthcoming was never explained. On this issue, I adopt the words of Justice Richard Mosley in *Kang v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 798, [2011] FCJ No 1006, at para 40:

> [36] When stopped and searched at the CIA, the applicant told the officers that he withdrew the money from two Canadian financial institutions: (1) the Bank of Nova Scotia, under his company name JJG Trucking; and (2) Khalsa Credit Union. He

said he brought the money to the UK as a gift to his cousin for his wedding. He claimed he was returning with the funds because his cousin did not want it. When asked for his cousin's name, he could not recall it.

[37] In later correspondence with CBSA, and after having been asked to provide documentary evidence to support the lawful origin of the seized currency, the applicant stated that he made an error in advising the officer that he brought the money with him when he left Canada. He attributed the error to his being nervous. What he characterizes as an error was, of course, an explanation which he could not back up with evidence of withdrawals from the financial institutions in question.

[38] The applicant then said that the money was given to him from his family in the UK, namely his cousin, Mr. Andip Singh, and his uncle, Mr. Kewal Singh. He submitted a letter from his cousin and a sworn affidavit from Mr. Singh. Both attached banking information. However, neither his uncle nor his cousin's information show how their withdrawals were transferred to the applicant.

[39] As such, the Minister found that the affidavit and the letter did not establish lawful origin of the currency or prove that the money the applicant had in his possession was from these sources. When CBSA asked for further information regarding the applicant's family's information, necessary to establish the lawful origin of the currency, the applicant provided no follow up evidence.

[40] I do not accept the applicant's argument that he is being held to an impossible standard of proof. The evidence submitted by the applicant does not establish the lawful origin of the funds. Although the bank withdrawals of the applicant's uncle and cousin were amounts that could, theoretically, provide for loans to the applicant, there is nothing in the record, apart from their statements, to link those sums of money to that which was ultimately seized at the airport in Calgary. Evidence that cannot establish the lawful origin of the funds cannot be used as proof of such: *Dupre v. Canada (Minister of Public Safety & Emergency Preparedness)*, 2007 FC 1177 at para. 31; *Sidhu*, above, at para. 41.

[41] The lack of proof, the contradictory stories which cast doubt on the applicant's credibility and the prior enforcement actions for smuggling controlled substances, taken together, make it reasonable that the Minister could not be persuaded that the

> currency did not come from proceeds of crime. It follows that the Minister's decision to hold the currency as forfeit was reasonable.

[24] For the foregoing reasons, this application is dismissed. Neither party proposed a question for certification and no issue of general importance arises on the record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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