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PENITENTIARIES

Application for judicial review of respondent's decision (Decision) refusing to accept for processing applicant's request made pursuant to *International Transfer of Offenders Act*, S.C. 2004, c. 21 — Applicant sought two principal types of relief herein: order quashing refusal; order directing respondent to accept his request for processing, consider it without delay — Applicant submitted that Decision was unreasonable for essentially three reasons: Decision was based on unreasonable interpretation of definition of "Canadian offender" in Act; Decision failed to address, account for submissions that he made in support of his request to have his entire sentence transferred to Canada; respondent misapprehended certain evidence — Applicant, Canadian citizen, residing in Southern Ontario, where he lived for most of his life — Between 2004-2009, he divided his time between Canada, Dominican Republic, where his family running resort business since 1980s — Applicant became president of that business in 2003, also got involved with individual who ran financial services company that sold timeshares — Applicant unaware that individual's company in fact sold financial products in pyramid-style, multi-level marketing system — Both applicant, individual charged, convicted for mail fraud in United States in relation to their involvement in scheme until 2007 — In August 2012, applicant entered into cooperation agreement with U.S. authorities which were investigating individual — After being criminally indicted in September 2012, applicant began to cooperate with Federal Bureau of Investigation, U.S. Attorney's Office — Applicant later pleading guilty to one count of conspiracy to commit mail fraud — Given applicant's extensive cooperation, prosecution recommended lenient sentence — Despite this, applicant was ultimately sentenced to two years of imprisonment plus three years of supervised release — Applicant ineligible to serve his sentence in minimum security facility in U.S because not U.S. citizen — Consequently, applicant required to serve his sentence in "Criminal Alien Requirement ('CAR') prison with harsh conditions — Due to applicant's status as non-citizen in U.S., applicant would not be able to access early release from two-year sentence of incarceration; would then likely be transferred into immigration detention for indeterminate period of time pending his removal from U.S. — Applicant initiated contact with International Transfers Unit of Correctional Service Canada ("CSC"), with view to having his sentence transferred to Canada — Made formal request on January 15, 2020 — Applicant not immediately ordered into custody but was released on bond, permitted to return to Canada subject to requirement to surrender into custody in U.S. on appointed date — Decision at issue consisted of two letters sent in response to applicant's request — First letter specifying that applicant not meeting definition of "Canadian offender" since applicant neither detained by nor under supervision of foreign entity — Second letter indicating in particular that applicant was to surrender to serve his sentence but did not do so — Issues were whether respondent's interpretation of Act, s. 2 unreasonable; whether Decision unreasonable on ground that it was not appropriately justified; whether Decision unreasonable on ground that respondent misapprehended applicant's circumstances; what was appropriate remedy — Act, s. 2 defining "Canadian offender"; includes Canadian citizen who was found guilty of offence, is detained or subject to any other form of supervision in foreign entity — Respondent's conclusion that applicant not coming within purview of term "Canadian offender" not unreasonable — Words "subject to any other form of supervision in a foreign entity" precise, unequivocal — Meaning that individual must be subject to form of supervision within entity outside Canada — Respondent submitted that applicant not coming within purview since not subject to any form of supervision "of" foreign entity; that applicant not subject to any form of supervision "in" foreign entity as contemplated by definition of

“Canadian offender” in Act, s. 2 — Applicant asserted he was subject to form of supervision “of” foreign entity since subject to Order of US Court that required him to surrender to his designated facility on November 13, 2023 — Also, Presentence Investigative Report providing further details of applicant’s release not before respondent when Decision made — Despite that applicant required to surrender to designated facility on specific date, respondent’s conclusion that applicant not meeting definition not unreasonable — Words “in a foreign entity” in definition of “Canadian offender” discussed; purpose of Act found in s. 3 examined — Applicant argued that when contextual factors considered, only reasonable interpretation of words “in a foreign entity” is that they mean “of a foreign entity” — Asserted that such contextual factors include Act’s purpose, language of *Treaty between Canada and the United States of America on the Execution of Penal Sentences*, March 2, 1977, [1978] Can. T.S. No. 12, harsh consequences resulting from literal reading of words “in a foreign entity; that respondent used expression “of a foreign entity” in Decision — Language of s. 3, taken as whole, is ambiguous, capable of providing some support for position of both applicant, respondent — Consequently, stated purpose of Act not displacing plain reading of definition of “Canadian offender” provided in s. 2 — Treaty at issue supporting positions of both parties, not weighing significantly in favour of applicant — Therefore, respondent’s interpretation of scope of term “Canadian offender” not unreasonable; respondent’s conclusion that applicant not currently coming within Act’s definition of “Canadian offender” further supported by plain meaning of language in that definition, in particular the words “in a foreign entity” — That said, two letters comprising Decision failing to adequately justify Decision; falling short of what was required — Decision ought to have reflected harsh consequences for applicant’s liberty interests — Should also have grappled with key issues or central arguments applicant raised — Decision’s complete failure to do these things rendered it inadequately justified, therefore unreasonable — It was unnecessary to make definitive finding as to whether respondent misapprehended applicant’s circumstances given conclusion on Decision’s justification — However, some language used in Decision raised genuine questions as to whether respondent misapprehended circumstances under which applicant actually was in Canada — Appropriate remedy here was to set Decision aside, remit it to respondent for reconsideration — Application allowed in part.

ELLIOTT V. CANADA (PUBLIC SAFETY) (T-889-22, 2023 FC 1053, Crampton C.J., reasons for judgment dated August 1, 2023, 26 pp.)