

Court File No. T-889-24

JD1

FEDERAL COURT

BETWEEN:

REYNOLD DEEB

FEDERAL COURT COUR FÉDÉRALE		D É P O S É
F I L E D	AVR 22 2024	
	BRITTNEY CHANNER	
	TORONTO, ON	

Applicant

- and -

MINISTER OF FOREIGN AFFAIRS and
THE ATTORNEY GENERAL OF CANADA

Respondents

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*, R.S.C.,
1985, c. F-7

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant, Reynold Deeb. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard in Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

April 22, 2024

Issued by: **IMRANA AHMED
REGISTRY OFFICER
AGENT DU GREFFE**

Address of
local office: 1800 Queen Street West
Suite 200
Toronto, ON M5V 3L6

TO: MINISTER OF FOREIGN AFFAIRS
Global Affairs Canada
125 Sussex Drive,
Ottawa, Ontario K1A 0G2

AND TO: THE ATTORNEY GENERAL OF CANADA
Federal Department of Justice, Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Fax: (416)-954-8982
Solicitor for the Respondents

APPLICATION

This is an application for judicial review of the decision of the Minister of Foreign Affairs (the “**Minister**”) dated March 21, 2024 (the “**Decision**”) to deny the application of Reynold Deeb to be delisted from the schedule of the *Special Economic Measures (Haiti) Regulations*, S.O.R., 2022-226 (the “*Haiti Regulations*”).

The Applicant makes an application for the following relief:

1. an order setting aside the Decision and referring it back to the Minister for redetermination in accordance with such instructions as this Court considers appropriate and just;
2. costs of this application; and
3. such further and other relief as counsel may advise and this Court may permit.

The grounds for the application are:

Overview

1. The Decision should be set aside on any one or more of three independent bases:
 - (a) The Decision lacks procedural fairness. The Decision fails to disclose in a meaningful manner the Minister’s reasons for refusing to delist Mr. Deeb.
 - (b) The Minister applied the wrong legal test. She was required to “decide whether there are reasonable grounds to recommend the removal [of Mr. Deeb’s name from the schedule to the *Haiti Regulations*] to the Governor in

Council” – a test expressed in positive terms. Instead she applied a different test, expressed in negative terms.

(c) The decision is unreasonable because it is based on “open-source information” without any apparent assessment of the reliability of that information, and because it is based on alleged facts qualified by vague language like “you appear to be”, “reportedly”, “you have likely”, and “you are reported to have”.

Background facts

2. Mr. Deeb is a reputable businessperson in Haiti. He serves as the Purchasing Manager for the Tire and Motorcycle Division of Deka Group, a group of companies that collectively are leading importers of consumer goods in Haiti. Mr. Deeb is also deeply involved in community philanthropy. He is not involved in or associated with gang violence in Haiti.

3. Mr. Deeb’s reputable nature is well illustrated by a recent incident. In early April 2024 – shortly after the Decision – the Royal Canadian Mounted Police (“**RCMP**”) and the Canadian Ambassador to the Government of Canada asked Mr. Deeb to assist them by providing access to property that he owns in Haiti for the purpose of police training exercises and for the purpose of evacuation by helicopter of Canadian citizens from Haiti. Mr. Deeb was happy to agree to this request and provided Canada with the requested assistance.

4. Despite being a reputable businessperson -- one to whom the Government of Canada turned in a time of crisis -- Mr. Deeb has been wrongfully subjected to sanctions under the *Haiti Regulations*. Moreover, at virtually the same time that the RCMP and the Ambassador requested access to Mr. Deeb's property to serve Canada's needs, the Minister refused to lift the sanctions against him. Why the Government of Canada was simultaneously asking Mr. Deeb for use of his property and maintaining sanctions against him is not clear.

5. On December 2, 2022, Mr. Deeb was made subject to Canadian sanctions when he was listed in the schedule to the *Haiti Regulations*. Such sanctions have extensive and far-reaching impacts on the daily lives of those who are subject to them, even if the sanctioned persons are not resident and have no assets in Canada. These impacts include the denial of access to ordinary services from banks and other financial institutions, exclusion from employment opportunities, severe reputational damage, and the inability to travel to Canada.

6. Mr. Deeb's listing is erroneous. He did not meet the criteria for listing set out under section 2 of the *Haiti Regulations* at the time he was listed, and has not met those criteria at any time.

7. Accordingly, on February 17, 2023, Mr. Deeb submitted a delisting application to the Minister, providing detailed written submissions and supporting documentation setting out why he did not satisfy the listing criteria.

8. In the time since his listing, Mr. Deeb has not been subject to similarly broad economic sanctions by any other nation.

9. On March 21, 2024 – more than a year after the delisting application was made, and on the same day that the Canadian Ambassador asked Mr. Deeb for assistance and the use of his property to evacuate Canadians – the Minister issued the Decision, declining to delist Mr. Deeb.

The statutory framework

10. The Haiti Regulations are promulgated under the Special Economic Measures Act, S.C. 1992, c. 17 (“*SEMA*”). *SEMA* gives the Governor in Council the authority to promulgate regulations that impose economic sanctions on foreign countries, or on entities or individuals of a targeted state. *SEMA*’s purpose is to enable the Government of Canada to take economic measures against foreign states when a grave breach of international peace and security has occurred, gross and systematic human rights violations have been committed in a foreign state, or acts of significant corruption involving a national of a foreign state have been committed.

11. The *Haiti Regulations* were enacted in November 2022 in response to conflict in Haiti involving armed gangs. The *Haiti Regulations* have been amended from time to time to identify additional “listed persons”.

12. A “listed person” is defined in the *Haiti Regulations* as:

A person whose name is listed in the schedule is a person who is in Haiti, or is or was a national of Haiti who does not ordinarily reside in Canada, and in respect of whom the Governor in Council, on the recommendation of the Minister, is satisfied that there are reasonable grounds to believe is

(a) a person engaged in activities that directly or indirectly undermine the peace, security and stability of Haiti;

- (a.1) a person who has participated in gross and systematic human rights violations in Haiti;
- (b) a current or former senior official of the Government of Haiti;
- (c) an associate of a person referred to in any of paragraphs (a) to (b);
- (d) a family member of a person referred to in any of paragraphs (a) to (c) and (g);
- (e) an entity owned — or held or controlled, directly or indirectly — by a person referred to in any of paragraphs (a) to (d);
- (f) an entity owned — or held or controlled, directly or indirectly — by Haiti; or
- (g) a senior official of an entity referred to in paragraph (e) or (f).

13. The *Haiti Regulations* impose a severe asset freeze and related prohibitions on dealings with those listed in the schedule of the *Haiti Regulations*. Pursuant to section 3 of the *Regulations*, no person in Canada or any Canadian outside of Canada may:

- (a) deal in any property, wherever situated, that is owned — or that is held or controlled, directly or indirectly — by a listed person;
- (b) enter into or facilitate any transaction related to a dealing referred to in paragraph (a);
- (c) provide any financial or related services in respect of a dealing referred to in paragraph (a);
- (d) make available any goods, wherever situated, to a listed person or to a person acting on behalf of a listed person; or
- (e) provide any financial or related services to or for the benefit of a listed person.

14. Moreover, listing by a reputable country like Canada has far-reaching impacts even where the listed individual resides in another jurisdiction and is not a citizen of Canada, due to the international nature of many financial institutions and businesses, and their blanket internal sanctions compliance policies.

The Decision should be set aside on procedural fairness grounds

15. Because the matter has important significance for Mr. Deeb, the duty of procedural fairness required the Minister to provide written reasons for what she decided, in a manner that achieves transparency and shows the path of reasoning of the Minister. The Decision fails to meet that standard, and as such violates procedural fairness. Among other things:

- (a) The Decision asserts that “you appear to be a close ally of President Michel Martelly, among others.”¹ There is no explanation of the basis for the alleged appearance.
- (b) The Decision asserts that “you have reportedly financing politicians’ electoral campaigns, including those of Mr. Gary Bodeau, who is considered one of the most powerful lawmakers under President Jovenal Moïse.”² There is no disclosure of the source of the alleged report, or which campaigns (other than those of President Jovenal Moïse) were allegedly financed.
- (c) The Decision asserts that “[y]our relationship with Mr. Bodeau benefitted your businesses.”³ There is no explanation of how the alleged relationship allegedly benefitted Mr. Deeb’s businesses, or which businesses were allegedly benefitted.

¹ Decision, p. 1.

² Decision, p. 1.

³ Decision, p. 1.

(d) The Decision asserts that “[y]ou have also reportedly benefitted from tax evasions of some of the goods you imported into the country through your relationship with Mr. Romel Bell, the former Director General of the General Customs Administration, who was sanctioned by the United States.”⁴ There is no disclosure of the source of the alleged report, nor any explanation of how the alleged tax evasions occurred.

(e) The Decision asserts that “you have likely bribed politicians on several occasions....”⁵ There is no disclosure of why such alleged bribery is “likely”.

(f) The Decision asserts that “you are reported to have influenced the appointment of heads of strategic income generating public institutions such as ports and customs.”⁶ There is no disclosure of the basis of these alleged “reports”.

(g) The Decision asserts that “you have likely financed a gang leader to wage a trade war against your competitors at the ports.”⁷ There is no disclosure of why such alleged financing is “likely”, nor any disclosure of which “gang leader” was allegedly financed.

16. The Decision does not comply with the requirements of procedural fairness, and ought to be set aside on that basis.

⁴ Decision, p. 1.

⁵ Decision, p. 2.

⁶ Decision, p. 2.

⁷ Decision, p. 2.

The Decision should also be set aside because it was based on the wrong test

17. Section 8 of the *Haiti Regulations* sets out the right of a listed person to seek delisting, and sets out what the Minister must decide in response to a delisting application:

<p>Applications Removal from list</p> <p>8 (1) A listed person may apply to the Minister in writing to have their name removed from the schedule.</p> <p>Reasonable grounds</p> <p>(2) On receipt of an application, <i>the Minister must decide whether there are reasonable grounds to recommend the removal to the Governor in Council.</i></p> <p>New application</p> <p>9 If there has been a material change in circumstances since the last application was submitted, a listed person may submit another application under section 8.</p>	<p>Demandes Radiation</p> <p>8 (1) La personne dont le nom figure sur la liste établie à l'annexe peut demander par écrit au ministre d'en radier son nom.</p> <p>Motifs raisonnables</p> <p>(2) À la réception de la demande, <i>le ministre décide s'il existe des motifs raisonnables de recommander la radiation au gouverneur en conseil.</i></p> <p>Nouvelle demande</p> <p>9 La personne dont le nom figure sur la liste peut, si la situation a évolué de manière importante depuis la présentation de sa dernière demande au titre de l'article 8, en présenter une nouvelle.</p> <p>[Emphasis added.]</p>
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18. Thus the Minister was statutorily required to consider a positive: "whether there are reasonable grounds to recommend the removal to the Governor in Council."⁸ Instead, she considered a negative: whether "there are *no* reasonable grounds to believe that you have not been associated with current or former members of the Government

⁸ *Haiti Regulations*, s. 8(2).

of Haiti, nor that you have not been associated with these relationships to advance your business interests, nor that you have not engaged in criminal acts, which have contributed to undermining stability, democracy and the rule of law in the Republic of Haiti.”⁹ Instead of considering whether there are *reasonable grounds* to delist Mr. Deeb, the Minister considered whether there are *no reasonable grounds* to believe that certain events have occurred. This approach flipped the statutory test from a positive inquiry into a negative inquiry, and required Mr. Deeb to prove a negative (and to the point that there are “no reasonable grounds” that the alleged facts occurred).

19. The Decision should be set aside and the Minister directed to determine the delisting application in accordance with the actual test set out in s. 8(2) of the *Haiti Regulations*, not in accordance with some different test that she apparently formulated herself.

The Decision should also be set aside on the basis that it is unreasonable

20. The Decision purports to rely on “available open-source information”,¹⁰ and repeatedly qualifies alleged facts using vague language like “you appear to be”, “reportedly”, “you have likely”, and “you are reported to have”. It does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law to rely on alleged facts from “available open-source” information without any apparent due diligence as to the reliability of that information. Nor does it fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and

⁹ Decision, p. 2 [emphasis added].

¹⁰ Decision, p. 1.

the law to rely on alleged facts based on vague appearances, reports, or assessments of likelihood.

21. The Decision is unreasonable and ought to be set aside.

Other grounds

22. Mr. Deeb will also rely on such further and other grounds as counsel may advise and this Court may permit.

REQUEST FOR MATERIALS UNDER RULE 317

23. Pursuant to Rule 317 of the *Federal Courts Rules*, Mr. Deeb requests the following material that is relevant to this application:

(a) copies of all documentation and communications (including but not limited to emails, texts, or other communication applications) related to the initial and continuing inclusion of Mr. Deeb on the sanctions list; and

(b) copies of all documentation and communications (including but not limited to emails, texts, or other communication applications) related to the Decision not to delist Mr. Deeb.

24. Without limiting the forgoing, this request includes all documents presented to the Minister or the Minister's advisors that relate to the initial and continuing inclusion of Mr. Deeb on the sanctions list and the Decision not to delist Mr. Deeb. Since there is a strong likelihood that the material requested may be stored on government issued devices (including computers, phones, and tablets) as well as on personal devices, such

information is included within the request. The material is relevant to this application, and the fact that staff of the Minister elected to communicate through personal devices does not shield that material from the application of Rule 317.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. the affidavit of Reynold Deeb;
2. the materials produced pursuant to Rules 317 and 318 of the *Federal Courts Rules*; and
3. such further and other evidence as counsel may advise and this Court may permit.

The Applicant relies on the following statutory provisions:

1. the *Federal Courts Act*, R.S.C. 1985, c. F-7;
2. the *Federal Courts Rules*, SOR/98-106;
3. the *Special Economic Measures Act*, S.C. 1992, c. 17;
4. the *Special Economic Measures (Haiti) Regulations*, S.O.R., 2022-226; and
5. such further and other provisions as counsel may advise and this Court may permit.

April 22, 2024



McCarthy Tétrault LLP

Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSO#: 34701O

Tel: 416-601-7856

Email: ghall@mccarthy.ca

John Boscariol LSO# 36628G

Tel: 416-601-7835

Email: jboscariol@mccarthy.ca

Gajan Sathananthan LSO# 73336K

Tel: 416-601-7682

Email: gsathananthan@mccarthy.ca

Rachel Chan LSO#: 79331E

Tel: 416-601-8075

Email: rchan@mccarthy.ca

Solicitors for the Applicant

Court File No. _____

FEDERAL COURT

Reynold Deeb

Applicant

- and -

MINISTER OF FOREIGN AFFAIRS and
THE ATTORNEY GENERAL OF CANADA

Respondent

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of APR 22 2024 A.D. 20____

Dated this _____ day of APR 22 2024 20____


IMRANA AHMED
REGISTRY OFFICER
AGENT DU GREFFE

NOTICE OF APPLICATION
(Filed this 22 day of April, 2024)

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSO#: 347100
Tel: 416-601-7856
Email: ghall@mccarthy.ca

John Boscariol LSO# 36628G
Tel: 416-601-7835
Email: jboscariol@mccarthy.ca

Gajan Sathananthan LSO# 73336K
Tel: 416-601-7682
Email: gsathananthan@mccarthy.ca

Rachel Chan LSO#: 79331E
Tel: 416-601-8075
Email: rchan@mccarthy.ca

Solicitors for the Applicant