

e-document	T-2446-23-ID 1	
I S S U E D	FEDERAL COURT COUR FÉDÉRALE	É M I S
	November 20, 2023 20 novembre 2023	
	Kadara Thompson	
OTT		1

Court File No. _____

FEDERAL COURT

BETWEEN:

ALEKSEY IVANOVICH ISAYKIN

Applicant

and

**CANADA (MINISTER OF FOREIGN AFFAIRS) and THE ATTORNEY GENERAL OF
CANADA**

Respondents

APPLICATION UNDER sections 18 and 18.1 of the Federal Courts Act, RSC 1985, c F-7.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears on the following page.

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 at Ottawa.

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.

Date: _____

Issued by: _____

(Registry Officer)

Address of local office: Federal Court of Canada
Registry Office
Thomas D'Arcy McGee Building
90 Sparks Street, Main Floor
Ottawa, Ontario, K1A 0H9

TO: The Minister of Foreign Affairs
Global Affairs Canada
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario K1A 0G2

AND TO: The Attorney General of Canada
Office of the Deputy Attorney General of Canada
248 Wellington Street
Ottawa, Ontario K1A 0H8

APPLICATION

This is an application for judicial review pursuant to section 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 (the “*Federal Courts Act*”) in respect of the delay and/or failure of the Honourable Minister of Foreign Affairs, the Honourable Mélanie Joly, P.C., M.P. (the “Minister”) to make a decision within the legislatively prescribed time limit on the application by Aleksey Ivanovich Isaykin (the “Applicant”) to be removed from Part 1, Schedule 1 (the “Sanctions List”) of the *Special Economic Measures (Russia) Regulations*, SOR/2014-58 (the “Russia Regulations”).

On April 5, 2023, the Applicant was added to the Sanctions List through the *Regulations Amending the Special Economic Measures (Russia) Regulations*, SOR/2023-72. On June 20, 2023, the Applicant filed an application to be removed from the Sanctions List pursuant to section 8 of the Russia Regulations (the “Delisting Application”).

Section 8 of the Russia Regulations imposes a mandatory statutory duty upon the Minister to make a decision within 90 days of receiving a delisting application, and to give notice of the decision to the Applicant without delay. It has been 153 days since the Applicant filed the Delisting Application, and the Minister has failed to make a decision.

This application for judicial review also challenges:

- a. The initial and ongoing inclusion of the Applicant on the Sanctions List;
- b. The absence of a reasonable basis to include the Applicant’s name under Part 1, Schedule 1 of the Russia Regulations, as this decision was taken based on an erroneous finding of fact, without the support of credible and reliable evidence, or otherwise in an arbitrary manner;
- c. The failure by the Minister to remove the Applicant’s name forthwith when presented with compelling, objective and credible evidence supporting the removal;
- d. The ongoing delay and/or failure of the Minister to perform mandatory statutory duties under section 8 of the Russia Regulations to make a decision on the Delisting Application within 90 days of it being received. In so failing to make that decision, the

Minister has acted and continues to act unreasonably and in a manner contrary to the law; and

- e. The lawfulness of the Russia Regulations, as amended by the *Regulations Amending the Special Economic Measures (Russia) Regulations*, SOR/2023-72, insofar as they concern the Applicant because:
 - i. the listing of the Applicant is *ultra vires* the *Special Economic Measures Act*, S.C. 1992, c.17 (the “*Special Economic Measures Act*”) as it does not fall within the scope of the objectives of the Russia Regulations nor Canada’s sanctions regime; and
 - ii. the inclusion of the Applicant under Part 1, Schedule 1 of the Russia Regulations is a breach of customary principles of international law regarding countermeasures, as codified in the *Articles on the Responsibility of States for Internationally Wrongful Acts* (“ARSIWA”), which was adopted by the United Nations’ International Law Commission in 2001.

THE APPLICANT APPLIES FOR THE FOLLOWING RELIEF:

- 1. Pursuant to paragraph 18(1)(a) and subsection 18.1(3) of the *Federal Courts Act*:
 - a. An order declaring that the Minister is in breach of section 8 of the Russia Regulations by delaying, failing and/or refusing to make a decision within 90 days of receiving the Delisting Application;
 - b. An order declaring that the Russia Regulations, insofar as they concern the Applicant, are *ultra vires* the *Special Economic Measures Act*, the Russia Regulations, and Canada’s sanctions regime because the listing of the Applicant does not fall within the scope of the objectives of the legislative scheme, and because sanctions against him are not “in relation to a foreign state”, and that they are therefore are invalid;
 - c. An order declaring that the initial and continued inclusion of the Applicant under Part 1, Schedule 1 of the Russia Regulations is in breach of the *Special Economic Measures Act* and the Russia Regulations because the Applicant does not, and did not at the time of his listing, meet the criteria enumerated in section 2 of the Russia Regulations;

- d. An order declaring that the inclusion of the Applicant under Part 1, Schedule 1 of the Russia Regulations is a breach of customary principles of international law that apply to countermeasures and therefore invalid; and
- e. The issuance of a writ of *mandamus* compelling the Minister to immediately:
 - i. Recommend to the Governor in Council that the Applicant's name be removed from the Part 1, Schedule 1 of the Russia Regulations; or
 - ii. In the alternative, issue a decision on the Delisting Application and communicate that decision to the Applicant within five days;
- 2. An order assigning a case management Judge or Prothonotary pursuant to Rule 384 of the *Federal Courts Rules*, SOR/98-106 (the "*Federal Courts Rules*");
- 3. An order expediting the hearing of this Application pursuant to Rule 8(1) of the *Federal Courts Rules*;
- 4. An order requiring the Respondents to pay the Applicant's costs of this application; and
- 5. Such other relief as counsel may request and that this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

Background

- 1. Under section 2 of the Russia Regulations, a person may be listed in Schedule 1 if the Governor in Council, on the recommendation of the Minister, is satisfied that there are "reasonable grounds to believe" that that person falls within one of the enumerated categories;
- 2. On April 5, 2023, the Minister announced amendments to the Russia Regulations to add 14 individuals and 34 entities on the basis that Global Affairs Canada considers them to be individuals and entities "complicit in Putin's war of choice, including several security targets linked to the Wagner Group and the aviation sector";
- 3. The Minister has failed to provide details regarding the basis for listing the Applicant, including the "reasonable grounds to believe" relied upon;

4. On June 20, 2023, the Applicant filed a Delisting Application with Global Affairs Canada pursuant to section 8 of the Russia Regulations on the basis that he does not fall within any of the section 2 listed categories. Specifically, the Applicant is not “complicit in Putin’s war of choice, nor has he “provided any aviation service to the Wagner Group or otherwise in relation to the military operations in Ukraine”. The Delisting Application was very detailed and included objective and credible evidence that established reasonable grounds for the Minister to recommend to the Governor in Council that the Applicant be removed from Part 1, Schedule 1 of the Russia Regulations;
5. The Delisting Application requested that, should the contents of the application not fully address Canada’s basis for the Applicant’s listing, Canada provide a copy of all information, documents and evidence relied upon to recommend his listing under section 2 of the Russia Regulations and that the Applicant be given an opportunity to respond to that information;
6. Under section 8 of the Russia Regulations, the Minister is statutorily required to decide within 90 days whether there are reasonable grounds to recommend to the Governor in Council that the Applicant’s name be removed from the Sanctions List. The Minister has failed to make such a decision within that mandatory statutory time period;
7. On July 7, 2023, the Applicant sent correspondence to the Minister requesting that the Minister issue a determination on the Delisting Application by October 2, 2023;
8. Neither Global Affairs Canada nor the Minister have made any further inquiry regarding the Applicant’s Delisting Application;
9. The Minister has not issued a decision in response to the Delisting Application.

The Applicant

10. The Applicant is a Russian and Cypriot national. He resides in Moscow, Russia;
11. Along with being a successful economist and entrepreneur, the Applicant is a shareholder in various corporate entities that operate global air freight businesses;
12. The Applicant was elected Chairman of the Board of Volga-Dnepr Airlines LLC, a then newly created airline, on August 22, 1990. This was the first private cargo airline in Russia and the first joint stock company in the Ulyanovsk region;

13. Between 1990 and 2002, he occupied various roles, including as the Chairman of the Board, Executive Director, and General Director of Volga-Dnepr Airlines. In October 1994, the Applicant, as then President of the Airline, was declared “Man of the Year” in the category “Entrepreneurs and Financiers” in accordance with the expert commission findings of the Russian Biographical Institute and the Who is Who newspaper;
14. From 2002 until October 11, 2019, the Applicant was the President of Volga-Dnepr Moscow LLC. As President of Volga-Dnepr Moscow LLC, he oversaw the management of various companies including Volga-Dnepr Airlines LLC, AirBridgeCargo Airlines LLC, which performed scheduled cargo flights, and Atran LLC, which worked in the segment of medium-haul cargo transportation. In this role, the Applicant also oversaw the management of other companies involved with maintaining and repairing aircrafts, providing ground cargo transportation, developing engineering and logistic solutions, and providing insurance services. The Applicant currently owns the majority of AirBridgeCargo Airlines LLC and Atran LLC. These two companies no longer operate any aircrafts;
15. The Applicant has also been a shareholder of other companies including Cargo Logic Holding Limited, a UK-based holding company of CargoLogicAir Ltd., and CargoLogic Germany. CargoLogicAir Ltd. was established in the United Kingdom in March 2015 with the intent to operate as a UK Cargo Airline with worldwide operations. In 2020, CargoLogicAir Ltd. provided vital support to the UK Government in its fight against the COVID-19 pandemic. Both CargoLogicAir and CargoLogic Germany ceased operations in 2022;
16. Over the span of his 30-year career, the Applicant has managed to create a diversified business, operating in the key segments of the international air cargo markets. He is actively involved in public work to strengthen the prestige of the civil aviation industry both inside the country and globally. In 2015, the Applicant was made a Fellow of the Royal Aeronautical Society of the United Kingdom to recognize his contributions to the industry. This distinction “is the highest grade attainable and is only bestowed upon those in the profession of aeronautics or aerospace who either have made an outstanding contribution to the profession, attained a position of high responsibility, or/and have had long experience of high quality in the profession”;

17. The Applicant has signed a Solemn Affirmation that he has not provided any aviation service to the Wagner Group or otherwise in relation to the military operations in Ukraine;
18. The detailed information supplied in the Delisting Application demonstrated that the Applicant is not engaged in activities that directly or indirectly support, provide funding for, or contribute to a violation of the sovereignty or territorial integrity of Ukraine. This is supported by objective and credible evidence highlighted in the Delisting Application; and
19. The Delisting Application establishes reasonable grounds for the Minister to recommend to the Governor in Council that the Applicant's name be removed from Part 1, Schedule 1 of the Russia Regulations.

The Hearing of this Application Should be Expedited

20. Pursuant to Rule 8(1) of the *Federal Courts Rules*, it is respectfully submitted that it would be appropriate to expedite the hearing of this Application as this matter is urgent and has already been unreasonably and unacceptably delayed by the Minister's failure to make a decision within the prescribed time period, at law, which results in significant ongoing harm being caused to the Applicant;
21. The Applicant is suffering substantial financial harm along with personal harm stemming from being incorrectly and unjustly smeared as a supporter of the Russian regime and its invasion of Ukraine by Canada.

The Minister's Refusal to Exercise her Jurisdiction is Unreasonable and in Violation of the Russia Regulations

22. Under section 8(3) of the Russia Regulations, "[t]he Minister must make a decision on the application within 90 days after the day on which the application is received". The Applicant has yet to receive a decision from the Minister;
23. The Minister's failure to make a decision regarding the Applicant's Delisting Application is unreasonable and in breach of the law that governs her because:
 - a. As of the date of this Application, it has been 153 days since the filing of the Delisting Application on June 20, 2023, which is significantly greater than the specified 90-day prescribed time limit under section 8 of the Russia Regulations;

- b. The Applicant is in no way responsible for the delay; and
- c. The Minister has not provided any justification for the delay in making a decision.

The Minister Has Failed to Observe Principles of Natural Justice and/or Procedural Fairness

- 24. The Minister has failed to observe principles of natural justice and/or procedural fairness by failing to provide the Applicant with the reasons or any evidentiary basis for his listing under the Russia Regulations;
- 25. In addition, the Minister has failed to observe the procedure she was required by law to observe by failing to make a decision within the time period set out in the Russia Regulations; and
- 26. The Minister, *inter alia*, failed to observe an adequate level of procedural fairness because she did not consider:
 - a. The impact and importance of the decision to the Applicant, including the ongoing financial and reputation damage suffered by the Applicant; and
 - b. The legitimate expectations of the Applicant that he would receive a decision on his delisting within 90 days of the application being received by the Minister, as per subsection 8(3) of the Russia Regulations.

The Minister Erred in Making the Decision to List the Applicant under the Russia Regulations and in Failing to Remove the Applicant from the Sanctions List Following the Receipt of the Delisting Application

- 27. The Minister, *inter alia*, erred in law because she used the incorrect legal standard to determine that there are reasonable grounds to believe that the Applicant falls within one of the prescribed categories under section 2 of the Russia Regulations. The standard that was used by the Minister did not:
 - a. Have an objective basis for the recommendation;
 - b. Rely on credible, compelling and up-to-date information; or
 - c. Assess the credibility and reliability of the information used in the decision making process;

28. The Minister's decision to list the Applicant, and the delay, failure or refusal to make a decision on the Delisting Application is not authorized by the enabling legislation, does not meet the legislation's objectives, and/or is based on an erroneous finding of fact;
29. The Minister was improperly influenced by irrelevant considerations in making the decision to add the Applicant to the designated persons list and in failing to make a decision on the Delisting Application, and was therefore not an unbiased decision maker, and acted in bad faith with a closed mind;
30. The Applicant recognizes that in light of the Russian military invasion of Ukraine, the Canadian Government and the international community have responded with targeted economic sanctions. He also understands that the Canadian Government identifies individuals as appropriate targets for economic sanctions in fluid and quickly evolving circumstances, with a view to maximize pressure for modifying Russian governmental actions. This initial analysis can, however, be based upon a misunderstanding of the facts. As set out in detail in the Delisting Application, this is exactly what has happened to the Applicant when Canada mistakenly added him to the Sanctions List;
31. The Minister made an erroneous finding of fact that the Applicant is "complicit in Putin's war of choice", or a "security target[t] linked to the Wagner Group and the aviation sector", and has maintained that erroneous finding of fact by failing to remove the Applicant even though the Delisting Application supports such a decision, because:
- a. The decision was made capriciously, perversely, or without regard to the evidence, including that presented in the context of the Delisting Application; and
 - b. The Minister's decision was based on erroneous information, and the Minister failed to properly consider the evidence put before her in the Delisting Application;
32. The Minister acted contrary to law upon making her initial decision, and in failing to make a decision to remove the Applicant. The Minister is in breach of the Russia Regulations and of Canada's international law obligations regarding the use of countermeasures, as codified in the ARSIWA, which was adopted by the United Nations International Law Commission in 2001. The sanctions against the Applicant are not targeted against the State responsible for the internationally wrongful act and are not proportionate. Furthermore, they affect

fundamental human rights or *jus cogens* norms, including the due process rights of the Applicant. The economic countermeasures targeting the Applicant, as established by the Russia Regulations, are unlawful under international law insofar as they concern the Applicant; and

33. The Minister's initial decision to recommend that the Applicant be listed in Part 1, Schedule 1 of the Russia Regulations, and the Minister's failure to recommend that the Applicant be removed from that Schedule, have been made in bad faith, for an improper purpose, and based on irrelevant considerations.

The Minister's Failure to Make a decision as per the Statutory Timeline Necessitates the Relief Sought by the Applicant

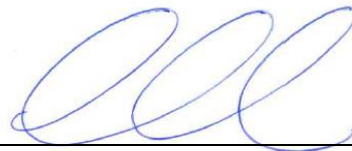
34. No equitable bar to relief in the nature of *mandamus* exist in these circumstances;
35. This Court has jurisdiction to hear this application and to grant the relief sought under sections 18 and 18.1 of the *Federal Courts Act*;
36. In particular, this Court has the express jurisdiction, under paragraph 18.1(3)(a) of the *Federal Courts Act* to order the Minister to make a decision on the Applicant's application for delisting under subsection 8(3) of the Russia Regulations;
37. All of the preconditions for this Honourable Court to issue a writ of *mandamus* have been met;
38. Under section 8(3) of the Russia Regulations, "[t]he Minister must make a decision on the application within 90 days after the day on which the application is received". The Applicant has yet to receive a decision from the Minister;
39. The Minister's failure to make a decision regarding the Applicant's Delisting Application is unreasonable and in breach of the law that governs her because:
- a. As of the date of this Application, it has been 153 days since the filing of the Delisting Application on June 20, 2023, which is significantly greater than the specified 90-day prescribed time limit under section 8 of the Russia Regulations;
 - b. The Applicant is in no way responsible for the delay; and

- c. The Minister has not provided any justification for the delay in making a decision;
40. The Applicant further relies on the *Federal Courts Rules* and such additional grounds as counsel may identify.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- a. Affidavits and attached documentary evidence, to be sworn;
- b. Documentary evidence that the Applicant used or produced in support of the Delisting Application and subsequent correspondence pursuant to Rule 306 of the *Federal Courts Rules*; and
- c. Such further and other Affidavits and materials as counsel may advise and this Honourable Court permit.

November 20, 2023



TEREPOSKY & DEROSE LLP

81 Metcalfe Street, Suite 1000
Ottawa, ON K1P 6K7
Fax: 613.701.2997

Vincent DeRose (LSO #44733S)
Tel: 613.237.8862
Email: vderose@tradeisds.com

Jennifer L. Radford (LSO #46395N)
Tel: 613.237.9777
Email: jradford@tradeisds.com

Stephanie Desjardins (LSO #71915N)
Tel: 613.237.8680
Email: sdesjardins@tradeisds.com

Michelle Folinas (LSO #87233O)
Tel: 613.237.1208
Email: mfolinas@tradeisds.com

Lawyers for the Applicant, Aleksey Ivanovich
Isaykin