

Federal Court



Cour fédérale

**Date: 20181120**

**Docket: IMM-1340-18**

**Citation: 2018 FC 1166**

**Ottawa, Ontario, November 20, 2018**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**SHAUN FARMAN RUZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Shaun Farman Ruz [Mr. Ruz], seeks judicial review of the July 28, 2017 decision of the delegate of the Minister of Citizenship and Immigration [Minister's Delegate] which refused his restricted Pre-removal Risk Assessment [PRRA] pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*] and found that he was not a person in need of protection. As a result, the removal order for Mr. Ruz, who is inadmissible to Canada on grounds of serious criminality, would not be stayed.

[2] For the reasons that follow, the Application is dismissed.

I. Background

[3] Mr. Ruz is a citizen of Iraq. On February 10, 2013, he arrived in Canada and submitted a refugee claim.

[4] Mr. Ruz's Basis of Claim [BOC] form included information about his identity, date of birth, work in Iraq and allegations of risk, some of which was later contradicted by information provided by Mr. Ruz and obtained by the Canadian Border Services Agency [CBSA].

[5] In Mr. Ruz's updated submissions in support of his restricted PRRA, he described that he grew up in the Kurdistan region of Iraq and was a member of the Patriotic Union of Kurdistan [PUK]. In 2000, he travelled to the United Kingdom [UK] and sought refugee protection there. Mr. Ruz claims that while in the UK, he was recruited to perform intelligence work for Iraq against terrorists. However, Mr. Ruz was involved in a bar fight and was convicted of "wounding with intent". He was sentenced to 6 years imprisonment. Mr. Ruz claims that while serving his sentence, he was offered an opportunity to return to Iraq and opted to do so in 2011.

[6] Mr. Ruz recounts that upon his return to Iraq, he joined the Counter Terrorism Group [CTG] where he was trained to gather intelligence. He claims that his undercover work put him at risk after he was identified by a member of the Ansar al-Islam, a group he was investigating. He fled Iraq after leaving the CTG without permission, fearing retaliation by the terrorist group.

[7] The Immigration Division [ID] of the Immigration and Refugee Board initially found that Mr. Ruz was not a member of the PUK and, therefore, he was not inadmissible to Canada on security grounds under paragraph 34(1)(f) of the *Act*. On appeal, the Immigration Appeal Division [IAD] concluded that there was other evidence to find that he was a member of the PUK and found him to be inadmissible. However, it appears that his inadmissibility to Canada on security grounds has not been pursued.

[8] Mr. Ruz was also reported for inadmissibility to Canada on the ground of serious criminality under paragraph 36(1)(b), based on his conviction in the UK for assault and was referred for an admissibility hearing. The ID found Mr. Ruz inadmissible for serious criminality and issued a deportation order (also referred to as a removal order). As a result of this finding, Mr. Ruz is ineligible to make a claim for refugee protection. However, the finding of inadmissibility and the issuance of a removal order triggered Mr. Ruz's right to a restricted PRRA.

[9] The first step in the process for a restricted PRRA is that an Immigration Officer conducts a "Risk Assessment" and makes a preliminary finding on whether an applicant is a person in need of protection. Second, a CBSA Officer conducts a "Restriction Assessment". In the present case, because Mr. Ruz was found inadmissible for criminality due to a conviction outside of Canada, the Restriction Assessment considered the factors set out in sections 96-98 of the *Act*. (In other cases, the Restriction Assessment may be more restricted; for example, it may be limited to section 97 factors). Third, the Risk Assessment and Restriction Assessment are shared with the applicant and submissions are invited. Finally, a Minister's Delegate considers

the assessments, the applicant's submissions, and other information, including any independent research, to determine whether the restricted PRRA application should be allowed or rejected.

A. *The Risk Assessment - 2013*

[10] In August 2013, Mr. Ruz applied for a PRRA and made submissions describing the risks he claimed if returned to Iraq.

[11] The Officer completed the Risk Assessment on September 25, 2013 and sent it with a memo to the CBSA Enforcement Centre, noting that the Risk Assessment is part of a larger case review process as described in the Protected Person Manual (PP3). The Officer considered Mr. Ruz's account of his participation in the Kurdish CTG and his subsequent desertion. The Officer concluded that it is more likely than not that Mr. Ruz would face a risk of torture and a risk to his life if he were to return to Iraq.

B. *The Restriction Assessment - 2014*

[12] The Restriction Assessment was prepared by the CBSA Case Management Branch in May 2014. It set out a summary of Mr. Ruz's past immigration proceedings, including the Report and Referral pursuant to section 44 of the *Act* (regarding admissibility), interviews with other Immigration and CBSA officers, the findings of the ID, IAD, detention review hearings, and information gathered by the CBSA. It notes, among other things, that Mr. Ruz had used different names, different dates of birth, different accounts of his time in the UK and Iraq, and that he had repeatedly denied any convictions in the UK until confronted with the UK document. The

Restriction Assessment includes excerpts of the admissibility reports, ID hearings and detention review hearings which noted Mr. Ruz's contradictory accounts and found that he was untrustworthy and lacking in credibility. The Restriction Assessment notes that "Members [of the ID] and officials of the Canadian Border Services Agency have stated that Mr. Ruz has been consistently not credible in his dealings with immigration officials. He purposely withheld and provided contradictory information, at interviews and in writing, concerning his identity, employment, time and place of residence, and criminality."

[13] The Restriction Assessment also includes a long list of documents that were disclosed to Mr. Ruz, such as transcripts and disclosure packages of past proceedings.

[14] On June 9, 2014, a CBSA Senior Decision Maker provided a "Disclosure Letter" to Mr. Ruz along with a copy of the 2013 Risk Assessment and the 2014 Restriction Assessment. The letter enclosing the documents explained that Mr. Ruz may make representations, arguments and submit evidence, which will be considered by the decision maker (the Minister's Delegate). The letter further explained that the submissions and evidence shall be limited to issues raised in the Risk Assessment, the Restriction Assessment and any other document enclosed. In addition, Mr. Ruz was advised that he could submit new evidence related to his risk upon return that was not reasonably available at the time the application was made.

[15] The Disclosure Letter explained that the Minister's Delegate may consider the recent and current country condition documents and set out several examples of reports that may be considered.

[16] The Disclosure Letter also stated, “When making a decision, the Minister’s Delegate, while not bound by any previous decisions, assessments or recommendations, will consider all relevant evidence before him, including your submissions, the PRRA and the Restriction Assessment.”

C. *The Applicant’s Submissions to the Minister’s Delegate*

[17] In June 2014, Mr. Ruz set out his submissions in a letter with several attachments, including media articles and reports about the conditions in Iraq. Mr. Ruz stated that he also relied on his past submissions. He added that recent developments in Iraq, including the inability of the government to address the rise of extremism, enhanced the risks he would now face. He stated that given his profile as a former member of the CTG, he would be at risk from his employer and could also be targeted by the terrorist groups who have taken control in certain areas of the country.

[18] By letter dated February 21, 2017, the Senior Decision Maker, in his role as Minister’s Delegate, advised Mr. Ruz that he would be making the final decision. Given the passage of time since the assessments and past submissions, Mr. Ruz was invited to update his submissions. The Minister’s Delegate reiterated the information in the previous Disclosure Letter and drew Mr. Ruz’s attention to a 2016 report of the UK Home Office regarding country conditions in Iraq.

[19] Mr. Ruz’s submissions in June 2017 again recounted that he sought refugee protection in 2000 in the UK, returned to Iraq in 2011, began working for the CTG, was trained to gather

intelligence and other evidence from people and electronic devices, worked in undercover operations, and had his identity discovered by the Ansar al-Islam while working undercover. Mr. Ruz believed that a bomb blast in Kirkuk that targeted the police station was intended for him due to his role in the undercover operation. Mr. Ruz again claimed that his knowledge of the CTG methods and his desertion put him in danger from Iraqi authorities and that his exposure in the undercover operation put him at risk from Islamic militant groups.

[20] Mr. Ruz also claimed, for the first time, that his religious affiliation as a Christian would make him a target of the Islamic State of Iraq and the Levant [ISIL].

## II. The Decision Under Review

[21] The Minister's Delegate reviewed the Risk Assessment, Restriction Assessment, the submissions of Mr. Ruz and the material submitted by him, as well as the country condition documents. The Minister's Delegate found that Mr. Ruz was unlikely to face the risks described in sections 96 and 97 of the *Act* if returned to Iraq.

[22] The Minister's Delegate considered Mr. Ruz's original BOC form, which described his work in Iraq in the 2000s and his recruitment by the CTG in 2008 to perform intelligence work in Sulaymaniyah. The Minister's Delegate cited passages from the ID and IAD, detention review hearings and other interviews which noted the inconsistency in Mr. Ruz's accounts and expressed concerns about his lack of credibility. The Minister's Delegate noted that Mr. Ruz's amended BOC form contradicted his initial BOC form regarding when he left Iraq for the UK

and when and why he returned to Iraq. The Minister's Delegate also noted that Mr. Ruz only admitted his UK conviction when confronted with the proof.

[23] With respect to the current assessment of risk, the Minister's Delegate first addressed the conflicting determinations about whether Mr. Ruz had been employed by the CTG. The Minister's Delegate noted that the Officer who conducted the Risk Assessment in 2013 accepted that Mr. Ruz had a role in the CTG and that Mr. Ruz deserted the CTG. The Officer concluded that Mr. Ruz could face severe and arbitrary punishment if returned to Iraq. However, the Officer did not find any reliable references about punishment for Iraqi officers who deserted. The Minister's Delegate noted that the ID had subsequently found that there was no credible evidence of his employment in the CTG. The Minister's Delegate noted that a great deal of information accompanying the Restriction Assessment differed from the Risk Assessment and that the Officer who prepared the Risk Assessment did not have the benefit of reviewing all of the information.

[24] The Minister's Delegate considered Mr. Ruz's submissions which were updated in 2014 and 2017. The Minister's Delegate summarized Mr. Ruz's stated risks as: his fear of insurgents, his fear of reprisals from the authorities (including the CTG or PUK), and persecution on the basis of his religious affiliation.

[25] The Minister's Delegate found that Mr. Ruz's submission that he would be at risk from Iraqi authorities because he had shared video and photographic evidence with Canadian authorities had no merit. The Minister's Delegate stated that the evidence was "meaningless"



because the photos were never explained; for example, dates, names and locations were lacking. The Minister's Delegate noted that without any explanation of how Iraqi officials might become aware that the photos had been provided to Canadian authorities, the fact that the Minister's Delegate and one other Officer had seen them would not result in any repercussions.

[26] With respect to Mr. Ruz's risk from insurgents, such as Ansar al-Islam, the Minister's Delegate found that there was no evidence that suggests that Ansar al-Islam remains active in Iraq. The Minister's Delegate considered the documentary evidence indicating that the Sulaymaniyah region, where Mr. Ruz had lived and where members of his family resided, is relatively stable and safe from terrorist attacks and that there is adequate law enforcement. The Minister's Delegate concluded that Mr. Ruz would be relatively safe from terrorist elements.

[27] With respect to the risk of reprisals from Iraqi authorities, the Minister's Delegate concluded that there is little evidence that Mr. Ruz deserted active service. No details had been provided about his employment contract and there was no suggestion of conscription. The Minister's Delegate went on to consider the risk to deserters but found that no evidence had been provided on the treatment of deserters from the CTG and the country condition evidence regarding desertion from the military in general did not support the risk claimed.

[28] With respect to Mr. Ruz's claim that he would be persecuted due to his Christianity, the Minister's Delegate first noted the limited evidence to support the claim. The Minister's Delegate went on to assess the risk and found that the documentary evidence indicates that there is protection for religious minorities in the Kurdistan region of Iraq and that there are "sizeable"

Christian communities. There was also little evidence to suggest that the government had any interest in pursuing apostates. The Minister's Delegate added that Mr. Ruz was not strictly religious when he lived in Iraq and his family would not be alarmed by his conversion.

[29] The Minister's Delegate also found that ISIL has been losing ground in Iraq and that the Kurdish region is outside the worst conflict areas. The Minister's Delegate concluded there is no more than a mere possibility that Mr. Ruz will face risks identified in sections 96 and 97 of the *Act*.

### III. The Issues

[30] Mr. Ruz argues that the Minister's Delegate breached procedural fairness and that the decision is unreasonable. His written and oral submissions focus on the following:

- Whether the Minister's Delegate erred by failing to hold an oral hearing to permit Mr. Ruz to address the adverse credibility findings;
- Whether the Minister's Delegate erred by improperly using documents gathered for the Restriction Assessment in the determination of risk; and
- Whether the Minister's Delegate misconstrued a key argument, resulting in an unreasonable finding.

### IV. The Standard of Review

[31] Issues of procedural fairness are reviewed on the correctness standard. Issues of mixed fact and law are reviewed on the reasonableness standard. Generally, the Minister's Delegate's determination of a PRRA is reviewed on the reasonableness standard (*Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 11, 265 ACWS (3d) 1006).

[32] Mr. Ruz argues that the failure to hold an oral hearing to permit him to address the credibility inferences breached his right to procedural fairness. He submits that the application of section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] points to the need for an oral hearing.

[33] In *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at para 13, [2016] FCJ No 106 (QL) [*Zmari*], the Court noted that the jurisprudence is split on whether the decision to proceed without an oral hearing is an issue of interpreting the *Act* and *Regulations*, which is an issue of mixed fact and law, or whether it is an issue of procedural fairness. However, in the present case, it does not appear that any request for an oral hearing was made or that the Minister's Delegate engaged in interpreting the *Regulations*. Therefore, I am not assisted by the jurisprudence which has found that the determination of whether to hold an oral hearing should be reviewed on the reasonableness standard because it involves the decision maker interpreting its home statute. The key issue is whether there was a breach of procedural fairness in the present circumstances, which is reviewed on the correctness standard.

[34] Whether the Minister's Delegate misconstrued an argument or the evidence related thereto is reviewable on a standard of reasonableness.

[35] Where the reasonableness standard applies, the Court considers "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

Deference is owed to the decision maker, in this case, the Officer, and the Court will not re-weigh the evidence.

V. Did the Minister's Delegate breach procedural fairness by not holding an oral hearing?

A. *The Applicant's Submissions*

[36] Mr. Ruz submits that an oral hearing should have been held because the Minister's Delegate's decision is peppered with references to his credibility with respect to crucial evidence. He submits that the Risk Assessment did not include credibility findings and the Restriction Assessment did not have a conclusion; therefore, he could not have known that the credibility issues should be addressed.

[37] Mr. Ruz submits that the failure to hold an oral hearing to permit him to respond to the credibility concerns was a breach of procedural fairness. He argues that the factors listed in section 167 of the *Regulations* all point to the need for an oral hearing.

[38] Mr. Ruz argues that the Minister's Delegate's veiled credibility findings, particularly those about his contradictory accounts of his past activities and the "meaningless" photographs which depicted his work with the CTG, are directly related to the risk he faced. He adds that his membership in the CTG was central to his claim for protection. If the Minister's Delegate had accepted this fact, a different conclusion may have been reached.

B. *The Respondent's Submissions*

[39] The Respondent argues that the Minister's Delegate based his decision on his assessment of the evidence of the claimed risks and not on credibility. The Minister's Delegate examined the risks claimed by Mr. Ruz against current country conditions, giving greater weight to independent and objective evidence.

[40] The Respondent submits that there was no breach of procedural fairness arising from the Minister's Delegate's references to Mr. Ruz's history and the findings of the ID, IAD and other decision makers regarding Mr. Ruz's lack of credibility in his account, as all of this was known to Mr. Ruz. He was aware of the concerns about his changing story and he was given an opportunity to provide submissions and evidence to the Minister's Delegate. An oral hearing was not required in these circumstances.

C. *There was no Breach of Procedural Fairness*

[41] No oral hearing was required for two reasons. First, Mr. Ruz clearly was aware of the case he had to meet, had an opportunity to respond and did so. Second, the factors in section 167 of the *Regulations* do not point to the need for an oral hearing. There was no breach of procedural fairness.

[42] Mr. Ruz's submission that he was unaware of credibility concerns and "the case he had to meet" and that he had no opportunity to address the concerns is somewhat disingenuous.

Mr. Ruz had full disclosure of the Risk Assessment and Restriction Assessment and the process

was described to him in the Disclosure Letter. The Restriction Assessment included disclosure of a long list of documents, including transcripts of hearings and decisions, which noted the credibility concerns. The Restriction Assessment included long excerpts from several of those decisions which clearly noted the credibility issues. Mr. Ruz was aware of the changes he had made in his BOC form, amended BOC form and evidence before the ID to his name, his birthdate, his time in Iraq and the UK and his introduction to the PUK and CTG. He was also personally aware of the decisions of the ID and IAD, which highlighted the inconsistencies in his account and found him to be lacking in credibility. Although he suggests that his file from other proceedings should not have been taken into account by the Minister's Delegate, all of his immigration proceedings are related. This is apparent from the disclosure provided with the Restriction Assessment. He made submissions to the Minister's Delegate in 2014 and again in 2017, both of which were considered by the Minister's Delegate.

[43] The application of the factors set out in section 167 of the *Regulations* is not intended to permit a breach of procedural fairness to be found where it does not exist in the circumstances. The factors are intended to guide whether an oral hearing should be held in order to guard against a breach of procedural fairness. In the present case, there was simply no breach of procedural fairness. In any event, the application of the factors would not point to the need for an oral hearing.

[44] Paragraph 113(b) of the *Act* provides that a hearing may be held to determine a PRRA if the Minister is of the opinion that a hearing is required. Section 167 of the *Regulations* sets out the guiding factors:

167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

(b) whether the evidence is central to the decision with respect to the application for protection; and

(c) whether the evidence, if accepted, would justify allowing the application for protection.

167 Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[Emphasis added]

[45] The use of “and” between paragraphs (b) and (c) and the jurisprudence which has interpreted the provisions confirm that all three factors must be present (*Demirovic v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284 at paras 9-10, [2005] FCJ No 1560 (QL)).

[46] In brief, an oral hearing was not required in accordance with the *Regulations* because the three factors which inform the need for an oral hearing were not all present. In particular, credibility was not determinative of the Minister's Delegate's decision. The Minister's Delegate assessed the risks claimed by Mr. Ruz with reference to the evidence submitted and gave more

weight to the objective country condition documents which led to the conclusion that there was no more than a mere possibility that he would face the risks under section 96 or 97.

[47] Mr. Ruz relied on several cases where the Court found that veiled credibility findings had been made and an oral hearing should have been held. However, in those cases (*Zmari*, at paras 19-20; *Majali v Canada (Citizenship and Immigration)*, 2017 FC 275 at para 41, [2017] FCJ No 276 (QL); *B147 v Canada (Citizenship and Immigration)*, 2018 FC 843 at paras 16-17, 295 ACWS (3d) 597), the Court found that all three factors in section 167 were present.

[48] In the present case, the Minister's Delegate did not make any new findings regarding Mr. Ruz's credibility, but he clearly noted the concerns raised in the past, including that Mr. Ruz had changed his BOC form and had given contradictory accounts of his time in the UK, his involvement with the CTG and his encounter with Ansar al-Islam.

[49] Mr. Ruz's account of his role in the CTG, his fear of retaliation by Ansar al-Islam due to his undercover work, and his recent conversion to Christianity were the basis of his application and the focus of his updated submissions. As a result, his evidence related to these three aspects of his claimed risk was "central" to his application and to the determination.

[50] However, the acceptance of Mr. Ruz's account about his risk would not have resulted in a different outcome. In *Selliah v Canada (Minister of Citizenship & Immigration)*, 2004 FC 872, 256 FTR 53, the Court noted at paragraph 27:

Upon reviewing the above-noted factors set out in section 167 of the Regulations I am satisfied that the prescribed circumstances



were not present in the instant case that would warrant the holding of an oral hearing. The applicants' credibility was not the determining issue of the decision, rather the officer found that the risks to the applicants had not been established on the objective evidence...

[51] Similarly, the determinative issue for the Minister's Delegate was that the risks claimed were not supported by the objective evidence. The Minister's Delegate assessed Mr. Ruz's risk from insurgents (Ansar al-Islam), his risk from Iraqi authorities and his risk of religious persecution regardless of the credibility issues noted in past accounts.

[52] With respect to Mr. Ruz's fear of reprisals from Iraqi authorities for deserting the CTG, any credibility concerns regarding whether Mr. Ruz was a member of the CTG were not determinative. The finding was based on the lack of evidence that deserters would be at risk.

[53] Although Mr. Ruz argues that desertion from the CTG is far different from desertion from other forces, he did not provide any evidence on the treatment of CTG deserters to support this contention. The Minister's Delegate also noted that although the Officer who conducted the risk assessment in 2013 accepted that Mr. Ruz was a CTG deserter, the Officer did not find any evidence on the treatment of deserters.

[54] The Minister's Delegate considered the available evidence about the consequence of desertion from other Iraqi forces, and concluded that there was little evidence that Mr. Ruz would be pursued by the authorities. He noted that the fact that Iraq's human rights record is "less than ideal" is not sufficient evidence that Mr. Ruz will be mistreated for leaving his employment. He added that a French report suggests that desertion from the Kurdish Peshmerga

forces has become common as compensation has been inconsistent, but there are still many new recruits. The Minister's Delegate also acknowledged the Danish report which states that punishment for desertion can range from cancellation of a contract to a death sentence. However, the Minister's Delegate found that there was little to suggest these punishments have been recently applied and little to suggest that Mr. Ruz would be pursued by authorities for military desertion.

[55] The credibility of Mr. Ruz's account of his discovery by Ansar al-Islam was also not determinative. The Minister's Delegate assessed Mr. Ruz's risk from insurgents, including by Ansar al-Islam, in the region he had lived. The Minister's Delegate pointed to the country condition documents demonstrating the relative stability of the region, the availability of state protection and the infrequency of terrorist attacks in this area. The Minister's Delegate found that there was no evidence that Ansar al-Islam remains active in Iraq.

[56] Although the Minister's Delegate's reference to Mr. Ruz's "contention" about Christianity suggests some scepticism, his risk of religious persecution was assessed. The Minister's Delegate relied on the objective country condition documents to find that there were "sizeable" Christian communities, state protection was available, even for apostasy, and that because Mr. Ruz had not been from a religious family, they would not be concerned with his conversion.

VI. Did the Minister's Delegate err by using the documents disclosed for the Restriction Assessment in the determination of risk?

A. *The Applicant's Submissions*

[57] Mr. Ruz submits that the 2013 Risk Assessment and the 2014 Restriction Assessment and their respective records should have been considered separately by the Minister's Delegate. He argues that the Minister's Delegate erred by relying on the documents provided with respect to the Restriction Assessment to cast aspersions on his credibility and on the findings made by the Officer in the 2013 Risk Assessment.

[58] Mr. Ruz submits that he could not have known that the Restriction Assessment record would be relied on. As a result, he did not know the case to meet and did not have an opportunity to respond.

[59] Mr. Ruz submits that the Disclosure Letter, which stated that his arguments and evidence should be "limited to issues raised in the PRRA, the Restriction Assessment as well as any other document enclosed", suggests that each assessment is considered separately. He submits that this means that the representations are to be made in response to each assessment separately.

[60] Mr. Ruz adds that the correct approach was described in *Muhammad v Canada (Citizenship and Immigration)*, 2014 FC 448 at paras 68-69, [2014] FCJ No 477 (QL) [*Muhammad*]; the two assessments are separate and the Minister's Delegate may balance them.

B. *The Respondent's Submissions*

[61] The Respondent disputes that Mr. Ruz did not know the case he had to meet. Mr. Ruz was well aware that concerns about his changing stories had been set out in the Restriction Assessment based on the accompanying documents, all of which were disclosed. Mr. Ruz had an opportunity to respond to the issues raised in both assessments.

[62] Pursuant to section 172 of the *Regulations*, the Minister's Delegate is required to consider two assessments—the Risk Assessment prepared based on section 97 factors and the Restriction Assessment, which assesses the other applicable factors depending on the reason for his inadmissibility—as well as the submissions and the country condition documents. All the information will be considered in order to make the decision. The Respondent notes that the restricted PRRA process is triggered by a finding of inadmissibility and a removal order and, therefore, the PRRA determination is informed by the whole record.

C. *The Minister's Delegate Did Not Err in Considering Both Assessments and the Full Record*

[63] Mr. Ruz's submission that the Minister's Delegate must consider the two assessments and their respective records in isolation from each other is not supported by the wording of the *Act* or *Regulations* or by the jurisprudence. It simply would not make any logical sense, given the task of the Minister's Delegate, to suggest that the file or record for each assessment cannot be considered in the overall and final decision.

[64] Mr. Ruz was found inadmissible on grounds of serious criminality with respect to his conviction in the UK. In accordance with paragraph 112(3)(b), refugee protection cannot be conferred on Mr. Ruz. However, Mr. Ruz is entitled to have his risks assessed in accordance with subparagraph 113(e)(ii) of the *Act*. The restricted PRRA assessed his risks related to the factors in both sections 96 and 97.

[65] Section 172 of the *Regulations* sets out what the Minister (or Minister's Delegate) must consider in making the assessment:

**172 (1)** Before making a decision to allow or reject the application of an applicant described in subsection 112(3) of the Act, the Minister shall consider the assessments referred to in subsection (2) and any written response of the applicant to the assessments that is received within 15 days after the applicant is given the assessments.

**(2)** The following assessments shall be given to the applicant:

**(a)** a written assessment on the basis of the factors set out in section 97 of the Act; and

**(b)** a written assessment on the basis of the factors set out in subparagraph 113(d)(i) or (ii) of the Act, as the case may be.

[Emphasis added]

**172 (1)** Avant de prendre sa décision accueillant ou rejetant la demande de protection du demandeur visé au paragraphe 112(3) de la Loi, le ministre tient compte des évaluations visées au paragraphe (2) et de toute réplique écrite du demandeur à l'égard de ces évaluations, reçue dans les quinze jours suivant la réception de celles-ci.

**(2)** Les évaluations suivantes sont fournies au demandeur :

**a)** une évaluation écrite au regard des éléments mentionnés à l'article 97 de la Loi;

**b)** une évaluation écrite au regard des éléments mentionnés aux sous-alinéas 113d)(i) ou (ii) de la Loi, selon le cas.

[Je souligne]

[66] The clear wording of this section does not support the view that the two assessments should be considered separately.

[67] Contrary to Mr. Ruz's submission, the Disclosure Letter did not convey that the two assessments and their respective records would be considered separately. The Disclosure Letter clearly stated, "When making a decision, the Minister's Delegate, while not bound by any previous decisions, assessments or recommendations, will consider all the evidence before him, including your submissions, the PRRA and the Restriction Assessment" [emphasis added]. As the Restriction Assessment very clearly noted the credibility issues that had been raised in the past proceedings, Mr. Ruz was alerted that this information was part of the record before the Minister's Delegate.

[68] In *Muhammad*, at paras 68-70, relied on by Mr. Ruz, the Court referred to the need for balancing the information in the two assessments. However, in that case, other provisions of the *Act* applied and the balancing required was between the risk upon return to the country of origin and the risk to Canadian society of remaining in Canada. In the present case, this balancing is not at play. Mr. Ruz's risk is assessed under both sections 96 and 97 without further restriction.

[69] *Muhammad* does not suggest that the assessments are to be considered separately. Rather, it supports the view that the Minister's Delegate should consider all the information to determine the current risk faced by an applicant. In *Muhammad*, the Court stated at paragraph 69:

[69] This suggests that not only may the Minister's Delegate balance the risk and security assessments, but that he or she may also make a decision as to whether a risk still exists. Clearly if such

a decision is made it may, or may not, be in accordance with the PRRA Officer's risk assessment.

[70] The language of subsection 172(1) of the IRPA Regulations is that, before making a decision to allow or reject an application described in subsection 112(3) of the IRPA, the Minister "shall consider the assessments" referred to in subsection 172(2), being the PRRA assessment and the security assessment. The PRRA Operational Manual is also consistent in describing these as assessments and requiring a Minister's delegate to consider them prior to rendering a decision. Contrary to the suggestion of the Respondent, a PRRA officer's contribution is not described as an "opinion". Nor does the PRRA Operational Manual state that the decision of a Minister's delegate must be based on the assessments alone as suggested by the Applicant.

[70] The Minister's Delegate is not bound or restricted in their decision making by either the Risk Assessment, which is a preliminary assessment, or the Restriction Assessment. If that were the case, there would be no point to the multi-staged approach. Moreover, as risk is always forward looking, the ultimate decision maker must be able to consider up-to-date information.

[71] As the Respondent notes, in an applicant's immigration proceedings, the CBSA works together with Immigration Officers, as would be expected, to ensure that there is a complete record. It would be unrealistic, and likely absurd, to expect one decision maker to ignore information on the record compiled in relation to another decision about the same applicant.

[72] As noted above, it is somewhat disingenuous for Mr. Ruz to argue that he did not know that his full history would be on the record before the Minister's Delegate. The Restriction Assessment referred to the documents disclosed, many of which were also summarized in the Restriction Assessment and noted the credibility concerns.

[73] The key issue in determining whether a breach of procedural fairness has occurred is whether Mr. Ruz knew the case to meet and had an opportunity to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56, [2018] FCJ No 382 (QL); *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, [1999] SCJ No 39 (QL) at para 28). Mr. Ruz had full disclosure of all the information to be considered. He knew that the onus was on him to establish that he would face the risks he claimed upon return and he knew that his credibility had been a concern in several past immigration decisions and reports that were disclosed to him. He knew the case to be met, had opportunities to respond and he did so in 2014 and again in 2017.

[74] More importantly, as noted above, Mr. Ruz's risks were assessed, regardless of any credibility concerns disclosed in the Restriction Assessment and the records. The Minister's Delegate's decision is based on finding that the claimed risks were not supported by the evidence.

VII. Did the Minister's Delegate misconstrue one of Mr. Ruz's key arguments, resulting in an unreasonable finding?

A. *The Applicant's Submissions*

[75] Mr. Ruz submits that the Minister's Delegate missed the point of one of his arguments. Mr. Ruz explains that he is at risk upon return because the Iraqi authorities would be concerned that he had shared confidential information with Canadian authorities, not simply photos—although the photos tie him to the CTG. Mr. Ruz argues that his superiors are aware that he had access to confidential material, which, combined with his unauthorized departure from the CTG and country, would lead to their perception that he would reveal secret information. Mr. Ruz



submits that the Minister's Delegate focussed only on the photos and the lack of an explanation about how Iraqi authorities would be aware that the photos were shared.

[76] Mr. Ruz also argues that the risk faced by a deserter from a special military unit, such as the CTG, is greater than other deserters and the Minister's Delegate only considered the latter.

[77] Mr. Ruz further submits that the Minister's Delegate should have explained why he reached a different conclusion than the Officer who conducted the 2013 Risk Assessment.

B. *The Respondent's Submissions*

[78] The Respondent's position is that the Minister's Delegate did not misunderstand the argument; the Minister's Delegate assessed all the risks claimed, including that there would be consequences for Mr. Ruz's desertion. The Minister's Delegate reasonably found that the photographs were meaningless because no explanation had been provided to link them to the claimed risk.

C. *The Minister's Delegate did not Misconstrue the Argument or Evidence*

[79] Mr. Ruz made submissions in 2013 for the Risk Assessment and made submissions in 2014 and 2017 in response to the Restriction Assessment. In his 2013 submissions, Mr. Ruz stated that the Iraqi government and intelligence agencies would be aware that he has "escaped from Iraq and would be concerned with the issue of Mr. Ruz revealing confidential information

to the Canadian government including video and photographic evidence of the activities of the CTG that he had brought with him” [emphasis added].

[80] Mr. Ruz’s submissions in 2014 referred more generally to the dire situation in Iraq and that, as a former member of the CTG, he would face a serious risk to his life, both at the hands of his former employer and terrorist groups.

[81] Mr. Ruz’s 2017 submissions stated that he “believes his involvement with the CTG investigation and his knowledge of their methods, and his subsequent desertion of the CTG puts him in danger of cruel and unusual punishment”.

[82] The Minister’s Delegate did not ignore or misconstrue the 2013 submission; the relevant part is excerpted in the decision. As noted above, the 2013 submission refers to Iraq’s concern that Mr. Ruz had shared information and points to the photos and video evidence as examples.

[83] The Minister’s Delegate’s comments regarding the photos do not miss the point of the broader submission because the photos and video were the only documents produced in support of this allegation. There was no other evidence to support Mr. Ruz’s assumption or belief that Iraq would presume he shared information. For example, there was no documentary evidence about similarly situated individuals being detained and interrogated upon return to Iraq, nor did Mr. Ruz provide any evidence attesting to personal knowledge that this is the way the CTG operates.

[84] Moreover, the Minister's Delegate assessed the three elements of the risk claimed, including the risk from insurgents and fear of reprisals from the Iraqi authorities. The Minister's Delegate also addressed the risk to deserters. Based on the available evidence, the Minister's Delegate found that this risk did not go beyond that of a mere possibility.

[85] In the present case, there was no obligation on the Minister's Delegate to provide a greater explanation for why he made different findings in 2017 than the Officer had in 2013. The Minister's Delegate is tasked with conducting a forward looking risk assessment and he did so. Although the Officer who prepared the preliminary Risk Assessment in 2013 found that Mr. Ruz would be at risk because his CTG supervisors would likely assume that he told Canadian authorities about the CTG's treatment of prisoners, the Minister's Delegate noted, more generally, that the Officer did not have all the information when he made his assessment. The Minister's Delegate based his decision on the evidence provided—which was only the photos. The Minister's Delegate attached little weight to the photos and explained why he did so.

[86] The Minister's Delegate is not bound to concur with the Risk Assessment (*Placide v Canada (Citizenship and Immigration)*, 2009 FC 1056 at paras 63-64, 359 FTR 217; *Muhammad*, at para 84). As noted above, if this were the case, there would be no point to the multi-staged approach. A previous risk assessment may not be of assistance to the Minister's Delegate who must conduct a forward looking assessment of the risks an applicant would face upon return to their country of origin. Most importantly in this case, although Mr. Ruz's credibility in his past interactions with Immigration and CBSA Officers was highlighted, the risks he claimed were assessed according to the factors in sections 96 and 97. The Minister's

Delegate found that the objective country condition documents did not support Mr. Ruz's claimed risks.

**JUDGMENT in IMM-1340-18**

**THIS COURT'S JUDGMENT is that**

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct Respondent.
2. The Application for Judicial Review is dismissed.
3. No question of general importance that would be dispositive on an appeal arises for the purpose of certification.

“Catherine M. Kane”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1340-18

**STYLE OF CAUSE:** SHAUN FARMAN RUZ v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** OCTOBER 22, 2018

**JUDGMENT AND REASONS:** KANE J.

**DATED:** NOVEMBER 20, 2018

**APPEARANCES:**

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