Federal Court  Cour fédérale

Date: 20190024

Docket: IMM-3103-18

Citation: 2019 FC 100

Ottawa, Ontario, January 24, 2019

PRESENT: **The Honourable Mr. Justice Annis**

BETWEEN:

YOUSIF SALIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision dated June 1, 2018 of a senior immigration officer [the Officer] finding the Applicant a danger to the Canadian public and finding that the Applicant would not personally face risk to his life, liberty of his person if removed to Iraq.

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

II. Background

[3] The Applicant, Yousif Salim, is a 25-year-old Iraqi citizen. He arrived in Canada on November 3, 2010 along with his mother and two siblings as Convention refugees. They arrived as government-sponsored refugees and were landed as permanent residents.

[4] The Applicant had a difficult time transitioning to life in Canada. He began getting in trouble as a youth and eventually incurred an adult criminal record. In 2013, he became the subject of a section 44(1) report under the IRPA for a 2012 conviction for assault causing bodily harm. A deportation order was subsequently issued, which the Applicant appealed in 2014.

[5] In 2014, the Applicant was referred by his family doctor to a psychiatrist for suspected mental health issues. The psychiatrist then diagnosed him with manic depression, post-traumatic stress disorder [PTSD] and a mixed drug abuse and withdrawal mood disorder. The Applicant alleges he has been medicated for these conditions since 2014. In 2018, he was re-assessed for mental health conditions by the Royal Ottawa Mental Health Centre and diagnosed with chronic PTSD, Attention Deficit Hyperactivity Disorder [ADHD], sleep apnea and drug dependency issues in remission.

[6] In 2017, the Applicant's deportation appeal was deemed abandoned by the Immigration Appeal Division for lack of perfection. The Applicant's deportation order was reinstated.

[7] In July 2017, the Applicant was served with notice that the Canada Border Services Agency [CBSA] intends to seek the opinion of the Minister that he constitutes a danger to the public pursuant to section 115(2)(a) of IRPA, commonly referred to as a "danger opinion".

[8] On June 19, 2018 the Applicant and counsel received notice and reasons from the Minister's delegate finding that the Applicant constitutes a danger to the Canadian public and would not be personally at risk if returned to Iraq.

[9] On July 4, 2018, the Applicant filed an application for leave to judicially review these findings.

III. Impugned Decision

[10] The Officer considered the risk to life, liberty, and security of the person to the Applicant and found that the need to protect Canadian society outweighed the risks the Applicant would face if returned to Iraq and on a balance of probabilities his rights under s. 7 of the *Charter of Rights and Freedoms Canadian*, Part I of the Constitution Act, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11, [*Charter*] would not be violated. To do so, the Officer considered the overall security situation in Iraq, the risk to children of mixed marriages and the availability of medical care for persons with the Applicants' mental health conditions. Only the first and last conclusions were raised as issues before the Court.

[11] First, with regard to the security situation in Iraq, the Officer found that the Applicant is from Nasiriyah, a part of Iraq which was generally less affected by conflict and that the overall

humanitarian situation has improved considerably in all parts of Iraq. The Officer concluded that should the Applicant return to his home region he would not face more than a mere possibility of becoming a random victim of violence.

[12] Second, with regard to mixed marriages, the Officer found that although the Applicant's mother was Shia and his father Sunni, according to a recent Immigration and Refugee Board Information Request, Shia and Sunni mixed marriages have always been and continue to be quite common. It therefore appeared unlikely that the Applicant's background would cause difficulties for him.

[13] Third, with regard to the issue of access to medical care, the Officer found that medical services available in Iraq would be sufficient to fulfill the Applicant's mental health needs.

[14] Finally, the Officer considered whether there were any other humanitarian and compassionate considerations that favoured the application. The Officer concluded that the Applicant is "likely to continue to commit crimes, and is no closer to living a pro-social lifestyle some 7 years after his arrival". The Officer concluded that the fact that the Applicant had traumatic experiences in Iraq and Syria was not a deciding factor as to whether he should be removed.

IV. Legislative Framework

[15] The following provisions of the IRPA are applicable in these proceedings.

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

Protection

115 (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.

Principe

115 (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.

Exceptions

(2) Subsection (1) does not apply in the case of a person

(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the

Exclusion

(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire :

a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;

public in Canada; or	
(b) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.	b) pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité du Canada.
Removal of refugee	**Renvoi de réfugié**
(3) A person, after a determination under paragraph 101(1)(e) that the person's claim is ineligible, is to be sent to the country from which the person came to Canada, but may be sent to another country if that country is designated under subsection 102(1) or if the country from which the person came to Canada has rejected their claim for refugee protection.	(3) Une personne ne peut, après prononcé d'irrecevabilité au titre de l'alinéa 101(1)e), être renvoyée que vers le pays d'où elle est arrivée au Canada sauf si le pays vers lequel elle sera renvoyée a été désigné au titre du paragraphe 102(1) ou que sa demande d'asile a été rejetée dans le pays d'où elle est arrivée au Canada.

V. Issues

[16] The following issues arise in this application:

1. Did the Officer breach procedural fairness by failing to provide the Applicant with a copy of the reports on Iraq, which were relied on in their assessment of risks to the Applicant?

2. Was the Officer's assessment of the risks to the Applicant unreasonable?

VI. Standard of Review

[1] The parties agree that the standard of review in the context of danger opinions issued pursuant to para 115(2)(a) of the IRPA is reasonableness: "[t]he court may not reweigh the factors considered by the Minister, but may intervene if the decision is not supported by the evidence or fails to consider the appropriate factors." *Suresh v Canada (Citizenship and Immigration)*, 2002 SCC 1 at para 39 (see also *Ahani v Canada (Citizenship and Immigration)*, 2002 SCC 2, at para 16).

VII. Analysis

[2] The test to determine whether the Applicant, who has been found to constitute a danger to the public, should be allowed to remain in the country because of the risk he faces upon his removal is best summarized by the Federal Court of Appeal in *Ragupathy v Canada (Citizenship and Immigration)*, 2006 FCA 151 at para 19 as follows:

> The risk inquiry and the subsequent balancing of danger and risk are not expressly directed by subsection 115(2), which speaks only of serious criminality and danger to the public. Rather, they have been grafted on to the danger to the public opinion, in order to enable a determination to be made as to whether a protected person's removal would so shock the conscience as to breach the person's rights under section 7 of the Charter not to be deprived of the right to life, liberty and security of the person other than in accordance with the principles of fundamental justice. See *Suresh v. Canada (Minister of Citizenship and Immigration*), especially at paras. 76-9.

A. *Did the Officer breach procedural fairness by failing to provide the Applicant with a copy of reports on Iraq, which were relied on in their assessment of risks to the Applicant?*

[3] My colleague Justice Brown, in *Ahmed v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 471 [*Ahmed*], recently summarized the law in this area at paragraph 27, as follows:

> … the general rule is that such officers must disclose extrinsic evidence relied upon and give the applicant an opportunity to respond if two conditions are met: first, where the evidence is truly extrinsic, i.e. "novel and significant", and second, where it is information the applicant could not reasonably have been expected to have knowledge of: *Joseph v Canada (Minister of Citizenship and Immigration*), 2015 FC 904; *Toma v Canada (Minister of Citizenship and Immigration*), 2006 PC 780 [. . .]

[4] The Minister's delegate overall conclusion regarding the security situation in Iraq was as follows:

> … the current situation is certainly vastly different from what was occurring in 2010 when the family were accepted as refugees. Iraq is now- largely stable and in a rebuilding phase. Incidents of terrorism do continue to occur in Iraq, but the country is no longer in a state of civil war with multiple insurgent groups and the economy is also recovering based upon a 2017 report. http://www.world.org/en/country/Iraq/publication/Iraq- economic-outlook-october-2017

[5] The Minister's delegate relied upon the most recent United Nations [UN] report dated April 17, 2018 regarding the general security situation and humanitarian situation in Iraq, citing several passages from it in the reasons. The April report was an update of a January 17, 2018 report on the same subject matter. The April 2018 report provided new information covered in the intervening three-month period.

[6] The Applicant had provided the Minister's delegate with submissions regarding the security situation in Iraq in November 2017. The Applicant was provided with a second opportunity to make submissions. He was invited to provide "any new evidence relevant to danger, risk upon return, or humanitarian and compassionate factors, or other matters which was not reasonably available at the time you were initially notified of CBSA's intention to seek the Minister's Opinion".

[7] His second set of submissions was received on February 28, 2018. They consisted solely of a mental health assessment authored by a Dr. J.P. Fedoroff. Accordingly, the Applicant had available to him the information from the January UN security report, but chose not to update the security situation with information contained in the January UN report.

[8] It is in this context that the Applicant complains that he was not accorded procedural fairness, particularly where the Minister's designate stated "[c]ounsel's risk submissions are out of date when discussing the parts of Iraq controlled by ISIS." The Applicant interpreted these remarks to the change in a situation from the fall of 2017 to the spring of 2018. However, the "out of date" comments specifically refer to the Applicant's submissions of November 1, 2017. The Minister's delegate cited portions of them in the decision, describing casualties and attacks in significantly greater numbers than were reported in the January UN report. These numbers, in turn had decreased somewhat in the April UN report. I see no error therefore; in the statement that the information provided by the Applicant was significantly out of date in terms of what was available to him on January 28, 2018.

[9] In comparing the information in the January and April UN reports, I also find that they are relatively similar, trending down to some degree, but on an entirely different scale than those cited by the Applicant in his November 2017 submissions. They are based on 2016 data which, for example cited 6878 persons killed and 12,368 injured. The January report spoke of 69 civilians killed and 327 wounded, while the April UN security report indicated that the numbers had fallen further to 16 civilians being killed and 139 wounded. This information was described in the Minister's delegate's report. I therefore find the general conclusion by the Minister's delegate that the situation was vastly different and improving to be supported by the evidence quoted, none of which was novel or significant in the sense described in *Ahmed.*

[10] An obligation to disclose the April Report could only arise if the Minister's Delegate intended to rely on information it contained relating to a novel and significant change in general country conditions during the time since February 28, 2018. The Applicant has not discharged his onus of establishing that any such change took place. It is also noted that the CBSA's Notice of June 22 2017 advised that the Minister would refer to "the most recent and current country information available at the Immigration and Refugee Board Documentation Centers". I think this is fair, so long as an applicant cannot provide significant evidence to contradict the post-hearing material.

B. *Was the Officer's assessment of the risks to the Applicant unreasonable?*

(1) Security situation in Nasiriyah

[11] For the most part, the Applicant is asking the Court to reweigh the evidence, which of course it cannot do. The only issue of concern is what I would describe as a form of process fact-

finding error, relating to the risk conclusions. The Applicant argues that the Minister's delegate failed to consider and respond to significant evidence raised in the Applicant's submissions that contradicted the risk findings.

[12] Specifically, the Applicant complained that the Minister's delegate did not consider more up-to-date evidence of a serious incident that occurred on October 17, 2017 in the town of Nasiriyah. The Applicant was from this town situated in the southern provinces and where it was implied that he would return to. The passage in question from the decision cites a United Kingdom Home Office *Country Information Guidance Report* of August 12, 2016, is as follows:

> I note that Mr. Salim is from Nasiriyah, which is in the province of Thi-Qar in southern. Iraq, a part of Iraq which was generally less affected by the sectarian strife 2006—2011 as well as by the conflicts between Iraqi throes and ISIL 2014-2017:
>
> > In the mainly Shi'a southern provinces of Najaf, Kerbala, Basra, Wassit, Qadisiya, Thi-Qar, Missan and al-Muthauna, there were no direct confrontations between ISIL and the Iraqi armed forces. The violence in these provinces was limited to sporadic terrorist attacks of decreasing frequency and intensity. The number of civilian casualties is significantly lower than in Babil province, and far below the levels reached in central Iraq, including Baghdad.
>
> According to a November 2017 report, there were fewer than 1000 internally displaced persons in temporary settlements in Thi Qar province as compared with other provinces of Iraq where there are reportedly 100 000 or more (citing a UN HCR report dated November 22, 2017).

[13] In his submissions in November 2017, the Applicant noted that "Although most ISIS activity and attacks are focused in the north and north-west of Iraq, like in Mosul, there have also

been serious attacks in southern Iraq, including in Mr.Salim's hometown of Nasiriyah. Suicide and car bombings have taken place in southern Nasiriyah as recently as on October 11, 2017."

[14] Thus, his submissions confirm that the area, as opposed to the Applicant's town, where the Applicant was likely to return is considerably less volatile and at risk than other areas in Iraq as stated in the decision. The Minister's delegate noted that violence in the provinces where the Applicant resided was limited to sporadic terrorist attacks of decreasing frequency and intensity. The Applicant did not refute this statement in regard to the overall conditions in the provinces described in the passage quoted above. The general conclusion of the Minister's delegate also stated that incidents of terrorism continue to occur in Iraq. The Officer's conclusion—which is supported by the evidence that Mr. Salim would be returning to an area which was considerably more secure than other areas in Iraq— is not unreasonable.

[15] There is no indication that the Minister's delegate overlooked the Applicant's evidence with respect to the October incident in his hometown, given that this information was contained with other information from the Applicant's submissions, which the delegate cited in their decision. I do not find that the Minister's delegate failed to consider evidence provided by the Applicant that contradicted their conclusions.

[16] Although it is not my function to reweigh the evidence, the conclusions appear to be confirmed by the evidence introduced in the matter. As long as there is some evidence to support the findings of the Minister's delegate with respect to risk, the Court cannot interfere. I do not find the evidence with respect to the September 2017 terror incident in Nasiriyah sufficient to

contradict the evidence supporting the overall finding of the Minister's delegate that the situation was markedly improving and that the Applicant would not be at risk on being refouled if he was returning to the southern provinces of Iraq.

(2) Mental health

[17] The Applicant submitted that the Officer's reliance on outdated reports on the availability of mental health care in Iraq was unreasonable.

[18] However, this is not responsive to the Minister's conclusion that "[c]ounsel's suggestion that Mr. Salim would be at risk in Iraq due to his medical needs appears to be overstated". I find that this conclusion is supported by the February 2018 report of Dr. Fedoroff, a head psychiatrist at the Royal Ottawa Mental Health Centre retained by the Applicant to provide expert evidence on his mental health.

[19] The Report provided updated evidence that contradicted the documentary medication evidence from when the Applicant was incarcerated. The Applicant's submission that he "receives Concerta, Wellburtin, Remeron, Seroquel, Olanzopane, Nozinan, and Methoprazine" appears to be directly contradicted by the findings of the Fedoroff report. It notes that the Applicant is "currently taking" Olanzapine for "anxiety" and sleeping pills (Remeron) one every night. No additional medications were noted, and specifically when asked by counsel in the retainer letter what medications he is required to take, Dr. Fedoroff answered "None".

[20] Dr. Fedoroff's diagnosis of the Applicant was that of PTSD (chronic), Polysubstance use (currently in remission), ADHD — may have been self-medicating and possible sleep apnea. When asked whether inpatient, residential mental health treatment or whether outpatient or day programs would be sufficient, Dr. Fedoroff replied that "[o]utpatient treatment would be preferable".

[21] In fact, the only recommendation was that Mr. Salim would benefit from enrolment in a program for treatment of substance abuse (to help him maintain abstinence). He would also benefit from treatment for PTSD and ADHD, ideally in a program familiar with the problems faced by refugees. It was suggested that he participate in a sleep to study to investigate his sleep disorder, to receive appropriate treatment for sleep problems found. He would also benefit from enrolment in an anger management program.

[22] I do not find that the evidence regarding the Applicant's mental health suggests that he was at any significant risk on removal; only that he would benefit from programs, no medication being prescribed beyond what he was already taking for anxiety and sleep issues.

[23] In my view, the evidence does not support a risk situation based on the Applicant's mental health issues that would meet the relatively high standard of his removal shocking the conscience as to breach the Applicant's section 7 *Charter* rights concerning the security of the person.

[24] In any event, the principal criticism of the Applicant was that the Minister's delegate was relying upon out of date evidence from 2009 concerning programs that were available to assist person suffering mental health issues. Attending such programs might have been an option for the Applicant, as recommended by Dr. Fedoroff.

[25] It turned out however, that the Applicant misunderstood the reference. It was to a four year program initiated in 2009, which was being reported on in 2013. Doctors without Borders had worked with the Iraqi Ministry of Health to introduce a program of psychological counseling services in two major cities in Iraq with the intention that it be replicated throughout Iraq.

[26] The articles submitted by Counsel explained that the need for psychological/psychiatric services is greater than what service providers can handle. The Minister's delegate considered this evidence and concluded that this was not to say that services are entirely lacking. Services exist, though limited in number, for those who require mental health treatment in Iraq and this would reduce the likelihood that the Applicant would be unable to access mental health services or require medication should he seek these out.

[27] This evidence, with that of the relatively benign mental health situation of the Applicant, is sufficient to dispose of this issue.

[28] Accordingly, the application is dismissed. No questions are certified for appeal.

JUDGMENT in IMM-3103-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and not question is certified for appeal.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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