Federal Court  Cour fédérale

Date: 20191115

Docket: IMM-794-19

Citation: 2019 FC 1439

Ottawa, Ontario, November 15, 2019

PRESENT: Madam Justice Strickland

BETWEEN:

ZHI YI HUANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment decision ("PRRA") made by a Senior Immigration Officer ("Officer") pursuant to s 112(1) of the *Immigration Refugee Protection Act*, SC 2001, c 27 ("IRPA").

Background

[2] The Applicant, Zhi Yi Huang, is a citizen of China. He entered Canada in May 2007 and sought refugee protection on the basis of his claim that he would be persecuted in China due to

his participation in an underground Christian house church. In a decision dated November 3, 2009, the Refugee Protection Division ("RPD") found that the Applicant was neither a Convention refugee nor person in need of protection pursuant to ss 96 and 97 of the IRPA, respectively. The RPD found that the determinative issue was credibility and drew adverse inferences because of inconsistencies between the Applicant's testimony and his Personal Information Statement ("PIF"). The RPD also described aspects of the Applicant's testimony as vague, confusing, incoherent, and unreasonable.

[3] The Applicant sought leave to commence an application for judicial review of the negative RPD decision, however, leave was denied by this Court on October 3, 2010. Because the Applicant subsequently failed to report at scheduled interviews, a warrant for his arrest was issued on August 13, 2010. The warrant was executed on June 15, 2018, and the Applicant was detained by Canada Border Services Agency ("CBSA").

[4] While in detention, another detainee reported that the Applicant was demonstrating symptoms of a mental illness. CBSA personnel also formed the opinion that the Applicant may suffer from some form of mental health disorder and reported that he had seen Dr. Alikhan on June 25, 2018, and that a follow-up appointment was scheduled for July 2, 2018. Copies of that doctor's notes or reports are not found in the Certified Tribunal Record ("CTR"). According to the Applicant, before his first detention review, which was scheduled for June 19, 2018, an Immigration Division member determined that, due to his mental health, the Applicant required a designated representative. The detention hearing took place the following day after a designated representative was appointed.

[5] Upon his release from detention, the Applicant explained his mental health problems to his counsel and to his supervisor at the Toronto Bail Program, including that he was hearing voices. The Applicant underwent a psychiatric evaluation on September 14, 2018, by Dr. Richard Stall. Dr. Stall prepared a psychiatric opinion, finding that that the Applicant fulfilled the diagnostic criteria for schizophrenia.

[6] The Applicant filed his PRRA application on August 3, 2018, and made additional submissions on August 16, 2018, as well as on September 24, 2018, October 31, 2018, November 1, 2018, and, finally, on November 19, 2018.

[7] The negative PRRA decision is dated October 31, 2018. By letter dated November 1, 2018, the Officer issued an Addendum, of the same date, to the October 31, 2018 PRRA decision ("Addendum 1"). A second addendum, dated December 10, 2018 ("Addendum 2"), followed. The negative PRRA decision and Addendum 1 were communicated to the Applicant on January 19, 2019. Addendum 2 was communicated after the Applicant had filed his Application for Leave and Judicial Review of the negative PRRA decision on February 4, 2019.

[8] This is the judicial review of the negative PRRA decision.

Decision under review

[9] In their decision, the Officer set out the procedural background noting that the RPD had issued a negative decision wherein the RPD found that there were discrepancies and inconsistencies in the Applicant's testimony and in his documentary evidence that led to its finding that the claim was not credible. The Officer then included quoted portions of paragraphs of the RPD decision that addressed credibility (RPD decision, paragraphs 4, 21, and 25).

[10] The Officer found that the risk alleged by the Applicant, that he would be at risk of harm in China because he is a Christian who attended an underground Christian house church, was the same risk considered by the RPD. The Officer reiterated that the RPD found that the Applicant was not credible. The Officer then included the same portions of the RPD decision as the Officer had previously quoted in the background section of their PRRA decision. The Officer stated that in his PRRA application the Applicant disputed his negative RPD finding and asserted that his mental health issues prevented him from remembering facts and giving adequate testimony at his RPD hearing. The Officer stated that a PRRA is not meant to be an appeal of a negative refugee decision but rather, a determination, based on new evidence, of whether an applicant would be at risk of harm if he were to return to his country of origin.

[11] The Officer referred to new country conditions documentation submitted by the Applicant and found that the articles showed that the practice of Christianity was allowed at officially sanctioned churches, and that although China monitored its religious groups, monitoring would not prevent the practice of Christianity or constitute persecution. While the articles also showed that involvement with unauthorized churches often resulted in discrimination or harassment, the Officer found that there was nothing to demonstrate that the Applicant ever attended an unauthorized church in China or that he was presently wanted by the authorities in China because of such attendance. Further, that the Applicant had not submitted any documentation from his family or friends to indicate that the Applicant had ever attended an unauthorized church or was wanted by the authorities in China in that regard. The Officer concluded that the materials did not demonstrate that the Applicant was ever a member of an unauthorized church in China or that he would face a personalized, forward-looking risk of harm from authorities in China because of his Christian religion.

[12] As to the Applicant's claim that he would be at risk in China because of his mental health issues, the Officer acknowledged Dr. Stall's opinion that the Applicant has schizophrenia but noted that the Applicant did not provide evidence of what treatment he required or whether he was receiving treatment since he was interviewed by Dr. Stall. The Officer concluded that the research articles submitted by the Applicant showed that, despite challenges, China has comprehensive mental health care and that one of the biggest barriers to accessing mental health care was that individuals in China do not seek treatment. The Officer found that was not an issue for the Applicant who "is proactively seeking treatment" and there was no evidence that he would not continue to be aware of his mental health issues and seek treatment in China if he were to return there. Further, the Applicant did not submit evidence that he could not access mental health care in China, whether because of location or cost. The Officer also noted that while mental health disorders can sometimes lead to stigmatization and discrimination, the articles that the Applicant submitted did not indicate that such societal behaviours are condoned or encouraged by China's government or authorities. The Officer concluded that the Applicant's materials did not demonstrate that he would face a personalized, forward-looking risk of harm in China, under either ss 96 or 97 of the IRPA, because of his mental health issues.

Addendum 1 – November 1, 2018

[13] The Officer stated only that they had reviewed the (unspecified) additional submissions dated November 1, 2018, but had determined that the negative PRRA decision still stands.

Addendum 2 – December 10, 2018

[14] The Officer stated only that they had reviewed the additional (unspecified) submissions dated November 19, 2018, but had determined that the negative PRRA decision still stands.

Issues and standard of review

[15] The Applicant identifies a number of issues including whether: the Officer's addendum reasons are unintelligible and lacking in justification; the Officer fettered their discretion in refusing to re-assess previous risk allegations in light of new evidence of the Applicant's mental health; the Officer breached natural justice by failing to respond to the explicit request to convoke an oral hearing; the Officer erred in failing to consider the interrelation of the two grounds of risk asserted by the Applicant; and, the Officer failed to reasonably assess the country conditions evidence that contradicts their conclusions.

[16] As will be discussed below, in my view, two issues are determinative. The first is the Officer's treatment of the psychological report and the second is whether the Officer erred in failing to respond to the Applicant's request to convene an oral hearing or to hold an oral hearing.

[17] A PRRA officer's assessment of the evidence involving questions of mixed fact and law is reviewable on a reasonableness standard, as is an officer's treatment of the evidence (*Kahsay v Canada (Citizenship and Immigration)*, 2017 FC 116 at para 6; *Cho v Canada (Citizenship and Immigration)*, 2010 FC 1299 at para 15). I acknowledge that the jurisprudence is unsettled as to the question of whether the granting of an oral hearing is one of procedural fairness, requiring correctness as the standard of review, or one of mixed fact and law, attracting the standard of

reasonableness. However, as I have previously stated, in my view, the standard of reasonableness applies because, as stated in *Ikechi v Canada (Citizenship and Immigration)*, 2013 FC 361 at para 26, a PRRA officer decides whether to hold an oral hearing by considering a PRRA application against the requirements in s 113(b) of the IRPA and the factors in s 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRP Regulations"). Thus, applying s 113(b) is essentially a question of mixed fact and law (*Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 737 at para 40 ("*Chekroun*"); *Majali v Canada (Citizenship and Immigration)*, 2017 FC 275 at para 16 ("*Majali*"); and, *Gjoka v Canada (Citizenship and Immigration)*, 2018 FC 292 at para 12 ("*Gjoka*").

[18] In judicial review, reasonableness is concerned with the existence of justification, transparency, and intelligibility within the decision-making process, and with 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).

Analysis

Psychiatrist's Report

[19] The Applicant submits that pursuant to s 113(a) of the IRPA, PRRA officers have the jurisdiction to reconsider factual and legal issues that were previously considered by the RPD when new evidence is submitted that can temper the RPD's findings, including credibility findings (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13 ("*Raza*"); *Elezi v Canada (Citizenship and Immigration)*, 2008 FC 422 at para 35 ("*Elezi*"); *Roshan v Canada (Citizenship and Immigration)*, 2016 FC 1210 at para 13 ("*Roshan*")).

[20] The Applicant submits that the Officer was required to reconsider the factual issues considered by the RPD – specifically, the credibility of his past involvement with an unauthorized house church in China, in light of the Applicant's new evidence, his schizophrenia diagnosis. In his PRRA application, the Applicant pointed out that the significance of his previously undiagnosed schizophrenia was that it impaired his ability to testify. Because the RPD based its credibility assessment substantially on the Applicant's testimony, the RPD's assessment may have been different had his mental health status been known at that time. In short, the RPD's credibility assessment was no longer reliable in light of the schizophrenia diagnosis. Despite this submission, and the fact that the Officer neither questioned the diagnosis nor that the Applicant was experiencing symptoms at the RPD hearing, the Officer still declined to reconsider the RPD's credibility findings and instead adopted the RPD's conclusions that were central to the Applicant's claim, including that the Applicant never attended an unsanctioned house church in China. The Officer's only consideration of this issue was to state that the PRRA is not meant to be an appeal of a negative RPD decision but rather a determination, based on new evidence, of whether an applicant would be at risk of harm if he was to return to his country of origin. The Applicant submits that the Officer erred by relying on the RPD's findings without considering how the Applicant's schizophrenia diagnosis could affect those findings (*Garcia v Canada (Citizenship and Immigration)*, 2019 FC 1005 at paras 31-33 ("*Garcia*")).

[21] The Respondent's written submissions do not engage with this issue but submit that the Officer did reassess the Applicant's case in light of new evidence because the Officer accepted that the Applicant was a Christian, although one that had not established that he had previously attended an unauthorized house church in China. According to the Respondent, this confirms that the Officer was not absolutely bound to the RPD's reasoning. Further, that the RPD's credibility

determination is not particularly key to a forward-looking risk. The Respondent also submits that "....that there is no way to know with any reasonable certainty why the Applicant gave what he tacitly concedes was unsatisfactory testimony: the Applicant cannot confirm this with anything approaching the required level of certainty and there is no doctor or medical professional who assessed him contemporaneously that can confirm this." Further, that there are other possible explanations for his unsatisfactory testimony. The Respondent submits that the Applicant was represented by counsel before the RPD and, therefore, the issue of a designated representative could have ben raised at that time. Because it was not, this mitigates against an inference being drawn that the Applicant's condition was at issue at that time. Further, because a designated representative was appointed when the Applicant was recently in detention, this illustrates that the "system" acknowledged and dealt with the Applicant's condition when it was clearly present. The Respondent submits that it is mere conjecture that the Applicant's testimony before the RPD was unsatisfactory due to his mental health.

[22] As to Dr. Stall's report, the Respondent's written submissions note that this makes reference to the Applicant's "hearings", so it cannot be determined if the doctor was referring to the RPD hearing or to multiple recent detention review hearings. Further, that if Dr. Stall did intend to provide an opinion that the Applicant's testimony at the RPD hearing was undoubtedly the result of his mental condition, then no reasonable trier of fact could give weight to that statement given that the Applicant was not diagnosed in 2009. Dr. Stall met with the Applicant only once in 2018, and Dr. Stall relied only on the Applicant's narrative which could not possibly support the doctor's opinion. The Respondent submits that the Officer assessed the Applicant in terms of a forward-looking risk of persecution from being a Christian, as the Officer was required to do, and as such the Officer's decision was reasonable.

[23] As a starting point, I would observe that although the Applicant frames this issue as being one of fettering discretion, in my view this is more properly viewed as an issue of the reasonableness of the Officer's treatment of evidence (*Garcia* at paras 31-33; *Roshan* at paras 7, 13). And, although I have set out the Respondent's position as found in its written submissions, wisely, most of these were not pursued at the hearing before me.

[24] Section 113 of the IRPA and the jurisprudence considering it is also significant in addressing this issue. Section 113 concerns the consideration of a PRRA application:

113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	**a)** le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	**b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
…	[…]

[25] The Federal Court of Appeal in *Raza* stated that a PRRA application by a failed refugee claimant is not an appeal or reconsideration of the decision of the RPD to reject a claim for refugee protection. Nevertheless, it may require consideration of some or all of the same factual and legal issues as a claim for refugee protection. The IRPA mitigates the risk of wasteful and

potentially abusive re-litigation by limiting the evidence that may be presented to the PRRA officer. The limitation is found in s 113(a) of the IRPA (*Raza* at para 12). Section 113(a) is based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD (*Raza* at para 13). The Federal Court of Appeal set out a non-exhaustive list of factors to be considered by a decision-maker when assessing the admissibility of new evidence, including credibility, relevance, newness, and materiality. When assessing newness, the decision maker may have to consider if the evidence is new in the sense that it is capable of proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or "contradicting a finding of fact by the RPD (including a credibility finding)".

[26] Here the psychiatric opinion states that, for the purpose of the assessment, Dr. Stall relied on his interview held on August 23, 2018, assisted by an interpreter, and the Applicant's narrative. The report sets out the Applicant's history of events and other background information. It then states:

> MENTAL STATUS EXAMINATION
>
> Mr. Huang presented as casually dressed. He relied on the interpreter for all communication. At times, his speech became very loud and very rapid and the interpreter halted her interpretation, as she did not like the fact that he was yelling at her: she became frightened. Mr. Huang was irritable throughout much of the interview. He did not remember many details rom 2007. He rambled as a historian and was tangential. He described delusions as well as auditory hallucinations.
>
> PSYCHIATRIC OPINION
>
> Mr. Huang is a 31-year-old man who fled to Canada because of persecution. He developed a Psychotic Disorder since arriving in

> Canada. Mr. Huang has had his refugee claim denied due to credibility issues and inconsistencies between oral evidence and information provided in his narrative.
>
> 1. In my opinion, Mr. Huang fulfills the diagnostic criteria for Schizophrenia. This Disorder is defined in the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", Fifth Edition, better known as DSM-5.
>
> 2. The essential features of Schizophrenia are the presence of delusions, hallucinations or disorganized speech and significant decline in occupational, personal or interpersonal function.
>
> 3. Mr. Huang's inconsistencies at his hearings are undoubtedly the result of his Schizophrenic Disorder. Individuals with Schizophrenia have difficulty with concentration and have impairment in their cognitive abilities.
>
> 4. Mr. Huang appeared a credible historian. His attitude towards the interpreter during the interview indicated a lack of control of his emotions as well as an inability to perceive others feelings, as he was becoming louder and louder during the interview without appreciating the effect on others.
>
> 5. It is my opinion, that Mr. Huang should seek treatment from a mental health professional which should improve his concentration and overall level of function.

[27] While the Officer acknowledged Dr. Stall's opinion, the Officer entirely failed to engage with the Applicant's clear submission that the diagnosis of schizophrenia was relevant to the RPD's negative credibility findings and could serve to provide an explanation for why the Applicant's evidence given at that hearing was inconsistent and confused.

[28] This situation differs from *Garcia*, relied upon by the Applicant, as in *Garcia* the officer did not acknowledge a diagnosis of PTSD. Here, the Officer acknowledged that the Applicant had submitted a medical opinion that he suffers from schizophrenia. The Officer also appears to have accepted that diagnosis as he goes on to assess the availability of mental health care in

China. The Officer did not, however, consider whether this new evidence could have brought the RPD's negative credibility findings pertaining to the Applicant's evidence, being the primary basis for its negative decision, into question and whether this required the Officer to revisit those findings. This was despite the fact that Dr. Stall stated that inconsistencies at the Applicant's hearings were "undoubtedly the result of his Schizophrenic Disorder."

[29] It is also of note that another piece of new evidence, an October 31, 2018 letter from the Schizophrenia Society of Ontario, was not addressed by the Officer but is significant as its speaks to the onset of schizophrenia and how it manifests itself:

> **About Schizophrenia**
>
> Schizophrenia is a very serious but treatable illness that has a profound impact on people's day-to-day functioning. Onset of schizophrenia usually occurs in young adults and relapses of acute episodes of psychosis can occur throughout the lifespan, particularly if the illness is left untreated. While symptoms of schizophrenia may first appear in late teenage years/early adulthood, it is not uncommon for people with schizophrenia to receive proper diagnosis much later on in life. Because many people with schizophrenia do not receive a diagnosis right away, they are not connected with necessary services and supports in a timely manner thus compromising their mental health and social wellbeing. We understand that this was the situation for Mr. Huang, who reports hearing auditory hallucinations for many years but never accessed medical care and was only recently diagnosed with schizophrenia.
>
> …Thought disorder is characterised by an inability to concentrate, to connect thoughts logically, or to communicate clearly.
>
> Almost all individuals with schizophrenia experience some cognitive deficit that can range from mild to severe. Research shows that the severity of impairment is greatest in the cognitive domains of working and episodic memory, attention, processing speed, problem-solving and social cognition. This means a person's ability to concentrate, recall details, or communicate clearly and concisely may be significantly compromised. We are aware that Mr. Huang has reported difficulty with his memory and

> concentration, and that during his refugee hearing he became confused. These experiences are consistent with the degree of cognitive deficit common to persons with schizophrenia.

[30] The above letter would appear to be credible evidence explaining why the Applicant may not have been diagnosed, at age 22, when he appeared before the RPD. It could also provide a possible explanation for the RPD's repeated findings that the Applicant's evidence was vague, marked by omissions and inconsistencies, confusing, and incoherent. It could also explain why the Applicant stated that he did not understand questions. I would also note that the RPD stated that it took into account the Applicant's personal circumstances, in particular his nine years of formal education "and his statement that he is not intelligent." The latter point is consistent with the subsequent diagnosis of schizophrenia. This new evidence, and the other new evidence pertaining the Applicant's mental health, appears to have been accepted as admissible by the Officer. The evidence should have been considered by the Officer in their assessment of whether it warranted a revisiting of the RPD's negative credibility findings, which findings the Officer appears to have relied upon heavily, having quoted them twice in their decision.

[31] The Applicant candidly acknowledges that there is no diagnosis of schizophrenia made contemporaneously with the RPD hearing. However, I agree with the Applicant that, at the very least, the Officer should have considered whether the new evidence led to a reasonable inference that the Applicant may have suffered from undiagnosed schizophrenia at the time of the RPD hearing and, if so, whether this is a fact that might have affected the outcome of the RPD hearing, had it been known (see *Garcia* at paras 31-33). The existence of that mental illness could have served to contradict or "temper" the negative credibility findings made by the RPD, necessitating a review of those findings by the Officer (*Elezi* at para 35).

[32] Instead, the Officer stated that the risk alleged by the Applicant was the same risk considered by the RPD, which had been found not to be credible, and that the PRRA was not an appeal of the RPD decision. Further, that the PRRA was intended to be a determination, based on new evidence, of whether an applicant would be at risk of harm if he was to return to his country of origin.

[33] However, as stated by the Federal Court of Appeal in *Raza*, s 113(a) of the IRPA is based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD (*Raza* at para 13). And, while a PRRA is not an appeal of a prior refugee determination, where the PRRA officer admits new evidence which may have affected the outcome of the RPD hearing had it been before the RPD, the PRRA officer may reconsider the same factual or legal issues considered by the RPD (*Roshan* at paras 12-14; *Raza* at paras 12-13).

[34] Further, the new evidence does not have to disclose new risks, as the Officer seems to suggest. Rather, the new evidence can relate to risks that an applicant claimed before the RPD. Where such evidence arises after the RPD decision, it is an error for a PRRA officer not to assess that evidence if the reason the officer gives for not doing so is that the RPD had already assessed the alleged grounds to which the evidence relates (*Jiminez v Canada (Citizenship and Immigration)*, 2016 FC 938 at para 10). Put otherwise:

> [12] While an Officer is obligated to take heed of the RPD decision and its credibility findings (*Obeng v Canada (Citizenship and Immigration)*, 2009 FC 61 at para 29), an exception exists if the Applicant offers new probative evidence to establish the alleged risks (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13). Importantly, the Applicant need not identify

> *new risks*, but only *new evidence* to establish previously identified risks (*Jiminez v Canada (Citizenship and Immigration)*, 2016 FC 938 at para 10 [*Jiminez*]).
>
> [13] As such, the test for the acceptance of new evidence on a PRRA is whether there are "new developments, either in country conditions or in the applicant's personal situation" (*Elezi v Canada (Citizenship and Immigration*), 2007 FC 240 at para 27) which may have affected the outcome of the board hearing *(Jiminez*, at para 11).
>
> (*Kailajanathan v Canada (Citizenship and Immigration)*, 2017 FC 970, emphasis in original.)

[35] In this matter, the Officer does not appear to have recognized that the same risk assessed by the RPD can be revisited in a PRRA, when warranted by the new evidence, and this appears to have circumscribed the Officer's analysis. Had the Officer considered the new evidence concerning schizophrenia in the context of the RPD's credibility findings, the Officer may or may not have found that no change in the RPD's credibility assessment was warranted. However, because the Officer entirely failed to assess the new evidence in this context, the Officer erred, and the decision is unreasonable.

[36] Further, and contrary to the Respondent's written submissions, credibility is significant because the Applicant's involvement in an unauthorized house church is central to his claim of persecution, which the Applicant reiterated in his PRRA submissions.

Oral Hearing

[37] The Applicant points out that in his PRRA submissions, he explicitly requested an oral hearing, stating, "[the RPD's] findings were made without the benefit of information about his serious mental health disorder that impacts his memory and cognition…this unique situation

demands a fresh credibility assessment, and that procedural fairness and section 167 of the *Immigration and Refugee Protection Regulations* require an oral hearing." The Applicant submits that the PRRA Officer made no reference to the Applicant's explicit request and instead adopted the RPD's credibility findings. At a minimum, the Officer should have responded to the Applicant's request for an oral hearing and that failure alone is a reviewable error (*Plata Vasquez v Canada (Citizenship and Immigration)*, 2019 FC 279 at para 12 ("*Vasquez*") and *Montesinos Hidalgo v Canada (Citizenship and Immigration)*, 2011 FC 1334 at paras 21-22 ("*Hidalgo*")).

[38] The Respondent's written submissions note that an oral hearing of a PRRA may be held if there is evidence raising a serious issue of the Applicant's credibility and is related to the factors set out in s 167 of the IRP Regulations. However, the Respondent submits that s 167 was never triggered because the Officer's decision was made based on the country condition evidence, assuming the credibility of Applicant's Christianity. The Respondent also questions the genuineness of the Applicant's claimed interest in an oral hearing given that the Applicant stressed in his submissions that he makes a very poor oral witness when his mental health condition is untreated.

[39] This Court has previously held that an oral hearing is not required in the normal course of deciding a PRRA application. However, s 113(b) of the IRPA states that a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required.

[40] The prescribed factors are set out in section 167 of the IRP Regulations:

167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**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) 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;	**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) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[41] As I have previously addressed in *Majali* and *Gjoka*, this Court has examined s 113(b) of the IRPA and s 167 of the IRP Regulations and held that the latter is to be interpreted as a conjunctive test. Therefore, an oral hearing is generally required if there is a credibility issue regarding evidence that is central to the decision and which, if accepted, would justify allowing the application (*Strachn v Canada (Citizenship and Immigration)*, 2012 FC 984 at para 34 citing *Ullah v Canada (Citizenship and Immigration)*, 2011 FC 221).

[42] Further, when an applicant requests an oral hearing, it is incumbent upon the Officer to respond to that request (*Chekroun* at para 72; *Zokai v Canada (Citizenship and Immigration)*, 2005 FC 1103 at paras 11-12 ("*Zokai*"); *Vasquez* at para 12; and, *Hidalgo* at para 21).

[43] Here, as in *Zokai*, there is no evidence that the Officer turned their mind to the appropriateness of holding an oral hearing. That is, beyond checking the box on the PRRA decision form stating that no oral hearing was held, which this Court has found falls short of

constituting adequate reasons (*Hidalgo* at paras 21-22). The Officer therefore also erred in failing to respond to the request for an oral hearing.

JUDGMENT in IMM-794-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is sent back for redetermination by a different PRRA officer.

3. No question of general importance for certification was proposed by the parties and none arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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