Federal Court  Cour fédérale

Date: 20200204

Docket: IMM-3278-19

Citation: 2020 FC 193

Toronto, Ontario, February 4, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

IMEDA SIMONISHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Delivered from the Bench in Toronto, Ontario on February 3, 2020 and edited for syntax, grammar and case citations)

I. Overview

[1] The Applicant, Imeda Simonishvili, seeks judicial review of a decision dated May 8, 2019 made by a Senior Immigration Officer [Officer] refusing his pre-removal risk assessment [PRRA] application.

[2] The Applicant is a citizen of Georgia. He arrived in Canada in 2014 and made a claim for refugee protection based on his alleged fear of the ruling Georgian Dream Party [GDP] due to his political affiliation as a high-profile member of the National Movement of Georgia, an opposition party.

[3] In a decision dated June 16, 2015, the Refugee Protection Division [RPD] dismissed the Applicant's claim. The Applicant's credibility and the insufficiency of objective evidence to substantiate his claim were the determinative issues. On August 31, 2015, the Refugee Appeal Division upheld the decision of the RPD and dismissed the Applicant's appeal. The Applicant subsequently filed an application for leave and judicial review, which this Court dismissed at the leave stage.

[4] In March 2019, the Applicant applied for a PRRA. In his application, he alleges that since the rejection of his refugee claim, members of the GDP have visited his parents and attempted to get information about his whereabouts. Because of these threats, the Applicant's wife and son moved away from Georgia in October 2018. In December 2018, the individuals in question beat his father, causing him several injuries requiring medical treatment. Despite his parents moving away the next month, they were found by the agents of persecution and were again attacked. The Applicant alleges that police authorities refused to intervene. The Applicant included four (4) letters from his family and friends to corroborate his allegations that supporters of the GDP continue to target him and his family members.

[5] The Applicant's PRRA application was refused on May 8, 2019.

[6] While the Officer accepted the letters from the Applicant's father, sister, neighbour and friend as new evidence, the Officer found they had no probative value. The Officer made this finding after noting that : (1) the quality of the translation of the letters was poor; (2) the language of each letter was essentially identical; (3) the letters lacked detail and did not establish some of the main events at issue; (4) the letters and their translations were not dated; (5) there was no explanation as to when and how the documents were sent to the Applicant; (6) the letters referred to allegations deemed not credible by the RPD; and, finally (7) the letters were not corroborated by other credible evidence.

[7] The Officer also consulted the objective documentation and found that there had not been significant adverse changes since the rejection of the Applicant's refugee claim. Considering the Applicant's personal profile, the Officer found that he did not face risk upon return and that he had not shown that he would need state protection. Finally, the Officer rejected the Applicant's request for an oral hearing on the basis that, in the absence of credibility findings, the factors set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 had not been met.

[8] The Applicant contends that the Officer's assessment of the evidence is unreasonable and that the Officer was obliged to hold an oral hearing given the credibility findings made against him.

II. Analysis

[9] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] held that reasonableness is the presumptive standard of review for decisions made by administrative decision makers, although the presumption can be rebutted in two (2) types of situations (*Vavilov* at paras 10, 16-17). None of these situations apply here.

[10] When the reasonableness standard applies, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The reviewing court must consider "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Close attention must be paid to a decision maker's written reasons and they must be read holistically and contextually (*Vavilov* at para 97). It is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). If "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision", it is not for the reviewing court to substitute the outcome it would prefer (*Vavilov* at para 99).

[11] Upon review of the record and the Officer's reasons, I am satisfied that the Officer's decision is reasonable and that no oral hearing was required.

[12] Contrary to the Applicant's assertion, the Officer did not find the documents to be fraudulent. I am also not persuaded that the Officer made veiled credibility findings. I accept, as the Applicant contends, that a conclusion of insufficient evidence may actually amount to a veiled credibility finding and that it is sometimes difficult to distinguish a finding of insufficient evidence from a veiled credibility finding. However, in this case, the Officer's concerns regarding the letters were valid and when read as a whole, I am satisfied that they relate to their probative value. In my view, the Officer reasonably found that the Applicant's new evidence was insufficient to support the allegation that he and members of his family continued to be targeted by supporters of the GDP. The Officer did not impugn the Applicant's general credibility. Moreover, I also find that the evidence in question would not have supported a positive outcome on the PRRA application. As a result, no oral hearing was required.

[13] The Applicant is essentially asking this Court to reweigh the evidence. That is not the role of this Court (*Vavilov* at para 125).

[14] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-3278-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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