

Federal Court



Cour fédérale

Date: 20210707

Docket: IMM-574-20

Citation: 2021 FC 713

Ottawa, Ontario, July 7, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AKA

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision by an Enforcement Officer of the Canada Border Services Agency dated January 23, 2020, dismissing a request for an administrative stay of a removal order.

[2] The Applicant is a citizen of India and sought refuge in Canada for fear of risk to life or of serious harm by authorities for events surrounding her father's death, including allegations of

sexual assault by a police officer. The refugee claim was rejected in 2014 for lack of credibility and for conduct incompatible with a fear of persecution; an application for leave of this decision was later dismissed by the Federal Court in January 2015. The Applicant thereupon submitted a pre-removal risk assessment (PRRA) application, which was later rejected in July 2019, leave for judicial review dismissed. A humanitarian and compassionate application followed therein.

[3] On February 5, 2020, a removal order was issued against the Applicant and, on January 23, 2020, her request for an administrative stay of the order was refused by an Enforcement Officer, ultimately granted by this Court pending the current judicial review.

[4] This judicial review relates to the reasonability of the Officer's decision. As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85, a "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation of the facts and law that constrain the decision maker".

[5] The Applicant submits that the Officer disregarded the situation of impunity in India, failed to consider the Applicant's lack of effective representation and erred in the assessment of the medical evidence on her diagnosis and related treatment. It is also argued that the reasons provided on risk upon return are insufficient and unfounded. In this regard, the Officer would have adopted an erroneous standard in assessing the prospective risk of persecution.

[6] In the present case, the Officer found that a pending H&C application does not provide a stay of removal and that its conclusion was not imminent. The Officer also found that a prospective second PRRA application would equally not automatically stay the removal.

[7] The Officer additionally found that risks upon return had previously been examined in prior immigration proceedings. The Officer found no new or credible documentary evidence of new risks, nor was there medical evidence suggesting that the removal could not take place or that treatment would not be available in India.

[8] The Court is not satisfied that the Officer's decision is reasonable for insufficiency of reasons with respect to the issue below.

[9] The Applicant was subject to post-determination risk assessment, which found no objectively identifiable risk in returning her to India. A letter dated January 20, 2020 co-signed by a social worker, a specialized nurse practitioner and a doctor relating to the Applicant's health shows the exact opposite for reasons to her person, demonstrating peril in her regard.

[10] With regard to the letter, the Officer remarked that there was no indication that the Applicant suffers from a medical condition that would prevent her from flying back to India, nor that medical follow-up and medication would not be available in India. According to the letter from medical practitioners, it demonstrates the opposite of the Officer's findings. The Applicant has been consulting a general practitioner since 2011 for depression and post-traumatic

symptoms resulting from sexual violence; the Applicant is receiving pharmacological treatment; and has had suicidal ideation since 2011, which has increased lately according to this evidence.

[11] The Court finds that due consideration was not given to the evidence; the letter plainly does provide grounding for the Officer to exercise the limited discretionary power which the Officer does hold in such cases. There is an indication of history and progression of treatment. The Court refers to the stay of removal decision in the file with significant reasons thereon.

[12] For the foregoing reasons, the application for judicial review is granted.

JUDGMENT in IMM-574-20

THIS COURT'S JUDGMENT is that the judicial review be granted and that the matter be sent to another enforcement officer for consideration anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-574-20

STYLE OF CAUSE: AKA v THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 29, 2021

JUDGMENT AND REASONS: SHORE J.

DATED: JULY 7, 2021

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