Federal Court  Cour fédérale

Date: 20210824

Docket: IMM-3164-20

Citation: 2021 FC 873

Ottawa, Ontario, August 24, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

OLEKSANDR CHEREDNYK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Oleksandr Cherednyk is a citizen of Ukraine. He seeks judicial review of an adverse Pre-Removal Risk Assessment [PRRA].

[2] Mr. Cherednyk entered Canada in 2007 on a visitor's visa. He claimed refugee protection based upon an alleged fear of persecution by criminal extortionists in Reshetilovka, Poltava Region. Mr. Cherednyk's refugee claim was denied, but an application for leave and judicial review was allowed by this Court in 2014.

[3] In 2013, Mr. Cherednyk was reported as inadmissible based on serious criminality following his conviction in Canada for fraud over $5,000.00. He was therefore no longer eligible to pursue his refugee claim.

[4] Mr. Cherednyk requested a PRRA in 2014. The Minister's Delegate rendered an adverse decision on June 8, 2020, finding that Mr. Cherednyk had a viable internal flight alternative [IFA] in Kiev.

[5] The decision of the Minister's Delegate was reasonable. The application for judicial review is therefore dismissed.

I. Background

[6] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected Mr. Cherednyk's refugee claim on December 3, 2012, finding that the risk he faced in Ukraine was general and not personalized. This Court allowed Mr. Cherednyk's application for leave and judicial review of the RPD's decision in 2014 (*Cherednyk v Canada (Citizenship and Immigration)*, 2014 FC 282 [*Cherednyk*]). The Court found that the risk to Mr. Cherednyk had

become personalized following his assault by members of the criminal gang, and remitted his claim to the RPD for redetermination.

[7] In April 2013, Mr. Cherednyk pleaded guilty to fraud over $5,000.00. He received a suspended sentence and 12 months of probation.

[8] On September 27, 2013, Mr. Cherednyk was reported pursuant to s 44 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA] as inadmissible to Canada for serious criminality under s 36(1)(a). A deportation order was issued against him on October 24, 2013.

[9] Mr. Cherednyk requested a PRRA on July 23, 2014. Because he had been reported as inadmissible due to serious criminality, the PRRA was governed by ss 112(3) and 113 of the IRPA. Pursuant to s 112(3) of the IRPA, Mr. Cherednyk was no longer eligible for refugee protection in Canada. Pursuant to s 113(e)(i), consideration of the PRRA was limited to ss 96 to 98 of the IRPA and whether Mr. Cherednyk posed a danger to the public. This is commonly referred to as a "Restricted PRRA".

[10] A Restricted PRRA is considered in accordance with s 172 of the *Immigration and Refugee Protection Regulations*, SOR 2002/227. The process consists of two written assessments: a Risk Assessment based on the factors enumerated in s 97 of the IRPA; and a Restriction Assessment based on the factors enumerated in s 113(d)(i). The Minister's Delegate must consider both assessments and any written representations made by the applicant before rendering a decision.

[11] The Risk Assessment was completed in March 2015, and concluded that Mr. Cherednyk would be at risk of persecution if he returned to Ukraine. The Restriction Assessment was completed in 2017, and provided an overview of Mr. Cherednyk's criminality in Canada, aggravating factors, sentences, probation and rehabilitation.

[12] On March 9, 2020, the Minister's Delegate provided Mr. Cherednyk with an opportunity to make submissions regarding the PRRA generally. In May 2020, the Minister's Delegate gave Mr. Cherednyk an opportunity to make submissions regarding a possible IFA in Kiev. Mr. Cherednyk responded through counsel on March 23, 2020 and May 19, 2020 respectively.

[13] The Minister's Delegate issued an adverse decision in June 2020. The Minister's Delegate found that Mr. Cherednyk had been the owner of a small taxi business in Ukraine, where he had been persecuted by criminal extortionists. Consistent with this Court's decision in *Cherednyk*, the Minister's Delegate acknowledged that the risk had become personalized following Mr. Cherednyk's assault by members of the criminal gang.

[14] The Minister's Delegate acknowledged that crime and corruption are widespread in Ukraine. Nevertheless, the Minister's Delegate found that an IFA was available in Kiev. The Minister's Delegate observed that the criminal extortionists operated locally, and there was little evidence to demonstrate they would have the ability to locate Mr. Cherednyk upon his return, or the incentive to pursue him given the passage of time since he left Ukraine in 2007. The proposed IFA was held to be reasonable, because challenges arising from the COVID-19

pandemic and the high cost of living were faced by all residents of Kiev, and were not personal to Mr. Cherednyk.

II. Issue

[15] In his written submissions, Mr. Cherednyk challenged the decision of the Minister's Delegate on two grounds: he alleged that the decision failed to address the danger he posed to the Canadian public, as required by s 113(d)(i) of the IRPA; and he also argued that the determination he had a viable IFA in Kiev was unreasonable. In oral submissions, Mr. Cherednyk's counsel abandoned the former argument, and proceeded with only the latter.

[16] Accordingly, the sole issue raised by this application for judicial review is whether the decision of the Minister's Delegate was reasonable.

III. Analysis

[17] A Restricted PRRA is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10; *Selvasabapathipillai v Canada (Citizenship and Immigration),* 2019 FC 1523 at para 18). The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls

within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[18] Mr. Cherednyk says there was no material change in circumstances to justify a departure from the determination made in March 2015 that he was at risk of persecution in Ukraine. He therefore argues that the decision of the Minister's Delegate, just three years later, that he was not at risk must be unreasonable.

[19] The officer who completed the Risk Assessment in March 2015 was not making a final decision, but conducting a preliminary assessment: "I am not the decision maker in the case at hand as the applicant is described in section 112(3) of IRPA. I am providing an opinion to Case Management […]"

[20] When Mr. Cherednyk was invited to make submissions on the PRRA and proposed IFA in 2017, he was informed as follows:

> 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.

[21] As this Court held in *Placide v Canada (Citizenship and Immigration)*, 2009 FC 1056 at paragraph 63: "In this context, it is obvious that the PRRA officer who conducted the assessment […] merely gave advice or made a suggestion that is not binding upon the Minister's Delegate

[…]". Similarly, in *Ruz v Canada (Citizenship and Immigration)*, 2018 FC 1166 Justice Catherine Kane held as follows (at para 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.

[22] It was therefore open to the Minister's Delegate to reach different conclusions from those contained in the Risk Assessment and Restriction Assessment. This included assessing the viability of a possible IFA, which was not considered by the officer who prepared the Risk Assessment in March 2015. There is no suggestion that Mr. Cherednyk was denied the opportunity to make submissions respecting the proposed IFA.

[23] The test for a viable IFA is well-established (*Rasaratnam v Canada (Minister of Employment & Immigration)*, [1992] 1 FC 707 (FCA) at paras 5-6, 9-10): first, the decision maker must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA to exist; and second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there. Both prongs of the test must be satisfied.

(1) Whether there is a Serious Possibility of Persecution in the Proposed IFA

[24] Mr. Cherednyk says that the Minister's Delegate misconstrued or ignored material facts. In particular, Mr. Cherednyk argues that the Minister's Delegate failed to consider evidence that the criminal extortionists had ties to the police, and would therefore be able to locate him in Kiev through the national registration system.

[25] Mr. Cherednyk also maintains that the Minister's Delegate unreasonably assumed the criminals would no longer be interested in pursuing him more than 12 years after he had left the country. In the absence of an adverse credibility finding, Mr. Cherednyk says he was in the best position to assess his own personal risk.

[26] Mr. Cherednyk asserts that the police told the criminals he had relocated to Kharkov. While there was evidence before the Minister's Delegate that the police in Kharkov had stopped Mr. Cherednyk, and that members of his family were interrogated by the extortionists regarding his location, there was no evidence that the interrogations resulted from information supplied by the police. Nor was there any evidence that the criminal extortionists travelled to Kharkov in pursuit of Mr. Cherednyk.

[27] The Minister's Delegate acknowledged publicly-available resources that confirmed widespread police corruption in Ukraine, but there was no direct evidence that Mr. Cherednyk's persecutors in fact had ties to the police. This conclusion of the Minister's Delegate was reasonably supported by the evidence.

[28] Mr. Cherednyk's counsel has previously argued before this Court that inferences cannot reasonably be drawn from the mere passage of time (*Vyshnevskyy v Canada (Citizenship and Immigration)*, 2020 FC 881 [*Vyshnevskyy*] at paras 30-35). In that case, the applicant also claimed to fear persecution by a criminal gang in Ukraine. The RPD relied on the passage of time (nine years) in support of its conclusion that that the criminals no longer had the motivation to pursue Mr. Vyshnevskyy. Justice Peter Pamel concluded that, in the absence of objective evidence that the criminals remained interested in pursuing him, it was reasonable to take the passage of time into consideration when assessing risks under s 97 of the IRPA (at paras 33, 35).

[29] Justice Pamel also rejected the argument, made here as well, that absent a negative credibility finding, the applicant was in the best position to assess his own personal risk. Justice Pamel held that the burden was on the applicant to present evidence of conditions that would jeopardize his life and safety (*Vyshnevskyy* at para 32).

[30] I see no reason to depart from Justice Pamel's reasoning in *Vyshnevskyy*. In this case, the Minister's Delegate acknowledged evidence that the criminals had attempted to locate Mr. Cherednyk in 2007, and had intimidated his family. However, the Minister's Delegate reasonably found there was no recent evidence that the criminals had either the incentive or the interest to pursue him presently.

(2) Whether the proposed IFA is Reasonable

[31] The burden was on Mr. Cherednyk to demonstrate that it would be objectively unreasonable for him to relocate to the proposed IFA. The threshold for demonstrating that a proposed IFA is unreasonable is very high (*Vyshnevskyy* at paras 51-52).

[32] Mr. Cherednyk says that the Minister's Delegate gave insufficient weight to generalized risks, as these are also risks that Mr. Cherednyk will face personally. Mr. Cherednyk argues that the Minister's Delegate did not consider the obstacles he will encounter in registering under Ukraine's national registration system. If he is unable to register, he says he will be denied access to government services including his pension and medical care. Mr. Cherednyk also submits that the Minister's Delegate failed to consider the risks associated with the COVID-19 pandemic.

[33] Once again, similar arguments were made in *Vyshnevskyy*. Justice Pamel found the applicant to be "stretching the evidence", which suggested "difficulty, not impossibility of registration" (*Vyshnevskyy* at para 54). The same conclusion is warranted here.

[34] The Minister's Delegate found that Mr. Cherednyk may encounter difficulty in finding rental accommodation, and therefore registering, but these challenges "are aspects of daily life faced by all residents of Kiev and Ukraine as a whole". While Mr. Cherednyk would experience these challenges personally, the Minister's Delegate reasonably concluded that they would not rise to the level of jeopardizing Mr. Cherednyk's life or safety.

IV. Conclusion

[35] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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