Federal Court  Cour fédérale

Date: 20220114

Docket: IMM-5998-20

Citation: 2022 FC 41

Ottawa, Ontario, January 14, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

LUIS ERNESTO RODRIGUEZ RAMOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Luis Ernesto Rodriguez Ramos, seeks judicial review of a senior immigration officer's (Officer) decision that refused his pre-removal risk assessment (PRRA). The Officer was not satisfied Mr. Rodriguez Ramos would face a serious possibility of persecution or a danger of torture, a risk to his life, or a risk of cruel and unusual treatment or

punishment upon return to El Salvador: sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] Mr. Rodriguez Ramos came to Canada as a landed permanent resident in March 2005, when he was 12 years old. He has not returned to El Salvador since then. In July 2020, Mr. Rodriguez Ramos was found inadmissible to Canada on grounds of serious criminality: paragraph 36(1)(a) of the *IRPA*. A deportation order was issued on August 6, 2020. As a result, Mr. Rodriguez Ramos lost his permanent residence status.

[3] Mr. Rodriguez Ramos suffers from severe mental illness. He is suicidal and schizophrenic.

[4] Mr. Rodriguez Ramos' PRRA was refused on November 12, 2020. By order of this Court dated November 23, 2020, his removal to El Salvador was stayed pending the final determination of this application for judicial review of the PRRA decision.

[5] On this application, Mr. Rodriguez Ramos asserts that the PRRA decision is unreasonable in that the Officer failed to conduct a cumulative and intersectional assessment of his risks, and ignored evidence that contradicted their findings.

[6] For the reasons below, Mr. Rodriguez Ramos has established that the PRRA decision is unreasonable. Accordingly, this application for judicial review is allowed.

II. **Issue and Standard of Review**

[7] The sole issue on this application is whether the PRRA decision is unreasonable. Mr. Rodriguez Ramos' written representations divide his arguments into two sub-issues and I have divided my analysis in the same way:

1. Did the Officer fail to conduct a cumulative and intersectional risk assessment?
2. Did the Officer ignore evidence that directly contradicted their findings?

[8] The parties agree that the applicable standard of review is reasonableness, following the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In applying the reasonableness standard, the Court must ask whether the decision under review bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

A. *Did the Officer fail to conduct a cumulative and intersectional risk assessment?*

[9] In his PRRA submissions, Mr. Rodriguez Ramos alleged a risk of persecution or harm in El Salvador under sections 96 and 97 of the *IRPA*, due to his profile as a returnee with severe mental illness. Specifically he alleged that, as someone returning to El Salvador from a developed country after leaving as a child, he would stand out as a target for extortion by gang members, and he would also be targeted by the police because he is being deported for

criminality. He alleged that his mental illness is an aggravating factor that heightens his personal risk: the agitated and erratic behaviours caused by his illness, which are partly controlled by the medication he receives in Canada, are likely to worsen without access to consistent treatment. Mr. Rodriguez Ramos alleged that his behaviours are likely to be perceived as acts of resistance that would put him at risk from gang members, the police would not protect him, and in fact he would face risk at the hands of the police. He relied on *Djubok v Canada (Minister of Citizenship and Immigration)*, 2014 FC 497 [*Djubok*] for the principle that cumulative risk factors should not be assessed in "silos" if the factors intersect and overlap in a way that exacerbates an individual's risk.

[10] The Officer accepted that Mr. Rodriguez Ramos suffers from schizophrenia and requires medication to control his symptoms, and also accepted that his mental illness is an innate and unchangeable characteristic that may qualify as "membership in a particular social group" under section 96 of the *IRPA*. However, the Officer concluded that Mr. Rodriguez Ramos would not face persecution by state or non-state actors as a result of his mental illness. The Officer found Mr. Rodriguez Ramos' arguments—that he would be targeted by gangs and his schizophrenic behaviours are likely to be perceived as acts of resistance that could cost him his life, and that he would be targeted and abused by police because his deportation would be viewed as being due to criminality—to be conjectural.

[11] The Officer considered whether Mr. Rodriguez Ramos' mental health will deteriorate if he is returned to El Salvador, finding that any risk caused by inadequate mental health care in El Salvador does not qualify as a section 97 risk by virtue of subparagraph 97(1)(b)(iv) of the *IRPA*,

and Mr. Rodriguez Ramos did not allege that El Salvador would withhold treatment for a persecutory or personal reason. The Officer found that the risk of being targeted by gangs is not a risk that is personal to him. Similarly, the Officer found that the risk of persecution by police is not a personalized risk.

[12] Mr. Rodriguez Ramos alleges the Officer assessed aspects of his risk profile separately, without engaging with his full risk profile. He argues that the Officer discarded the mental illness aspect of his risk profile based on arguments he did not present—that treatment would be withheld for a persecutory reason or that inadequate medical care would be directly responsible for the anticipated harm—and analyzed the risks from gang members and the police without regard to his mental illness and criminal record. In this regard, the Officer found the risk of gang violence to be a generalized risk felt by all inhabitants of El Salvador, and not a risk that is personal to Mr. Rodriguez Ramos. The Officer also found there was little evidence to demonstrate that the police would suspect he was affiliated with gang members simply as a result of returning to El Salvador, and did not consider this to be a personalized risk.

[13] Mr. Rodriguez Ramos submits that his mental illness and criminal record are key factors that contribute to his heightened risk of persecution or harm from gang members and the police. He argues the Officer failed to consider the intersectionality of his risk profile, and erred by assessing his risk factors in discrete silos rather than considering their cumulative effect: *Djubok* at para 18; *Gorzsas v Canada (Minister of Citizenship and Immigration)*, 2009 FC 458 at para 36 [*Gorzsas*]; *Kusmez v Canada (Minister of Citizenship and Immigration)*, 2015 FC 948 at

paras 17-19; *Vilvarajah v Canada (Minister of Citizenship and Immigration)*, 2018 FC 349 at paras 11 and 21.

[14] The respondent submits the Officer reasonably found Mr. Rodriguez Ramos' arguments of increased risk due to his behaviours to be speculative, and not grounded in evidence that gangs target or persecute people with mental illness. Mr. Rodriguez Ramos simply failed to provide sufficient, non-speculative evidence that he would be persecuted because of his mental illness. The respondent submits that Mr. Rodriguez Ramos' alleged risk as a returnee is not supported by jurisprudence. This Court has repeatedly stated that returnees who may be perceived as wealthy are not members of a "particular social group" under section 96 of the *IRPA* (*Cius v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1 at para 18 [*Cius*]; *Regala v Canada (Minister of Citizenship and Immigration)*, 2020 FC 192 at para 22 [*Regala*]). The respondent points out that everyone who applies for a PRRA is a returnee, and the Officer's lack of engagement with an unmeritorious argument does not render the decision unreasonable. Since Mr. Rodriguez Ramos' claim of persecution as a returnee was unfounded, the respondent submits the Officer analyzed the risk of persecution based on his mental illness alone.

[15] In reply, Mr. Rodriguez Ramos argues that *Cius* and *Regala* do not lay down a general principle that returnees can never qualify as a particular social group. Whether returnees qualify as a particular social group must be determined on a case-by-case basis, and Mr. Rodriguez Ramos argues the Officer did not consider the country condition evidence that was presented regarding returnees to El Salvador in particular. Moreover, he states that he did not present a risk of persecution based on being a returnee alone, but rather a returnee with severe mental

illness, and he supported the risk with evidence. As such, there was no basis for the Officer to reject his arguments as unmeritorious.

[16] In my view, the Officer did not adequately engage with Mr. Rodriguez Ramos' allegations of risk, and failed to assess risk based on the full risk profile as alleged.

[17] As noted above, in his PRRA submissions Mr. Rodriguez Ramos alleged a risk of persecution or harm as a returnee who is afflicted with serious mental illness, and a returnee who would be suspected of criminality. He alleged that he would be targeted by gangs as a readily identifiable returnee, and the erratic and agitated behaviours caused by schizophrenia would put him at risk of being harmed or killed because gang members will perceive those behaviours as acts of resistance. He also alleged that he would be targeted by the police because violent street gangs in present-day El Salvador are a consequence of, among other factors, the deportations of Salvadorian gang members from the United States and the police would assume he was deported for criminality. Country condition evidence describes police abuses against people who are suspected of being linked to gangs or criminal activities, including arbitrary detention, killings, disappearances, and torture.

[18] In my view, the Officer rejected Mr. Rodriguez Ramos' arguments without adequate justification, asserting that they were conjectural or that the alleged risks were not personal to him without providing further explanation and without addressing the evidence in the record. As a result, instead of assessing Mr. Rodriguez Ramos' cumulative risk from the intersecting aspects of his profile, the Officer separated aspects of his risk profile when assessing the risks of

persecution or harm. The Officer assessed the risk of persecution as a result of mental illness based on whether he would be denied treatment, and the risk from gang members based on his status as a returnee without regard to the schizophrenic behaviours. The Officer dismissed the alleged risk of abuse by the police against those who are suspected of being linked to gang or criminal activities on the basis that there was "little evidence on file demonstrating the police would suspect the applicant was linked or affiliated to gang members simply as a result of his returning to El Salvador". The Officer did not address Mr. Rodriguez Ramos' submission that the police associate deportees with criminality, and did not consider the fact that Mr. Rodriguez Ramos has a criminal record and he is in fact being deported for criminality.

[19] As noted above, Mr. Rodriguez Ramos relies on *Gorzsas* and *Djubok* in support of his position. While I find these cases to be instructive, they also present a point of distinction. An analysis under section 96 of the *IRPA* is based on Convention grounds of persecution, and in *Gorzsas* and *Djubok*, there was no issue regarding whether the risk factors considered as part of the intersectional analysis related to Convention grounds of persecution under section 96. In contrast, the respondent's position in this case is that a "social group" under section 96 is informed by anti-discrimination notions (*Cius* at para 17, citing *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1 at 33-34), and the Officer did not err by separating a risk based on being a returnee as part the section 96 analysis.

[20] Nonetheless, I disagree with the respondent that the Officer reasonably focused on mental illness separately because the risk of being targeted as a returnee is not based on a section 96 Convention ground. The PRRA decision does not state that the Officer separated any aspect of

Mr. Rodriguez Ramos' risk profile for this reason, and does not provide a justification for the Officer's approach. Instead, I agree with Mr. Rodriguez Ramos that it appears the Officer simply did not address his full risk profile. The Officer seemed to reject Mr. Rodriguez Ramos' allegations of risk as being conjectural or not personal to him based on a sequential analysis of aspects of his risk profile that he had alleged to be intersecting, and to heighten risk when considered together.

[21] In summary, Mr. Rodriguez Ramos presented a combined risk profile that was central to his alleged risks. By assessing his risks separately, the Officer did not assess the risk profile as "the sum of its parts". The Officer's findings about the alleged risks from gangs or the police were made without regard to the behaviours caused by Mr. Rodriguez Ramos' mental illness or his criminal record, which were presented as key factors that defined his risk profile. I find that these errors amount to a sufficiently serious shortcoming so as to render the decision unreasonable: *Vavilov* at para 100.

B. *Did the Officer ignore evidence that directly contradicted their findings?*

[22] Mr. Rodriguez Ramos alleges that the Officer ignored evidence contradicting the finding that the risk he would face upon return to El Salvador is conjectural, or not personalized. According to Mr. Rodriguez Ramos, this included: (i) evidence showing that his mental health will deteriorate if his medication is interrupted; (ii) uncontested evidence on the lack of medication and mental health care resources in El Salvador; (iii) country condition evidence about returnees being extorted, gang member violence against individuals who do not abide by gang rules, and persecution of deportees by the El Salvador police; (iv) affidavit evidence from

Mr. Rodriguez Ramos' elderly grandmother, his only remaining relative in El Salvador, about her inability to provide or pay for necessary care and assistance for Mr. Rodriguez Ramos and the existence of gang violence in her neighbourhood.

[23] With respect to the Officer's section 97 analysis in particular, Mr. Rodriguez Ramos submits that Salvadorans in general do not face the risks he faces as someone who is a returnee with family abroad, and with a mental illness that requires consistent medication. Furthermore, Mr. Rodriguez Ramos submits the medical exclusion under subparagraph 97(1)(b)(iv) of the *IRPA* does not apply to his case, as that provision only excludes protection where inadequate medical care is directly responsible for the anticipated harm, whereas his anticipated harm is at the hands of gang members and the police: *Ferreira v Canada (Minister of Citizenship and Immigration)*, 2014 FC 756 at paras 11-14 [*Ferreira*]; *Level v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1226 at paras 21-29 [*Level*]; *Lemika v Canada (Minister of Citizenship and Immigration)*, 2012 FC 467 at para 26.

[24] Turning first to the exclusion under subparagraph 97(1)(b)(iv) of the *IRPA*, the Officer stated that the exclusion would apply, but did not explain why it would apply to the alleged risk from gangs or the police, where untreated mental illness heightens Mr. Rodriguez Ramos' risk. The Officer did not address the principles set out in the jurisprudence (particularly *Ferreira* and *Level*), and it appears that those principles are applicable to the facts of this case.

[25] Turning next to Mr. Rodriguez Ramos' submissions that the Officer ignored objective country condition evidence and personalized evidence, I note that the PRRA decision states that

the Officer read Mr. Rodriguez Ramos' submissions and the country condition documents that he presented. The decision also sets out a number of passages from the country condition evidence. Apart from the failure to mention the grandmother's affidavit, there is no indication that the Officer ignored any evidence.

[26] However, I agree with Mr. Rodriguez Ramos that the Officer failed to engage with the personal and country condition evidence that Mr. Rodriguez Ramos presented. Four pages of the PRRA decision consist of excerpts from the country condition evidence that support Mr. Rodriguez Ramos' arguments, yet the Officer dismissed the evidence summarily with a statement that the risks described in the documentation are general to the population as a whole, and not specific to Mr. Rodriguez Ramos. Contrary to the respondent's argument, in my view the PRRA decision does not reflect a careful consideration or a balanced assessment of the evidence.

IV. **Conclusion**

[27] Mr. Rodriguez Ramos has established that the Officer's decision is unreasonable. The decision shall be set aside, and remitted to a different decision maker for redetermination.

[28] Neither party proposes a question for certification. In my view, no such question arises in this case.

JUDGMENT IN IMM-5998-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.

2. The Officer's decision is set aside, and the matter shall be remitted to a different decision maker for redetermination.

3. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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