Federal Court  Cour fédérale

Date: 20220622

Docket: IMM-4776-20

Citation: 2022 FC 938

Ottawa, Ontario, June 22, 2022

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ALEXANDER LOTSOV

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment ("PRRA") decision dated September 4, 2020.

II. Background

[2] The Applicant was born in what is now Saint Petersburg, Russia (then Leningrad, USSR) prior to the collapse of the Soviet Union. He is not a citizen of Russia nor does he have an automatic right to obtain citizenship but he can apply.

[3] On July 2, 1990, the Applicant arrived from the USSR to Canada at the age of 13, alongside his parents. He became a permanent resident, but lost this status in July 2003 due to inadmissibility for criminal convictions. He identifies as a stateless Jewish individual.

III. Issues

[4] The issues are:

A. Was the Officer's decision reasonable?

B. Did the Officer breach procedural fairness by refusing to hold an oral hearing?

IV. Standard of Review

[5] The Applicant raises issues of both substantive review and procedural fairness regarding the PRRA Officer's decision.

[6] On the substantive issues, it is clear and settled law – and indeed agreed between the parties – that the applicable standard of review is reasonableness. As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC

65 [*Vavilov*], at paragraph 23, “where a court reviews the merits of an administrative decision … the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.” I see no reason in this case to deviate from this general presumption. As such, the standard of review in this case is reasonableness.

[7] A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting “an internally coherent and rational chain of analysis” when read as a whole and taking into account the administrative setting, the record before the decision-maker, and the submissions of the parties (*Vavilov* at paras 81, 85, 91, 94-96, 99, 127-128).

[8] As for the right to a hearing, I refer to my colleague Mr. Justice Gascon’s detailed discussion in *Garces Canga v Canada (MCI),* 2020 FC 749 at paragraphs 21-24. In the context of a PRRA application, the right to a hearing stems from s. 113(b) of the *Immigration and Refugee Protection Act* (SC 2001, c 27) [*IRPA*] and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. S. 113(b) of the IRPA reads that “a hearing may be held if the Minister, on the basis of the prescribed factors, is of the opinion that a hearing is required,” and s. 167 of the IRPR sets out factors for determining when a hearing is required: “(a) whether there is evidence that raises a serious issue of the applicant’s credibility and is related to the factors set out in s. 96 and 97 of the Act; (b) whether the evidence is central to the decision with respect to the application for protection; and (c) whether the evidence, if accepted, would justify allowing the application for protection.”

[9] In sum, then, a hearing is required when the evidence relates to the Applicant's credibility, is material to the decision, and it could justify allowing the PRRA application. In my view, similar to that of Justice Gascon, the standard of reasonableness applies given that the decision on this issue depends on the officer's interpretation and application of the officer's enabling legislation, namely s. 113(b) of the *IRPA*, which provides that a hearing may be held if the Minister considers it necessary, based on the specific factors set out in s. 167 of the *IRPR*. Since *Vavilov*, it is no longer disputed that the standard of reasonableness applies when a question is one of statutory interpretation, which is at the heart of an administrative decision-maker's expertise. As such, the standard of review for this issue is also reasonableness.

V. Analysis

A. *Review of the Documentary Evidence*

[10] The Applicant submits that the Officer engaged in a selective consideration of the evidence, and did not address evidence in conflict with their own conclusions. The Applicant asserts that the Officer ignored documentary evidence raised by the Applicant and that this is a reviewable error. Specifically, the Applicant's argument is that the Officer focused on moderate accounts of persecution faced by Jewish people in Russia, while ignoring other, more severe incidents. Finally, the Applicant submits that the Officer ignored evidence that illustrated the mistreatment of foreigners in Russia, failing to consider the depth of the evidence.

[11] It is well established that officers are presumed to have reviewed all of the evidence before them, and there is no requirement to mention each piece of evidence or submissions

reviewed (see, e.g. *Kooner v Canada (MCI)*, 2019 FC 1201). The Applicant acknowledges that there are varying accounts of persecution of Jewish people in Russia and that experiences range. The Officer considered this and the range of possible risks facing the Applicant should he be returned. The Applicant would have preferred that the Officer concluded that the situation is clearly and necessarily dangerous instead of stating the varied possibilities. This does not amount to an unreasonably selective review of the documentary evidence. It more clearly points to asking the Court to reweigh the evidence to come to a different conclusion than he did. This is not the role of this Court on judicial review (*Vavilov* at para 125), and I find the Officer's assessment of this evidence to have been reasonable.

B. *Consideration of Risk and Evidence*

[12] In general, the Applicant is of the view that the Officer failed to reasonably consider the risk and circumstances he would face in Russia. The Applicant states that the Officer unreasonably failed to consider if his two risk factors (being Jewish and being perceived as a foreigner) cumulatively met the risk threshold. He cites case law to the effect that it may be a reviewable error for the PRRA Officer to fail to assess or consider the cumulative profile of the Applicant. Based on this, the Applicant submits that the Officer failed to cumulatively consider his risk profile, but rather engaged in an unreasonable isolated analysis of the two factors separately. The Applicant argued that the Officer's finding of little personalized risk is an unreasonably high bar, given he had not lived there for 30 years and never as a refugee, and secondly, that it was unreasonable given the risk profile he had and the documentary evidence.

[13] First, I consider the Applicant's proposed interpretation of cumulative consideration. It is inconsistent with the relevant jurisprudence. In *Shire v Canada (Minister of Citizenship and Immigration)*, 2014 FC 795, Justice Strickland dealt with a similar argument and wrote as follows:

> [68] The Applicant also submits that the Officer erred in failing to consider his grounds of persecution cumulatively. It is correct that where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of the conduct (*Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84). However, what the Applicant proposes in this case is that the Officer failed to consider the grounds of persecution and risk of being perceived to be a Westerner and of being a Marehan together. **This is not a series of discriminatory actions but rather two separate alleged grounds of risk, both of which were assessed by the Officer.** The cases cited by the Applicant do not support his interpretation and the Officer did not err in failing to consider these separate risks cumulatively.
>
> [Emphasis added]

[14] The submissions before me are much the same – that the Officer did not consider the risk of being Jewish and being a foreigner together. As such, I find, in line with Justice Strickland and the jurisprudence that has followed, that the Officer's failure to consider the Applicant's two risk profiles cumulatively is not an error. As noted by Justice Strickland, where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of the conduct. However, in the case before me, the Officer considered both aspects of the Applicant's risk profile and was not required to consider them cumulatively given the circumstances and his conclusions on them. Rather, these are two separate grounds of risk that the Officer reasonably assessed. I find the Officer was reasonable in their treatment of the cumulative effects.

[15] Secondly, I turn to the Applicant's submission that the Officer ignored several pieces of evidence in the PRRA submissions. The first such instance is an assertion that the Officer unreasonably expected the Applicant to present evidence of persecution in Russia for his profile. The Applicant said this would be impossible given that he left at the age of 13 and has been in Canada for 30 years. As well, the Applicant argued that the Officer ignored the Applicant's submissions on his limited ability to speak Russian and instead speculated as to language abilities he may have. The Applicant presented that this second point is rendered further unreasonable because the ability to speak Russian is a requirement to obtain Russian citizenship because you take a test in Russian.

[16] Regarding the Applicant's personalized risk, I find that Officer did not unreasonably require that the Applicant adduce evidence he was incapable of adducing. Rather, he noted – as conceded by the Applicant – that there were a variety of experiences for people of his risk profiles in Russia, and concluded that the Applicant in totality had not persuaded him that he would face a personalized risk based on his evidence and the objective country conditions.

[17] I turn next to the Applicant's ability to communicate in the Russian language, and the Officer's consideration of the evidence thereon. I do not find the Officer's treatment of the evidence before him unreasonable. The Applicant's sworn statement indicates that he has a "limited grasp" of the language. Based on this, and the fact that he lived in Russia until he was 13, the Officer concluded that "it is reasonable to believe that he still has some grasp of the language as there is no evidence on file to indicate otherwise." The Applicant, who bears the onus to do so, did not provide any evidence other than the statement that he has a limited grasp

of the language. This acknowledgment of some grasp of the Russian language is in the Counsel's written submissions for the Application as well in the sworn declaration by the Applicant. It is not the role of the Officer to prove the Applicant can understand Russian sufficient to pass his citizenship test. Rather, as noted, it is the role of the Applicant to demonstrate, with sufficient evidence, that he has no understanding of the Russian language. He failed to meet this burden. Consider, for instance, in addition to the evidence cited above in the Certified Tribunal Record is evidence that his parents' mother tongue is Russian. He presented no evidence of what was spoken in his home or if he is limited in oral or in writing. Based on the limited information before them, the Officer reached a reasonable conclusion which represents "internally coherent and rational chain of analysis … that is justified in relation to the facts and law that constrain the decision maker" as required by *Vavilov* at paragraph 85.

[18] This evidence goes to the heart of the Officer's comments about the Applicant's ability to obtain citizenship, as passing an exam in the Russian language is one of the three requirements noted. As such, the Applicant's only vague evidence about his ability to understand the language on such a serious issue is him not putting his best foot forward, and the Officer cannot be faulted that their reasons are not detailed concerning language skills of the Applicant, considering the lack of detail in the submissions before them.

C. *Refusal to Hold Oral Hearing*

[19] The Applicant argues that the PRRA Officer breached procedural fairness by not holding an oral hearing despite making veiled credibility findings. He relied on jurisprudence to the effect that an oral hearing is required when credibility is at issue, as well as when veiled

credibility findings are made (see, e.g. *Abdiliahi v Canada (Citizenship and Immigration),* 2020 FC 422; *Jystina v Canada (Citizenship and Immigration),* 2020 FC 912). On the other hand, if the Officer's conclusion was based on sufficiency of evidence, it is well-established that there is no requirement for an oral hearing.

[20] While there is ordinarily no requirement of an oral hearing in PRRA matters, the Applicant submits that the Officer's failure to do so in light of veiled credibility findings was procedurally unfair.

[21] The Applicant submits that the veiled credibility findings in this case occurred when the Officer both ignored and rejected some of the Applicant's evidence and submissions. The Applicant points to case law regarding the distinction between veiled credibility and sufficiency of evidence, and submits that in the instant case, the Officer made veiled credibility findings that affected the assessment of both grounds of persecution.

[22] First, when discussing grounds of religious persecution, the Officer concluded that there was little personalized evidence provided and that resultantly the Applicant would not face persecution. He submits that since his application is *sur place* and he left the Soviet Union at 13 years old, he cannot submit personalized evidence and instead submitted evidence of similarly situated people in Russia, as well as swore a statutory declaration. The Applicant argued that the Officer not accepting these constituted disbelieving the Applicant and was not a sufficiency of evidence determination. Further, the Applicant stated if the Officer did not believe him, he should have provided an oral hearing. Second, regarding the Applicant's lack of status in Russia

and perception as a foreigner, the Officer concluded there was little information to demonstrate he would not be able to fulfill the requirements for citizenship, and that it was reasonable to believe he had some grasp of the language, as there was no evidence on file to the contrary. The Applicant argued that the Officer's conclusion that the Applicant had "some" grasp of the Russian language is really a credibility finding in light of his sworn statement that he has a "limited" grasp. This is because, in his view, it is contradictory to what he said, and would potentially allow him to meet the test to get Russian citizenship. The Applicant submits that this was thus also a veiled credibility finding.

[23] As my colleague Justice Rochester wrote in *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447:

> [24] An oral hearing is therefore 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 (Hare at para 20). Section 167 of the Regulations becomes operative when credibility is at issue such that it could result in a negative decision (Tekie v Canada (Minister of Citizenship and Immigration),2005 FC 27 at para 16). The question that must be asked is whether an officer had reason to turn their mind to the factors in s. 167 of the Regulations, and if so, they ought to be addressed. If credibility concerns are central to the decision such that s. 167 of the Regulations becomes operative, it would be unreasonable for an officer not turn their mind to the appropriateness of a hearing.

[24] As such, the requirement for an oral hearing in this case, and whether the Officer failed to afford sufficient procedural fairness by denying one, comes down to the question of whether this related to credibility or sufficiency of evidence. In my view, the Officer's conclusion related to sufficiency of evidence. Rather than disbelieving the Applicant or finding that the Applicant was not telling the truth – which would clearly be a credibility finding and warrant an oral hearing –

the Officer simply concluded that there was “no evidence on file to indicate otherwise.” I am not of the view that procedural fairness was breached because of a lack of oral hearing. The Officer’s conclusion related to sufficiency of evidence, and was not a veiled credibility finding.

D. *Applicant’s Statelessness*

[25] Finally, the Applicant submits that the Officer unreasonably failed to consider the Applicant’s statelessness. The Applicant argued that the Officer focused on the Applicant’s possibility of obtaining citizenship in Russia, engaging in speculation that there is a reasonable belief that he could, but noting that the assessment does not confirm that he could. They assert that the Officer did not consider what would occur if their belief was incorrect, and the Applicant ends up with no status in a country that actively persecutes foreigners. The Applicant notes that much of the law on stateless refugees differs from the Applicant’s circumstances, but cite *Huynh v Canada (Citizenship and Immigration)*, 2018 FC 148, for the proposition that it is insufficient for an Officer to be aware of the Applicant’s submissions regarding statelessness, but that they also must consider the evidence supporting that contention. Based on this, they submit that the Officer’s decision in this case did not demonstrate meaningful consideration of the Applicant’s statelessness.

[26] I do not find the Officer’s consideration of this factor to have been unreasonable. The Officer reasonably assessed all of the evidence before them, analyzing it and coming to a reasonable conclusion justified in light of the facts and law. As noted earlier in this decision, the Officer is presumed to have reviewed all of the evidence and submissions before them, and the Officer’s failure to consider the Applicant’s statelessness in the detail the Applicant desired does

not render the decision unreasonable. What the Applicant calls speculation is the lack of sufficiency of evidence.

[27] In closing, it is also worth noting that it appears the Applicant can have another PRRA, as it has been over one year, and that he appears to have the option of pursuing an Humanitarian and Compassionate application.

[28] The parties did not present any certified questions, and none arose.

JUDGMENT IN IMM-4776-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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