Federal Court  Cour fédérale

Date: 20221005

Docket: IMM-5522-20

Citation: 2022 FC 1379

Toronto, Ontario, October 5, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SAJID HUSSAIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an April 29, 2020 decision [Decision] of a Senior Immigration Officer [Officer], denying the redetermination of a pre-removal risk assessment [PRRA], on the basis that it does not satisfy sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As set out below, I find that the Officer has erred in his approach to the Applicant's evidence and has provided insufficient justification for key aspects of his assessment of the Applicant's risk. As such, the application will be allowed.

I. Background

[3] The Court in its decision on the Applicant's first application for judicial review summarized the background to Mr. Hussain's PRRA application in 2017 FC 1149. As the same background is applicable to this application, I will repeat those background paragraphs here and add some additional background context:

> [3] Mr. Hussain accompanied his parents to Canada as a dependent child. The family was sponsored by Mr. Hussain's older brother Farakat. Mr. Hussain became a permanent resident in 1995 at the age of fifteen.
>
> [4] His brother, Farakat, married his cousin Shazia Bi in Pakistan and also sponsored her permanent residency application. Ms. Bi arrived in Canada and became a permanent resident in 1998. The couple divorced less than a year later.
>
> [5] Mr. Hussain submits that as a result of the divorce, and to maintain the honour of the two families, he was forced to marry his brother's ex-wife. The two were married in January 2002 but divorced in July 2012. Their divorce application lists a separation date of July 2005 although Mr. Hussain states they twice attempted to reconcile, once in 2008 and again in 2010.
>
> [6] Mr. Hussain reports that after the separation from Ms. Bi he entered into a relationship with a Philippine national. They had a child together in Canada in 2006 and Mr. Hussain sponsored her permanent resident application as his common-law spouse in 2008. Mr. Hussain's Philippine partner became a permanent resident in 2009 but the relationship appears to have broken down with Mr. Hussain being charged with assault.
>
> [7] Mr. Hussain states that the attempt to reconcile with Ms. Bi in 2010 ended when Ms. Bi became aware of his relationship with his Philippine partner and that he was the father of a child from that relationship. He claims that since the failed 2010 attempt to

> reconcile with his wife, Ms. Bi's family have threatened to harm him if he were to return to Pakistan.
>
> [8] In 2010 he was convicted of a number of fraud-related offences under paragraphs 362(1)(a) and 380(1)(a) of the *Criminal Code*, RSC, 1985, c C-46. He was subsequently found to be inadmissible to Canada for serious criminality under IRPA paragraph 36(1)(a). On October 12, 2012 he was ordered deported from Canada.

[4] Shortly before the deportation order, Mr. Hussain began seeing a mental health professional. He was subsequently diagnosed with mental health issues, including schizoaffective disorder, bipolar type.

[5] Mr. Hussain made a PRRA application on March 24, 2015. The application was rejected on February 13, 2017, but the decision was set aside on December 14, 2017 on judicial review and the matter was remitted to a different officer for redetermination.

[6] On the redetermination, Mr. Hussain provided additional evidence and submissions. He alleged he was at risk of an honour killing by Ms. Bi's family; of arbitrary detention and torture by the Pakistani authorities as a deportee with a criminal record; and of targeting from prisoners in detention because of his mental health.

[7] On April 29, 2020, the redetermination of the PRRA was rejected. The Officer considered the cumulative evidence filed, including evidence from Mr. Hussain, his father, brother and nephew, but found it insufficient to establish that he was at risk of an honour killing from Ms. Bi's family. The Officer considered there to be inconsistencies in the evidence of Mr. Hussain's father and found the father's evidence, and the evidence of Mr. Hussain's brother

and nephew to be lacking as it failed to explain why Mr. Hussain would be at risk when Ms. Bi and his brother, who was also divorced from Mr. Bi, were not.

[8] The Officer considered Mr. Hussain's allegation that he was at risk of detention and torture on his return to Pakistan due to his criminal record in Canada, and the risk of mistreatment due to his mental illness. The Officer considered country documentation and concluded that it was probable that Mr. Hussain would be detained upon his return to Pakistan, but did not find such detention to violate international standards of prosecution.

[9] The Officer considered the Immigration and Refugee Board National Documentation Package and a 2017 Alternative Report to the Human Rights Committee [2017 Report] that reported on detention of those who are mentally ill and suffer attacks from fellow prisoners, but found the report insufficient on its own, without corroborating country documentation, to demonstrate a risk of torture.

[10] The Officer acknowledged that "torture of detainees does take place in Pakistan, to certain individuals in specific circumstances", but concluded that Mr. Hussain would likely only be subject to a short period of detention and did not have a profile that would place him at risk at the hands of authorities while in detention.

[11] The Officer found no evidence to indicate that the treatment of mentally ill people was at a level of severity that would amount to a risk under sections 96 or 97 of the IRPA, and concluded that the inability of a country to provide adequate healthcare is not a risk due to the

operation of subparagraph 97(1)(b)(iv) of the IRPA. The Officer further found that Mr. Hussain's allegations that he was at risk of being prosecuted under blasphemy laws were speculative and did not amount to a real risk.

[12] Overall, the Officer did not find the Applicant faced more than a mere possibility of persecution, a danger of torture, a risk to life, or a risk of cruel and unusual treatment or punishment in Pakistan.

II. Issues and Standard of Review

[13] The only issue on this application is whether the Decision was reasonable. Mr. Hussain raises two sub-issues:

1. Did the Officer err in concluding he was not at risk of being the victim of an honour killing?
2. Did the Officer err in concluding he was not at risk due to his profile as a returnee with a mental health condition?

[14] The standard of review applicable to the review of a PRRA officer's decision, including his or her assessment of the evidence, is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17; *Aldarurah v Canada (Citizenship and Immigration)*, 2022 FC 1173 at para 15.

[15] In conducting a reasonableness review, the Court must determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when

read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

A. *Did the Officer err in concluding he was not at risk of being the victim of an honour killing?*

[16] The Officer assigns very little weight to the Applicant's evidence in concluding that the Applicant would not be at risk of being a victim of an honour killing. There are two main reasons given for this. First, there were inconsistencies with certain aspects of the father's evidence, and second the evidence was lacking in that no explanation was given as to why the Applicant would be at risk instead of the Applicant's brother and Ms. Bi, or why the Applicant would not be at risk in Canada. In my view, each are unreasonable. While the Respondent argues the Officer afforded little weight to the Applicant's evidence because the affiants had a self-interest and the evidence was not corroborated, this reason was not provided and cannot be substituted for the reasons given by the Officer: *Vavilov* at para 96. It does not, in my view, properly form part of the analysis.

[17] In the Decision, the Officer states that there are inconsistencies regarding the marriage and divorce dates in the three affidavits provided by the Applicant's father. However, I agree with the Applicant that the alleged inconsistencies do not exist.

[18] The Officer misread the father's first affidavit as indicating that Mr. Hussain's brother married Ms. Bi in 2001 when the context of the affidavit is clear that the statement is referring to the date of the Applicant's marriage to Ms. Bi instead. Further, while the date of marriage given

in the father's affidavits are slightly off (late 2001, instead of early 2002), they are all consistent. The assertion that the evidence should be afforded less weight because of inconsistency is an unreasonable characterization.

[19] Further, I agree it was unreasonable for the Officer to afford less weight to the affidavits because they did not expressly address why Mr. Hussain's brother and Ms. Bi were not at risk or why Mr. Hussain was not at risk from an honour killing by Ms. Bi's brother, who lives in Canada. Evidence is to be considered for what it says, not for what it does not say: *Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 (FC) at para 11.

[20] Further, given that the PRRA relates to Mr. Hussain, it is unclear why the evidence would speak to the risk to other individuals.

[21] The Officer comments on country condition evidence that indicates there may be motive for perpetrating an honour killing if a woman demands a divorce. However, the Officer does not address other apparent aspects of the evidence, which highlight different circumstances involving Mr. Hussain, his brother and Ms. Bi, that may have impacted the risk of these individuals to an honour killing. The father's evidence explains that the marriage between Mr. Hussain and Ms. Bi was arranged to avoid shame or dishonour because of her divorce from Mr. Hussain's brother. Similarly, the evidence indicates that Mr. Hussain's extra-marital relationship and child were precursors to the divorce with Ms. Bi, and that further implications arose because of Mr. Hussain's subsequent marriage. Without consideration of the surrounding facts provided, in my view, the criticism given is unreasonable.

[22] The Officer's suggestion that Mr. Hussain should have explained why he was not at risk from an honour killing from Ms. Bi's brother in Canada, is also, in my view, irrational. On a PRRA, an Officer is to assess an applicant's risk on their return to their home country. It is unclear why an applicant would address a risk they might face in Canada when the purpose of a PRRA is to assess forward-looking risk in the country of origin with the objective of satisfying the Officer that they should remain in Canada.

B. *Did the Officer err in concluding he was not at risk due to his profile as a returnee with a mental health condition?*

[23] Further, I agree with Mr. Hussain that there was insufficient justification provided for the Officer's conclusions regarding the conditions Mr. Hussain might face upon return to Pakistan.

[24] The Officer acknowledges from his review of the country documentation that torture of detainees at the hands of authorities does take place in Pakistan "to certain individuals with specific circumstances". The Officer accepts that Mr. Hussain would be detained on his return to Pakistan on the basis of the Australian Department of Foreign Affairs and Trade's "DFAT Country Information Report Pakistan" [DFAT Report]. However, the Officer ultimately concludes that "[e]ven if [the Applicant] is subject to detention, based on the country documentation, it will likely be for a short period of time."

[25] No support is provided for this statement from the DFAT Report or any of the other country documentation. The Officer states only that the Applicant "has not submitted any evidence to demonstrate that he has committed any crimes in Pakistan or engaged in any activities that would be of interest to authorities or considered a threat to the country. The

applicant has not provided sufficient evidence to demonstrate that he has a profile that places him at risk at the hands of authorities while in detention."

[26] In the DFAT Report, three categories of returnees are identified, each category with a different potential level of detainment:

> 5.39 DFAT understands that people returned to Pakistan involuntarily are typically questioned upon arrival to ascertain whether they left the country illegally, are wanted for crimes in Pakistan, or have committed any offences while abroad. Those who left Pakistan on valid travel documentation and have not committed any other crimes are typically released within a couple of hours. Those found to have contravened Pakistani immigration laws are typically arrested and detained. These people are usually released within a few days, either after being bailed by their families or having paid a fine, although the law provides for prison sentences. Those wanted for a crime in Pakistan or who have committed a serious offence while abroad may be arrested and held on remand, or required to report regularly to police as a form of parole.

[27] The Officer acknowledges that the Applicant would be a returnee who has committed a serious offence while abroad. However, the Officer does not address this characterization within the full context of the DFAT Report as reproduced above.

[28] The DFAT Report notes that returnees who have violated immigration laws are generally detained and released within a few days. However, there is no reference to short detainment for returnees who have committed criminal offences abroad. Instead, returnees "who have committed a serious offence while abroad" are referred to as those who "may be arrested and held on remand, or required to report regularly to police as a form of parole." The logical inference being that the period of detainment or remand may be longer than with the second

category of returnees. No distinction is made for those who have served a sentence abroad and those who have not.

[29] The report from the United Kingdom Home Office, "Country Information and Guidance Pakistan: Prison Conditions", June 2016, also relied on by the Officer for a different passage, states that 69.1% of the prison population in Pakistan are prisoners on remand. This evidence also suggests remand in Pakistan can be lengthy. The Officer similarly does not engage with this evidence.

[30] While a decision-maker need not refer to every detail from the evidence in their decision, where important context from the evidence is omitted or not analyzed that may contradict the conclusion reached, a failure to consider those details may suggest to the Court that the decision-maker reached their conclusion without proper regard to the evidence: *Ponniah v Canada (Citizenship and Immigration)*, 2014 FC 190 at para 16; *Gonzalo Vallenilla v Canada (Citizenship and Immigration)*, 2010 FC 433 at paras 13-15; *Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, (1998), 1998 CanLII 8667 (FC), 157 FTR 35 (FCTD) . In this case, the Officer's finding that the Applicant would only be detained for a short period of time without greater discussion of the country condition evidence, in my view, renders the Decision without sufficient justification.

[31] Similarly, I am of the view that the Officer's analysis relating to Mr. Hussain's risk within the meaning of section 97 of the IRPA arising from the conditions of detention in Pakistan and his mental illness is also flawed; in particular, in the Officer's handling of the 2017 Report.

[32] The Officer states that the 2017 Report says that: a) "'...not only is torture still acceptable as an inevitable part of law enforcement, but perpetrators of torture are granted virtual impunity through sociocultural acceptance, lack of independent oversights, widespread powers of arrest and detention, procedural loopholes and ineffective safeguards'"; and b) "while prisoners with mental illness are required to be transferred to a mental health facility under a special scheme of protections, in practice they are typically kept in detention, and consequently subject to attacks from fellow prisoners".

[33] However, the Officer discounts this evidence because he could not find any corroborating documents. No reason is given for the requirement for further corroboration. The Officer states only the following as his rationale:

> In my independent research, there was a lack of information pertaining to the treatment of mentally ill prisoners by fellow prisoners. I have reviewed the most recent IRB National Documentation Package, reports of national observers, and other publicly available sources. However, there was no additional evidence to support the finding by the aforementioned report. I do not find that this single report, submitted by the applicant, is sufficient to demonstrate a risk, when no other country documentation has substantiated the finding. In the absence of corroborating evidence, I attach very little weight to the 2017 Alternative Report to the Human Rights Committee.

[34] The Respondent argues it was reasonable for the Officer to require corroboration. It cites the following cases in support of its argument: *Khan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 400 at para 17; *Bodokia v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 227 at paras 24-25; *Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 (CA). However, all of these cases involve the absence of documentary evidence corroborating the evidence of a claimant. In my view, this is

fundamentally different from an officer discounting country condition documentation because of a lack of corroboration.

[35] Even in a context where corroboration of an applicant's testimony is determined to be required, a decision-maker must clearly set out an independent reason for requiring corroboration: *Contreras Luevano v Canada (Citizenship and Immigration)*, 2021 FC 1467 at paras 19-20; *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 244 at para 9.

[36] In this case, the Officer does not explain why corroboration was required and considered necessary. Nor does the Officer point to any contradictory statements from the country condition evidence. The reasons provide insufficient justification for the conclusion given.

[37] In my view, these errors are sufficient to render the Decision unreasonable. Accordingly, the application will be allowed, the Decision set aside, and the matter referred back to another officer for redetermination.

[38] No question for certification was proposed by the parties and I agree none arises in this case.

JUDGMENT IN IMM-5522-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed, the Decision is set aside, and the matter is referred back for redetermination by another officer.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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