Federal Court

Cour fédérale

Date: 20230911

Docket: IMM-11290-22

Citation: 2023 FC 1224

Ottawa, Ontario, September 11, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

ALI HASHIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an October 20, 2022 decision of a Senior Immigration Officer [Officer] that denied the Applicant's Pre-Removal Risk Assessment [PRRA] application [Decision]. The Officer found that new documents submitted by the Applicant were not new evidence as defined in subsection 113(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and in any event, that they did not affect the findings of the Immigration and Refugee Board [IRB] with respect to the availability of an Internal Flight Alternative [IFA].

[2] In my view, the Applicant has not identified a reviewable error arising from the Decision and as such, the application is dismissed.

I. Background

[3] The Applicant is a citizen of Pakistan who arrived in Canada on December 1, 2018. In his refugee claim, he asserted a fear of his paternal uncles, who wanted to gain ownership of property he inherited from his father. The Applicant claimed his uncles spread rumours that he was a homosexual and had engaged in blasphemous acts. He asserted a fear from villagers because of these rumours.

[4] The Applicant's claim was rejected by the Refugee Protection Division [RPD] in November 2019. An appeal to the Refugee Appeal Division [RAD] was subsequently dismissed in December 2020. The RAD confirmed the RPD's Decision, finding that the Applicant would not be at risk from his uncles if he agreed to sell or give up the disputed property and that while he might be at risk from local villagers because of the rumours created by his uncles, he had a viable IFA in Islamabad and Lahore.

[5] In August 2021, the Applicant was convicted of an offence under the *Criminal Code* and was found inadmissible to Canada. However, because his sentence was 2 months served and 9 months conditional, he remained eligible for a full PRRA assessment. In January 2022, the Applicant applied for a PRRA, which was rejected on October 20, 2022.

[6] In the PRRA, the Applicant submitted the following new documents:

(a) a First Instance Report [FIR], dated after the RAD hearing but before the RAD decision was issued, that was filed by the Applicant's uncle with the police in Pakistan;

(b) an undated statement setting out how the FIR was obtained; and

(c) country condition reports describing FIR registration and documents in Pakistan, at various dates.

[7] The Officer found the new documents did not comply with subsection 113(a) of the IRPA and that the Applicant's lack of explanation as to why the evidence was not provided to the RAD "lessen[ed] the weight" afforded to the documents. On the submissions made, the Officer was also not satisfied that the Applicant had established he faced more than a mere chance of persecution in Pakistan based on a nexus to one of the *Convention* grounds, or that the Applicant's uncles or any agents of persecution would maintain an ongoing interest in persecuting the Applicant for any of the grounds in s 96 of the IRPA.

II. Issues and Standard of Review

[8] The following issues are raised by this application:

A. Did the Officer err in his consideration of the Applicant's new documents?

B. Did the Officer apply the wrong burden of proof when considering s 96 of the IRPA?

[9] The parties assert and I agree that the standard of review is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17 and 25.

[10] A reasonable 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 decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

A. *Did the Officer err in his consideration of the Applicant's new documents?*

[11] In the Decision, the Officer notes that the FIR predates the RAD decision and that no explanation was provided as to why the evidence was not presented to the RAD. As such, the Officer found the FIR does not constitute "new" evidence under subsection 113(a) of the IRPA. Nevertheless, the Officer goes on to conduct a holistic assessment of the PRRA, including the additional documents and submissions made.

[12] The Applicant does not dispute the Officer's finding regarding subsection 113(a) but argues that because the Officer went on to conduct this analysis, the Court can no longer find that the PRRA should be rejected because there is no new evidence. He argues that once the Officer

accepted the FIR as genuine, the Officer was obliged to go on to consider the FIR and submissions made within the context of the RPD's previous factual findings.

[13] The Respondent argues that as the Applicant failed to present new evidence meeting the requirements of subsection 113(a) of the IRPA, this is dispositive of the PRRA. However, even with the Officer's additional analysis, the Respondent argues that the Applicant has not identified a reviewable error.

[14] In my view, it is clear from the Officer's reasons that they did not consider the new documents to satisfy subsection 113(a) of the IRPA and that the further analysis conducted was not intended to lessen this finding, but rather was conducted as a matter of completeness. Indeed, the Officer reiterates after conducting the analysis that they are mindful that the evidence on file does not appear to constitute new evidence under subsection 113(a), which would afford it limited weight.

[15] Even with the analysis of the new documents, the Officer did not find sufficient evidence to establish the risk asserted. While the Applicant argues that the Officer should have engaged directly with the factual findings made by the RPD in view of the reference in the FIR to Lahore and Islamabad as being possible locations where the Applicant might be residing, I do not find this argument persuasive. First, I note that the FIR refers to Lahore and Islamabad along with other locations such as Faisalabad, Multan and Karachi.

[16] Further, as noted by the Officer:

> A PRRA is not intended to be an appeal of a previous decision by the RPD or RAD. It is an assessment, based on new evidence, of the risk of persecution, torture, risk to life, or risk of cruel and unusual punishment that an applicant would face upon return to their country of nationality or habitual residence. In the case of applicants who have made refugee claims before the IRB in the past and been rejected, section 113(a) of IRPA restricts [the] assessment solely to new evidence presented in [the] PRRA.

[17] The role of the Officer was not to redo the analysis of the RAD on the basis that there was evidence that could have been provided to the RAD but was not.

[18] In this case, the Officer's analysis focussed on the new documents provided. The Officer notes that the FIR details a complaint made by the Applicant's uncle but nothing more. There was little evidence that the FIR was acted upon since January 2020, or that the Applicant's uncle had taken further action in pursuing the Applicant since the FIR. The Officer finds that the new evidence does not present a significant change from the IRB's previous findings.

[19] The Officer considered the Applicant's submissions regarding the manner in which he received the FIR and whether this posed a threat to the Applicant if he were to return to Pakistan but did not find the argument persuasive. As noted by the Officer, the submissions made did not clarify important questions regarding the communications around the FIR, or whether any other friends or relatives from Pakistan had contacted the Applicant since his arrival in Canada. The Applicant's narrative accompanying the FIR was also vague and insufficient to support the risk asserted.

[20] The reasons indicate that the Officer did consider the FIR, along with the narrative and submissions made by the Applicant. However, the Officer did not find the evidence sufficient to support the Applicant's assertion of risk. The Applicant has not satisfied me that there is a reviewable error.

B. *Did the Officer apply the wrong burden of proof when considering s 96 of the IRPA?*

[21] The Applicant's further argument that the Officer did not apply the proper legal test for section 96 is also not persuasive. While the Applicant refers to *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 4, I do not consider this case to be of assistance.

[22] I agree with the Respondent, while the Officer could have been more careful and precise with certain language used in the reasons and with delineating between the analysis applicable to s 96 and that applicable to s 97, the Applicant has not established that the Officer misunderstood the legal test for s 96, or that they held the Applicant to a higher burden of proof.

[23] As stated in the Decision:

> Upon establishing a nexus to one or more of [the] *Convention* grounds, it must also be determined; on a balance of probabilities that this fear is well-founded in an objective sense, including whether ; similarly situated persons are treated in ways that reach the threshold of persecution or discrimination culminating in persecution. If a well-founded fear and a nexus to a *Convention* ground are determined to exist, the applicant must be found to face more than a mere chance of persecution in their country of origin, taking into consideration the availability and reasonableness of state protection or an internal flight alternative (IFA).

[24] The Officer considered the evidence and submissions on file, but was “not satisfied that the applicant ha[d] demonstrably established that he face[d] more than a mere chance of persecution in Pakistan, based on a nexus to one or more Convention grounds, as per section 96 of IRPA.”

[25] For all of these reasons, the application is dismissed. There was no question for certification proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-11290-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11290-22
STYLE OF CAUSE:	ALI HASHIM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	AUGUST 31, 2023
JUDGMENT AND REASONS:	FURLANETTO J.
DATED:	SEPTEMBER 11, 2023

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