Federal Court Cour fédérale

Date: 20231123

Docket: IMM-12742-22

Citation: 2023 FC 1545

Ottawa, Ontario, November 23, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

JULIUS CARLO LAYUG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Julius Carlo Layug, is a citizen of the Philippines who initially came to Canada with his father in 2008. He was then 17 years of age. After his arrival in Canada, the Applicant became a drug user and accumulated a criminal record. He is therefore inadmissible to Canada for serious criminality.

[2] The record shows that the Applicant had a difficult childhood in the Philippines. He grew up without a mother, and his father moved away when he was very young. He was passed from one relative to another, and experienced both physical and sexual abuse as well as isolation as a young child. He has since been diagnosed with severe Complex-Chronic Post Traumatic Stress Disorder (PTSD) as well as Substance Use Disorder.

[3] Because the Applicant is inadmissible for serious criminality, he was not eligible for refugee protection, in accordance with paragraph 112(3)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. He was eligible for a Pre-Removal Risk Assessment [PRRA] under *IRPA* paragraph 113(e)(i), pursuant to which an Officer is required to assess his risk of persecution, risk of torture, risk to life, or risk of cruel and unusual treatment or punishment if he is returned to the Philippines.

[4] The Applicant submitted a PRRA application on February 7, 2022. At that time he was incarcerated and did not have the assistance of legal counsel. He had difficulty obtaining documents to support his PRRA because of a lockdown. His PRRA was denied on March 11, 2022, and he received a copy of the decision on March 18, 2022.

[5] Following this, the Applicant was able to retain counsel. In July 2022, his counsel's request to reconsider or reopen the PRRA application was granted and further submissions were filed on behalf of the Applicant. These submissions focused on the risk that the Applicant would face on a return to the Philippines because of his history of drug use, his Substance Use Disorder, and his mental health. The Applicant provided

documentary evidence concerning his medical diagnoses and prognosis, as well as information regarding substance abuse recovery and substantial documentary evidence about the "war on drugs" in the Philippines.

[6] The Applicant's PRRA request was refused on reconsideration, and he received this decision on December 7, 2023. He seeks judicial review of the negative PRRA decision. In a case such as this, both the initial PRRA decision and the reconsideration decision are relevant since the reconsideration decision was styled as an "Addendum" to the first: see *Alvarez v Canada (Citizenship and Immigration)*, 2020 FC 573 at paras 11 and 18. In reality, the focus of the parties' submissions on judicial review – and of these reasons – is on the reconsideration decision.

II. Issues and Standard of Review

[7] The only issue in this case is whether the PRRA decision is reasonable.

[8] This is assessed under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21. In summary, under the Vavilov framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (Vavilov at para 85). An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent" (Vavilov at para 95).

[9] The onus is on the Applicant to demonstrate flaws in the decision that are “sufficiently central or significant to render the decision unreasonable” (Vavilov at para 100). The decision must be assessed in light of the history and context of the proceedings, including the evidence and submissions made to the decision-maker (Vavilov at para 94). However, “absent exceptional circumstances, a reviewing court will not interfere with [the decision maker’s] factual findings” (Vavilov at para 125).

[10] One additional feature of the *Vavilov* framework should be mentioned here. The degree of responsive justification called for depends, in part, on the impact of the decision on the affected individual. As the Supreme Court expressed it in *Vavilov*, at paragraph 133: “Where the impact of a decision on an individual’s rights and interests is severe, the reasons must reflect the stakes… This includes decisions with consequences that threaten an individual’s life, liberty, dignity or livelihood.” The Court observed (at paragraph 135):

> [135] Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.

[11] This is relevant here in light of the nature of the risks raised by the Applicant, and because these risks were not previously assessed. The Applicant was not eligible to submit a refugee claim, and so the PRRA officer had to assess his risks under both ss. 96 and 97 of *IRPA* for the first time.

III. Analysis

[12] The Applicant argues that the decision is unreasonable for three reasons, which are inter-related. First, the Applicant says the Officer failed to engage with his submission that he was at risk in the Philippines due to his struggles with addiction, even if he does not relapse. Second, he says the Officer failed to engage with the evidence that the stress he would experience on returning to the Philippines – the place where he experienced a childhood of abuse and trauma – would increase the likelihood he would relapse, which in turn would put him at even greater risk. Third, he says the Officer failed to engage with the evidence that addictions and mental health treatment in the Philippines was inadequate, so that if he sought help it would not be available to him.

[13] I am persuaded that the Officer's decision is unreasonable for two reasons. First, the Officer failed to engage with a central plank of the Applicant's PRRA application, which argued that he would be at risk simply by virtue of his drug addiction and past association with drug use. Second, to the extent the Officer's conclusion rests on a finding that the Applicant would not relapse because he could access effective treatment in the Philippines, the Officer failed to explain why they rejected the evidence about the inadequacy of such treatment and the risks associated with seeking it out.

A. *Risk even if no relapse*

[14] The Applicant submits that the Officer's reasons focus primarily on two questions: his risk of relapse into drug use, and whether he can access treatment in the Philippines for his substance abuse disorder and PTSD. The Officer accepted the diagnosis provided in the report from Dr. Agarwal, and mentioned the evidence that the risk of

relapse is high. However, the Officer also noted the Applicant's own statements about his dedication to his recovery and how he has benefitted from treatment and intends to continue it. The Officer cited an expert's statement that there are instances where individuals have become successfully rehabilitated. The Officer also discussed the evidence about the treatment facilities and programs available for those with substance abuse and mental health challenges. Based on the combined effect of the possibility of recovery, the Applicant's personal commitment to recovery and the availability of treatment in the Philippines, the Officer concluded that there was insufficient evidence that the Applicant was at risk because he would relapse into drug use.

[15] In the Applicant's view, this is unreasonable because the Officer failed to engage with the substantial evidence he filed in support of his argument that he is at risk simply by virtue of his prior drug usage. He claims that the Officer failed to meaningfully address the evidence in the record about the targeting killing of individuals who had successfully completed treatment, citing news reports as well as an Amnesty International report that documented such cases. The Amnesty International report stated that once on a drug watch list, recovering addicts "were, in effect, tagged with no recourse to clear their name." (Amnesty International, *They Just Kill: Ongoing Extrajudicial Executions and Other Violations in the Philippines'* 'War on Drugs', (2019)).

[16] In the context of the evidence about the drug war in the Philippines, the Applicant submits that the Officer's analysis demonstrates a failure to grapple with a central argument he advanced in his PRRA submissions. The evidence cited by the Applicant includes the

following key elements: local communities were required to compile lists of suspected or known drug users, and to track and report on their progress in pursuing treatment; evidence from a variety of independent third party organizations indicates a widespread pattern of extrajudicial targeted killings of those suspected of drug use or involvement in the drug trade; these killings occur at the hands of police as well as other assailants; there is also significant evidence that police have justified such killings using similar stories of self-defence, and planting drugs and firearms at the scene of the incident to back up their narratives; there have been very few prosecutions for extrajudicial killings, and a large number of police investigations into these matters are stalled.

[17] The record shows that the drug war in the Philippines was directed most harshly at those who used methamphetamines. The Applicant argued this puts him at particular risk, noting that he had been addicted to crystal meth in Canada. He said that given his history of drug use, and in particular his use of crystal meth, he fits the profile for targeting.

[18] The Applicant submits that the Officer's conclusion that he would not relapse because he is motivated to seek treatment demonstrates a failure to engage with his submissions as well as the overwhelming evidence in the record about the risks of seeking treatment in the Philippines. In his PRRA submissions, the Applicant stated:

> [G]iven the pervasiveness of violence against individuals associated with drugs in the Philippines, the Applicant cannot disclose the fact of his addiction, without endangering himself. This would be a problem. To require someone with a diagnosed, documented disability to return to a country where he must conceal his disability would undermine the fundamental Canadian values of equality before the law and non-discrimination. In our system, a disability need not be hidden…

> Second, practically speaking, an individual should not be returned to a country where they are unable to seek adequate medical care for a disability. That is a factor here. While addictions treatment exists in the Philippines, government policy encouraging the killing of addicts and monitoring the progress of treatment-seekers renders treatment option[s] unsafe, and therefore unavailable. Should the Applicant make his disability known, the reports above indicate local…officials throughout the Philippines will track him – that 'they are required to list suspected drug users and monitor their progress kicking the habit, while police stations must maintain watch lists of alleged drug suspects who are under surveillance.

[19] The Applicant submits that the Officer's decision failed to engage with this aspect of his claim, and is therefore unreasonable.

[20] I agree.

[21] The Officer's analysis focused on whether the Applicant had demonstrated that he was likely to face risk in the Philippines because he would relapse into drug use, and thereby come to the attention of the authorities. On this point, the Officer's conclusion is stated as follows:

> While I accept that the applicant may relapse into his substance dependency, I find the risk of the applicant's future possible relapse to be speculative. I find the applicant's claim of risk is not among those described in sections 96 or 97, in that the applicant can mitigate or eliminate the perceived risk by not using drugs and by seeking appropriate treatment. I find the applicant can access treatment and rehabilitation programs in the Philippines on return.

[22] The logical sequence of this analysis is fatally flawed, in my view, because it fails to grapple with a key aspect of the Applicant's claim.

[23] The Officer's conclusion about the risk of relapse rests on a finding that the Applicant can seek treatment to help prevent it. There are two main problems with this line of reasoning: first, it does not engage with the Applicant's central argument that simply by admitting he has a history of drug use (which is an inherent part of seeking treatment) he would be putting himself at grave risk. Second, there is substantial evidence questioning the adequacy and appropriateness of such treatment, which is discussed in the next section.

[24] The Respondent submits that the evidence the Applicant relies on in support of his claim that he faces risk whether or not he uses drugs in the Philippines does not actually bolster his claim. The Respondent argues that the reports cited by the Applicant all relate to individuals who had used drugs in the Philippines and had thus come to the authorities' attention. The Applicant has never used drugs in the Philippines, and so he does not fit into that category. Based on this, the Respondent argues that the Officer reasonably concluded that he was not at risk.

[25] This argument cannot succeed because there is no indication in the Officer's decision that they actually made this finding. It is not open to the Respondent, or a reviewing Court, to bolster the reasons by adding substantive findings of fact. Fact-finding is the Officer's job.

[26] The evidence is overwhelming that individuals suspected of past or current drug use in the Philippines are in danger of targeted killing either by police or unidentified assailants. The evidence also shows that local authorities are required to compile lists of

suspected drug users and to track and monitor their progress in recovery. The Applicant argued that he could not safely seek treatment for his Substance Use Disorder in the Philippines, because he would be forced to disclose his history of drug use and addiction, and would thereby put himself in danger.

[27] The Officer was not required to accept the Applicant's claim. But the Officer was required to engage with it, and to explain why they were not persuaded by the evidence and arguments the Applicant advanced. In my view, the Officer's failure to address this in the decision is unreasonable.

B. *Adequacy of Treatment*

[28] The second unreasonable aspect of the Officer's decision is the failure to engage with the evidence about the adequacy and appropriateness of drug treatment facilities and programs in the Philippines. As noted above, the Officer's main finding is that the Applicant is not at risk on return because he will not relapse into drug use in the Philippines. A central element of that is based on the availability of drug treatment to assist the Applicant.

[29] This part of the Officer's decision summarizes the threats faced by individuals with drug addiction in the Philippines, but also notes the evolution in the government's approach. The Officer quotes from a United States International Narcotics Control Strategy Report dated March 2022, which observed that the government's "methods for eradication [of drug use] have… evolved over the last five years from an approach strictly focused on

supply reduction and punishment to one that includes drug demand reduction initiatives, including evidence-based prevention, treatment, and rehabilitation training…"

[30] The Officer then referred to the various treatment and rehabilitation centres that are reported to be available, including "community-based drug rehabilitation programs, outpatient drug rehabilitation centres, and advanced services in residential drug abuse treatment and rehabilitation centres."

[31] The Applicant contends that this analysis is flawed because the Officer selectively assessed the evidence, relying on official sources from the government of the Philippines while ignoring the substantial evidence that calls into question the adequacy of these efforts. On this point, the Applicant points to a variety of reports, from diverse sources including the United Nations Human Rights Council, Amnesty International, academic researchers and press reports. These documents paint a picture of a system beset with inadequate facilities and personnel (e.g. 56 accredited drug treatment and rehabilitation centres in a country with a population of 110 million), where treatment is costly, and also inadequate (e.g. some treatment programs consisted of exercise such as Zumba classes, or watching a movie about drug use).

[32] Reports indicate that a primary focus of service providers is reporting high number of attendees as programs, rather than successful treatment outcomes. In addition, it was noted that many of the treatment facilities are housed on military installations, which calls into question their independence from government. The United Nations Human

Rights Council stated they are "concerned that the involvement of law enforcement agencies in drug rehabilitation programmes runs counter to the provision of evidence-based medical treatment and rehabilitation." In light of the evidence about police involvement in extra-judicial killing of suspected drug users summarized above, this also gives rise to obvious security concerns.

[33] The Applicant submits that the Officer's decision rests on a finding that he could easily access appropriate drug treatment facilities either to help him to avoid a relapse into drug use, or assist him to recover. This conclusion is unreasonable, according to the Applicant, because the Officer did not engage with the evidence summarized above that calls into question the availability, adequacy and appropriateness of such treatment, and raises doubts about the security of those who seek it out.

[34] I agree.

[35] Once again, the key point is that the Officer did not have to agree with the Applicant's submissions about the adequacy and availability of treatment programs. But the Officer could not ignore it, particularly given their reliance on reports that paint a more positive picture. The Officer was required to engage with the Applicant's submission and evidence on this point, and make findings to justify their conclusion. The failure to do so was unreasonable.

IV. Conclusion

[36] For the reasons set out above, I find the decision to be unreasonable. It bears repeating that the consequences for the Applicant are very high. His risks of return to the Philippines were not previously assessed, and so this was not a situation where the Officer was simply required to examine any new evidence regarding risks that had emerged since a refugee hearing. Instead, the Officer was required to examine these risks for the first time.

[37] In accordance with the *Vavilov* framework, in this type of circumstance, the burden of justification on the Officer was at the highest level. The reasons had to "reflect the stakes". In my view, the reasons in this case fall short of that mark, and are therefore unreasonable.

[38] The application for judicial review will be granted. The decision will be quashed and set aside. The matter will be remitted back for redetermination by a different Officer. Before any new decision is made, the Applicant shall be permitted an opportunity to make further submissions, if he wishes to do so.

[39] There is no question of general importance for certification.

JUDGMENT in IMM-12742-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision is quashed and set aside.

3. The matter is remitted back for redetermination by a different Officer.

4. Before a new decision is taken, the Applicant shall be permitted an opportunity to provide further submissions, if he wishes to do so.

5. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12742-22
STYLE OF CAUSE:	JULIUS CARLO LAYUG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 16, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	JUSTICE PENTNEY
DATED:	NOVEMBER 23, 2023

APPEARANCES:

Nathaniel Ng-Cornish	FOR THE APPLICANT JULIUS CARLO LAYUG
Lorne McClenaghan	FOR THE RESPONDENT THE MINISTER OF CITIZENSHIP AND IMMIGRATION

SOLICITORS OF RECORD:

Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT JULIUS CARLO LAYUG
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT THE MINISTER OF CITIZENSHIP AND IMMIGRATION