Federal Court  Cour fédérale

Date: 20240229

Docket: IMM-4800-22

Citation: 2024 FC 343

Ottawa, Ontario, February 29, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

BAHRE KARAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2009, the Refugee Protection Division ("RPD") found the Applicant, Bahre Karam, to be a Convention refugee because of his fear of persecution by the Taliban in Pakistan. Very soon after he obtained permanent residence in Canada, he returned to Pakistan two times in 2011 and 2012. The Minister of Public Safety and Emergency Preparedness ("Minister") brought an application for cessation in 2014, arguing that Mr. Karam had voluntarily reavailed himself of

Pakistan's protection when he returned in 2011 and 2012. In 2019, the RPD granted the Minister's cessation application and Mr. Karam's refugee claim was deemed rejected.

[2] In 2021, Mr. Karam applied for a Pre-Removal Risk Assessment ("PRRA"), arguing that he feared persecution by the Taliban on the grounds of political opinion and religion. Mr. Karam presented new evidence: objective evidence related to the Taliban returning to power in Afghanistan in 2021, resulting in its branch in Pakistan intensifying attacks, and personal evidence from his family members relating to recent attacks, threats and a kidnapping by the Taliban in relation to seeking out Mr. Karam.

[3] Mr. Karam's PRRA was rejected by an officer at Immigration, Refugees and Citizenship Canada ("IRCC"). Mr. Karam makes a number of arguments challenging the PRRA refusal on judicial review. The overarching argument is that the Officer unreasonably required that he "overcome" the cessation decision, making this a precondition to considering his protection claim. I agree that the Officer unreasonably required Mr. Karam to "overcome" the 2019 cessation finding that related to his 2011 and 2012 reavailment; the Officer's repeated reference to the need to overcome the cessation decision animated their assessment of both the personal and objective new evidence. This was not a minor misstep, but rather a central problem with the Officer's evaluation of Mr. Karam's claim.

[4] Based on the reasons below, I grant the application for judicial review.

II. Issue and Standard of Review

[5] The determinative issue on judicial review is the Officer's evaluation of the substance of Mr. Karam's protection claim. The parties agree, as do I, that I should review the Officer's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 85 described a reasonable decision as "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". Administrative decision makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

[6] Mr. Karam also argues that the Officer unfairly considered extrinsic evidence without notice to him and ought to have held an oral hearing because the Officer made veiled credibility findings on determinative issues. It is unnecessary for me to address these procedural fairness issues because I have found, as I explain below, that the Officer's decision is unreasonable on the merits and must be re-determined.

[7] The PRRA determination process engages the principle of non-refoulment, which prohibits returning refugees to countries where they are at risk of being subjected to human rights violations (*Németh v Canada (Justice)*, 2010 SCC 56 at paras 1, 19; *Atawnah v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 774 at para 48). The critical rights and interests at the core of a PRRA decision mean that there is a heightened obligation to provide

applicants both with a procedurally fair process (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 22-23) and responsive reasons that reflect the serious consequences at stake (*Vavilov* at para 133).

III. Analysis

[8] At issue in this judicial review is the relationship between the RPD's findings in a cessation case and allegations of new risk on a PRRA. The parties do not disagree about the general approach to be taken in these circumstances. When the RPD allows the Minister's cessation application, a person's refugee claim is "deemed to be rejected" (section 108(3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*")). This means that section 113 of *IRPA* applies to the consideration of their PRRA. Section 113 of *IRPA* provides a PRRA applicant can only provide new evidence "that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection".

[9] A PRRA Officer is not conducting an appeal of the preceding RPD decision, whether the previous RPD decision relates to the Minister's cessation application or a protection claim under section 96 or 97 of *IRPA* (*Demesa v Canada (Citizenship and Immigration)*, 2020 FC 135 at para 16). The PRRA Officer shows deference to the RPD's or the Refugee Appeal Division ("RAD")'s findings of fact absent a material change of circumstances (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 47; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13). This does not mean, however, that failing to convince a PRRA officer that the RPD's or the RAD's findings of fact or final determination have been

"overcome" by new evidence is fatal to a protection claim on a PRRA. Key to the assessment is the relevance of those determinations to the particular forward-looking risk claim being advanced on a PRRA, taking into account the new evidence.

[10] In this case, the Officer never explains how the RPD's findings about Mr. Karam's trips in 2011 and 2012 to Pakistan affect its assessment of his risk in 2022. The Officer states repeatedly throughout the decision that Mr. Karam has not "overcome" the RPD's cessation determination. It is not clear what aspect of the determination needs to be overcome in relation to the new risk being put forward. In other words, how is the determination about Mr. Karam's reavailment over ten years ago relevant to the risk being asserted now, given the new objective and personal evidence that has been provided. In its cessation determination in 2019, the RPD did not evaluate Mr. Karam's prospective risk in returning to Pakistan in 2019; the RPD in the 2019 cessation decision focused on Mr. Karam's actions in 2011 and 2012 when he returned to Pakistan.

[11] The Officer sets out the RPD's findings in the cessation decision about the purpose of Mr. Karam's visits in 2011 and 2012, the length of his stay, that he could not have been in hiding the whole time he was there, and the speed with which he obtained a Pakistani passport after obtaining permanent resident status in Canada. The Officer then states that the Applicant has failed to address these findings and that on the balance of probabilities the "applicant has not overcome the RPD's findings."

[12] The Officer's focus on overcoming the cessation determination leads to an assessment that does not grapple with the central task of a PRRA officer – to evaluate whether Mr. Karam would face risk under section 96 or section 97 of *IRPA* if he were to return to Pakistan today (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 116). This is the key problem that permeates the decision, including the Officer's evaluation as to whether there is a nexus and their evaluation of Mr. Karam's new personal and the objective evidence.

[13] The Respondent argued that while the Officer could have used better wording, when the decision is read holistically, the Officer is not requiring the reavailment finding be overcome as a precondition before risk can be assessed, but rather has found Mr. Karam had not met his burden of establishing his claim. I do not agree. The Officer repeatedly uses the language of having to "overcome" the RPD's cessation finding and the substance of the Officer's decision exemplifies an approach that did not grapple with the central question of whether Mr. Karam was at risk but instead focused on if he had "overcome" the RPD's specific findings about his trips in 2011 and 2012.

[14] For example, the Officer discounts personal evidence of Mr. Karam's family that set out attacks, threats and a kidnapping they recently experienced by the Taliban in the pursuit of Mr. Karam. The Officer states that the risk from the Taliban set out in the letters "stem from the applicant's initial stated risk that forced the applicant to flee the country" and that the "letters do not address the RPD's finding of reavailment." Based on this, the Officer assigns little weight to the letters because "the letters do not overcome the RPD finding."

[15] There are a number of concerns with the Officer's treatment of this evidence, including that it is unclear how these family members would even address the RPD's findings about Mr. Karam's reavailment to Pakistan in 2011 and 2012. The Officer's treatment of this evidence illustrates that the Officer's approach requires that the reavailment finding be overcome as a precondition to even evaluating the risk that is being asserted on the PRRA.

[16] The main submission on the PRRA is that the situation in Pakistan is different now than it was in 2011 and 2012. Simply asserting that evidence on new risk is not relevant because it does not overcome a finding about reavailment in 2011 and 2012 distracts from the central task of the PRRA Officer: evaluating current risk. The Officer never explains why these findings have to be "overcome" to find Mr. Karam currently at risk. In other words, the relevance of the RPD's findings to the current risk claim. The unanswered question is even though the RPD found that Mr. Karam reavailed in 2011 and 2012, is he currently facing forward-looking risk under section 96 or 97 of *IRPA* in light of the new personal and objective evidence.

[17] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-4800-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The PRRA decision dated March 31, 2022 is set aside and sent back to be redetermined by a different officer; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4800-22
STYLE OF CAUSE:	BAHRE KARAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 28, 2023
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	FEBRUARY 29, 2024

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