Date: 20240301

Docket: IMM-4969-23

Citation: 2024 FC 353

Vancouver, British Columbia, March 1, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

MALEK MOHAMMAD DAOUD BAKR

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I.   Overview

[1]   The Applicant, Malek Mohammad Daoud Bakr [the "Applicant"], has applied to this

Court under s. 72(1) of the *Immigration and Refugee Protection Act* [IRPA] to judicially review

the decision of the Refugee Appeal Division ["RAD"] upholding the rejection of his refugee

claim by the Refugee Protection Division ["RPD"] of the Immigration and Refugee Board

["IRB"].

[2]   This Applicant is a citizen of Jordan and of Palestinian origins. He was born in Saudi Arabia and was also a temporary resident of that country. He alleged a fear of the general manager (the "GM") of his former employer. His GM, also a Jordanian citizen, sought to involve the Applicant in money laundering activities carried on through the company. The Applicant was directed to pick up two vehicles in the United States, containing money, for importation to Jordan and Saudi Arabia. He arrived in Miami ostensibly to pick up the vehicles in August 2018 but, after going for a cruise, travelled to Canada where he made a refugee claim dated December 2018.

[3]   The Applicant initially alleged a fear of his former employer, tied to his refusal to participate in money laundering, and the family of a former domestic partner, who he was convicted of assaulting in 2008. By the time of the appeal at issue, he alleged a fear only of the GM.

[4]   Before the RPD and the RAD, exclusion 1F(b) was also an issue but both found that he was not excluded. The parties are not challenging the reasonableness of the RAD decision on exclusion.

II.   Procedural History

[5]   The RPD initially rejected the Applicant's claim in March 2020 on the basis of an Internal Flight Alternative in Jordan. It found that the Applicant was not excluded from protection on the basis of his above-mentioned assault conviction. However, on appeal, the RAD

found that the RPD conducted an incomplete assessment of exclusion and failed to notify the Minister as required. The RAD returned the matter to the RPD by decision dated May 2021.

[6]   The RPD, again, rejected the Applicant's claim pursuant to ss. 96 and 97(1) IRPA by written decision in June 2022. It found the determinative issue to be credibility. The panel assessed exclusion per Article 1F(b) of the *Convention Relating to the Status of Refugees* [the "Convention"] but found that the Applicant was not excluded for commission of a serious non-political crime.

[7]   In March 2023, the RAD dismissed the appeal and confirmed the decision of the RPD on both inclusion (i.e., that the Applicant is neither a Convention Refugee nor a person in need of protection) and exclusion (i.e., that there were no serious reasons for considering that he had committed a serious non-political crime outside of Canada prior to his arrival).

[8]   The RAD also found that the Applicant's allegations of bias against the RPD were without merit.

[9]   The RAD accepted new evidence in the form of "WhatsApp" text messages alleged to be from the GM and related e-mails, but found no basis to convene an oral hearing. The panel refused to accept an unsworn affidavit and another document, as they did not contain new information but rather submissions, although it did consider the material as the latter. A Wikipedia article respecting cannabis in Saudi Arabia was also refused.

III.   Issues and Standard of Review

[10]   In his memorandum, the Applicant had challenged both the reasonableness of the RAD

decision and whether it was reached in a procedurally fair manner. However, in the hearing, the

Applicant dropped the argument on procedural fairness.

[11]   The standard of review applicable to refugee determination decisions is reasonableness

(*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4

SCR 653 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at

para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). 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).

The reviewing court must ensure that the decision is justifiable, intelligible, and transparent

(*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns

raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

IV.   Analysis

A.   *Legal Framework: Credibility Findings*

[12]   There is generally a great degree of deference given to the credibility findings of an

expert administrative tribunal. Generally, this Court will not interfere with a decision if the

evidence before the Board, taken as a whole, would support its negative assessment of

credibility, if its findings were reasonable in light of the evidence, and if reasonable inferences

were drawn from that evidence (Tsigehana v Canada (Citizenship and Immigration), 2020 FC

426, at paras 33-35).

[13]   However, credibility assessment is a fact-finding exercise. The decision-maker can accept or reject the facts on a balance of probabilities. Facts that the decision-maker accepts or rejects are then linked to their rationally connected legal consequence. If the claimant's testimony cannot be relied upon, and that there is no independent evidence to corroborate the facts relevant to the claim, the decision-maker is left with insufficient credible evidence to find that the fact is established to support the claim. Therefore, the starting point is to understand and consistently use well-defined concepts such as credibility, probative value, relevance, materiality, weight and sufficiency. My colleague Justice Grammond has offered guidance on this in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 that I will not repeat here. Concisely, by understanding and using concepts related to accepting or rejecting evidence consistently, administrative decision-makers increase the likelihood of rendering reasonable decisions.

[14]   The formal rules of evidence, which make irrelevant or immaterial evidence inadmissible to a court proceeding, do not apply to an administrative tribunal at the IRB. However, this does not mean that all facts, irrespective of their relevance, probative value or materiality, are created equal. Even though nearly all evidence is admitted at the RPD, and that new evidence before the RAD is subject to the restrictions in section 110(4) of the IRPA, relevance and materiality remain key to the weight of the evidence. Therefore, generally speaking, an exercise in making credibility assessment of individual facts, irrespective of how they matter in the context of the refugee case, in and of itself may not support an overall reasonable decision. This is because a decision where the member refers to all facts as equal, irrespective of their relevance and materiality in the context of the refugee claim, could lose the logical chain of reasoning contemplated by *Vavilov*:

[85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a **whole is reasonable.** As we will explain in greater detail below, 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. The reasonableness standard requires that a reviewing court defer to such a decision (my emphasis).

[15]   Putting it differently, likening the situation to puzzle pieces, individual credibility findings represent fragments of evidence. Each piece might be accurate on its own, but without assembling and examining the complete puzzle, the overall picture – the comprehensive credibility assessment – may fail to reflect the true nature of the case. It underscores the necessity of a holistic approach to ensure the integrity and accuracy of the decision-making process. Without it, the chain of reasoning is lost and the reasons are no longer intelligible (Patel v Canada (MCI), 2024 FC 28 at para 24).

B.   *Was the RAD decision reasonable?*

[16]   In his memorandum, the Applicant had challenged multiple issues that had allegedly rendered the RAD decision unreasonable, including matters related to the incompetence of counsel, RAD's failure to accept new evidence (without arguing the restrictions of s. 110(4) of the IRPA) and its failure to find the RPD member to be biased. However, at the hearing, he only pursued the reasonableness of the RAD's credibility findings and the conditions in Jordan for Palestinians. I will therefore only deal with these issues.

[17]   The Applicant has argued that the RAD reviewed the RPD decision on the correctness standard, which was an error. It should have used the reasonableness standard.

[18]   I reject the Applicant's argument on this point. As per *Canada (MCI) v Huruglica,* 2016 FCA 93 at paras 58-59 and 70-75 [*Huruglica*], the RAD's standard of review for an RPD decision is that of correctness. The RAD may show deference to the RPD where the latter has a meaningful advantage in assessing credibility or the weight of oral evidence. However, *Huruglica* does not indicate that the RAD is under any obligation to be deferential in all RPD credibility assessments. As stated by Mr. Justice Mosley in *Azanor v Canada (MCI)*, 2020 FC 613 at para 22 [*Azanor*] citing *Rozas del Solar v Canada (MCI)*, 2018 FC 1145 [*Rozas del Solar*]: "there is no presumption that the RPD has a meaningful advantage, even where credibility findings are concerned". The RAD is also under no obligation to explicitly make a finding on RPD's meaningful advantage with respect to each evidence.

[19]   In this case, at paragraph 26 of its decision, the RAD member correctly cited *Huriglica* and stated that "My role is to look at all the evidence and decide if the RPD made the correct decision". The RAD also stated and demonstrated in its decision that it conducted an independent assessment of the record, the Applicant's testimony and the other evidence and arrived at its own conclusion. While ultimately agreeing with much of RPD's credibility findings on key elements, it also rejected some and offered a nuanced analysis on others.

[20]   The Applicant had presented two central arguments on his refugee claim: (1) a fear of one person only, the GM, under s. 97(1) of the IRPA, and (2) discrimination amounting to persecution because of his Palestinian origins in Jordan under s. 96 of the IRPA.

[21]   The Applicant spent the bulk of the hearing at judicial review to go through the RPD transcript to argue a microscopic approach, including a non-exhaustive need for further corroboration of details. However, the issue before me is the reasonableness of the RAD's decision. The RAD member provided a clear chain of reasoning as to why in the context of a s. 97 fear of a single individual, who had not harmed the Applicant in the past, sufficient credible evidence was necessary to conclude a future risk on the balance of probabilities. The context includes the Applicant's allegation that the GM had control over him as his employment-linked residency in Saudi Arabia.

[22]   The RAD's independent assessment of the evidence did not uphold all of the RPD's credibility findings as seen on paragraphs 42-44 and 50 of its decision. As the RAD member stated in paragraph 50, she agreed with "repeated miscommunication" at the RPD during a testimony but focused on the "salient point" on the Applicant's inability to corroborate the evidence of a threat by the only agent of harm, namely, the GM.

[23]   In this case, as new evidence, the Applicant provided evidence of his interactions with the GM on "Whatsapp" to conclude a forward-looking risk from the GM. However, the RAD member analysed those messages and the fact that they only contained pleasantry with no threat to conclude that they did not amount to sufficient credible evidence of a forward-looking risk of harm in Jordan (at paragraph 64). This is a reasonable finding. In fact, the Applicant had agreed that the messages did not contain any threats, but he argued this was because the GM did not want to put a threat in writing. It was reasonable for the member not to speculate as to what a silence could mean in a message. In any event, it is not for this Court to reweigh the evidence.

[24]   The RAD explained clearly and intelligibly that the contradictions or omissions that formed its decision mattered because they all related to the Applicant's alleged ongoing fear of reprisal and harm from his employer which was central to his allegations (such as at paragraphs 55 -70). Ultimately, upon providing a detailed analysis as to why the consistent or missing evidence mattered in context, the RAD concluded the following:

> [73] In conclusion, I find that there is insufficient credible evidence to establish on a balance of probabilities that the Appellant faces a risk of harm as defined in subsection 97(1) of the IRPA, by his alleged agent of harm.

[25]   The Applicant takes issue with numerous credibility determinations in the RAD's decision. The arguments point to various findings and disagree with the RAD's conclusions. However, the Applicant's arguments amount to disagreeing with how the RAD weighed the evidence. Not only does this Court not reweigh the evidence, I find that the RAD's reasons on fearing the GM were intelligible, transparent and justifiable.

[26]   The RAD further concluded that the Applicant did not face persecution in Jordan on account of his residual profile as a Palestinian. It looked at the Applicant's profile and applied the country conditions to it. It noted country conditions that those of Palestinian ancestry face "low level" discrimination, but it was not satisfied that conditions rose to the level of systemic discrimination amounting to persecution, pointing to the Applicant's ability to obtain a professional degree and certificate in Jordan, amongst other factors. The RAD's reasons on this point also shows a clear chain of reasoning and is reasonable.

V.   Conclusions

[27]   I find that the decision of the RAD was reasonable. I therefore dismiss the judicial

review.

[28]   The parties did not propose a certified question and I agree that none arises.

<u>JUDGMENT IN IMM-4969-23</u>

THIS COURT'S JUDGMENT is that

1. The Judicial Review is dismissed.

2. There are no questions to be certified.

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"Negar Azmudeh"

Judge

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FEDERAL COURT

SOLICITORS OF RECORD

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