Federal Court Cour fédérale

Date: 20240326

Docket: IMM-3089-23

Citation: 2024 FC 475

Ottawa, Ontario, March 26, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ABUBAKAR OLADIMEJI ALABI
AWELE MEME OLUFUNKE ALABI
GADIL OLUWASENI ALABI
ZAIDA OLUWAFIKEMI NGOZI ALABI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by a Senior Immigration Officer ("Officer") dated February 2, 2023, denying the Applicants' Pre-Removal Risk Assessment ("PRRA") application, pursuant to section 112 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 ("*IRPA*"). The Officer was not satisfied that the Applicants would be subject to a risk to their lives, or a risk of persecution, torture, or cruel and unusual treatment or punishment if returned to Nigeria.

[2] The Applicants submit that the decision is unreasonable and procedurally unfair, given that the Officer erred in requiring corroborating evidence, made veiled credibility findings, applied an incorrect legal test, and failed to hold an oral hearing.

[3] For the following reasons, I find that the Officer's decision is unreasonable. This application for judicial review is granted.

II. **Analysis**

A. *Background*

[4] Abubakar Oladimeji Alabi (the "Principal Applicant"), Awele Meme Olufunke Alabi, and their two children are citizens of Nigeria who entered Canada in September 2018.

[5] In a decision dated February 2, 2023, the Officer refused the Applicants' PRRA application, concluding the Applicants had furnished insufficient evidence to establish that they faced persecution or other personalized risk of harm. The Officer was not satisfied that the evidence provided supported the Principal Applicant's stated fears regarding female genitalia mutilation ("FGM") and/or persecution from the Principal Applicant's family. The Officer

further found that the country conditions evidence indicated “no more than a generalized risk for the applicants,” being insufficient as a risk required for sections 96 or 97 of the *IRPA*.

B. *Issues and Standards of Review*

[6] The issues in this application are whether the Officer’s decision is procedurally fair and reasonable.

[7] The parties agree the applicable standard of review for the merits of the Officer’s decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 25, 86-87). I agree.

[8] The issue of procedural fairness in this matter is to be reviewed on the correctness standard (*NMS v Canada (Citizenship and Immigration)*, 2023 FC 391 at paras 47, 71-79; *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 at paras 19-24, 36; *AB v Canada (Citizenship and Immigration)*, 2019 FC 165 at paras 23-25; *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (“*Canadian Pacific Railway Company*”) at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada’s decision in *Vavilov* (at paras 16-17).

[9] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its

rationale and outcome, is transparent, intelligible and justified (*Vavilov* 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[10] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

[11] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

C. *The Officer's decision is unreasonable*

[12] The Applicants maintain that the Officer unreasonably required the Applicants to demonstrate a "personalized risk," thus conflating the requirements under sections 96 and 97 of

the *IRPA* (*Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 ("*Fodor*")) and that the Officer erred in unjustifiably requiring corroborative evidence to support the Principal Applicant's sworn statement and other documentary evidence.

[13] The Respondent submits that the Officer did not err, the evidence being insufficient to establish the Applicants' claim and there being no evidence to indicate the state was targeting the Applicants either as individuals or as a particular social group for a failure to engage in FGM.

[14] I agree with the Applicants. I am mindful of the fact that the mere use of terms like "personally," "personalized," or "individualized," "does not alone indicate that the tests under section 96 and 97 [of the *IRPA*] have been conflated" (*Fodor* at para 38, citing *Somasundaram v Canada (Citizenship and Immigration)*, 2014 FC 1166 at para 25, *Pillai v Canada (Citizenship and Immigration)*, 2008 FC 1312 at paras 42, 44, and *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at para 29). I am also mindful that the Officer's decision must be read "as a whole, including the reasons provided by the decision maker and the outcome that was reached" (*Vavilov* at para 116).

[15] The Officer's analysis canvassed the objective documentary evidence furnished by the Applicants in support of their PRRA application, and found at various points that the Applicants faced only a "generalized," rather than personalized risk, concluding that "[t]here is insufficient evidence before me to conclude that the applicants would be singled out for treatment that would be substantially different from other residents based on the applicants' personal circumstances. I

note that a generalized risk in the country of return does not rise to the level of a risk under section 96 or section 97 of the *IRPA.*" [Emphasis added]

[16] Having reviewed the Officer's decision as a whole, I find that the Officer required the Applicants to establish the persecution they alleged under section 96 of the *IRPA* was not "generalized." I rely upon my colleague Justice McHaffie's comprehensive summary of the relevant jurisprudence in *Fodor* and adopt his ruling that requiring an applicant to establish that a risk of persecution is "individualized" impermissibly imports a threshold from a section 97 of the *IRPA* analysis into a section 96 analysis (at para 41).

[17] Here, the Officer does not engage in the requisite analysis for determining whether the Applicants had a well-founded fear of persecution under section 96 of the *IRPA* through evaluating whether the generalized evidence was relevant to them (*Fodor* at para 38). The Applicants' PRRA submissions clearly rely upon general documentary evidence to establish a fear of persecution owing to the possibility of FGM: "The documentary evidence establishes that FGM is still prevalent throughout Nigeria." For the Officer to summarily dismiss this evidence as "generalized" and thus find it insufficient to establish a risk of persecution under section 96 of the *IRPA* is inconsistent with the jurisprudence. It is therefore unjustified in relation to its legal and factual constraints (*Vavilov* at paras 99-101). As such, I find the decision is unreasonable.

[18] Furthermore, the Officer fails to provide independent reasons for requiring corroborative evidence to substantiate the statements in the Principal Applicant's sworn affidavit. The Officer was not entitled to belie the obvious and deem the Principal Applicant's affidavit to be

insufficient, absent independent reasons for requiring corroboration. This includes the Officer failing to provide explicit credibility, plausibility, or hearsay concerns regarding this evidence (*Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 36, cited with approval in *Nadarajah v Canada (Citizenship and Immigration)*, 2022 FC 171 at para 13). This further strikes at the decision's reasonableness with regard to its legal and factual constraints (*Vavilov* at paras 99-101).

[19] Moreover, by requiring further corroboration the Officer only implicitly and without reason reject the contents of the Principal Applicant's affidavit. It is an error to fail to provide reasons to reject the presumed truthfulness of evidence in an applicant's sworn affidavit in PRRA applications (*Anni v Canada (Citizenship and Immigration)*, 2016 FC 941 at paras 17-20, citing *MalDonado v Minister of Employment and Immigration*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 at para 5 (FCA) and *Hilo v Canada (Minister of Citizenship and Immigration)*, 26 ACWS (3d) 104, [1991] FCJ No 228 (FCA)).

[20] This is not, however, to say that the Applicants were necessarily entitled to an oral hearing to assess the credibility of new evidence provided in support of the PRRA application. As I have held, "it is when otherwise credible and admitted evidence raises a serious issue with respect to the general credibility of the applicant that the determination of an oral hearing becomes relevant. A 'credibility finding' on the admissibility of new evidence is not equivalent to a credibility assessment on the Applicants" (*AB v Canada (Citizenship and Immigration)*, 2020 FC 61 at para 17). Rather than raising any serious issue with the Principal Applicant's credibility in this matter, it was the Officer requiring corroboration under the guise of

"sufficiency," without providing reasons for doing so, that rendered this aspect of the decision unreasonable.

D. *Procedural fairness*

[21] Having found the decision to be unreasonable, I do not address the issue of procedural fairness.

III. **Conclusion**

[22] This application for judicial review is granted. The Officer's decision is unreasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-3089-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted, the underlying decision is set aside and the matter is remitted to a different officer for redetermination.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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