Federal Court  Cour fédérale

Date: 20240702

Docket: IMM-6555-22

Citation: 2024 FC 1032

Toronto, Ontario, July 2, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

BAKRAT ALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Pakistan. He arrived in Canada in June 2019 as a merchant seaman. The Applicant's refugee claim, made in July 2019, was refused because, as a merchant seaman, he was required to initiate a refugee claim within three days of arriving to Canada. The Applicant was eligible for and submitted a Pre-Removal Risk Assessment [PRRA].

[2] In a decision dated May 31, 2022 a Senior Immigration Officer [Officer] refused the PRRA. The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the Officer's decision.

[3] In assessing the Applicant's risk and refusing the PRRA, I am satisfied that the Officer identified issues of credibility in relation to evidence central to the application that would or could have justified the granting of the application. The Officer's failure to acknowledge that credibility was in issue and to then consider whether an oral hearing was required renders the decision unreasonable. The Application is granted.

II. Background

[4] The Applicant reports that, after making a speech at the request of a friend who was the Pashtun Tahaffuz Movement [PTM] president in their constituency, he became a member of the PTM, a civil rights movement. He reports that he declined a leadership position within the PTM in 2018 because of his job, but remained involved with PTM activities.

[5] On September 10, 2018, the military picked up the Applicant from his house and took him to a local military detachment, where he saw his friend, the PTM constituency president. He reports that both he and his friend were told to stop engaging with the PTM and lay low, and that, if they were brought back, "it would not be pleasant at all." They were then yelled at and told to get out.

[6] Shortly after having been picked up by the military, the Applicant left Pakistan to work on a ship, but remained in contact with his family and his friend. He submits that around the time he left, the military started to crack down on the leadership and prominent members of the PTM. His friend was again picked up by the military in early May of 2019, charged with treason, and disappeared. The military also visited the Applicant's home, where they conducted a search, interrogated the Applicant's brother and father and told them that the Applicant had to report to the military office when he returned. The Applicant also reports his father learned through his connections with the military that the Applicant was on a list of individuals to be charged with treason.

[7] The Applicant fears being detained and falsely charged with treason, or disappearing, upon his return to Pakistan.

[8] The Applicant also reports that he continues to be an active member of the PTM and uses Facebook to "[let] the world know how the people of Swat are suffering under the Pakistani Army." He asserts that the authorities monitor his activities on Facebook, and that the Pakistani army went to his father's house and told his father that they know the Applicant is active on Facebook and actively supporting the PTM. The military reportedly told the Applicant's father they would catch him if he returned to Pakistan.

III. Decision under review

[9] In refusing the PRRA, the Officer first identified and reviewed the documentary evidence in the form of letters and affidavits submitted in support of the PRRA. The Officer detailed

concerns and discrepancies with the documentary evidence and held much of it was of limited probative value due to the identified concerns. The Officer then considered the country condition documentation. The Officer concluded that the country condition evidence demonstrated that PTM members had been arrested and detained in Pakistan. However, there was little indication that all supporters of the PTM were in danger; the government instead targets leaders and prominent members of the PTM.

[10] The Officer concluded the Applicant is a supporter of the PTM but is neither a leader nor a prominent member of the PTM. The Officer also found that the Applicant's statement that he had been actively supporting the PTM on Facebook while living abroad was not supported by corroborative evidence. The Officer was not persuaded that the Applicant would reasonably have attracted the attention of the authorities, or that he had a profile that would have sustained the interest of authorities in Pakistan.

[11] The Officer concluded that the Applicant would face no more than a "mere possibility of risk" under any of the Convention grounds set out in section 96 of the IRPA. Further, the Officer found that, on a balance of probabilities, the Applicant would not face a risk of torture, a risk to life or a risk of cruel and unusual punishment as described in section 97 of the IRPA if he returned to Pakistan.

IV. Issues and standard of review

[12] The Applicant has raised a number of issues on this Application, including that the Officer's failure to hold an oral hearing was a breach of procedural fairness. The procedural fairness issue is determinative.

[13] The Applicant argues that the correctness standard of review is to be adopted in considering whether there has been a breach of natural justice. The Respondent relies on *Lotsov v Canada (Citizenship and Immigration)*, 2022 FC 938 at paras 5-9 [*Lotsov*] in submitting that all issues raised, including the question of whether an oral hearing was required, are to be reviewed on a reasonableness standard.

[14] In *Lotsov*, Justice Glennys McVeigh relied on *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 (Justice Denis Gascon) and noted that the right to a hearing in the context of a PRRA application flows from subsection 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Where the evidence relates to the Applicant's credibility, is material to the decision, and could justify allowing the PRRA application, a decision maker may determine that an oral hearing is required:

113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
[…]	[…]
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is	**b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

required;	
[…]	[…]
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[15] Determining whether to conduct an oral hearing requires the Officer's interpretation and application of the IRPA and of the specific factors identified in the IRPR. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 teaches that a decision maker is generally entitled to deference when a question involves the decision maker's interpretation of its statutory grant of authority (paras 108-110). I share the view of Justices McVeigh and Gascon and have applied the reasonableness standard of review.

V. Analysis

[16] The Applicant argues that the Officer, having made clear findings of credibility that were dispositive of the application without conducting an oral hearing, breached the principles of natural justice. The Respondent submits that credibility was not in issue as the basis of the Officer's refusal determination was that there was insufficient evidence to establish the asserted risk.

[17] In considering the need for a hearing in the PRRA context, a decision maker must consider whether the factors identified in section 167 of the IRPR exist – whether there is a serious issue of the applicant's credibility that is central to the determination of the application for protection. It can often be difficult to distinguish credibility findings from findings of insufficient evidence. In considering whether a decision maker has made actual or veiled credibility findings, a reviewing court "must analyze the decision by looking beyond the words used by the officer himself or herself… while an officer may state that the decision was based on the insufficiency of the evidence, the officer may in fact have called into question the applicant's credibility"(*Matute Andrade v Canada (Citizenship and Immigration)*, 2010 FC 1074 at para 31 [*Matute Andrade*], citing *Hurtado Prieto v Canada (Minister of Citizenship and Immigration),* 2010 FC 253, and *Ferguson v Canada (Citizenship and Immigration),* 2008 FC 1067). The Court must consider "the true basis of the decision before determining whether it turned on lack of credibility or insufficient evidence" (*Matute Andrade* at para 32, citing *Wang v Canada (Minister of Citizenship and Immigration),* 2010 FC 799, and *Zemo v Canada (Minister of Citizenship and Immigration),* 2010 FC 800).

[18] Although the Officer couches many of their findings in terms of sufficiency, I am satisfied that the true basis for those concerns is in fact credibility. As I noted in *Osorio Malave v Canada (Citizenship and Immigration)*, 2021 FC 785:

> [11] Credibility findings generally involve a decision-maker pointing to contradictions and inconsistencies in the evidence and often involve a questioning, expressed or implied, of the sincerity of a statement or belief. Where a finding does not rest on contradictions and inconsistencies, but instead a failure of the evidence, even if believed, to establish the conclusion for which it has been tendered, the finding relates to the evidence's sufficiency, not credibility. [Citations omitted.]

[19] In this case, the Officer's analysis was heavily focused on deficiencies in the Applicant's evidence. The Officer engaged in a detailed review of the Applicant's evidence and repeatedly flagged what was not addressed in the various letters and affidavits. The Officer highlighted inconsistencies in the reporting of certain events by various witnesses, and discounted the evidence contained in affidavits authored by family members on the grounds that the affiants were not disinterested parties and that the supporting documentation and information the Officer would have preferred to see was lacking. The Officer's focus was on what the evidence did not say or address rather than on what the evidence did establish, suggesting the Officer had credibility concerns with Applicant's narrative.

[20] The Officer identified sufficiency of the evidence as the concern, which may have been the case in some instances. However, the Officer's reliance on contradictions, inconsistencies and the interests of the parties strongly indicates credibility was the actual concern.

[21] The evidence in issue was central to the Applicant's reported risks and if accepted would have justified the application. The factors prescribed at section 167 of the IRPR were present. The Officer was therefore required to consider the need for an oral hearing. The Officer's failure to do so renders the decision unreasonable.

VI. Conclusion

[22] The Application is granted. The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-6555-22

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The matter is returned for redetermination by a different decision maker.

3. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	BAKRAT ALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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