

Federal Court



Cour fédérale

Date: 20230303

Docket: IMM-5426-22

Citation: 2023 FC 273

Ottawa, Ontario, March 3, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

AHMED AINAN ABDOURAHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Mr. Ahmed Ainan Abdourahman, seeks judicial review of the negative Pre-Removal Risk Assessment [PRRA] decision the PRRA Officer rendered on November 13, 2020. The PRRA Officer then determined that, as a result of his active membership in the opposition political party named “Mouvement pour le Renouveau Démocratique” [the Party], Mr. Abdourahman faced no more than a mere possibility of persecution based on any of the

Convention grounds if returned to his country of citizenship, Djibouti, and that he had failed to establish that he would be personally subjected to a risk of life, or cruel or unusual treatment or punishment, or a danger of torture, if returned to Djibouti. The PRRA Officer found Mr. Abdourahman was neither a Convention refugee nor a person in need of protection as defined by sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] In his Memorandum of Fact and Law, Mr. Abdourahman essentially asserts that the PRRA Officer erred in law in their analysis of the risk of persecution he faced by (1) not referring to the considerable evidence contradicting their decision; and (2) by coming to a conclusion that is not reasonable in the context of the entirety of the evidence before them. Mr. Abdourahman thus submits that the decision is unreasonable.

[3] The Minister responds that the PRRA Officer's conclusion that Mr. Abdourahman would not be personally at risk of persecution due to his membership in the Party rests on the evidence in the record and the law.

[4] For the reasons that follow, I find that the PRRA Officer did not err as (1) there is no obligation for the PRRA Officer to refer to all the evidence; (2) in any event, the evidence referred to by the Applicant does not in fact contradict the evidence the PRAA Officer refers to, in their decision, so that the PRRA Officer could therefore not refer to contradictory evidence; and (3) given the evidence adduced by the Applicant, their conclusion was reasonable.

[5] The Application for judicial review will be dismissed.

II. Background

[6] On March 14, 2017, Mr. Abdourahman entered Canada and claimed refugee protection based on his fear of persecution from the Djibouti government based on his membership in the Party.

[7] On September 27, 2017, the Refuge Protection Division [RPD] rejected Mr. Abdourahman's claim and stated there was no credible basis for said claim. Mr. Abdourahman's application for leave and judicial review against the RPD decision was denied.

[8] Around March 2018, Mr. Abdourahman became an active member of the Party in Quebec and on October 31, 2018, he submitted a PRRA application, alleging a fear of persecution because of his political affiliation with the Party. On November 13, 2020, the PRRA Officer issued their negative decision.

III. The negative PRRA decision

[9] The PRRA Officer rejected Mr. Abdourahman's application on the ground that Mr. Abdourahman failed to establish that he faces more than a mere possibility of persecution based on any of the Convention grounds if returned to Djibouti (section 96 of the Act), and that he would be personally subjected to a risk of life, or cruel or unusual treatment or punishment, or a danger of torture, if returned to Djibouti (subsections 97(1)(a) and (b) of the Act).

[10] The PRRA Officer found Mr. Abdourahman had demonstrated that he is an active member of the Party, a conclusion that is not in issue here. Then, stating that they had analyzed the objective documentation submitted by Mr. Abdourahman, the PRRA Officer determined he had not demonstrated being at risk and that the documentation tended to show that political opponents may be subject to a certain discrimination but not to persecution. The PRRA Officer noted and discussed the publications Mr. Abdourahman had submitted into evidence, they noted that it could show that political opponents can sometimes be victims of arrest or harassment, but noted as well that it did not mention that these opponents are persecuted, tortured, subjected to cruel or unusual punishment or that their lives are threatened.

[11] After having also conducted their own research, the PRRA Officer noted, on one hand, that the arbitrary arrest of opponents is not a widespread phenomenon, and on the another hand, that those who are arrested in this way are released after a short time. The PRRA Officer cited the extract of the evidence he had considered.

[12] The PRRA Officer acknowledged that Djibouti did not experience a high level of political freedom and that certain members of the opposition political organisations could sometimes be subject to some harassment, but ultimately concluded that the evidence did not show these incidents were systematic or widespread enough to amount to persecution.

IV. Issues and Standard of Review

A. *Parties' Position*

[13] Mr. Abdourahman submits that the PRRA Officer erred in their analysis of the risk of persecution (1) by not referring to the considerable evidence contradicting its decision in order to establish why no weight was given to them; and (2) by coming to a conclusion that is not reasonable in the context of the entirety of the evidence before them.

[14] Mr. Abdourahman cites paragraphs from the documentation the PRRA Officer reviewed to conclude that the evidence does not demonstrate persecution of political opponents, and opines that the PRRA Officer erred as this evidence clearly refers to arbitrary arrests, surveillance, and political violence, and describes the high level of prosecution of political opponents in Djibouti. He also raises that the PRRA Officer refers to one excerpt in the documentation and does not provide any explanations as to why this excerpt should be given more weight than the rest of the documentary evidence clearly referring to serious political violence in Djibouti. Mr. Abdourahman adds that the evidence shows that the problems are widespread and that the PRRA Officer's conclusion is thus unreasonable.

[15] The Minister responds, *inter alia*, that there is a distinction between harassment and persecution (*Sefa v Canada (Citizenship and Immigration)*, 2010 FC 1190 at para 10 [*Sefa*]), and that the PRRA Officer examined documentary evidence concerning the situation in Djibouti to conclude that the harassment faced by members of the Party does not amount to persecution. It is

the Minister's opinion that Mr. Abdourahman invites this Court to reweight and reassess evidence, which is not allowed (*Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 13).

B. *Standard of Review*

[16] The only issue in this case is whether the decision is reasonable, which is to be assessed under the framework set out in *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[17] When the standard of reasonableness is applied, the burden is on the applicant to satisfy the Court “that any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). The Court’s “review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision 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). It is not for the Court to substitute the outcome that it believes is preferable to the one chosen (*Vavilov* at para 99).

C. *Discussion*

[18] First, as I outlined at the hearing, Mr. Abdourahman has not identified evidence in the record that is contrary to the evidence cited by the PRRA Officer; even the passages cited by Mr. Abdourahman in his memorandum, and stressed at the hearing, reveal the same occurrences of harassment, arrests, detention, and surveillance identified by the PRRA Officer.

[19] Mr. Abdourahman also argued, without much details, that the documentary evidence showed the occurrences were widespread and systematic, which amounts to persecution rather than discrimination, and that the PRRA Officer's conclusion is thus unreasonable.

[20] The dividing line between discrimination, harassment and persecution can sometimes be difficult to establish. As the Minister outlined, discrimination or harassment does not necessarily equate to persecution. To amount to persecution, the incidents must be serious and the harm inflicted must occur in a sustained or systematic way (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, at. 733-734; *Sefa* at para 10; *Noel v Canada (Citizenship and Immigration)*, 2018 FC 1062 at para 29). Persecution may be characterized by a "particular course or period of systematic infliction of punishment" directed against a particular group (*Rajudeen v Canada (Minister of Employment and Immigration)*, [1984] FCJ No 601, *Valentin v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 390 at para 8).

[21] The PRRA Officer acknowledged that some persons from opposition parties were arrested and were victims of harassment; therefore documents which show a number of arrests are consistent with the officer's appreciation of evidence. A death in custody of a man who was in ill health in 2017, a ban on demonstrations before presidential elections in 2011, dozens of detentions in 2015, arrests of journalists or activists, all this evidence is consistent with the PRAA Officer's conclusion that some arrests take place. Based on the objective documentation, the PRRA Officer also acknowledged that Djibouti does not have a high level of political freedom and that some members of the Party indeed faced harassment and arrests, but noted

these arrests are not frequent and the members who are arrested are usually released after a short time, which is substantiated by the evidence.

[22] The PRRA Officer was obviously alert to the distinction between discrimination, or harassment, and persecution and Mr. Abdourahman has not showed that their conclusion was not open to him given the documentation in the record.

[23] Also, I am mindful of the Supreme Court's instructions in *Vavilov* that a reviewing court must refrain from reweighing or reassessing the evidence considered by the decision-maker and must not, absent exceptional circumstances, interfere with factual findings (*Vavilov* at para 125). Ultimately, I find that Mr. Abdourahman's arguments constitute an impermissible request to reweigh the evidence that was before the PRRA Officer. Even if the Court had reached a different conclusion than the PRRA Officer, this is not sufficient, in itself, to overturn the decision (*Latif v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 104 at para 55; *Vavilov* at paras 15, 83-86; *Naredo v Canada (Citizenship and Immigration)*, 2022 FC 1543 at para 152).

[24] Accordingly, having carefully reviewed the entire record, and having read the decision "holistically and contextually" (*Vavilov* at para 97), I find that the PRRA Officer considered Mr. Abdourahman's evidence and considered the objective documentation regarding Djibouti and the Party. I am also of the view that the PRRA Officer could reasonably conclude that the discrimination and harassment alleged by Mr. Abdourahman did not amount to persecution.

[25] In addition, no serious arguments were raised to challenge the conclusion that Mr. Abdourahman had failed to establish a personal risk of return.

V. Conclusion

[26] In brief, the PRRA Officer reviewed the evidence submitted by Mr. Abdourahman and the objective and recent documentation. The reasons provided by the PRRA Officer reflect an “internally coherent and rational” chain of analysis. I am of the opinion that the PRRA Officer’s reasons bear the hallmarks of reasonableness (*Vavilov* at paras 97, 99). For all these reasons, the Application shall be dismissed.

JUDGMENT in file IMM-5426-22

THIS COURT'S JUDGMENT is that :

1. The Application for judicial review is dismissed
2. No question is certified
3. No costs is awarded

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5426-22

STYLE OF CAUSE: AHMED AINAN ABDOURAHMAN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 22, 2023

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: MARCH 3, 2023

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