Federal Court Cour fédérale

Date: 20230728

Docket: IMM-6379-22

Citation: 2023 FC 1035

Toronto, Ontario, July 28, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

FARTUN MOHAMED ALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review, the applicant seeks to set aside a decision dated June 6, 2022, made by a migration officer at the High Commission of Canada in Dar es Salaam, Tanzania.

[2] The officer refused the applicant's application for a permanent resident visa in Canada as a member of the Convention Refugee Abroad Class, or the Country of Asylum class, under the

Immigration and Refugee Protection Regulations, SOR/2002-227 (the *"IRPR"*). The officer found that the applicant did not meet the criteria in section 96 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the *"IRPA"*), and in paragraph 139(1)(*e*) and sections 145 and 147 of the *IRPR*.

[3] For the following reasons, I conclude that the application must be dismissed because applicant has not shown that the decision was unreasonable.

I. Events Leading to this Application

[4] The applicant is a citizen of Somalia. She married her husband in 2005 and together, they had a son in 2007.

[5] In November 2018, two men broke into the family home and killed the applicant's husband in front of her. Soon after, she fled Somalia for Uganda, fearing that the gunmen would return to kill her because she could recognize them. In Kampala, Uganda, the United Nations High Commissioner for Refugees recognized the applicant as a Convention refugee.

[6] In December 2019, the applicant applied to come to Canada as a member of the Convention Refugee Abroad Class or the Country of Asylum class. She was supported by a number of sponsors in Canada.

[7] On May 18, 2022, an officer at the High Commission in Dar es Salaam, Tanzania, interviewed the applicant by videoconference in Kampala, with the assistance of a Somali

interpreter. The same day, after the interview, the officer inserted interview notes into the Global Case Management System ("GCMS") and, under the heading "Assessments and Conclusion", the officer entered an eligibility decision on the applicant's application.

[8] Also following the interview on May 18, 2022, the applicant's sponsors sent an email with new information in an effort to support the applicant's claim. The email was sent about 50 minutes after the officer's entries into the GCMS. The sponsors' email was recorded in the GCMS on May 25, 2022.

[9] By letter from the High Commission in Tanzania dated June 6, 2022, the officer advised that, after carefully assessing all factors relative to her application, the officer determined that the applicant was not a member of any of the prescribed classes because the officer was not satisfied she had a well-founded fear of persecution on any Convention ground, nor that she would continue to be seriously and personally affected by civil war, armed conflict or massive violation of human rights. The officer's letter stated that the applicant was "presented with this concern at the time of interview" and the applicant was "provided with an opportunity to respond"; her "response did not allay that concern".

II. Analysis

[10] The applicant contended that the decision should be set aside as unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 563.

[11] Both parties submitted that the standard of review is reasonableness in *Vavilov*, and I agree: see e.g., *Woldemariam v. Canada (Citizenship and Immigration),* 2023 FC 891, at para 5; Sedoh v. Canada (Citizenship and Immigration), 2021 FC 1431, at para 16; *Gebreselasse v. Canada (Citizenship and Immigration),* 2021 FC 865, at para 37 (and the cases cited there).

[12] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v. Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[13] The applicant made a number of submissions to support her position that the officer's decision was unreasonable and should be set aside. They may be addressed under two headings.

A. ***Was the decision unreasonable for failure to consider family as a nexus to the Refugee Convention?***

[14] The applicant's position was that her nexus to the Convention was her family. As such, the applicant argued that she is a member of a particular social group covered by the non-exhaustive definition under *IRPA* section 96, and was therefore a member of the Convention Refugee Abroad class. The applicant referred to *Tomov v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1527.

[15] The respondent disagreed, arguing that membership in a family alone is insufficient to establish that the applicant is a member of a particular social group (citing *SM v. Canada (Citizenship and Immigration),* 2011 FC 949, at para 11). The respondent characterized the applicant as a witness to a crime, which was insufficient to show a nexus to a Convention ground. The respondent also argued that the fact that a member of a family is targeted does not imply that everyone in the family has established a nexus to the Convention. There must also be proof that the individual claiming protection is being targeted because of the relationship with the targeted family member (citing *Granada v. Canada (Minister of Citizenship and Immigration),* 2004 FC 1766, para 16). In this case, the respondent emphasized that the applicant did not know who the gunmen were or why they killed her husband, and there was no evidence that she was being targeted due to her relationship with him.

[16] Justice Roussel summarized the principles applicable to claims for protection based on a family relationship in *Theodore v. Canada (Citizenship and Immigration),* 2021 FC 651, at paragraph 8:

> It is recognized that the fact that one family member has been persecuted does not confer refugee status on all of the other members of that family. Those claiming refugee protection who base their claim on membership in a family group must demonstrate a personal connection between themselves and the persecution alleged to have occurred on a Convention ground. The family, as a social group, must be subjected to retaliation and revenge to hope to be granted the protection of Canada. Claimants must show that they have been or will be targeted by the persecutors because they are members of that family (*Ramirez Estrada v. Canada (Citizenship and Immigration),* 2015 FC 1019 at paras 8–10; *El Achkar v Canada (Citizenship and Immigration),* 2013 FC 472 at paras 40–41; *Ndegwa v Canada (Minister of Citizenship and Immigration),* 2006 FC 847 at para 9; *Granada v Canada (Minister of Citizenship and Immigration),* 2004 FC 1766 at paras 15–16).

See also *Zuniga Barrera v. Canada (Citizenship and Immigration)*, 2023 FC 51, at para 14; *Olobor v. Canada (Citizenship and Immigration)*, 2021 FC 1150, at para 39.

[17] The officer concluded that the applicant's claim did not reveal a nexus to the Convention, in particular because the applicant did not know why the gunmen killed her husband or who they were. On the record, this conclusion was reasonably open to the officer, whether the applicant's claim was based on the targeting of another family member or that her family is a particular social group and was targeted for that reason.

[18] The GCMS notes stated that the applicant "ran away because her husband was killed for unknown reasons" and that she did not seek redress from local authorities and did not provide a Convention ground for not doing so. The officer's notes of the interview with the applicant, and the applicant's Basis of Claim form, do not disclose any reason why her husband was targeted. The applicant advised the officer that she did not know why the gunmen attacked and nothing was said before they started shooting. Her husband did not tell her anything about having issues with anyone. He was not part of a political movement or a member of a religious organization. She did not know of any issues with another clan. The GCMS notes recorded that she told the officer she had "no idea why her husband was targeted". The applicant stated in her Basis of Claim form: "I did not know the reason why he was killed."

[19] Without some evidence that the applicant's husband or her family were targeted for persecution as a group, the applicant did not demonstrate a personal connection between herself and persecution alleged to have occurred on a Convention ground: *Theodore*, at para 8.

[20] The applicant's first argument therefore did not demonstrate that the officer's decision was unreasonable under the principles in *Vavilov*.

B. ***Was the decision unreasonable for failure to consider determinative evidence?***

[21] The applicant submitted that the officer failed to consider information from her sponsors that, according to the applicant, was determinative of her claims for protection under the *IRPR*.

[22] After her interview on May 18, 2022, the applicant's sponsors sent an email to IRCC. The sponsors' email stated that during the interview, the officer raised two concerns, regarding (a) the two men who had murdered the applicant's husband in Somalia, and (b) the whereabouts of her son (who was not going to accompany her to Canada). With respect to her husband's murderers, the email stated:

> Please understand that the refugee is deeply traumatized and was unable to answer the questions asked by the officer. The two armed men [are] suspected to belong to Al-Shabaab as they posed an enormous threat to everyone's safety in her neighbourhood and Somalia as a whole. It is suspected that the murderers are Al-Shabaab also due to the nature of the assassination which uses the same type of gun and execution style. Fartun's [the applicant's] mental state is emotional grief stricken as she is traumatized for witnessing first-hand the murder of her husband and lives with fear for her life every day since … those members of Al-Shabaab could identify her and murder her as well.

[23] The sponsors' email stated that the officer had "concluded the interview stating that he needed further details prior to making a decision". The sponsors hoped that the details provided would clarify the concerns raised by the officer.

[24] The applicant's position was that the officer made a clear reviewable error because the decision ignored this email (citing *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. D-53, [1998] FCJ No 1425, at para 17).

[25] The respondent took two principal positions. First, the respondent submitted that by the time the sponsors' email was sent, the officer had already made the decision and advised the applicant, and therefore it was not reflected in the officer's assessment in the GCMS notes. The respondent referred to the following GCMS entry, which was posted on May 18, 2022, before the sponsors sent their email:

> ELIGIBILITY DECISION
>
> I END BY AGAIN COMING BACK TO THE DEFINITION AND GOING OVER HOW SHE DOESN'T MEET ANY OF THESE GROUNDS. SHE HAS NOT DEMONSTRATED THAT SHE OBJECTIVELY HAS A WELL FOUNDED FEAR OF ANY OF THE FIVE ENUMERATED GROUNDS …
>
> BY THE SAME TOKEN, SHE DID NOT PROVIDE ANY REASONS WHY SHE HAS BEEN AND CONTINUES TO BE SERIOUSLY AND PERSONALLY AFFECTED BY CIVIL WAR OR ARMED CONFLICT OF MASSIVE VIOLATIONS OF HUMAN RIGHTS. I TELL HER THIS IS WHAT I CONCLUDE …
>
> WHILE UNFORUNATE THAT HER HUSBAND WAS KILLED IN THIS FASHION, HER INFORMATION DOES NOT OVERCOME MY CONCERN ABOUT HER ELIGIBILITY UNDER EITHER THE CONVENTION REFUGEE OR COUNTRY OF ASYLUM CLASS. APPLICANT IS NOT ELIGIBLE TO BE RESETTLED UNDER THE CONVENTION REFUGEE OR COUNTRY OF ASYLUM CLASSES FOR WHICH SHE APPLIED.
>
> [Underlining added.]

[26] On this issue, I issued a Direction after the hearing requesting further submissions from the parties. The Direction identified certain case law that may affect the parties' positions on the reasonableness and procedural fairness of the decision, in light of the officer's GCMS notes and the sponsors' email: *Avci v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 359; *Chudal v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1073, at paras 16-21; and *Sarissky v. Canada (Citizenship and Immigration)*, 2022 FC 1014; *Kim v. Canada (Citizenship and Immigration)*, 2020 FC 581; *Haile v. Canada (Citizenship and Immigration)*, 2019 FC 538; and *Balazuntharam v. Canada (Citizenship and Immigration)*, 2015 FC 607. The parties filed submissions by letters dated June 20, 2023.

[27] The respondent's second position was that the email would have made no difference to the officer's decision – the outcome would be the same even considering its contents. At the hearing, the respondent also argued that the contents of the email were not sufficiently important to warrant a new entry in the GCMS. According to the respondent, the officer should be presumed to have considered the email given the length of time between its appearance in the GCMS on May 25 and the decision letter dated June 6, 2022. The respondent's position was that the officer was not required to explain why the sponsors' email did not affect the outcome.

[28] Having carefully considered the matter, I conclude that the respondent must prevail.

[29] I will first address whether the officer could have considered the information sent by the sponsors in their email on May 18, 2022.

[30] Both parties' submissions argued that the officer became *functus officio* when the decision was made and the applicant was notified. The applicant's position was that the officer was not *functus officio* until the decision was made in the letter from the High Commission dated June 5, 2022, and she was notified of it on June 6, 2022. According to the applicant, until the date she was notified, the officer was required to consider all information filed, including the sponsors' email sent on May 18, 2022 and uploaded into the GCMS on May 25, 2022 (citing *Chudal,* at para 19; *Sarissky,* at para 55). The applicant relied on *Avci,* at paragraph 5. The respondent argued that the officer was *functus* on May 18, 2022 because the decision was made and the applicant was notified orally of the outcome during her interview. The respondent submitted that the oral delivery of a decision in the presence of the applicant is a "sufficiently formal act" to mark the decision, after which the officer cannot be permitted to change their mind (also citing *Avci*, at paras 5-6). The respondent distinguished *Chudal* on the basis that the applicant in this case was notified of the negative decision before the sponsors' email was sent.

[31] I am conscious that the sponsors' email stated that officer had "concluded the interview stating that he needed further details prior to making a decision", whereas the officer's GCMS notes that day indicated that the officer communicated the decision during the interview and entered reasons for a negative decision prior to IRCC receiving the sponsors' email. This factual tension was not the subject of any additional evidence from either the sponsors or the officer, so it cannot be resolved conclusively. I note that the sponsors appear not to have been present during the videoconference interview, whereas the officer was obviously present and entered contemporaneous notes in the GCMS. There is also no indication in those notes that the officer

suggested that additional information would assist, was requested or was required in order to make a decision, or that the applicant requested an opportunity to do so.

[32] The Federal Court of Appeal in *Avci* concluded that if the Immigration and Refugee Board reserves its decision at the end of a refugee determination hearing, it renders its decision and becomes *functus officio* when it signs written reasons for decision and transmits them to the registrar: *Avci,* at paras 2-3 and 9 (answer to the certified question). The Court of Appeal's reasons also confirmed that under the court's existing case law, the board became *functus* with the oral delivery of reasons or a decision from the bench in the presence of the participants in the hearing. At that point, the board could not change its mind. The appeal court rejected an argument that dictation of reasons into a recording machine in chambers could be equated with the delivery of reasons from the bench: *Avci,* at paras 5-6. On the facts in *Avci,* the board did not consider or refer to materials sent to it two days before it signed the written reasons for decision. The Minister conceded that failing to do so was a breach of procedural fairness. The court agreed with that concession and set aside the decision: *Avci,* at para 7.

[33] In my view, the officer's decision in this case was made in the letter from the High Commission dated June 5, 2022. The officer was *functus* when that letter was issued to the applicant. The oral statements made to the applicant during the videoconference interview, as recorded in the GCMS, were not a sufficiently formal act to constitute a decision and notification of it as contemplated by *Avci.* Nor do I believe that there was sufficient formality in preparing notes and entering them into the GCMS, akin to a tribunal signing written reasons for a decision and transmitting them to a registry as described in *Avci*.

[34] Three additional observations support this conclusion. First, this Court's decisions conclude that GCMS notes form part of the reasons for an officer's decision – not the other way around: see e.g., *Yang v. Canada (Citizenship and Immigration)*, 2023 FC 954, at para 9; *Mohammadzadeh v. Canada (Citizenship and Immigration)*, 2022 FC 75 at para 5; Sedoh, at para 36; *Torres v. Canada (Citizenship and Immigration)*, 2019 FC 150, at para 19.

[35] Second, as is common practice, the GCMS notes were not included with the officer's letter dated June 5, 2022. The applicant had to request a copy of the GCMS notes under Rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR 93-22.

[36] Third, the respondent did not raise any objection to the filing of the Notice of Application for Leave and Judicial Review in this proceeding on July 5, 2022 – within 30 days of the date when the letter was first communicated to the applicant but well past the deadline for filing if the decision had been made and notified to the applicant on May 18, 2022: see *Federal Courts Act*, RSC 1985, c. F-7, subsection 18.1(2), referring to the time when the decision was "first communicated" to the applicant.

[37] I conclude that the letter from the officer on High Commission letterhead and its transmittal to the applicant (or her representative) constituted the decision and its notification to her for the purposes of determining when the officer became *functus officio*. To conclude otherwise would introduce needless uncertainty into the process.

[38] Accordingly, I am satisfied that the officer was not *functus officio* when the sponsors' email arrived on May 18, 2022.

[39] Should the officer's decision be set aside for failure to consider the information in the sponsors' email? The applicant's position was that the email contained "determinative" evidence and that the officer made a reviewable error by failing to consider and give effect to it. After careful consideration, I am unable to agree in the circumstances of this case.

[40] The sponsors' email contained information seeking to connect the murder of the applicant's husband to Al-Shabaab. However, as both parties recognized, that proposed connection was entirely new. As the respondent correctly observed, there was no mention of Al-Shabaab anywhere in the applicant's Basis of Claim, in any prior GCMS entry, or elsewhere in the record. The officer's GCMS notes of the interview with the applicant recorded no reference to Al-Shabaab. Apart from the email itself, it was not supported by any existing evidence before the officer.

[41] In addition, the sponsors' email did not attach or refer to any evidence, such as country condition evidence, to support the risks posed by Al-Shabaab in Somalia and specifically the statement that Al-Shabaab was an "enormous threat" in the applicant's former home neighbourhood. Nor did it refer to evidence about Al-Shabaab's weapons of choice or violent practices. No one sent any additional evidence of this kind after the sponsors' May 18 email to support the assertions in it. The officer's knowledge of Al-Shabaab in Somalia is not known.

[42] Further, the applicant's affidavit sworn several months later, in September 2022, and filed on this application, also made no reference to the applicant's fear of Al-Shabaab or why she may believe that it was involved in her husband's murder in November 2018.

[43] I am sensitive to the fact that the sponsors' email stated that the applicant herself could not provide the missing information during her interview because she remained traumatized and grief stricken by her husband's murder. This was consistent with a comment in the applicant's Basis of Claim, that she still dreams every night and wakes up screaming. However, there is no other evidence about her condition at the time of (or during) the interview in May 2022. The GCMS entries before the interview did not alert the officer to a concern about the applicant not being able to communicate fully owing to trauma. Unfortunately, the applicant's affidavit sworn in September 2022 again made no mention of the trauma arising from the killing of her husband or how it may have affected her ability to communicate during her interview or when she prepared her Basis of Claim. In the circumstances, the evidence related to the applicant's trauma is not sufficient to materially affect the outcome of this application.

[44] Although I am very sympathetic to the applicant's difficult circumstances, I must agree with the respondent that it is quite unlikely that the information about Al-Shabaab in the sponsors' email, without more, would have made any material difference to the outcome of the applicant's claims for *IRPR* protection. While new information of this kind could prompt an officer to ask for additional evidence and/or submissions from the applicant, that did not occur in this case.

[45] Accordingly, applying the principles in *Vavilov*, I am not persuaded that the officer made an error that would enable this Court to intervene, by failing to consider the information in the sponsors' email dated May 18, 2022.

III. Conclusion

[46] The application will therefore be dismissed.

[47] Neither party proposed a question to certify for appeal and none arises in the circumstances of this application.

JUDGMENT in IMM-6379-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6379-22
STYLE OF CAUSE:	FARTUN MOHAMED ALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 15, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	JUKY 28, 2023

APPEARANCES:

Anna Davtyan	FOR THE APPLICANT
Andrea Manti	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dov Marierovitz Barrister & Solicitor Thornhill, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT