Federal Court  Cour fédérale

Date : 20240221

Docket : IMM-5263-22

Citation : 2024 FC 263

Ottawa, Ontario, February 21, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

SAJJAD ZAHEER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks to overturn the negative Pre-Removal Risk Assessment ("PRRA") decision issued on April 19, 2022.

[2] The Applicant is a citizen of Pakistan, from the Kabal District of Swat province. He says that he fled Pakistan for the United States because he faced several risks:

A. Risk of harm at the hands of a family from the Baqwanan caste for refusing to marry their daughter;

B. Risk of harm at the hands of the Taliban for writing an article against them in 2008 and for having spurned the arranged marriage to a girl whose family is affiliated with the Taliban;

C. Risk of detention by the government and army due to writing articles critical of them between 2007 and 2012; and

D. Risk of harm from the government of the Khyber Pakhtunkwa province due to being of Pashtun ethnicity.

[3] The Applicant left Pakistan and made a refugee claim in the United States, but his claim was denied in 2019. Shortly after that, the Applicant came to Canada and made another refugee claim; he was found ineligible under s. 101(1)(c.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and then submitted a PRRA application, which was denied.

[4] The Applicant seeks judicial review of the negative PRRA decision. He claims that the PRRA decision is unreasonable because :

A. The Officer was unduly influenced by the decision of the U.S. Immigration Judge, resulting in a breach of natural justice; and

B. The Officer erred in assessing his credibility by ignoring or misconstruing relevant evidence;

[5] On the issue of natural justice, the standard of review is akin to correctness. I am required to assess whether the process by which the decision was reached was fair, in all of the circumstances : *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 54.

[6] The Applicant argues that his right to procedural fairness was compromised because the PRRA Officer was unduly influenced by the reasons set out in an earlier decision by a U.S. Immigration Judge. He points to three passages in the PRRA Officer's decision that he says are nearly identical to the wording in the U.S. Judge's decision. He states that these passages indicate that the Officer did not undertake an independent analysis, but rather adopted the reasoning of the U.S. Judge. He asserts that because these passages are so central to the Officer's conclusion, the copying is sufficient to cast doubt on the entire decision.

[7] The Respondent acknowledges that it is not good that some of the wording in the PRRA decision is identical to that in the U.S. Judge's decision. However, the Respondent argues that this is not fatal, because there is only one passage that is an identical quote; this amounts to a few lines in an otherwise lengthy and detailed decision; and the Officer's analysis indicates an engagement with the issues that goes well beyond the similarities in wording on a few points.

[8] It is undoubtedly unfortunate that one of the passages the Applicant cites appears to be identical to a passage in the U.S. decision, and the PRRA Officer did not reference the original source of that passage. However, I am not persuaded that the decision as a whole is tainted by an undue reliance on the U.S. Judge's reasoning.

[9] The analytical framework to be applied to this analysis was set out by the Supreme Court of Canada in *Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 [*Cojocaru*] at paragraph 1 :

> [1] The main question on this appeal is whether a trial judge's decision should be set aside because his reasons for judgment incorporated large portions of the plaintiffs' submissions. For the reasons that follow, I conclude that while it is desirable that judges express their conclusions in their own words, incorporating substantial amounts of material from submissions or other legal sources into reasons for judgment does not without more permit the decision to be set aside. Only if the incorporation is such that a reasonable person would conclude that the judge did not put her mind to the issues and decide them independently and impartially as she was sworn to do, can the judgment be set aside.

[10] This has been applied to situations where an administrative decision-maker, including PRRA officers, have copied portions of prior decisions or the submissions of one of the parties : see Apotex Inc. *v Janssen-Otho Inc.*, 2009 FCA 212; *Es-Sayyid v Canada (Public Safety and Emergency Preparedness)*, 2012 FCA 59; *Csikja v Canada (Citizenship and Immigration)*, 2017 FC 909.

[11] Applying this to the case at bar, I find the following to be important considerations in assessing the significance of the similarity in wording. First, while one of the passages relating to risk from the Taliban tracks the U.S. Judge's decision word-for-word, in that section of the decision the Officer is referring to the Applicant's testimony in the U.S. proceeding. The opening words of the paragraph just prior to the quotation the Applicant objects to states : "In his US refugee testimony, the applicant stated that he perceived the letter as a threat…" The Officer then

goes on to discuss the letter, including the passage where the wording tracks the U.S. Judge's decision.

[12] I also note that while the other two passages bear some similarity to the U.S. Judge's decision, they are not identical, and this part of the decision also includes a discussion of the Applicant's evidence during the oral hearing he was provided by the PRRA Officer pursuant to s. 101(1)(c.1) of IRPA because he did not have a refugee hearing. It is also significant that the PRRA Officer and the U.S. Immigration Judge were dealing with the same claims and it appears much of the same evidence, and so it is not surprising there is a resemblance on some of the reasoning.

[13] Examining the decision as a whole I find that the PRRA decision is lengthy and detailed, and while a few passages are either identical or similar, it differs in many respects from the long and detailed decision of the U.S. Judge. Among other things, the PRRA Officer discusses the Applicant's evidence at the oral hearing, as well as the more recent evidence he produced – evidence that was not before the U.S. Judge.

[14] Overall, I am not persuaded that "the incorporation is such that a reasonable person would conclude that the [Officer] did not put her mind to the issues and decide them independently and impartially…" (*Cojocaru* at paragraph 1).

[15] Therefore, there was no breach of procedural fairness or natural justice.

[16] As for the issue of the PRRA Officer's credibility assessment, this question must be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[17] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paragraph 2 [*Canada Post*]). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at paragraph 102).

[18] The Applicant claims the PRRA Officer's credibility findings were based on speculative findings of plausibility that ignored or misconstrued evidence. When assessing the Applicant's risk from the Taliban, the Officer expressed doubt that the Taliban would still be searching for the Applicant so many years after he wrote critical articles in a local newspaper. The Applicant argues that the Officer ignored evidence that the Taliban were still pursuing him in 2020. When assessing the Applicant's risk of vengeance from the family of the woman he spurned based on Pashtunwali Code, the Applicant says the Officer ignored the evidence regarding the Code and how long-lasting the desire for revenge may be, especially for a crime against a family's honour.

On both claims, the Applicant points to evidence in the record to show that the Officer's assumptions and conclusions did not take into account the totality of the evidence.

[19] The Respondent asserts that the Officer reasonably found there was no objective evidence supporting the Applicant's claim of a forward-facing risk, in light of the passage of time, credibility concerns about the Applicant's narrative, and the Officer's finding that he could find safety by relocating elsewhere in Pakistan.

[20] I am not persuaded by the Applicant's arguments for a number of reasons. First, the Officer's decision reflects a comprehensive and thorough analysis of the four claims advanced by the Applicant. The Officer did not undertake a partial or one-sided analysis of the evidence; instead, the Officer assessed the Applicant's claims in light of the objective evidence. Findings regarding past events are relevant to the Officer's conclusion regarding the Applicant's credibility – but the key issue in a PRRA is whether the evidence supports a finding of a forward-facing risk. On this point, the Applicant's disagreement with the Officer's analysis does not point to any fatal flaw that is sufficiently central or significant to warrant setting aside the decision : *Vavilov* at paragraph 100.

[21] Second, decisions do not need to be perfect. In this case, the Officer engaged with the Applicant's claims, in light of the evidence from him and the objective evidence in the record.

Even though I agree that certain of the Officer's statements are questionable (for example, the Officer appears to think the Taliban in the Swat region are somehow separate and removed from the Pashtun population), this does not make the entire decision unreasonable. The Officer analyzed the evidence in light of the Applicant's submissions, and explained their reasons for the conclusions reached; that is what reasonableness requires.

[22] There is no basis to overturn the Officer's credibility findings.

[23] In light of my conclusions on both issues, the Application for judicial review is dismissed.

[24] There is no question of general importance for certification.

JUDGMENT IN IMM-5263-22

THIS COURT'S JUDGMENT is that :

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES :

DJAWID TAHERI	FOR THE APPLICANT
LORNE MCCLENAGHAN	FOR THE RESPONDENT

SOLICITORS OF RECORD :

TAHERI LAW OFFICE Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT