

Federal Court



Cour fédérale

Date: 20121030

Docket: IMM-1562-12

Citation: 2012 FC 1261

Ottawa, Ontario, October 30, 2012

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

NAGILA FIRDOUS

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION and
MINISTER OF PUBLIC SAFETY**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Nagila Firdous seeks judicial review of a Pre-removal Risk Assessment that determined that she would not be at risk in Pakistan. Ms. Firdous asserts that she was treated unfairly as the PRRA Officer made negative credibility findings without first affording her an interview. She further claims that the PRRA Officer erred in assessing her claim under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, by requiring that she demonstrate that she faced a personalized risk of persecution in Pakistan.

[2] For the reasons that follow, Ms. Firdous has not persuaded me that the PRRA Officer erred as alleged. As a consequence, her application for judicial review will be dismissed.

Was an Interview Required?

[3] Ms. Firdous and her family sought refugee protection in Canada, alleging that they were at risk in Pakistan because of the family's membership in the Pakistan Peoples' Party. Their refugee claims were rejected by the Immigration and Refugee Board. The Board found that there was no credible or trustworthy evidence to support the family's claims. This Court subsequently denied the family's application for leave to judicially review that decision.

[4] In support of her PRRA application, Ms. Firdous provided evidence of what she says is a new risk development – namely an attack on her grandfather allegedly carried out by members of the Pakistan Muslim League that occurred in November of 2010 - after the Immigration and Refugee Board had rejected the family's refugee claims.

[5] Ms. Firdous provided the PRRA Officer with affidavit evidence from eyewitnesses to the attack, along with her grandfather's medical record documenting injuries that he purportedly sustained in the attack and photographs of what was alleged to be her grandfather's injured leg. The PRRA Officer chose to assign little probative value to this evidence, because, amongst other things, the attack was never reported to the police and there was nothing to indicate whose leg was actually depicted in the photographs. There was nothing unreasonable about this.

[6] The Officer concluded that there was insufficient probative evidence of the attack on the grandfather and insufficient evidence to overcome the negative credibility findings made by the Immigration and Refugee Board with respect to the family's claim to face persecution in Pakistan because of their political beliefs.

[7] Ms. Firdous asserts that while the PRRA Officer's findings were couched in language as to the sufficiency of the evidence with respect to the attack on the grandfather, the Officer's findings were in fact negative credibility findings. As a consequence, Ms. Firdous says that she should have been afforded an interview in accordance with subsection 167(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which requires an interview where "there is evidence that raises a serious issue of the applicant's credibility". This is not, however, such a case.

[8] Had Ms. Firdous asserted that she herself had witnessed the attack on her grandfather, a finding that the attack had not occurred would necessarily have required a negative credibility finding on the part of the PRRA Officer. An interview with Ms. Firdous would thus have been required before such a finding could have been made.

[9] However, Ms. Firdous was in Canada at the time of the alleged attack and she could not, therefore, have had any first-hand knowledge of the incident. Indeed, her affidavit does not identify any information that she could have added with respect to the attack on her grandfather. Ms. Firdous' own credibility was not in issue before the PRRA Officer. What was in issue was the credibility of third parties. An interview with a PRRA applicant is not required in such

circumstances: see *Borbon Marte v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 930, [2010] F.C.J. No. 1128, at para. 62.

[10] What the PRRA Officer had to do was to determine whether Ms. Firdous had adduced sufficient evidence to establish that the attack had actually taken place. An interview is also not required when the issue is the sufficiency of the evidence: see *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, [2008] F.C.J. No. 1308.

The Section 96 Assessment

[11] Ms. Firdous also alleged that she was at risk in Pakistan at the hands of Islamic fundamentalists because she is a moderate Muslim. This is a new risk assertion that was not assessed by the Immigration and Refugee Board.

[12] Ms. Firdous submits that the PRRA Officer erred in assessing this aspect of her claim under section 96 of *IRPA* by requiring that she demonstrate that she faced a personalized risk of persecution in Pakistan. In support of this assertion, she points to one sentence in the PRRA decision where, after reviewing information with respect to conditions in Pakistan, the Officer stated “[t]his information is indicative of a generalized risk to the applicant and all individuals residing in Pakistan and does not support that she faces a personalized risk or harm if returned to Pakistan with her immediate family members”.

[13] This sentence cannot, however, be read in a vacuum. It is evident from the paragraph immediately following the sentence in question that the PRRA Officer understood the distinction between a section 96 claim and one brought under section 97 of *IRPA*.

[14] This paragraph first addresses Ms. Firdous' claim under section 96, stating that "[t]he evidence before me does not support that the applicant faces more than a mere possibility of persecution for any of the Convention grounds in Pakistan". This is the correct test for a section 96 claim.

[15] The PRRA Officer then goes on to state that he or she was "not persuaded that the applicant being removed from Canada *subjects her personally* to a danger, believed on substantial grounds to exist ... As a result, I must find that the applicant's fears of harm do not place her within the meaning of persons in need of protection as is found in subparagraph 97(1)(a) of the *Immigration and Refugee Protection Act*" [my emphasis].

[16] It is thus evident that the PRRA Officer understood that a personalized risk was required to support a section 97 claim, but not a claim under section 96 of *IRPA*. No error has been demonstrated by the applicant in this regard.

Conclusion

[17] For these reasons, the application for judicial review is dismissed.

[18] Ms. Firdous proposes that I certify the following question: ‘Is there a need to assess particularized risk in a claim based on section 96 of the *Immigration and Refugee Protection Act*?’ This is not an appropriate question for certification as it is premised on the understanding that the PRRA Officer required that Ms. Firdous demonstrate that she faced ‘a particularized risk’ in order to establish her claim under section 96 of the Act. This is clearly not what happened here, and thus the answer to the question would not be dispositive of this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

“Anne Mactavish”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1562-12

STYLE OF CAUSE: NAGILA FIRDOUS v. MINISTER OF CITIZENSHIP
AND IMMIGRATION ET AL

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 25, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** MACTAVISH J.

DATED: October 30, 2012

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