

Federal Court



Cour fédérale

Date: 20160421

Docket: IMM-4000-15

Citation: 2016 FC 454

Fredericton, New Brunswick, April 21, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

Aider ABDEL KADDER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment [PRRA] dated July 29, 2015, in which the PRRA officer determined that Aider Abdel Kadder [Mr. Kadder] is not a Convention refugee and would not be subject to a risk of torture, or face a risk to life or risk of cruel and unusual treatment or punishment should he return to Iraq, his country of nationality, as contemplated by ss 96 and 97 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [the Act]. For the reasons set out below, I would dismiss the application for judicial review.

II. Background

[2] Mr. Kadder is a citizen of Iraq who is also a Kurd and a Sunni. He belongs to the Hanarai tribe which mainly lives in Irbil and other parts of Iraqi Kurdistan. Fearing Saddam Hussein and the Baath party, Mr. Kadder arrived in Canada and claimed refugee protection on August 31, 2001. The Immigration and Refugee Board, Refugee Protection Division [RPD], in a decision dated November 16, 2004, denied him refugee protection on the basis that his testimony was neither credible nor trustworthy, and that he had not presented credible evidence that he would face a risk of torture, a risk to his life or a risk of cruel and unusual treatment or punishment should he return to Iraq. Following that decision, he applied for permanent residence status based on humanitarian and compassionate grounds, which as noted below, was eventually dismissed for reasons of inadmissibility.

[3] Mr. Kadder says that in October 2009, he met a Moroccan woman in Canada with whom he developed a romantic and serious relationship. In and around December 2011, Mr. Kadder contacted his family, part of a very traditional and religious tribe, who live in Iraq and informed them he wished to get married. The family refused its consent, based, according to Mr. Kadder, upon the fact his girlfriend was not Iraqi, not Kurdish and not from his tribe. Despite his family's objection, Mr. Kadder pursued the romantic relationship.

[4] Mr. Kadder says he had an argument with his girlfriend on October 24, 2012, during which time he slapped her on the face. He was later convicted of assault causing bodily harm and criminal harassment and threats, for which he was sentenced to four months' imprisonment (of which he only served 80 days). Mr. Kadder's family eventually learned of his conviction and sentence.

[5] Mr. Kadder says he fears death from his family members who have allegedly threatened to kill him. According to Mr. Kadder the death threats arise from his long-term relationship with a woman outside of marriage, his lies to hide the relationship, and his criminal sentence, all of which have tarnished his family's honour. He claims his family and his tribe are very powerful and could easily locate him if he returns to Iraq. Mr. Kadder also contends that because he is a Kurd and a Sunni (non-practicing), he cannot live in the non-Kurdish areas of Iraq.

[6] Mr. Kadder's application for permanent residence on humanitarian and compassionate grounds took several years to process. He was eventually found inadmissible on the grounds of serious criminality pursuant to s 36(1)(a) of the Act. Mr. Kadder applied for a PRRA on October 30, 2013.

III. Impugned Decision

[7] On July 29, 2015, the PRRA officer concluded that Mr. Kadder was not a person in need of protection pursuant to ss 96 and 97 of the Act.

[8] In the analysis of the risks, the officer observed that Mr. Kadder was determined to be inadmissible on grounds of serious criminality (a conviction in Canada punishable by a term of imprisonment of at least ten years) under s 112(3) of the Act. I note that the officer did not mention the negative credibility findings of the RPD, nor did he rely upon credibility in reaching his decision. Rather, he based his conclusion on the insufficiency of the evidence.

[9] The officer found that Mr. Kadder did not meet the definition of s 96 of the Act as his fear of retaliation from his family members is not linked to an enumerated Convention ground. The officer also determined that Mr. Kadder provided insufficient objective evidence to corroborate his allegations that he is at risk if he returns to Iraq. Specifically, the officer found that Mr. Kadder did not present objective evidence: that he was threatened or harmed in any way; that he would be at risk after having been away from Iraq for fourteen years or that he would have maintained ties which would put him at risk; that any family member would be interested in him; and that he could not reside in other areas of Iraq. Furthermore, the officer determined the documentation provided by Mr. Kadder, namely the newspaper articles and documentation from UNHCR, are generalized in nature and do not establish a personalized risk of harm in Iraq. The officer concluded as follows:

...After consideration of the evidence before me, a review of the current country conditions and taking into account the personal circumstances of the applicant, it is my finding that he is not a Convention Refugee in accordance with Section 96 of the Immigration and Refugee Protection Act nor is he a person in need of protection in accordance with Section 97 of the Immigration and Refugee Protection Act.

IV. Issue

[10] The sole issue on this application is whether the officer's decision to deny Mr. Kadder's PRRA application meets the test of reasonableness.

V. Standard of Review

[11] Given the deference owed to PRRA officers and the questions of mixed fact and law that arise in such cases, the applicable standard of review is that of reasonableness (*Ahmad v Canada (Citizenship and Immigration)*, 2012 FC 89, [2012] FCJ No 96 at para 19; *Kulanayagam v Canada (Minister of Citizenship and Immigration)*, 2015 FC 101, [2015] FCJ No 63 at para 21; *Alvarez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 564, [2014] FCJ No 594 at paras 19-20; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]). A reviewing court must not substitute its views regarding the assessment of the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 FCJ No 1425, 157 FTR 35 at para 14). This Court will only intervene if it concludes the PRRA officer's decision is not justified, transparent and intelligible, and falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47).

VI. Relevant Provisions

[12] By application of s 112(3) of the Act, refugee protection may not be conferred to applicants who are found inadmissible on grounds of serious criminality. However, pursuant to

s 113(e) of the Act applicants who have been found inadmissible on grounds of serious criminality, but have been sentenced to a term of imprisonment of less than two years, or no prison term, are eligible for a PRRA on the basis of ss 96 to 98 of the Act (see Appendix 'A').

VII. Analysis

[13] Mr. Kadder contends the officer either assumed that both ss 96 and 97 contain nexus requirements or simply failed to assess the case under s 97. I disagree. Although the officer did not explicitly mention that the second part of his analysis was based on s 97, it is clear from the analysis that he assessed Mr. Kadder's risk should he return to Iraq and determined he was not a person in need of protection under s 97. Because I am satisfied of the reasonableness of the officer's decision as it relates to s 96 of the Act, I will move immediately to an assessment of whether the conclusion regarding s 97 meets the test of reasonableness. In order to meet the onus upon him with respect to s 97, Mr. Kadder must prove on a balance of probabilities that he personally is at risk should he return to Iraq (*Bayavuge v Canada (Minister of Citizenship and Immigration)*, 2007 FC 65 [2007] FCJ No 111; *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, [2008] FCJ No 1067 at paras 21-22). It is not sufficient to demonstrate a generalized risk (*Lalane v Canada (Minister of Citizenship and Immigration)*, 2009 FC 5, [2009] FCJ No 2 at para 28; *Hussain v Canada (Minister of Citizenship and Immigration)*, 2006 FC 719, [2006] FCJ No 916 at para 12).

[14] As well established in the jurisprudence, the inadequacy of reasons alone is not sufficient to render a decision unreasonable (*Pushparasa v Canada (Minister of Citizenship and Immigration)*, 2015 FC 828, [2015] FCJ No 812; *Newfoundland and Labrador Nurses' Union v*

Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708

[*Newfoundland Nurses*']). The decision under review must be read in conjunction with the evidentiary record and under the assumption that the decision-maker has considered all the evidence. However, the reasons given when considered in conjunction with the evidence must “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland Nurses*’, above at para 16). In my view, the PRRA officer’s reasons, when considered in light of the evidence, meet the test of reasonableness. I elaborate below.

[15] First, with respect to country conditions, the officer categorically stated that he “read and carefully considered all of the documentary material provided in addition to conducting [his] own independent research into current country conditions in Iraq as they relate to the applicant”. Independent research into country conditions is not only permitted but required in certain cases: see, *Myle v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1073, [2007] FCJ No 1389 at para 12; and *Hassaballa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, [2007] FCJ No 658 at para 33. For purposes of s 97 of the Act, it was incumbent upon Mr. Kadder to demonstrate a personalized risk flowing from the objective country conditions. The officer considered the evidence and found no such risk. It is not the role of the Court on judicial review to re-weigh the evidence (*Ellero v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 1364, [2008] FCJ No 1746 at para 34). While the evidence demonstrates a worsening humanitarian crisis in large areas of Iraq, that evidence is not sufficient on a PRRA application if there is no connection to the personal characteristics of Mr. Kadder (*Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, [2008] FCJ No 415 at para 17). His

major contention, apart from the fear of his family, is that he is a non-religious, secularized, Kurd who has lived in the West for 14 years and cannot live in non-Kurdish areas of Iraq. The officer's conclusion regarding that evidence, where the onus of proof rests upon Mr. Kadder, is unequivocal:

I do not find that they demonstrate that the applicant is personally at risk in Iraq. None of this material corroborates or (sic) substantiates the applicant's allegations or addresses his personal circumstances in any way. The applicant presents insufficient objective evidence that would support his allegations that he is at risk in returning to Iraq.

[16] Second, the officer clearly demonstrated that he read and considered Mr. Kadder's affidavit given the significant recitations of fact found in the affidavit which are included in the decision. While the officer does not mention the affidavit filed by Mr. Kadder's friend, Ghulam Mahmoudi, I find that affidavit unhelpful to Mr. Kadder. It concludes by saying Mr. Kadder's family was "scandalized by the whole affair" and that they were "very angry with him". Mr. Mahmoudi does not say the family threatened death, violence or any other form of persecution against Mr. Kadder. If they had made such threats, surely Mr. Mahmoudi would have mentioned them in his affidavit. In my view the decision, when considered in conjunction with the evidence, demonstrates the officer carefully considered Mr. Kadder's evidence and found it insufficient to meet the threshold required under s 97 of the Act. This conclusion is reasonable given the Mahmoudi affidavit and the failure by Mr. Kadder to specifically set out when threats were made to him and by whom. His affidavit is abstract at best. In the circumstances it was not unreasonable for the officer, after stating he had considered all of the evidence to conclude there was a lack of objective evidence that "anyone is interested in him and that he is being sought by his family and/or tribe".

VIII. Conclusion

[17] For the above reasons, I am of the view that the PRRA officer's decision, when read in conjunction with the record, meets the test of reasonableness. The decision is justified, transparent and intelligible and falls within a range of acceptable outcomes. I would therefore dismiss the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs, and no question is certified.

"B. Richard Bell"

Judge

APPENDIX 'A'

<i>Immigration and Refugee Protection Act, SC 2001, c 27</i>	<i>Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27</i>
<i>Pre-Removal Risk Assessment</i>	<i>Examen des risques avant renvoi</i>
Exception	Restriction
112(3) Refugee protection may not be conferred on an applicant who	112(3) L'asile ne peut être conféré au demandeur dans les cas suivants :
...	...
(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;	b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
...	...
Consideration of application	Examen de la demande
113 Consideration of an application for protection shall be as follows:	113 Il est disposé de la demande comme il suit :
(e) in the case of the following applicants, consideration shall be on the basis of sections 96 to 98 and subparagraph (d)(i)	e) s'agissant des demandeurs ci-après, sur la base des articles 96 à 98 et, selon le cas, du

or (ii), as the case may be:

(i) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punishable by a maximum term of imprisonment of at least 10 years for which a term of imprisonment of less than two years — or no term of imprisonment — was imposed, and

...

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of

sous-alinéa d)(i) ou (ii) :

(i) celui qui est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle soit un emprisonnement de moins de deux ans a été infligé, soit aucune peine d'emprisonnement n'a été imposée,

...

Définition de « réfugié »

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97 (1) A qualité de personne à

protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Pia Zambelli

FOR THE APPLICANT

Simone Truong

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pia Zambelli
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Montréal, Quebec

FOR THE RESPONDENT