Federal Court  Cour fédérale

Date: 20181012

Docket: IMM-798-18

Citation: 2018 FC 1025

Ottawa, Ontario, October 12, 2018

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

SAMEER MOUSA ASIRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Sameer Mousa Asiri, is a 29-year-old citizen of Saudi Arabia who first came to Canada in 2007 on a study visa. A few months after his arrival in Canada, he initiated a refugee claim after his mother informed him that the unmarried woman with whom he had a sexual relationship in Saudi Arabia had disclosed the relationship to her family, who then reported it to the police. The Refugee Protection Division of the Immigration and Refugee Board rejected his claim in May 2010. Subsequently, the Applicant's application for a pre-removal risk

assessment [PRRA] was rejected in March 2011 and the Applicant was deported to Saudi Arabia in April 2011.

[2] The Applicant entered Canada a second time in September 2017. He did not have authorization to return to Canada and, consequently, was detained and ordered to be deported. He initiated another application for a PRRA, but in a decision dated January 24, 2018, a senior immigration officer rejected his application. He has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the Officer's decision to reject his PRRA application.

I. Background

[3] The Applicant claims the unmarried woman with whom he had a sexual relationship disclosed their relationship, and that this resulted in the imprisonment of his father in Saudi Arabia. He also claims he was detained upon returning to Saudi Arabia in 2011 and, subsequently, sentenced to two months' incarceration as well as 90 lashes. The Applicant says he has received threats of violence and death from the unmarried woman's family, and that the Saudi Arabian government has revoked his access to services to which citizens of Saudi Arabia are normally entitled.

[4] The Applicant also says he has married an Eritrean citizen in Saudi Arabia in an unofficial, private ceremony. According to the Applicant, his inability to obtain an official marriage license permitting him to marry a non-Saudi citizen is explained by the revocation of

his access to governmental services. The Applicant says he is unable to be seen in public with his wife and they are unable to have children without being legally married.

[5] The Applicant fears returning to Saudi Arabia as he believes he will be detained again, interrogated, and likely imprisoned and tortured for having dishonoured Saudi Arabia by seeking Canada's protection. He also believes his unofficial marriage will be discovered by Saudi authorities and he and his wife will be punished not only for marrying without permission of the government but also for having a sexual relationship outside of marriage.

II. The PRRA Officer's Decision

[6] In the decision dated January 24, 2018, the Officer concluded there was insufficient evidence to support the Applicant's assertion that the government of Saudi Arabia had revoked his access to services. The Officer reasoned that the documents filed by the Applicant as evidence of this assertion were insufficient due to spelling errors, incompleteness, and they did not have the appearance of official government documents. In the Officer's view, the Applicant had failed to provide evidence explaining the duration of the revocation of services, the rationale behind the decision, and the existence of any appeal mechanisms. The Officer found the Applicant would not have been able to obtain a passport and exit visa from the government of Saudi Arabia if he was considered a criminal or a dissident, was wanted by the authorities, and was no longer able to access the government services to which citizens are entitled. The Officer further found the Applicant was not wanted by the government for any reason when he left the country in July 2017.

[7] The Officer stated he had not received any objective evidence such as police, court, or prison documents proving that the Applicant had been subject to imprisonment or lashing, or that his father had been imprisoned. The Officer determined that the Applicant was not considered a fugitive by the Saudi Arabian government because he had stayed in his family's home in Saudi Arabia for a year without being apprehended.

[8] With respect to the marriage, the Officer found there was insufficient objective evidence demonstrating a denial of a marriage license or to corroborate the allegation that the Applicant would be at risk due to his unofficial marriage upon return to Saudi Arabia.

[9] After reviewing publicly available country condition reports, the Officer was not satisfied that the Applicant would be at risk of torture, or subjected personally to a risk to his life or to a risk of cruel and unusual treatment or punishment upon return to Saudi Arabia. The Officer concluded that the Applicant faced no more than a mere possibility of persecution, that there was insufficient evidence to find the Applicant, if returned to Saudi Arabia, faced a danger of torture, and that it was unlikely he would be subjected personally to a risk to his life or to a risk of cruel and unusual treatment or punishment.

III. Issues

[10] This application for judicial review raises three primary issues:

1. What is the standard of review?
2. Did the Officer breach the duty of procedural fairness?
3. Was the Officer's decision reasonable?

IV. Analysis

A. *Standard of Review*

[11] It is well-established that, absent any question of procedural fairness, the standard of review to assess a PRRA officer's decision is that of reasonableness (see, e.g.: *Koppalapillai v Canada (Citizenship and Immigration)*, 2018 FC 235 at para 13, 289 ACWS (3d) 787; *Wang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 799 at para 11, 191 ACWS (3d) 574). The standard of review to assess a PRRA officer's assessment of new evidence under paragraph 113(a) of the *IRPA* is also that of reasonableness (*Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at para 8, [2016] FCJ No 1128).

[12] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if "the reasons 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 and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para16, [2011] 3 SCR 708). So long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; nor is it "the function of the reviewing court to

reweigh the evidence" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339 [*Khosa*]).

[13] The standard of review for an allegation of procedural unfairness is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Khosa* at para 43). The Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115, [2002] 1 SCR 3). The analytical framework is not so much one of correctness or reasonableness but, rather, one of fairness and fundamental justice. An issue of procedural fairness "requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation" (*Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 74, [2002] 1 SCR 249).

[14] As the Federal Court of Appeal recently observed: "even though there is awkwardness in the use of the terminology, this reviewing exercise is 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, [2018] FCJ No 382). This is particularly true in cases where the alleged breach is an unintentional omission rather than a deliberate procedural choice. In other words, a procedure which is unfair will be neither reasonable nor correct, while a fair procedure will be both reasonable and correct. Furthermore, a reviewing court will pay respectful attention to the procedures followed by a decision-maker and

will not intervene except where they fall outside the bounds of natural justice (*Bataa v Canada (Citizenship and Immigration)*, 2018 FC 401 at para 3, [2018] FCJ No 403).

[15] According to the Applicant, the Officer's credibility findings and treatment of the evidence should be reviewed on a standard of reasonableness. The Applicant contends that the Officer's failure to consider whether to convoke an oral hearing is an issue of procedural fairness to be reviewed on a standard of correctness.

[16] The Respondent says the Officer's decision as a whole should be reviewed on a standard of reasonableness. The Respondent disagrees with the Applicant's assertion that a standard of correctness should be applied to the issue of whether an oral hearing ought to have been considered.

B. *Did the Officer breach the duty of procedural fairness?*

[17] The parties disagree about whether the Officer's failure to consider if an oral hearing was necessary constitutes a breach of procedural fairness. This issue turns on section 113 (b) of the *IRPA*, which provides that "a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required." The prescribed factors in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are as follows:

167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a	**a)** l'existence d'éléments de preuve relatifs aux

serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[18] The Applicant contends that the Officer breached the duty of procedural fairness by failing to consider whether an oral hearing was required. In the Applicant's view, the Officer made several veiled credibility findings about evidence central to the decision which, if accepted, could justify allowing the application. In particular, the Applicant states that the Officer made a veiled credibility finding in determining that the evidence to support his claim that government services had been revoked did not provide sufficient objective evidence. By noting the incompleteness of the documents as well as their spelling errors and unofficial appearance, the Applicant says the Officer made a veiled finding that the Applicant is not credible and is relying on fabricated evidence. This, according to the Applicant, satisfied the conjunctive test in section 167 of the *Regulations*, and therefore required at a bare minimum consideration of the necessity of an oral hearing.

[19] The Respondent counters that the prescribed factors in section 167 were not met and, therefore, there is no merit to the Applicant's argument that the Officer ought to have considered an oral hearing.

[20] Determining whether veiled credibility findings are present in a decision requires going beyond the actual words used by an officer. It is necessary to determine the basis for the decision even if the officer expressly states he is not making a finding on credibility (see: *Majali v Canada (Citizenship and Immigration)*, 2017 FC 275 at para 31, 277 ACWS (3d) 815). As the Court remarked in *Gao v Canada (Citizenship and Immigration)*, 2014 FC 59:

> [32] … in some cases it is difficult to draw a distinction between a finding of insufficient evidence and a finding that the applicant was not believed i.e. was not credible. The choice of words used, whether referring to credibility or to insufficiency of the evidence is not solely determinative of whether the findings were one or the other or both. However, it can not be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant.

[21] In this case, the Officer explained why he concluded that there was insufficient objective evidence to support the Applicant's claim of government service revocation. In relation to the Applicant's arrest, his father's arrest, and the marriage, the Officer simply found a lack of sufficient objective evidence. The Officer may have arrived at a different decision if the evidence had been stronger or corroborated in some way. In my view, the Officer's findings and conclusions go to the sufficiency of the evidence provided by the Applicant rather than his credibility. The Officer did not, as the Applicant argues, make veiled credibility findings but, rather, reasonably weighed and balanced the evidence before him or her.

[22] Since the Officer in this case did not make a credibility finding, veiled or otherwise, section 167 of the *Regulations* could not be engaged. The Applicant's contention, that the Officer breached the duty of procedural fairness by failing to even consider whether an oral hearing was required, is without merit because none of the evidence raised a serious issue as to his credibility.

C. *Was the Officer's decision reasonable?*

[23] According to the Applicant, the Officer ignored evidence and made erroneous findings of fact which rendered the decision unreasonable. The Applicant also says the Officer relied on specialized knowledge without declaring the nature of the specialized knowledge. Specifically, the Applicant claims the Officer should have disclosed any specialized knowledge used to conclude that acquisition of a passport and an exit visa is inconsistent with the revocation of government services, and to make conclusions about the authenticity of government documents.

[24] The Respondent defends the Officer's decision. According to the Respondent, the Officer's conclusion that the Applicant failed to provide sufficient evidence to substantiate his claims was reasonable. The Respondent also disagrees with the Applicant's assertion that the Officer ignored evidence and made erroneous findings of fact.

[25] The Applicant's argument that the Officer utilized specialized knowledge is without merit. In my view, it does not require specialized knowledge to conclude that an individual who receives an exit visa and a passport must have access to government services. This was a logical conclusion by the Officer because it relies on reasoning and not on any specialized knowledge. Similarly, the analysis of a document's basic appearance is a task that does not require

specialized knowledge, and it was not unreasonable for the Officer to question the appearance of the government documents.

[26] I agree with the Respondent that the Applicant failed to provide sufficient evidence to substantiate his claims and that the Officer neither ignored evidence nor made erroneous findings of fact.

V. Conclusion

[27] The Officer's reasons for rejecting the Applicant's PRRA application are intelligible, transparent, and justifiable, and the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant's application for judicial review is therefore dismissed.

[28] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-798-18

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed, and no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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