Federal Court  Cour fédérale

Date: 20190923

Docket: IMM-55-19

Citation: 2019 FC 1201

Ottawa, Ontario, September 23, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

MANDIP SINGH KOONER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mandip Singh Kooner, is a citizen of India, who became a permanent resident of Canada in 1992 at the age of 13. On January 19, 2017, he was convicted of three offences of possession of heroin for the purpose of trafficking. On July 10, 2017, he was declared inadmissible to Canada under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). On June 29, 2018, he was ordered to be deported. He

submitted a Pre-Removal Risk Assessment (PRRA) application on September 6, 2018, which was refused. He now seeks to judicially review the negative PRRA decision.

II. Background

[2] The basis of the Applicant's PRRA application was his stated fear of persecution due to an heroin addiction. According to the Applicant, heroin addicts in India face criminalization and stigmatization, which can result in violence, as well as arbitrary detention from state and non-state actors. Of even greater concern, he argues, is the lack of access to regulated addiction treatment centres and methadone treatment.

[3] The Applicant has abstained from using heroin since 2015 and has been receiving methadone treatment. He must visit a pharmacy on a regular basis in order to receive his methadone treatment, and relies on his family members in Canada for support in dealing with his addiction. He alleges that methadone treatment is not readily available in India.

[4] In 2010, the Applicant travelled to India with his mother, where he received addiction treatment at a private clinic for approximately one month. After returning to Canada, he relapsed.

[5] The Applicant is now on a reduced dose of methadone from when he was first incarcerated and must attend daily and weekly appointments at the pharmacy as part of his methadone maintenance program.

[6] The Applicant's evidence to the PRRA Officer was that he suffers from anxiety and depression and that these conditions are related to his fear that he will be returned to India and will be unable to access methadone treatment or receive family support.

[7] The Officer determined that the Applicant would not be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual punishment if he were returned to India.

[8] The Applicant disagrees with the Officer's decision, but has not identified the presence of a reviewable error. This application should be dismissed.

III. Issue

[9] The issue to be determined is whether the Officer's decision is reasonable.

IV. Standard of Review

[10] A standard of reasonableness applies to the review of a PRRA Officer's findings of fact as well as mixed law and fact (*Burton v Canada (Citizenship and Immigration)*, 2014 FC 910 at para 34; *Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at para 7).

V. Analysis

[11] To meet the requirements of s 96 of the IRPA, the Applicant must have a well-founded fear of persecution on one of the convention grounds. In this regard, the Applicant had identified to the PRRA Officer that the risks that made him a member of a particular social group were that he would:

- not have the support system he has in Canada and would be risking his life as he would relapse into heroin addiction;
- be denied effective treatment in India;
- be exposed to a heroin epidemic in India; and

- face discrimination, violence and mistreatment amounting to persecution as an addict.

[12] In response, the PRRA Officer found that the documentary evidence supported that there was methadone treatment available in India and in the state of Punjab. The Officer also found that, although there was evidence that some drug users were abused at private rehabilitation clinics the Government of India was addressing this issue.

[13] Knowing that the test under s 97 IRPA is that the risk to a claimant's life must not be "…caused by an inability of that country to provide adequate health or medical care", the Applicant in his PRRA application submitted that he met the test not solely because India could not provide adequate medical care, but because of his vulnerability as "part of stigmatized and criminalized group in India and to the loss of his social support systems in Canada" (page 444 of the Application Record (AR))

[14] With respect to this argument, the PRRA Officer found that social support was not essential to the Applicant's recovery and that adequate rehabilitation facilities are available.

[15] The Applicant argues that the finding was unreasonable for three reasons, all of which have to do with the Officer's analysis of the evidence. First, the Applicant says the Officer determined that methadone was widely available in India on the basis of 2013 evidence which has since been contradicted. Secondly, he claims that the Officer made the determination that abuse did not occur at the majority of addiction clinics in India without referring to any evidence. Finally, he says that the Officer's finding that social support is not a necessary component of addiction recovery was made without regard to any evidence.

[16] The Applicant was strident in highlighting that heroin is an epidemic in Punjab and that this would make it impossible for him to get into the "20 Drug Treatment Clinics" that serve the whole of India, as mentioned in the report at page 282 of the Certified Tribunal Record.

[17] The Applicant challenges the Officer's finding that there were lots of clinics by arguing that it is not reflected in the evidence. According to him, there were only 20 that were state-run and all the others were private rehabilitation ones found to treat patients inhumanly. The Applicant further argued that the Officer only relied on a UNODC - 2013 report that talked about a two-year program to make its finding that methadone was available. He says that there is no evidence that this program is even still running after the pilot project ended.

[18] On these bases, the Applicant advances that he meets the test under s 96 if he returns to India because of the prevalence of heroin addicts, that he would risk not receiving methadone, and could be abused in the clinics and at the hands of the police.

[19] The Applicant's alleged s 97 risk is that he will not have the necessary treatment for lack of its availability, nor the essential support of his family to stay sober. The Applicant says the Officer missed key evidence to the effect that 860,000 men in the state of Punjab take drugs and that heroin is the most preferred by 53% of addicts. He says that this evidence is supportive of his position that the Officer ignored the evidence because, with this many addicts, he will not receive treatment and his life will be at risk. The alleged error is that the Officer only relied on the BBC article and ignored other documentary evidence that many of the clinic mentioned are bogus and that, with the legal threshold being only "more than a mere possibility", the Officer's finding otherwise was an error.

[20] The Respondent argues that the decision was reasonable. The Respondent relies on subparagraph 97(1)(b)(iv) of the *IRPA* which excludes consideration of risk caused by the inability of the country of reference to provide adequate medical care.

[21] Secondly, the Respondent says that the Applicant failed to demonstrate that India is providing medical care to addicts in a persecutory manner.

[22] Finally, the Respondent argues that, although the Officer did acknowledge that a lack of social support would make the Applicant's recovery more difficult, this is a consideration which is more relevant to an application for permanent residence under humanitarian and compassionate grounds.

[23] The Applicant's first argument fails due to subparagraph 97(1)(b)(iv) of the *IRPA* which stipulates that a risk caused by the inability of the country of reference to provide adequate health or medical care will not constitute a risk to life or a risk of cruel and unusual punishment. The Applicant impugns the Officer's treatment of the evidence relating to methadone availability in India and argues that there is more recent evidence available. However, in my opinion, this is a thinly disguised attempt to have this Court re-weigh the evidence regarding the availability of methadone maintenance treatment. The re-weighing of evidence is not a proper role for this Court (*Kahsay v Canada (Citizenship and Immigration)*, 2017 FC 116 at para 32).

[24] The reasons set out how the Officer considered the evidence:

> The Officer began by noting that an Officer assessing a PRRA application is not obliged to consider whether the Applicant faces a risk to life due to inadequate medical care in the country of return. It is necessary, however, for the Officer to consider whether the

> country of return engages in the provision of health care and medical services in a persecutory manner.
>
> The Officer considered the Applicant's contention that he will be denied methadone treatment in India as a result of stigma towards drug users.
>
> The Officer reviewed the objective evidence submitted by the Applicant and noted the recent proliferation of drug rehabilitation centres in India. The Officer concluded that the Applicant had failed to provide sufficient evidence that he would be denied methadone or other forms of treatment for addiction.
>
> Further, the Officer specifically mentioned that the Applicant had received treatment in India previously and did not present any evidence that he had suffered "…abuse or unethical treatment". He stated that his drug treatment in India was successful and that he relapsed when he returned to Canada.

[25] The BBC article relied upon by the Applicant, discusses the recovery process of a specific addict, and explains that the addict in question had gone to "...one of hundreds of rehab centres that have sprung up across the state in the past few years". This was evidence that the officer relied on as the applicant did not provide sufficient evidence that he will be denied methadone or treatment because of his membership in a particular group which is drug addicts.

[26] The United Nations Office on Drugs and Crime document specifically says that methadone treatment "…will be incorporated into the drug treatment clinics of the Ministry of Health and Family Welfare and will be further scaled up nationally." The article goes on to indicate that "methadone will be proposed to be considered an essential drug in the upcoming review of the narcotic Drugs and Psychotropic Substance Act. Further to this, it will also be proposed that private medical practitioners be allowed to prescribe methadone as a treatment option for people who need it." The Applicant argues that this can only be characterized as "efforts" and that there is no proof that it actually happened – and that the Officer was in error to rely on it.

[27] On the flipside, the Applicant did not meet his onus to file evidence that none of this happened. In this regard, I point to the article from 2017 in the Indian Psychiatry Journal (page 277 CTR) where the author of the article indicates that he participated in the UNODC, relaying both the positive results as well as some limitations of the Opioid Substitution Therapy (OST). Given the evidence I find the Officer's treatment of this issue to be reasonable.

[28] The Applicant's second argument falls more neatly into the confines of the PRRA framework. Serious and widespread abuse committed by rehabilitation clinics against recovering addicts would potentially qualify as a risk of cruel and unusual treatment contemplated by paragraph 97(1)(b) of the *IRPA*. The Applicant argues that the Officer should have cited a specific piece of evidence for the finding that the majority of clinics do not engage in such abuse.

[29] This argument must fail. There is a presumption that the Officer has reviewed the evidence and, as a result, the Officer does not need to mention each piece of evidence reviewed (*Matute Andrade v. Canada (Citizenship and Immigration)*, 2010 FC 1074 at para 64). The

Officer acknowledged that abuse does occur in some clinics, but determined that it does not occur in the majority. The Applicant points to the existence of horrific practices at several private clinics, but does not provide any evidence inconsistent with the Officer's conclusion that the majority of clinics are free from abuse.

[30] The Officer further considered this argument and acknowledged the occurrence of discrimination against drug users in some clinics, but went on to find that the government and judiciary are taking serious steps to address this problem. Additionally, the Officer noted that in 2010, the Applicant had received treatment for drug addiction in India and that this treatment was reportedly successful as the Applicant did not relapse until after he had returned to Canada.

[31] The Officer found that the Applicant "…had not provided sufficient evidence that he will likely be denied methadone or any other drug treatment due to negative attitudes toward addicts." Again this was a reasonable determination given the evidence before the Applicant.

[32] With respect to the allegation of risk from the police and that Indian police have engaged in unlawful killings, I find that the Officer did consider the Applicant's claim that he will face risk from police in India if he is caught in possession of heroin. The Officer determined that the risk posed to the Applicant from the police was speculative in nature and assigned little weight to this concern given there was not sufficient evidence or documentation to link the instances of police mistreatment and the risk to the applicant.

[33] The Officer concluded that the Applicant failed to establish that he faces more than a mere possibility of persecution if he is returned to India. In addition, the Officer determined that the Applicant failed to demonstrate that he faces a personalized risk to his life or of cruel and

unusual treatment or punishment, or a risk of torture in India. Given the evidence before the Officer this was reasonable.

[34] The Applicant's final argument is that the Officer unreasonably determined that social support is not necessary for rehabilitation.

[35] I cannot agree with the Applicant as I find that the Officer did consider this fact in noting that the absence of family support in India would make it more difficult for the Applicant to abstain from heroin. The sections of the report that the Applicant refers to in order to say that support plays a key role in recovery were not disregarded. The Officer engaged the evidence regarding the importance of social support and arrived at a conclusion which the Applicant disagrees with. This is not a reviewable error.

VI. Conclusion

[36] In sum, the Applicant disagrees with the manner in which the Officer weighed the evidence, but has failed to establish the presence of a reviewable error. Instead, the Applicant asks this Court to simply re-weigh the evidence already considered by the Officer. That is not the role of the Court. I find the Officer's decision to be reasonable.

[37] No question for certification was presented and none arose from the argument.

[38] This application for judicial review is dismissed.

JUDGMENT IN IMM-55-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-55-19
STYLE OF CAUSE:	MANDIP SINGH KOONER v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 15, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	MCVEIGH J.
DATED:	SEPTEMBER 23, 2019

APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
Chris Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lorne Waldman Waldman and Associates	FOR THE APPLICANT
Chris Ezrin Department of Justice	FOR THE RESPONDENT