Federal Court  Cour fédérale

Date: 20191010

Docket: IMM-6085-18

Citation: 2019 FC 1207

Ottawa, Ontario, October 10, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

MOHEMMAD ARIF ZARIFI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mohemmad Arif Zarifi, is a citizen of Afghanistan who was found to be inadmissible to Canada as a result of his past employment with the Afghanistan Ministry of Defence. On this judicial review of his Pre-Removal Risk Assessment (PRRA), the Applicant argues that the PRRA Officer [Officer] should have afforded him an oral interview and that the Officer was unreasonable in his treatment of the evidence.

[2] For the reasons that follow, this judicial review is dismissed, as the Officer did not make adverse credibility findings against the Applicant that would have triggered an oral hearing requirement. Further, I conclude that the Officer reasonably assessed the evidence.

Background

[3] The Applicant arrived in Canada in July 2014 from the United States and made a refugee claim. However, as the Applicant was employed as a senior member of the Afghanistan Ministry of National Defence from 1978 to 1992, he was found inadmissible to Canada pursuant to s. 35(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for working with a government that engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity.

[4] The Applicant claims that as an activist for women's rights, and having worked for the previous Afghan government, he is a target of the Taliban. He claims that he and his family have been targeted and threatened by the Taliban, and that the Taliban sent a threatening letter to his home in 2014.

Decision Under Review

[5] The Applicant's Pre-Removal Risk Assessment (PRRA) was rejected on July 25, 2018. The Officer determined that there was insufficient evidence to conclude that the Applicant would be subject to risk of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Afghanistan.

[6] The Officer found the information in the letter purporting to be from the Taliban was unverifiable, and therefore gave it low weight. The Officer also gave the Applicant's supporting letters low evidentiary weight, as they were provided by close family members and a friend who were not impartial.

[7] In reviewing the evidence, the Officer also determined that the Applicant's own affidavit dated February 11, 2018, although credible, was insufficient to demonstrate that the Taliban targeted the Applicant and his family. The Officer canvassed the country condition reports and concluded that, overall, there was insufficient objective evidence that the Applicant would be at risk in returning to Afghanistan or that he would be a person of interest such that he might be monitored, targeted, abducted, tortured, or put to death.

[8] Accordingly, the Officer determined that the Applicant is not a person in need of protection.

Issues

[9] The following are the issues to be determined on this judicial review:

1. Did the Officer err by not allowing an oral hearing?
2. Did the Officer reasonably assess the Applicant's evidence?

Standard of Review

[10] The requirement to convene an oral hearing in the PRRA context arises in limited circumstances where serious credibility issues that are central to the PRRA application arise

(*Ahmad v Canada (Citizenship and Immigration)* 2012 FC 89 at para 38 [*Ahmad*]). If those particular circumstances are triggered, the standard of review of the Officer's decision is correctness (*Ahmad* at para 18).

[11] The standard of review applicable to the Officer's treatment of the evidence, including if the Officer made vailed credibility findings, is reasonableness (*Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 737 at para 40).

Did the Officer Err By Not Allowing An Oral Hearing?

[12] In his PRRA application, Mr. Zarifi requested as follows:

> …that if there are any outstanding concerns with regards to his credibility, or the credibility of any of the documents provided included in the application, that he should be granted a hearing to address these concerns.

[13] Generally speaking, a PRRA applicant is not entitled to an oral hearing. However, the Officer does have authority to grant a request for an oral hearing in circumstances where the factors outlined in s. 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] are met.

[14] Section 167 states 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 serious issue of	a) l'existence d'éléments de preuve relatifs aux éléments

the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	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.

[15] The factors outlined in s. 167 of the *IRPR* are cumulative; a PRRA Officer is only obliged to hold a hearing if all three factors are satisfied (*Cosgun v Canada (Citizenship & Immigration*), 2010 FC 400, at para 32).

[16] In this case, the determinative factor for the Officer was the lack of sufficient evidence, therefore the s. 167(c) requirement is not satisfied. This is obvious from the decision where the Officer makes a number of findings with respect to the evidence tendered finding it to be "insufficient persuasive evidence" and "insufficient objective evidence".

[17] Where the decision is made based upon the sufficiency of evidence rather than the applicant's credibility, the oral hearing requirement is not triggered (*Ahmad*, paras 37-39). Here, the Officer considered the evidence but found it to be insufficient.

[18] Furthermore, the Officer's finding that the Applicant was credible is reasonable. Although the Officer notes that the conditions in Afghanistan are less than ideal, and far from

favourable, what the Officer was looking for was evidence to substantiate the Applicant's claim that he is a target of the Taliban. In the context of a PRRA, a belief alone is not sufficient to meet the requirements of the legislation; the Applicant must demonstrate on the balance of probabilities that he personally faces risk if he returns to Afghanistan (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 22 [*Ferguson*]) and *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at para 29 [*Raza*]).

[19] Here, the Officer's decision was not based upon a negative credibility finding. The Officer accepted that the Applicant believed that he was targeted by the Taliban. The issue for the Officer was that the Applicant did not have evidence to support his allegation that he was personally at risk. The Officer properly noted that the generalized country condition evidence and information pertaining to the risk to the general public is general and not personal, and that the Applicant's evidence falls short of establishing a personal risk. Specifically, the Officer notes that the country condition evidence contains varied reports of criminal acts and that the materials do not mention the Applicant or address the material elements of his application.

[20] The Applicant argues that the Officer could not have made a negative decision if he believed him. However, credibility and sufficiency of evidence are separate issues. One deals with the quality of the evidence (whether it is to be believed), whereas the other deals with the quantity of evidence (whether there is enough of it to meet the threshold requirement of balance of probabilities). It is reasonable for a PRRA Officer to believe everything an applicant says, and yet still find that there is not enough evidence to shift the balance of probabilities in favour of a finding of personalized risk.

[21] Here, the Officer acknowledges that the Applicant provided some evidence that was relevant to personalized risk, such as the letter left in the Applicant's home and the letters from his family and his friend. However, the Officer also notes that an unverified letter, and the opinions of his family and a friend are not sufficient to demonstrate the Taliban has a pattern of targeting Mr. Zarifi and his family.

[22] Accordingly, in my view, in failing to grant the Applicant's request for an oral hearing, there was no breach of the duty of procedural fairness owed to the Applicant. The Officer made a finding about the low probative value of the corroborating evidence, not that there was an issue with the Applicant's credibility.

[23] Thus, the criteria of s.167 of the *IRPR* are not met such that the Applicant should have been afforded an oral hearing, as there was a lack of corroboration (*Khansary v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 1146 at para 30 [*Khansary*]).

Did the Officer Reasonably Assess the Applicant's Evidence?

[24] The Applicant argues that his evidence is entitled to the presumption of truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) at para 5 [*Maldonado*]). However, more is required to base a claim for protected status pursuant to s. 97 of *IRPA*. As noted in *Khansary*, at para 30:

> [t]he fact that an applicant attests to the truthfulness of corroborating evidence, no longer applies, as it is a circular proposition. In addition, while an applicant's evidence is accepted on presentation, the need for corroboration has been recognized as required to enhance its weight when the narrative raises questions

> of improbability and the applicant's self-interest reduces its probative value, per *Ferguson*...

[25] A determination of the probative value and weight of evidence can be made without making a determination as to credibility. This is not a situation where the PRRA Officer made veiled credibility findings as in *Chekroun*.

[26] Fundamentally, the Applicant is taking issue with the weighing of the evidence by the PRRA Officer. Consistent with *Ferguson,* it was open to the Officer to assess the weight and probative value of the evidence without considering whether or not the evidence is credible.

[27] On judicial review, it is not the role of this Court to reassess or reweigh the evidence considered by the PRRA Officer (*Khansary* at para 44 and *Ferguson* at para 33).

[28] The Applicant argues that the Officer did not specifically address the issue of "night letters" being sent by the Taliban as noted in some of the country condition information. However, the Officer is not obligated to mention every piece of evidence in his decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[29] Additionally, the reference to such letters in the country condition evidence is not a sufficient link to personalize it to the Applicant's circumstances. Overall, there was insufficient evidence that the Applicant himself would be targeted by the Taliban.

[30] On a reasonableness standard of review, deference is owed to the Officer's assessment of the evidence. In the circumstances, the decision is justifiable, intelligible, transparent and within the range of reasonable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[31] This judicial review is therefore dismissed.

JUDGMENT in IMM-6085-18

THIS COURT'S JUDGMENT is that this judicial review is dismissed. No question is certified.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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