Federal Court  Cour fédérale

Date: 20191218

Docket: IMM-3109-18

Citation: 2019 FC 1640

Toronto, Ontario, December 18, 2019

PRESENT: Mr. Justice Diner

BETWEEN:

SHARIF AWAD SHARIF BAHAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The 24-year-old Applicant seeks the judicial review of an April 2018 pre-removal risk assessment [PRRA] refusal. Having entered Canada from the United States at a port of entry, he was deemed ineligible to make a refugee claim as a result of the Safe Third Country Agreement. He asks this Court to overturn the decision, claiming that the PRRA officer misinterpreted the

evidence and should have held an oral hearing. I do not agree, and will dismiss this application for the following reasons.

II. Background

[2] Although a citizen of Sudan, the Applicant was born, grew up, and went to school in Saudi Arabia. He went to Sudan in January 2013 to attend university, where September 2013 mass protests followed a government decision to remove subsidies from consumer products, resulting in increased inflation. The police and security forces used violence to quell the demonstrations, killing many protesters, while beating others and conducting mass arrests.

[3] The Applicant states that he was: arrested, beaten, interrogated and forced to sign written confessions while taking part in one of the protests; singled out for worse treatment because his father was a member of the political opposition before fleeing Sudan for Saudi Arabia 35 years earlier; threatened upon release, by the security forces, with execution if recaptured; expelled from university and returned to Saudi Arabia; and traumatized to this day, affecting his mental health.

[4] The Applicant travelled to the U.S. in 2016 and entered Canada in 2017. During this time, his Saudi residence permit expired, blocking his return to Saudi Arabia.

[5] A Senior Immigration Officer [Officer] denied the PRRA in April 2018. She noted the evidence regarding frequent human rights abuses and the impunity with which the police and security forces act, including escaping accountability for the violence in 2013. However, she

found that the Applicant had not provided evidence demonstrating he would be targeted after his limited participation in the protest. Further, she found that the Applicant did not demonstrate a degree of political activism that would create risks upon return.

[6] Ultimately, the Officer found that the Applicant provided little evidence, including just one unclear photograph, without any medical documentation, all of which she deemed insufficient to find him a person in need of protection. The PRRA Officer observed that the Applicant only lived in Sudan for eight months, and did not mention any political involvement until the mass protests of September 2013.

[7] Furthermore, the generally adverse country conditions were not sufficient to find that he would be persecuted either personally or as a member of a group. Country condition evidence did not, for instance, indicate the September 2013 protesters were still being targeted by the authorities when she adjudicated the case nearly five years later.

III. Analysis

A. *Issues and Standard of Review*

[8] The Applicant contends that the Officer erred in making unreasonable findings of fact, as well as making veiled credibility findings and failing to provide a hearing, both of which should be reviewed on a reasonableness standard (*Joe-Edebe v Canada (Citizenship and Immigration)*, 2019 FC 684 at para 10).

[9] The Applicant also asserts that the Officer denied him procedural fairness by failing to conduct independent research on Sudan's country conditions, breaching his legitimate expectations. Even if the Applicant is correct that this issue should be reviewed on a correctness standard, a position with which I disagree (as do others of this Court, per *Shallow v Canada (Citizenship and Immigration)*, 2019 FC 911 at paras 16 and 21 [*Shallow*]), I find the Officer made no reviewable errors.

(1) Oral Hearing

[10] Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, requires an officer to consider granting an oral hearing if a question of credibility is being determined. The Applicant asserts that because the PRRA Officer made a negative credibility finding on the Applicant's declaration that he faced persecution, and he was owed an oral hearing.

[11] I do not find this to be the case. Rather, the Officer simply found insufficient evidence for the claims made, both subjectively and objectively. She found that participating in one demonstration, without any history of activism, political affiliation, or being a member of a targeted group, did not give rise to a reasonable chance of persecution. Certainly, this was one possible, acceptable outcome defensible on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47), given the Applicant's spontaneous decision to join one demonstration when passing by on his way home from classes in 2013, the dearth of personal evidence provided, and the updated country condition evidence regarding the Applicant's profile.

[12] Ultimately, if simply reaching a result that conflicts with an applicant's declared belief of persecution constitutes a credibility finding, then every denied PRRA would call for an oral hearing.

(2) Factual Findings and Risk

[13] The Applicant argues the Officer capriciously, and without regard for the evidence, found that the Applicant's degree of political involvement was not sufficient to pose a continuing risk of persecution nearly five years after the events. The Applicant submits that the evidence shows that Sudan commits ongoing violations to crush protests.

[14] Again, without more, I find that these findings of fact were open to the Officer. She referenced all central elements raised by the Applicant and addressed them in light of relevant, updated and reputable country condition evidence. Ultimately, the Applicant failed to show a current and ongoing personal risk of persecution based on his activity in a demonstration and subsequent mistreatment, in spite of adverse country conditions. Forward-looking risks should be personalized to invoke section 97 protection.

(3) Independent Research

[15] The Applicant also submits that the Officer was required to undertake further research on available country condition documents. He bases this "legitimate expectation" of further research upon PRRA policy outlined in policy guidance on the Departmental (Immigration, Refugees and Citizenship Canada) website, entitled *Processing pre-removal risk assessment (PRRA)*

applications: Procedures and guidelines applicable to all cases. The Applicant argues that the Officer, by failing to document any further research, reached her decision without proper knowledge and understanding of Sudan's present country conditions.

[16] However, I note that the Officer considered up-to-date country condition evidence from credible sources based on the record (such as the Immigration and Refugee Board, the U.S. Department of State, Amnesty International and Human Rights Watch reports). These reputable sources made no mention of the 2013 protesters as a discrete targeted group. The Officer, based on the available evidence, found that the Applicant's evidence failed to show that he established risk should he return to Sudan.

[17] A PRRA applicant has an obligation to prove on a balance of probabilities that he faces more than a mere possibility of persecution (*Liyanage v Canada (Citizenship and Immigration)*, 2019 FC 194 at para 38). The onus does not reside with the officer to do additional research to prove the applicant's case (*Shallow* at para 21; *AB v Canada (Citizenship and Immigration)*, 2019 FC 165 at para 28).

[18] Rather, the Applicant must put his best foot forward, and provide objective evidence to support his allegations. Furthermore, departmental policy is not law and cannot fetter the discretion of the officer (*Krasniqi v Canada (Citizenship and Immigration)*, 2018 FC 743 at paras 19 and 20; see also *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32). As such, this policy merely guides that research when an officer decides it would be helpful. Indeed, as the policy itself states:

> One of the implicit assumptions about PRRA is that the PRRA officer will become, over time and through experience, very knowledgeable on many countries. The knowledge accumulated should, in a straightforward case, enable officers to make judgements without the need for extensive additional research.
>
> [Emphasis added.]

IV. Conclusion

[19] The PRRA Officer fairly and reasonably decided that the evidence before her raised no risk in light of the Applicant's past activities and current profile. The PRRA Officer thus reasonably found that the Applicant failed to establish a risk of persecution or need of protection should he return to Sudan. The Applicant has not shown any reviewable errors in the PRRA Officer's reasons, including with respect to the finding of insufficient evidence, which was just that, and not a veiled credibility finding. Finally, the Officer considered relevant and updated country condition evidence, and had no obligation to do independent research. Accordingly, the Applicant established no legitimate expectation of further research, nor any breach of fairness.

[20] As I have found there are no reviewable errors or breaches of procedural fairness in the PRRA refusal, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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