

Federal Court



Cour fédérale

Date: 20200331

Docket: IMM-2201-19

Citation: 2020 FC 465

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 31, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

OTHMAN HUSHAM QASIM QASIM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The applicant seeks judicial review of a decision of a visa officer at the Canadian Embassy in Turkey rendered on February 7, 2019, finding that the applicant failed to meet the requirements to be considered a refugee.

[2] The applicant alleges that the officer failed to consider all of the risks should he return to Iraq. However, a reading of the reasons for decision reveals that the officer was attentive to the concerns raised by the applicant.

[3] The application for judicial review is dismissed.

II. Facts

[4] The applicant is a citizen of Iraq. The applicant and his family resided in Baghdad, Iraq until 2005. They left Iraq that year after the applicant's father received a threatening call demanding that he pay money or be killed by militias. However, the applicant admitted that he does not know who was on the other end of the line or why his father received the call.

[5] Following the call, the family relocated within Iraq, moving from Baghdad to Anbar. The applicant states that the education system was not adequate and that, as a result, the family left Iraq in 2006 for Syria. The family remained in Syria until 2010.

[6] In October 2010, the applicant left Syria for Lebanon to pursue post-secondary studies. His family returned to Iraq because of the employment of the applicant's father. His father is a lawyer in a Baghdad law firm. The applicant remained in Lebanon until May 2016.

[7] In May 2016, the applicant returned to Iraq because of visa problems. The applicant alleges that while in Iraq he had to pay a bribe to pass through a checkpoint.

[8] In December 2016, the applicant left Iraq for Turkey. He alleges that his departure from Iraq was motivated by the kidnapping of a neighbour's son, who was allegedly released after payment of a sum of money (approximately \$60,000 in U.S. currency). In addition, the applicant testified that he was also afraid to return to Iraq because of a collision he had on the road with a car containing several passengers dressed as militiamen. Although he was not responsible for the collision, the applicant compensated the passengers in the other car.

[9] On September 13, 2017, the applicant filed an application for permanent residence as a member of the Convention refugees abroad class or the country of asylum class. In his claim, the applicant stated that he had been a refugee since 2004 (one year before the 2005 threatening call) owing to civil instability and violence in Iraq.

[10] Based on my reading of the record, the applicant failed to file any documentary or other evidence in support of his claim for refugee protection.

[11] In March 2018, the applicant returned to Baghdad for a period of 10 days because his father was having health problems. The applicant did not indicate that he encountered any problems during his visit to Baghdad. As I understand the rest of the text, they are still living in Baghdad.

[12] On January 14, 2019, the applicant was interviewed by a visa officer with an interpreter present. At the interview, the applicant testified that the militia did not like his name because his name was of Sunni origin. At the same time, the applicant admitted that he had not personally

experienced any hardship in Iraq, because before his departure he had acted cautiously and lived in the small village of Anbar.

III. Decision

[13] As the applicant was not in Canada when he applied for a permanent resident visa, his application was considered under both the Convention refugees abroad class and the humanitarian-protected persons abroad class. In a decision rendered on February 7, 2019, the visa officer concluded that the applicant was not eligible to immigrate to Canada.

[14] In a letter to the applicant, the officer states that he believes that the applicant's allegations (i.e. the checkpoint incident, the kidnapping and the car accident) do not demonstrate persecution, but rather are the result of widespread crime in Iraq. The officer concluded that the applicant was not seriously affected by the perilous situation in Iraq, with the exception of the threatening telephone call received by his father in 2005. For these reasons, the officer concluded that the applicant failed to meet the requirements to be considered a Convention refugee or a humanitarian-protected person abroad.

[15] The officer set out his reasoning in notes in the Global Case Management System [GCMS]. In his notes, the officer summarized the events related by the applicant and concluded simply that they were the result of widespread crime in Iraq. The officer noted that the applicant was given the opportunity to address his concerns about his fears.

IV. Issue

[16] The issue in this case is whether the officer's decision is reasonable.

V. Standard of review

[17] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court established a revised analytical framework for determining the applicable standard of review for administrative decisions. The starting point in this analytical framework is the presumption of the reasonableness standard (*Vavilov* at para 23). This presumption can be rebutted in two types of situations: where there is a statutory appeal mechanism or where the rule of law requires review on the standard of correctness (*Vavilov* at para 17). In the present case, neither of the situations justifying a departure from the presumption of application of the standard of reasonableness applies. The visa officer's decision is subject to review under the reasonableness standard (*Vavilov* at paras 73–142).

VI. Analysis

A. *Convention refugees abroad class*

[18] The applicant wishes to remind the Court that although the tendency of a reviewing court is to show deference to the administrative tribunal, “[h]owever, it is not a ‘rubber-stamping’ process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review” (*Vavilov* at para 13).

[19] In general, the applicant alleges that the visa officer's decision is tainted by the omission of three important details related to his situation.

(1) Time in Iraq

[20] The applicant contends that the visa officer made a reviewable error when he failed to take into account the fact that the applicant had spent very little time in Iraq and that the country posed several dangers to him. In particular, the officer does not appear to have considered the possibility of the applicant being captured by a Shia rebel militia or the sufficiency of state protection in Iraq.

[21] The respondent submits that the visa officer took into account the fact that the applicant had spent most of the time since 2006 outside Iraq. The respondent finds it telling that the applicant was unable to point to any problems experienced by his family in Iraq.

[22] In GCMS notes, the officer makes reference to the applicant's moves:

When asked why he left Iraq, the PA explained that he initially left Iraq in 2005 because of a threat phone call his father received that year. His father was asked to pay money or be killed. The PA stated that it was not clear why his father received this threat and stated the militias did not need a specific reason to threaten people. After this threat, the PA states his family initially moved out of Baghdad to Anbar, but the education system there was not at an adequate level, so in 2006 they moved to Syria where he lived with them until 2010. They lived in Homs and his father would travel between Syria and Iraq for his work as a lawyer [some of this information was discussed earlier in the interview]. From 2010 to 2016, the PA lived in Lebanon attended university there. In May 2016, the PA returned to Baghdad as he was unable to stay in Lebanon due to visa issues.

. . . When asked if there was an issue or event which made the PA leave Iraq in 2016, the PA responded there were problems happening generally and then mentioned the kidnapping of his neighbour's son, for whom the kidnappers demanded a ransom of \$60,000 USD. When the family paid, he was released. In response to being asked if the PA had idea why the son was kidnapped, he

said that for 90% of people who were killed or kidnapped, it was due to money. PA stated he did not think it was a religious problem which led to the kidnapping. PA then went on to mention an incident where he was driving and he was in a car accident with a car full of people who the PA thought belonged to a militia because of their style of dress. Because he was scared of the men involved in the militia, he paid compensation for the accident even though the accident was not the PA's fault.

When asked if the PA's family had any problems with any militias since the PA's father had received the threat in 2005, the PA said that many of his family members/relatives live outside of Baghdad, some in Iraq, Jordan, Syria, the UAE, Canada and that those who do live in Baghdad live in certain areas, such as the Green Zone and don't stray outside of those areas.

The PA left Iraq to seek refuge in Turkey on December 14, 2016. However, the PA returned to Iraq from March 6 to March 16 in 2018 as his father was sick with stomach problems and high blood pressure. The PA stated he did not experience any problems when he visited his father in March 2018. His family is living in Adamiyah neighbourhood of Baghdad.

The PA stated that some militias do not like his name [and mentioned that some militias don't like the town where the PA is registered in on the PA's Iraqi ID card], however he states himself he has not experienced issues at checkpoints because he has been careful. He also does not know of or know anyone personally with the same name who has had issues because of it. The PA gave some examples of his experiences such as passing through the checkpoint and getting in a car accident with militia members, but it does not appear these incidents amount to persecution. As the PA said himself during the interview, "anyone could face the same thing."

Moreover, I note that the PA's parents live in Baghdad and have lived there for several years. The PA went to visit his father in 2018 (I note this is due to his father's blood pressure and stomach issues), however he did not experience any problems during his 10 day visit.

Given the PA's statement that he did not have any problems during this visit, it does not appear that the PA had any issues at checkpoints going to and from the airport and his family's home in Baghdad during this visit.

...

When, for procedural fairness, these concerns were put to the applicant along with the caution that his application may be refused, the PA states he has not been targeted because he had been living outside of Iraq for 14 years, so no one knew him. The PA also said that he is not posting on Facebook either but can't adapt to the mentality of his society influenced by militias where one cannot freely express one's opinion. The PA also stated that his father is not leaving Iraq because of his work as a lawyer which is in Iraq. The PA also reiterated the danger of leaving his neighbourhood due to the different types of checkpoints he could have to pass through. The PA stated that he could experience problems if he left his neighbourhood and noted he had to give up job opportunities because of the checkpoints he might have to pass on his way to work.

[Emphasis added.]

[23] From reading these notes, it appears that the officer conducted an analysis guided by the fact that the applicant had spent little time in Iraq after 2006.

[24] I note that the officer referred to all of the applicant's moves (to Anbar in 2005, Syria in 2006, Lebanon in 2010, Baghdad in May 2016, and Turkey in December 2016), as well as his brief stay in Iraq in March 2018. In addition, the officer noted that the applicant's parents have been living in Baghdad for several years.

[25] In the interest of procedural fairness, the officer communicated his doubts about the fears raised by the applicant at the interview. The applicant responded that he was not targeted by militia because he had been out of the country for 14 years.

[26] In addition, the applicant stated that he could not leave his neighbourhood in Baghdad because he would be exposed to the risks associated with checkpoints. The applicant did not refer to any incident of personal concern to support this speculative fear.

[27] It should be noted that the officer was mindful of the fact that the applicant had had little experience in Iraq and gave the applicant an opportunity to elaborate on the nature of his fears about Iraq.

[28] Therefore, I find that the intervention of this Court is not warranted because the officer considered the facts and concerns raised by the applicant (*Vavilov* at paras 125–28).

(2) His Sunni name

[29] The applicant alleges that the visa officer made a reviewable error when he failed to consider the risks associated with his Sunni name in the analysis of the risk of persecution in Iraq. According to the applicant, his Sunni name (Othman) puts him at particular risk of being targeted by Shia militias in Iraq, especially at checkpoints.

[30] The respondent submits that the officer did not ignore the Sunni situation, as he addressed this issue during the interview. According to the respondent, the applicant failed to provide any details to support his allegation that he was at risk because of his name.

[31] In his GCMS notes, the officer noted the applicant's fear regarding his name:

Earlier in the interview, the PA had mentioned in passing that the militias did not like his name, Othman. The PA was asked to elaborate on this and stated that the Shia militias didn't like the name as it was a Sunni name, and it "could mean problems". When asked if he has experienced issues passing through checkpoints, the PA stated he has not had issues passing through checkpoints as he avoids driving except in his area, which is Sunni. When asked if he knows or has heard of other people having issues because of having the name Othman, the PA stated that in 2005 and 2006, many Sunnis were killed because of their name and because of the content of their IDs but that he did not know anyone personally affected and that he had few friends.

...

The PA stated that some militias do not like his name [and mentioned that some militias don't like the town where the PA is registered in on the PA's Iraqi ID card], however he states himself he has not experienced issues at checkpoints because he has been careful. He also does not know of or know anyone personally with the same name who has had issues because of it. The PA gave some examples of his experiences such as passing through the checkpoint and getting in a car accident with militia members, but it does not appear these incidents amount to persecution. As the PA said himself during the interview, "anyone could face the same thing".

[32] Contrary to the applicant's allegations, I find that the officer did, in fact, consider his Sunni name as a reason for risk. The officer referred to this risk twice, but concluded that this risk did not amount to persecution because the applicant had indicated that neither he nor those around him had experienced any difficulty in passing through the checkpoints.

[33] Again, I find that this Court's intervention is not warranted because the officer considered the facts and concerns raised by the applicant (*Vavilov* at paras 125–28).

(3) Incomplete interview notes

[34] The applicant alleges that the visa officer made a reviewable error in failing to mention the fact that a car had been following him for several minutes before deliberately hitting his car. According to the applicant, this incident demonstrates that he was personally targeted by militias in Iraq.

[35] The respondent submits that a careful reading of the notes and reasons demonstrates that all the relevant elements were considered by the officer.

[36] In two affidavits (dated after the impugned decision), the applicant states that he explained to the officer that he had been targeted by militia who identified him as Sunni and that he had been chased for a few minutes before the car accident. However, none of the affidavits mention the specific motivations of the persons involved in the accident or the specific questions asked by the officer during the interview.

[37] According to the summary notes of the interview, the applicant testified that he was afraid to return to Iraq after a collision with a car containing several passengers dressed as militiamen, although he conceded that the car had not hit him intentionally:

Q.: Do you think it was a religion problem? A.: In this case, exactly, I don't know. But I don't think it was a religious problem in this case, but for others who are killed or kidnapped, maybe, yes. For people who don't have a militia behind them, they think he's an easy person to kill or kidnap. Also, there was something that happened . . . my mom and I were driving. Someone hit me from the back. From his looks, I could tell he was in a militia. Even though we weren't at fault, I had to pay him. I was scared he'd hurt me. They were 5 in the car, and I had my mother with me. There was a policeman standing nearby and he saw but he didn't come closer since he saw they were militia people.

Q.: Did he hit you on purpose? A.: No.

[Emphasis added.]

[38] In GCMS notes justifying the decision, the officer twice noted the car accident and the applicant's fear regarding his name:

[The] PA then went on to mention an incident where he was driving and he was in a car accident with a car full of people who the PA thought belonged to a militia because of their style of dress. Because he was scared of the men involved in the militia, he paid compensation for the accident even though the accident was not the PA's fault.

...

The PA gave some examples of his experiences such as passing through the checkpoint and getting in a car accident with militia members, but it does not appear these incidents amount to persecution. As the PA said himself during the interview, "anyone could face the same thing".

[39] The decision letter also refers to the car accident:

You gave a few examples of your experiences such as passing through a checkpoint, getting in a car accident with militia members and the kidnapping of your neighbour's son, among others discussed at the interview. However, it does not appear these incidents amount to persecution. I presented these concerns to you in the interview and gave you an opportunity to respond, however your response did not alleviate them.

[40] Although the officer did not mention all the details of the car accident, I believe that a reading of the reasons demonstrates that he addressed the applicant's concerns. I note from these excerpts that the officer downplayed the probative value of the car accident because the applicant had admitted that "anyone could face the same thing".

[41] I have also read the applicant's supplementary affidavit, but I must admit that the transcript is very clear, and the applicant did not argue that this exchange did not take place and did not challenge the description of his confession.

[42] I see nothing unreasonable in the officer's analysis. In this context, the administrative decision-maker is not obliged to catalogue all the details associated with each allegation (*Vavilov* at para 128). In this case, the officer considered the applicant's testimonial evidence and the concerns raised by the applicant. Even if one were to accept the details raised by the applicant by affidavit, it would not be unreasonable to conclude that the facts alleged by the applicant do not amount to persecution.

[43] In the end, the officer determined that the applicant's fear of return to Iraq was based on the generalized poor security conditions in the country, and not on a fear of persecution based on one of the Convention grounds.

[44] I see nothing unreasonable in this decision.

B. *Humanitarian-protected persons abroad class - country of asylum class*

[45] Section 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227

[IRPR], sets out the criteria for the "country of asylum" class:

**Member of country of
asylum class**

147 A foreign national is a member of the country of asylum class if they have been

**Catégorie de personnes de
pays d'accueil**

147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un

determined by an officer to be in need of resettlement because	agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(a) they are outside all of their countries of nationality and habitual residence; and	a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

[46] With respect to the eligibility criteria for the country of asylum class, apart from the incident involving his father in 2005, the officer found that the applicant had not suffered serious and personal consequences caused by civil war, armed conflict or massive human rights violations in the country of his citizenship.

[47] The visa officer's notes include the following:

Informed PA [Principal Applicant] that I was looking at his present application strictly through a refugee assessment and given his educational background, he may wish to explore Canada's economic immigration program.

[48] The applicant cites *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589, to argue that persons applying under the country of asylum class do not necessarily have to meet the definition of Convention refugee. Thus, Justice Mainville writes at paragraph 39:

Members of the country of asylum class need not meet the definition of Convention refugee, and consequently need not demonstrate a well-founded fear of persecution for reasons of race, religion,

nationality, membership in a particular social group or political opinion. Rather, they must demonstrate that they are displaced outside of their country of nationality and habitual residence, and have been and continue to be seriously affected by civil war, armed conflict or massive violations of civil rights, and that there is no reasonable prospect within a reasonable period of a durable solution elsewhere for them.

[49] The applicant submits that it was an error on the part of the visa officer to limit his assessment to the question of whether the applicant was a Convention refugee.

[50] The respondent objects to the Court's consideration of this argument because the applicant first made it before me and did not raise it in his memorandum, his reply memorandum or his supplementary memorandum. In his written submissions, the applicant limited himself to the issue of section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27, and the Convention refugee abroad class. Therefore, this argument should not be considered by this Court.

[51] I acknowledge that this is a new issue that was not raised in the applicant's written submissions, but I think I can dispose of it very quickly.

[52] I recognize that there is a "duty on the officers abroad to consider all legal grounds of a refugee claim inferred from the evidence [which] stems from the early leading Canadian case on refugee law" (*Barak v Canada (Citizenship and Immigration)*, 2017 FC 648 at para 11, citing *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689). However, it is clear that this is precisely what the visa officer did.

[53] According to the summary notes of the interview, the visa officer addressed this issue. In his written decision, the visa officer stated:

With regards to the eligibility criteria of country of asylum class, you described your father receiving a threatening phone call in 2005. However, other than that, you do not appear to have been seriously and personally affected by civil war, armed conflict or massive violations of human rights in your country of nationality.

[54] In addition, the applicant returned to Iraq in 2016 and 2018, a fact that has not gone unnoticed.

[55] This is not a situation in which “[t]here is no analysis in the officer’s decision of the requirements in section 147 of the IRPR” (*Taman v Canada (Citizenship and Immigration)*, 2020 FC 17 at para 13), and I do not believe that the visa officer was obliged to repeat his findings with respect to the other relevant elements of the applicant’s application that he had reviewed as part of the analysis under the Convention refugee abroad class:

The reviewing court must also read the decision maker’s reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker’s work, and past decisions of the relevant administrative body. This may explain an aspect of the decision maker’s reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency. Opposing parties may have made concessions that had obviated the need for the decision maker to adjudicate on a particular issue; the decision maker may have followed a well-established line of administrative case law that no party had challenged during the proceedings; or an individual decision maker may have adopted an interpretation set out in a public interpretive policy of the administrative body of which he or she is a member.

(*Vavilov* at para 94.)

[56] Lastly, I do not think that the fact that the visa officer stated having examined the application strictly “through a refugee assessment” means that he failed to consider the issue of country of asylum class. The visa officer was simply trying to make a distinction between his role at the time and the possibility of the applicant applying for a visa in the economic immigration class.

[57] In my opinion, the visa officer’s decision is “justified in light of the facts” (*Vavilov* at para 126), and I find nothing unreasonable in it.

[58] Accordingly, the intervention of this Court is not warranted.

VII. Conclusion

[59] However rigorous the analysis, the officer’s decision is not unreasonable, and the application for judicial review is dismissed. The parties did not submit any questions for certification.

JUDGMENT in IMM-2201-19

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no question to certify.

“Peter G. Pamel”

Judge

Certified true translation
This 21st day of April 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2201-19

STYLE OF CAUSE: OTHMAN HUSHAM QASIM QASIM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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DATED: MARCH 31, 2020

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