Federal Court  Cour fédérale

Date: 20200430

Docket: IMM-2128-18
IMM-4076-18

Citation: 2020 FC 573

Ottawa, Ontario, April 30, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

RICARDO ANTONIO LOPEZ ALVAREZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ricardo Antonio Lopez Alvarez, seeks to overturn two negative Pre-Removal Risk Assessment (PRRA) decisions that found him not to be at risk if he returned to Honduras.

[2] The first negative PRRA decision was made before the officer had an opportunity to review documents provided by the Applicant. It was agreed that, in light of the new documentation, the decision would be reviewed again by the same officer. Following that

review, a PRRA Decision – ADDENDUM was issued, which found that the Applicant had not established that he faced a risk of persecution or mistreatment if he returned to Honduras.

[3] The Applicant challenges both decisions and, by agreement of the parties, the matters were heard together. In reality, the second PRRA decision is simply an addendum to the first, and so the "reasons" for the second decision incorporate those provided for the first. These reasons deal with both matters, and a copy will be placed in each file.

[4] For the reasons set out below, the applications for judicial review are dismissed.

I. Context

[5] The Applicant is a citizen of Honduras. He came to Canada in August 2011 under the temporary foreign workers program. He returned to Canada in August 2012, but by June 2013 he had lost his job because he was unable to work due to a medical condition. He married a Canadian citizen in June 2013.

[6] The Applicant's work permit expired in July 2013, and an exclusion order was issued against him in August 2013. In January 2014, he submitted an application for permanent residence under the spouse or common-law partner in Canada class. The processing of that application was suspended, however, because in June 2017 the Applicant was convicted of driving while impaired and for failure to comply with an undertaking. A deportation order was issued against the Applicant in August 2017.

[7] The Applicant submitted a PRRA application on December 12, 2017, alleging risk in Honduras on the basis of his imputed political opinion as a municipal employee of the city of San Lorenzo and his association with the National Party. He claimed that he had faced harassment and threats from members of the opposition who alleged that he was involved in municipal corruption.

[8] Following the submission of his PRRA application, the Applicant obtained supporting documentation from his family in Honduras, but it was all in Spanish. He arranged for translation of these documents, and his counsel provided them to the Respondent on March 22, 2018. In the meantime, on March 9, 2018, he had received a "call-in" notice from the Canada Border Services Agency (CBSA) for a meeting on April 3, 2018, in order to receive the decision on his PRRA. The Applicant's counsel contacted the CBSA officer to explain that he had provided further documentation, and the officer cancelled April 3, 2018 meeting.

[9] The Applicant then received another call-in notice for a meeting on April 25, 2018. At that time, he received the first negative PRRA decision, dated March 2, 2018, which did not take into account the further material his counsel had submitted. The Applicant was advised that his removal from Canada had been scheduled for July 3, 2018. The removal was later cancelled, and the parties agreed that based on the decision in *Chudal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1073, the PRRA officer would reconsider the decision and take into account the documents the Applicant had submitted in March 2018. The parties also agreed that the application for leave and judicial review of the first PRRA decision (IMM-2128-18) would be held in abeyance.

[10] The Applicant received the second negative PRRA decision on August 7, 2018, and his removal was scheduled for August 20, 2018. The removal was stayed by Order of this Court.

[11] The second PRRA decision is styled as an "addendum" to the first. It does not repeat all of the analysis set out in the first decision, but rather focuses on the new evidence. The two decisions must be read together.

II. Decisions Under Review

[12] The first PRRA decision begins by recounting the Applicant's immigration history and notes that he based his PRRA application on his fears of returning to Honduras because of his imputed political opinion and his association with the National Party and the municipal government of San Lorenzo. He had provided evidence that his mother's home had been robbed and that a message had been left for the Applicant stating that he "should not even think about staying in Honduras." The Applicant states that he was attacked a short time later, during which he was threatened and ended up in hospital for six days. The officer accepts this evidence. However, the officer notes that the assailants were unknown to the Applicant or the police and he had not made any allegations about who he suspected they were.

[13] The officer states that the Applicant had not provided any evidence to establish that he was a member of the National Party or had been employed by the municipal government or that his mother or family have any political profile in Honduras. Therefore, the robbery and attack were not evidence that he faced a prospective risk of harm because of his imputed political opinion or his employment. The documentary evidence indicated that armed attacks and homicides had occurred against political candidates, leaders of parties, and activists and their

families. The officer found the Applicant had not demonstrated that he fit the political profile of a person at risk of being targeted in Honduras.

[14] The officer notes that the National Party had won the last national election and, although many citizens disputed the results, the government had nevertheless taken office. The objective evidence did not support the Applicant's claim that he faced a personalized risk.

[15] In relation to the claim of generalized risk because of criminality in Honduras, or the particularized risk to people who are perceived to oppose gangs, the officer concludes that the Applicant had not provided evidence to support that he had opposed gangs, or otherwise faced such risks. Rather, the evidence showed that the Applicant faced the same generalized risk of violence as others in Honduras.

[16] Finally, the officer notes the Applicant's desire to remain in Canada because his wife and children live here, but found that this was not a consideration for a PRRA assessment; rather, this could form the basis for a separate humanitarian and compassionate application.

[17] For these reasons, the officer rejected the PRRA application.

[18] Following the receipt of the additional evidence the Applicant submitted, the same PRRA officer reconsidered the application. The resulting decision is styled "PRRA Decision – ADDENDUM." It focuses on the new evidence that the Applicant provided in late March 2018, and does not repeat all of the earlier decision. As noted above, the second decision effectively incorporates the first and builds upon it, and so the decisions will be treated together.

[19] The officer notes that several documents had been provided, which confirmed the Applicant's political activity and affiliation with the National Party, and that he had been a municipal employee of San Lorenzo. The officer also notes, however, that the National Party was currently in power in Honduras, having won a four-year term in a national election. The core of the officer's reasoning is set out in the following passage:

> I accept that the applicant was a member of the National Party and that he was a former government worker for the municipality of San Lorenzo. I also accept that he was a victim of persecution, harassment, threats and intimidation by the opposition party in 2011; however, I note that the applicant was a member of the National Party – which is the ruling party of Honduras today. I also note that the applicant has not lived in Honduras for more than six years. I have been provided with insufficient evidence that the opposition party or anyone would be interested in harming him six years following his departure from Honduras.
>
> In the case at bar, the applicant provided insufficient evidence to support his application. Therefore, without sufficient supporting evidence for this application I am left to conclude that on a forward looking basis, the applicant would not face more than a mere possibility of persecution in Honduras nor is he more likely than not to face a danger or (*sic*) torture, or a risk to life, or a risk of cruel and unusual treatment or punishment. The application has failed to meet the requirements of Section 96 and 97 of the *Immigration and Refugee Protection Act*.
>
> The application is rejected.

III. Issues and Standard of Review

[20] The only issue in this case is whether the second PRRA decision is reasonable. The challenge to the first PRRA decision (IMM-2128-18) is subsumed in this, because the second decision incorporates and expands upon the first.

[21] When this case was argued, the leading authority on reasonableness review was *Dunsmuir v New Brunswick*, 2008 SCC 9, and its progeny. Since then the Supreme Court of Canada has updated and clarified the framework for judicial review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] as applied in *Bell Canada v Canada (Attorney General)*, 2019 SCC 66, and *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*].

[22] In view of paragraph 144 of *Vavilov*, I see no reason on the facts of this case to request additional submissions from the parties on either the appropriate standard or the application of that standard. This case is similar to the situation in *Canada Post*, where the Supreme Court stated at paragraph 24 that it was not unfair to decide a case applying the *Vavilov* framework when it had been argued under the *Dunsmuir* approach, because under both frameworks the result would be the same. The same reasoning applies here.

[23] The standard of review that applies to the merits of the PRRA decisions is reasonableness. This standard has been applied in previous decisions (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]; *Rahman v Canada (Citizenship and Immigration)*, 2019 FC 941 at para 17). This has not changed under *Vavilov*.

[24] When reviewing for reasonableness, the Court asks "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85).

[25] As such, a decision will be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision maker's reasoning on a critical point (*Vavilov* at para 103). The framework set by this decision "affirm[s] the need to develop and strengthen a culture of justification in administrative decision-making" by endorsing an approach to judicial review that is both respectful and robust (*Vavilov* at paras 2, 12-13).

IV. Analysis

[26] The core of the Applicant's argument is that the PRRA officer misapprehended the nature of the risk he alleged, and therefore did not consider the evidence in a reasonable manner.

[27] The Applicant alleged that he faced a risk of persecution as a member of the National Party and a municipal employee. The evidence showed that he had faced threats and accusations from opposition members who linked him to the corrupt practices of the former mayor, and accused him of stealing money from the poor. This led him to flee Honduras and to come to Canada as a temporary foreign worker in 2011. When he returned to Honduras in 2012, his mother's house was robbed, and he was physically attacked and ended up in hospital.

[28] The Applicant submits that the officer failed to consider the objective documentary evidence that shows that gang violence and extortion is rampant in Honduras, and that municipal officials have been targeted because of this. At the time the PRRA officer made his decision, there were several reports that demonstrated the way in which migration patterns in the region had evolved, including the Amnesty International report *Home Sweet Home: Honduras, Guatemala and El Salvador's Role in a Deepening Refugee Crisis* (2016), as well as the report of the Research Directorate of the Immigration and Refugee Board, *Honduras: Information*

Gathering Mission Report (2018). The Applicant's position is that the officer's failure to consider his alleged risk in light of the specific country condition evidence makes the decision unreasonable.

[29] In addition, the Applicant argues that the officer failed to consider the wider risk of harm he faced because he fit into the demographic profile of the people being targeted by gang violence. The Applicant submits that the country condition evidence shows that state protection is not available in Honduras, and that gang violence and threats are rampant in the country. The evidence shows risks to people returning to Honduras from abroad, as well as risks to persons who work in activities susceptible to extortion, including municipal workers and those who do not comply with a gang's authority. The officer's failure to engage in any meaningful analysis of this evidence makes the decision unreasonable.

[30] I am not persuaded. The PRRA officer considered the evidence submitted in light of the claims advanced by the Applicant and the affidavit evidence he filed in support. The decision is based on an assessment of the sufficiency of the evidence in relation to these claims, and the officer's conclusions are supported in the evidence. The officer applied the appropriate legal tests to the assessment of the evidence, and the decision – meaning the original decision plus the addendum – displays clear and coherent reasoning that justifies the conclusion reached. This is what is required by the *Vavilov* framework for reasonableness review.

[31] The PRRA decision refers to the specific allegations of risks made by the Applicant and there is no basis to find that the officer misapprehended the nature of these claims. The officer correctly focused on whether the evidence established a forward-looking risk of harm because

that is what is required by a PRRA analysis (*Kioko v Canada (Citizenship and Immigration)*, 2014 FC 717 at para 8).

[32] In relation to the claim that the Applicant faced risks as a person aligned with the National Party and from a family that had been politically active in Honduras, the officer rightly noted that the National Party had won power in contested elections and was continuing as the government at the time. This is a relevant consideration, in light of the claims that the Applicant had faced threats by members of the opposition. Indeed, the further evidence he submitted included a number of statements by officials affirming that he had been an employee of the municipality of San Lorenzo, and that he was a victim of harassment, threats, and persecution by the opposition party. However, there was no evidence that these threats had continued after he left the country, or that anyone was continuing to search for him because of his prior involvement in municipal affairs.

[33] The evidence shows that gang violence and extortion are significant problems in Honduras, and there is evidence that mayors face threats from gangs. The officer's conclusion that the Applicant had not demonstrated that he faced a continued risk as a former municipal employee is supported in the evidence. Furthermore, there was no evidence of continued threats made specifically against the Applicant in the intervening period. The fact that his mother had expressed fears because of her involvement in municipal politics is a relevant but not decisive consideration.

[34] Finally, the officer's assessment of the generalized risk of violence in Honduras is well grounded in the evidence. In the decision, the officer states: "While acknowledging that crime

and violence are serious concerns in Honduras, the applicant provided insufficient evidence of a personal risk." This conclusion is also based on the evidence in the record and flows form the generalized nature of the fears expressed by the Applicant in his PRRA application.

[35] A PRRA officer is required to focus on the actual risks alleged by the individual, and these must be examined in the context of the evidence as a whole, including the specific evidence put forward by the claimant as well as the general country conditions documents. The approach is summarized by Justice Cecily Strickland in *Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332:

> [33] In this matter, the Officer addressed the letter of the Principal Applicant's friend and then referred to their remaining submissions which included various news articles and country reports, noting that s 161(2) of the IRP Regulations required the Applicants to indicate how that evidence related to them. The Officer stated that the Applicants' submissions described the general country conditions in Bangladesh but that they had not linked this evidence to their personalized, forward-looking risks. The Officer stated that it is well established that it is insufficient to simply refer to country conditions in general without linking them to the personalized situation of an applicant. Further, that the assessment of an applicant's potential risk of being persecuted or harmed if sent back to his country, must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean that there is risk to a given individual. The Officer stated that the Applicants had not provided objective documentary evidence to support that their profile in Bangladesh is similar to those persons that currently face persecution, a danger of torture or a risk to life, or of cruel and unusual treatment or punishment in that country. The Officer concluded by stating that he or she found that the submissions related to conditions faced by the general population, or described specific events or conditions faced by persons not similarly situated to the Applicants.

[36] In the case at bar, the Applicant pointed to country condition evidence that shows that state protection is not available or effective in Honduras. However, I agree with the Respondent that the officer did not need to engage in a state protection analysis because there was insufficient evidence that the Applicant faced risks based on Convention grounds. The officer acknowledged that crime and violence are serious concerns in Honduras, but it was not necessary for the officer to assess whether state protection was available and effective.

[37] I agree with the Respondent that much of the evidence of the situation in Honduras and the risks faced by particular groups simply did not apply to the Applicant; this includes risks faced by mayors, journalists, human rights defenders, and environmental activists. The Applicant's profile while he was in Honduras and since that time does not bring him within any of these categories, and the more generalized risks of gang violence are not personal to the Applicant.

[38] The officer notes that the Applicant's wife and children are Canadian citizens, but that a consideration of their circumstances and the impact of possible removal of the Applicant must be done in the context of a separate process and is not determinative in relation to a PRRA assessment. There is no error in this conclusion.

[39] For these reasons, the applications for judicial review in IMM-2128-18 and IMM-4076-18 are dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-2128-18 and IMM-4076-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review in IMM-2128-18 is dismissed.

2. The application for judicial review in IMM-4076-18 is dismissed.

3. There is no question of general importance for certification.

4. A copy of this decision shall be placed on both files.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2128-18 AND IMM-4076-18
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