Federal Court  Cour fédérale

Date: 20200924

Docket: IMM-3197-19

Citation: 2020 FC 931

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 24, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

JULES THIERRY GHISLAIN MOKOKO MOMBEKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Jules Thierry Ghislain Mokoko Mombeki, is seeking judicial review of a decision of an immigration officer who rejected his Pre-Removal Risk Assessment (PRRA) application. The officer determined that the applicant did not face a risk within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The officer's decision was based on the lack of credibility of the applicant's testimony.

I. The facts

[2] The applicant, who was 43 years old at the time of his PRRA application, is a citizen of Congo. He arrived in Canada as a permanent resident in 1997, when he was 22 years old. He was sponsored by his father. Between 2003 and 2017, the applicant committed a number of offences, mainly fraud and credit card theft. Two inadmissibility reports for serious criminality were issued against him in 2006 and 2013. On September 15, 2016, his permanent resident status was revoked after a deportation order was issued against him. In April 2017, because he committed further crimes, a third inadmissibility report was issued against him (Decision at pp 2–4, 9–10).

[3] The applicant submitted his PRRA application on January 31, 2018. The applicant alleges that he is at risk because he is wanted in his country for financing the election campaign of his uncle, General Jean-Marie Michel Mokoko, and because his mother's family blames him for her death and intends to use magic to kill him.

[4] The officer summoned the applicant to a hearing on October 3, 2018, and concluded on October 10, 2018, that the applicant was not credible because of implausibilities and contradictions in the evidence submitted in support of his PRRA application.

[5] The officer first determined that the Congolese authorities are not looking for the applicant in connection with the financing of his uncle's election campaign or in connection with comments he posted on Facebook. The officer also concluded that the applicant does not have the profile of a person who could attract the attention of Congolese authorities as an opponent of the government. Finally, the officer rejected the applicant's evidence that his mother's relatives

wanted to revenge her death. For all these reasons, the officer rejected the applicant's PRRA application.

II. Issues and standard of review

[6] According to the applicant, the two issues are as follows:

A. Was the officer's decision reasonable?

B. Was there a breach of procedural fairness?

[7] At the hearing, however, the applicant abandoned his argument with respect to procedural fairness. It will therefore not be necessary to further address it in this judgment.

[8] It is well established that the standard of review applicable to the review of an immigration officer's decision on a PRRA application is reasonableness (*Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at para 14; *Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15; *Farah v Canada (Citizenship and Immigration)*, 2019 FC 928 at para 12). The recent decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], did not change the state of the law and confirms that this standard applies here.

[9] The hearing of this case took place on December 18, 2019, and the decision in the *Vavilov* case was rendered on December 19, 2019. Considering the circumstances, and in light of paragraph 144 of *Vavilov*, the Court offered the parties the opportunity to make additional submissions with respect to the application of the analytical framework set out in *Vavilov*. The comments received were considered in the context of this judicial review.

[10] A judicial review under the deferential standard of reasonableness includes determining whether the process and decision indicate that the decision-maker actually analyzed the evidence, applying the appropriate legal test, and that the analysis is "based on reasoning that is both rational and logical" (*Vavilov* at para 102).

[11] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post Corp*], the Supreme Court of Canada further noted that:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> . . .
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100). . . .

[12] Under this framework, a decision will likely be found to be unreasonable if the reasons, read in conjunction with the record, do not allow the court to understand the decision maker's reasoning on a critical point (*Vavilov* at para. 103). The analytical framework established by this decision emphasizes "the need to develop and strengthen a culture of justification in

administrative decision making" through an assessment that is both respectful and robust (*Vavilov* at paras 2, 12–13).

III. Analysis

[13] According to the applicant, the officer made eight errors. He argues that the combination of these errors is sufficient to make the officer's decision unreasonable.

[14] I am not convinced.

[15] I accept the respondent's argument that most of the alleged errors involve only the officer's assessment of the evidence or are based on a microscopic examination of the reasons for the decision, without taking into account the officer's entire analysis.

[16] At the outset, it is important to emphasize two points:

i. On judicial review, it is not the role of the Court to re-evaluate the evidence examined by the officer. In *Vavilov*, the Supreme Court of Canada reaffirmed this principle: "[i]t is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from 'reweighing and reassessing the evidence considered by the decision maker'" (citations omitted) (*Vavilov* at para 125);

ii. The decision must be considered as a whole; perfection is not the standard by which reasons must be judged. Moreover, review on a standard of reasonableness is not a "line-by-line treasure hunt for error" (citations omitted) (*Vavilov* at para 102).

[17] With respect to the errors alleged by the applicant, it is important to analyze them in relation to their nature. Some relate to how the officer described the applicant's testimony, but do not take into account the officer's analysis of all the relevant evidence. For example, the officer asserts that the applicant had not shown a political interest before his criminal activities led to the loss of his permanent residence. The applicant contends that he became involved in politics as soon as he learned that General Mokoko was running for office in June 2015, and not—contrary to the officer's finding—because of the impact of his criminal activities on his immigration status. He submits that the officer failed to properly assess the evidence, and that this was a decisive error as it formed the basis for the rejection of his PRRA application.

[18] I am not convinced. It is important to consider the officer's entire analysis on this issue (Decision at p 9):

> [TRANSLATION]
>
> First, I questioned the political involvement of the applicant. Indeed, at the hearing, I had asked the applicant whether since his arrival in Canada in 1997, at the age of 22, and before the events of 2015, he had been politically active. The applicant replied that he had not. I asked him if he had been a member of Congolese associations in Canada; he again replied that he had not. I also asked him if he had been politically active in the Congo, and he replied that he had been president of a student association, but that it was not of a political nature. It appears, therefore, that the applicant had no interest in politics until his criminal activities led to the loss of his permanent residence.

[19] In my view, the officer's analysis on this issue is clear and consistent, and based on the evidence on the record. Although the applicant disagrees with the officer's assessment of the evidence on this issue, there is no basis for intervention.

[20] There are other examples. The applicant contends that the officer erred in concluding that he had attempted to conceal information about his criminal history. He claims to have included all the details of his criminal history, including his gambling problems, in his PRRA application form. He further argues that the officer ignored this evidence.

[21] The problem with the applicant's argument on this point is that it does not reflect the decision. Indeed, the officer noted the applicant's criminal record on page 2 of the decision and does not appear to blame the applicant for hiding his criminal history. In the analysis of this issue, the officer described the problem with the applicant's testimony (Decision at p 9):

> [TRANSLATION]
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> [T]he applicant testified at the hearing that the fraud *and* thefts he had committed began in 2012, when he developed a gambling problem . . . .
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> Although the applicant states that his problems began in 2012, I note from his history and the CBSA notes that his crimes began long before that date.

[22] This is a coherent and well-founded analysis.

[23] The focus of the officer's analysis is that the applicant failed to satisfy him that he was involved in the financing of General Mokoko's election campaign. The officer found that the applicant had not shown an interest in politics prior to the onset of his immigration problems; that given his gambling problem and the distressing circumstances he was in at the time—including the fact that he had to sleep at the casino and commit crimes to satisfy his gambling urges—it is surprising that he collected and sent over $2,000 to finance General Mokoko's election campaign; and that he did not demonstrate that he had transferred campaign funds. All these findings, which are central to the officer's analysis, are based on an assessment of the

evidence on the record, and the analysis on these points is "internally coherent and rational . . . and . . . justified in relation to the facts and law that constrain the decision maker" (*Canada Post Corp* at para 31, citing *Vavilov* at para 85).

[24] I agree with the applicant that some aspects of the officer's analysis are not justified or adequately explained. For example, with respect to the lack of evidence of fund transfers through Western Union, the officer rejected the applicant's explanation that he could not obtain such evidence because [TRANSLATION] "it ha[d] been a long time". However, the officer did state that [TRANSLATION] "proof of transfer can be obtained from Western Union by completing a form" (Decision at p 10). In my view, it was unreasonable for the officer to have asserted this possibility without offering any explanation in his reasons, and without giving the applicant an opportunity to respond. This assertion appears to be based on extrinsic evidence based on the officer's knowledge. It is not, however, a fatal error, because the officer went on to note that [TRANSLATION] "the applicant has not shown that he has taken steps [to obtain proof of the transfers]" (Decision at p 10).

[25] In addition, the officer found the article in the Journal Porc Épic submitted by the applicant to be unconvincing, despite its reference to the applicant as the largest donor outside the country. The officer noted that the documentary evidence on the Congo [TRANSLATION] "says about the press in the Congo, that articles are unreliable and often contain misleading information" (Decision at p 11). The officer referred to the objective evidence on this subject, but did not explain why the article submitted by the applicant was unreliable or contained misleading information. In itself, this conclusion was unreasonable.

[26] However, on this issue, I agree with the respondent that the officer's finding on the credibility of the article was based on other issues, and that ultimately, the officer's analysis was reasonable. In the introduction to the analysis on this issue, the officer states that he does not give [TRANSLATION] "weight to this article for a number of reasons" (Decision at p 10). The officer goes on to analyze the evidence, noting the inconsistency in the evidence regarding the number of articles referring to the applicant and the fact that General Mokoko's situation was widely reported in the media, but that the only reference to the applicant in the evidence is a mention in a small newspaper with a small circulation—a fact that is surprising if it is true that the applicant was one of the largest contributors to his election campaign. In light of all these factors, the officer did not give much weight to the content of the article. This was a reasonable analysis.

[27] In addition, the officer noted other inconsistencies in the applicant's evidence. The officer also noted that the applicant adjusted his testimony when confronted with certain problems or contradictions in his story. It is the officer's primary role to weigh the evidence, and the reviewing court must show deference to the findings made by a PRRA officer in assessing the risks faced by the applicant (*Aziz v Canada (Citizenship and Immigration)*, 2015 FC 694 at para 9; *James v Canada (Citizenship and Immigration)*, 2010 FC 318 at paras 16–17).

IV. Conclusion

[28] In this case, the officer examined the evidence in depth and made an analysis that was "internally coherent and rational" and "justified in light of the facts and law that constrain the decision maker" (*Vavilov* at para 85). Most of the applicant's arguments amount to an invitation

to engage in a “line-by-line treasure hunt for error”, which is defended in the context of judicial review by applying the standard of reasonableness (*Vavilov* at para 102).

[29] For all these reasons, the application for judicial review is dismissed.

[30] The parties are of the view that there are no questions of general importance to certify, and I agree.

JUDGMENT in IMM-3197-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to certify.

"William F. Pentney"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3197-19
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