Federal Court  Cour fédérale

Date: 20210611

Docket: IMM-6625-19

Citation: 2021 FC 593

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 11, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

KAHSAY HAILEMICHAEL TESFAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Kahsay Hailemichael Tesfay, is a citizen of Eritrea. In January 2018, he entered Canada and claimed refugee protection under a false identity. His claim was found

ineligible to be referred to the Refugee Protection Division on the grounds that he had already been recognized as a Convention refugee in Italy and could therefore return to that country.

[2] In June 2018, the applicant applied for a pre-removal risk assessment [PRRA]. In his application, he first cited his fear of returning to Italy since he would be unemployed and homeless and his life would be in danger because of other homeless people with mental health and substance abuse disorders. He alleged that there were too many refugees in Italy and that the government was not able to help them. In addition, he noted his desire to stay in Canada to learn a profession in order to support his children and his spouse, who were living in Sweden. Finally, he also mentioned a fear of returning to Eritrea because of the political situation in that country.

[3] The application was denied on October 11, 2018. The PRRA officer [the officer] concluded after analysis that the applicant had not demonstrated that he was at risk under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In reaching this conclusion, the officer relied on the following:

(a) The scope of a PRRA does not extend to humanitarian and compassionate considerations related to an applicant's family obligations as they do not involve a risk of return;

(b) The alleged fear of Eritrea did not need to be analyzed as the applicant would not be returned to that country. Canada Border Services Agency [CBSA] officers had received confirmation from Italian authorities that the applicant would be readmitted to Italy as he had been recognized as a refugee in that country;

(c) The applicant did not file any evidence in support of his PRRA application. The hyperlinks provided by the applicant to videos about the general conditions for refugees in Italy led instead to the home pages of news sites, and the applicant produced no certified transcripts of the videos he wanted the officer to consider; and

(d) Although the documentary evidence on conditions in Italy mentions that refugees have difficulty in finding accommodation and employment, the applicant has not filed any objective evidence to support his allegations of risk under sections 96 and 97 of the IRPA or to rebut the presumption of state protection in Italy.

[4] The applicant is seeking judicial review of this decision. Although it was expressed in somewhat different terms in his memorandum, the applicant criticized the officer's assessment of the evidence and the inadequacy of his reasons. He also argued that the officer should have invited him to provide additional evidence to support his case, and in failing to do so violated procedural fairness.

II. Analysis

[5] The standard of review applicable to a PRRA officer's decision, including his or her assessment of the evidence, is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17 [*Vavilov*]; *Mombeki v Canada (Citizenship and Immigration)*, 2020 FC 931 at para 8; *Ashkir v Canada (Citizenship and Immigration)*, 2020 FC 861 at para 11).

[6] When the reasonableness standard applies, the Court's focus must be on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must consider 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). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[7] With respect to the allegations of procedural unfairness raised by the applicant, the Federal Court of Appeal made it clear in *Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*], that issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, this Court's role is to determine whether the procedure was fair having regard to all of the circumstances (*Canadian Pacific* at paras 54–56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[8] Adequacy of reasons does not constitute a breach of procedural fairness unless there is a complete absence of reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14–16).

[9] The Court cannot agree with the applicant's arguments.

[10] A review of the file shows that the applicant did not submit any documents to support his application other than two accounts. The onus was on the applicant to demonstrate that he was at risk, which he did not do (*Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913 at paras 14–15). His allegations of persecution or risk remain allegations. Despite this, the officer nevertheless considered documentary evidence of the conditions in Italy. The officer was of the opinion that the documentary evidence did not support a finding that the applicant would be exposed to the risks alleged.

[11] In his application for judicial review, the applicant introduced evidence and facts that did not appear in the Certified Tribunal Record. The respondent objected on the basis that any evidence that was not before the officer must be excluded by this Court (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19). In response, the applicant argued that he did not have to submit objective documentary evidence to the officer since this was contained in the National Documentation Package.

[12] The Court finds that it is not necessary to rule on the respondent's objection and other preliminary grounds raised by the respondent since the applicant has not demonstrated how this objective documentary evidence relates to his personal circumstances or how the officer's analysis was deficient.

[13] With respect to the applicant's argument that the officer's reasons were inadequate, the Court finds, after reviewing the record and the decision at issue, that the reasons were sufficient to understand the basis for the decision.

[14] The applicant's argument that the officer should have given him the opportunity to provide additional evidence to support his application is also unfounded. It was the applicant's responsibility to ensure that he submitted all relevant evidence in support of his application. The officer was not required to tell the applicant that his evidence was insufficient or ask the applicant to provide him with additional evidence (*Mbengani v Canada (Citizenship and Immigration)*, 2017 FC 706 at para 15; *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 52; *Tovar v Canada (Citizenship and Immigration)*, 2015 FC 490 at para 21).

[15] At the hearing, the applicant made much of the fact that he had no status in Italy. If the applicant had no status in Italy, it is unlikely that the Italian authorities would have confirmed to the CBSA officers that the applicant could return to Italy since he had been recognized as a Convention refugee, as stated in the officer's reasons. In any event, the Court cannot consider this argument as it was not raised before the officer (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–26). Moreover, the applicant argued the opposite in his PRRA application.

[16] In conclusion, the review of objective documentary and personalized evidence and the assessment of an applicant's risks of return are matters for the specialized expertise of the PRRA officer. The Court must give considerable deference to the decision made. While the applicant

may disagree with that assessment, it is not the role of this Court to reweigh the evidence in order to reach a result that is favourable to the applicant (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). The applicant has not shown in this case that the officer's decision lacks the hallmarks of reasonableness (*Vavilov* at para. 99) or that there was a breach of procedural fairness.

[17] For these reasons, the application for judicial review is dismissed. No question of general importance has been submitted for certification, and the Court is of the view that none arises in the matter.

JUDGMENT in IMM-6625-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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