Federal Court  Cour fédérale

Date: 20220310

Docket: IMM-2930-20

Citation: 2022 FC 328

Ottawa, Ontario, March 10, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

KIRUBEL ZELALEM SEIFU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a review of the Immigration, Refugee and Citizenship Canada (IRCC) Officer's decision, dated March 12, 2020, that the Applicant was not eligible to have his refugee claim referred to the Refugee Protection Division (RPD) by operation of paragraph 101(1)(c.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as he had previously made a refugee claim in the United States (US).

[2] For the reasons that follow, I have concluded that the Officer properly applied paragraph 101(1)(c.1) of IRPA to the Applicant's circumstances. Therefore, this judicial review is dismissed.

I. Background

[3] The Applicant is a citizen of Ethiopia. In 2007, he applied for refugee protection in the US, where he resided as a student from 2007 to 2014, and 2015 to 2017. In 2017, he withdrew his refugee claim in the US and returned to Ethiopia. In April 2018, he again returned to the US.

[4] The Applicant came to Canada in 2020 on a student visa, and made a claim for refugee protection. He claims to be a target of the Ethiopian government for refusing to work on a project for a company that he alleges was a front for the Ethiopian regime.

II. Decision Under Review

[5] The Officer determined the Applicant was ineligible to make a refugee claim in Canada due to his prior refugee claim in the US, which was confirmed with biometric information. The Officer advised the Applicant that the fact that he withdrew that refugee claim did not affect his ineligibility as the legislation states "made a refugee claim" in the past tense.

III. Issues

[6] The issue that arises on this judicial review is whether the Officer was correct in concluding that paragraph 101(1)(c.1) of IRPA is applicable to the Applicant's circumstances considering he had withdrawn his US refugee application.

[7] The Applicant also argues that the Officer unreasonably relied upon biometric evidence, considering the Minister's guideline states biometric evidence is not a reliable form of evidence on which to make an ineligibility determination.

IV. Standard of Review

[8] The Applicant submits that the correctness standard should be applied to the Officer's interpretation of paragraph 101(1)(c.1) of IRPA, however as noted in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]:

> Matters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard...
>
> […]
>
> Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.

> But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision… (at paras 115, 119, 120).

[9] The decision of the Officer and the evidentiary foundation on which it was made are considered on the reasonableness standard of review. In conducting a reasonableness review, 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).

V. Analysis

A. *Interpretation of Paragraph 101(1)(c.1) of IRPA*

[10] The Applicant argues that paragraph 101(1)(c.1) of IRPA was enacted to prevent forum shopping and is directed at refugee claims that are still in existence at the time of the application in Canada is made. He argues that because his refugee claim in the US has been withdrawn, this provision should not apply to his circumstances.

[11] Paragraph 101(1)(c.1) of IRPA states:

Ineligibility	**Irrecevabilité**
101 (1) A claim is ineligible to be referred to the Refugee Protection Division if	**101 (1)** La demande est irrecevable dans les cas suivants :
(c.1) the claimant has, before making a claim for refugee	**c.1)** confirmation, en conformité avec un accord ou

protection in Canada, made a claim for refugee protection to a country other than Canada, and the fact of its having been made has been confirmed in accordance with an agreement or arrangement entered into by Canada and that country for the purpose of facilitating information sharing to assist in the administration and enforcement of their immigration and citizenship laws;	une entente conclus par le Canada et un autre pays permettant l'échange de renseignements pour l'administration et le contrôle d'application des lois de ces pays en matière de citoyenneté et d'immigration, d'une demande d'asile antérieure faite par la personne à cet autre pays avant sa demande d'asile faite au Canada;

[12] In support of his position, the Applicant relies upon the following from *Seklani v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 778 [*Seklani*]:

> According to the Respondent, the Minister of Public Safety and Emergency Preparedness [Minister], the purpose of these combined amendments was to discourage filing of multiple asylum claims in different countries with which Canada has an information-sharing agreement, while preserving a fair process to properly adjudicate these refugee protection claims through what has been described by the Minister as an "enhanced" PRRA process.
>
> […]
>
> …On the record before me, I am satisfied that the general purpose of paragraph 101(1)(c.1) of the IRPA is to provide an additional tool to manage and discourage asylum claims in Canada by those who have made claims for refugee protection in information-sharing countries, while maintaining an asylum system that is fair and compassionate to those who seek protection...
>
> […]
>
> As such, there is clearly a rational connection between the objective of the law and its effects on the rights of Mr. Seklani: the object of the new provisions is to ensure that refugee claimants do not make claims for refugee protection in multiple countries to improve efficiency at the RPD while providing a proper risk assessment process for these claimants through an enhanced PRRA application process… (at paras 13, 60-61).

[13] The issue in *Seklani* was whether paragraph 101(1)(c.1) of IRPA violates s 7 of the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act*, 1982, being Schedule B to the *Canada Act*, 1982 (UK), 1982, c 11 [Charter]. However, there was no finding in *Seklani* that the provision was only intended to apply where there are active or ongoing refugee claims. Ultimately, in *Seklani* the Court concluded that the provision did not violate the *Charter*.

[14] More relevant to the facts here is *Shahid v Canada (Citizenship and Immigration)*, 2021 FC 1335 [*Shahid*] where the Court accepted that this provision applied to denied and withdrawn refugee claims. In *Shahid*, one of the applicants had made an unsuccessful refugee claim in the United Kingdom, while the other two applicants had deemed-withdrawn refugee claims in New Zealand. The applicants argued s 101(1)(c.1) of IRPA violated s 2(e) of the *Canadian Bill of Rights*, and s 15(1) of the *Charter*. Justice Strickland stated:

> I would first note that pursuant to s 101(1)(c.1), a finding that a claimant is ineligible to be referred to the RPD is dependent on only one factual determination to be made by the Minister's Delegate. If it has been confirmed by one of the other countries with whom Canada has entered into an information sharing agreement that the claimant has previously made a claim for refugee protection in that country, then the applicant must be found to be ineligible. There is no discretion. Accordingly, it is difficult to see how the Minister's Delegate Review could possibly give rise to a real or perceived lack of independence on the part of the officer later assessing a PRRA (at para 52, emphasis added).

[15] Although not directly at issue in *Shahid*, the Court concluded that the Applicants circumstances – consisting of denied and withdrawn refugee claims – were caught by s 101(1)(c.1) of IRPA.

[16] The Applicant also relies upon information contained on the IRCC website which states: "A claim is not ineligible under paragraph 101(1)(c.1) unless the existence of a refugee claim in the other country has been confirmed through information sharing". He argues that this supports his position that the provision was only intended to apply to refugee claims in "existence".

[17] The "information" contained on the IRCC website does not supersede the words used in the legislation. In any event, nothing turns on the use of the word "existence" on the website as it could be taken to mean simply that a claim was made, and is not necessarily limited to an meaning that the claim is still active or ongoing.

[18] The words used in s 101(1)(c.1) of IRPA clearly indicate two requirements for this provision to apply: (1) that a refugee claim was made; and, (2) that this has been confirmed by the other country in accordance with an agreement entered into for the purpose of facilitating information sharing. Had the legislature intended this provision to only apply to cases that had not been withdrawn or abandoned, it would have been worded accordingly.

[19] The Officer's decision that the Applicant was not eligible to have his claim referred to the RPD due to a previous refugee claim in the US is reasonable.

B. *Evidence Relied Upon*

[20] The Applicant also argues that the Officer relied on biographic evidence to find him ineligible, despite the IRCC website stating that biographic information-sharing is not considered sufficiently reliable on its own.

[21] The IRCC website contains the following information:

> **Biographic checks**
>
> Biographic information-sharing results generally do not reveal asylum-related information. In addition, they are not considered sufficiently reliable on their own.
>
> **Personal declaration by the claimant of a claim in another country**
>
> A personal declaration by the claimant is insufficient to find them ineligible under paragraph A101(1)(c.1), even if they are supported by documentation. The allegation must be supported by information from the partner organization responsible for asylum in that country. For example, a communication from U.S. Customs and Border Protection is not sufficient, as U.S. Citizenship and Immigration Services (USCIS) is responsible for asylum claims. Case-by-case requests should not be sent, as this is simply a manual process that replicates the automated process. [Emphasis added].

[22] According to the Applicant, the Officer did not have the proper foundation upon which to find him ineligible. The Applicant argues the Officer should have considered other evidence, including that the Applicant obtained a student visa in the US. He asserts that he would not have been able to obtain a student visa if he had an existing asylum claim in the US.

[23] It is important to differentiate between "biographic" information (i.e. name, address), and "biometric" information (i.e. fingerprinting). In this regard, the Officer notes as follows in her affidavit:

> …Prior to coming to Canada, the Applicant had made a claim for asylum in the United States. This was confirmed with biometric information sharing match with the United States.
>
> […]

> Whereas **biographic** information-sharing results generally do not reveal asylum-related information, and are not considered sufficiently reliable on their own, **biometric** data helps maintain program integrity by ensuring that previous claimants do not access the Canadian asylum system more than once. Information sharing also prevents claimants from accessing multiple asylum systems in an effort to 'asylum shop'... [emphasis added] (at paras 2, 5).

[24] As noted by the Officer, and confirmed by the IRCC website, while biographic information may not be reliable, the same is not true for biometric information.

[25] In any event, it is not clear what information the Applicant is suggesting the Officer should or should not have considered as the Officer had a statement from the Applicant that he had previously made a claim for asylum in the US and this was confirmed by the Officer with biometric information. The Applicant does not deny his identity and does not deny that he made a refugee claim in the US which he later withdrew.

[26] The Officer's decision is reasonable.

VI. Conclusion

[27] Overall, the Officer's decision that the Applicant was not eligible to have his refugee claim referred to the RPD by operation of paragraph 101(1)(c.1) of IRPA is reasonable. However, the Applicant is not without a remedy. Pursuant to s 113.01 of IRPA, the Applicant is entitled to an enhanced PRRA, which includes a mandatory hearing.

[28] This judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-2930-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question of general importance for certification arises.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2930-20
STYLE OF CAUSE:	SEIFU v MCI
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 18, 2022
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	MARCH 10, 2022

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