Federal Court Cour fédérale

Date: 20220404

Docket: IMM-6265-20

Citation: 2022 FC 462

Ottawa, Ontario, April 4, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

NEMAT ZAMRAWI MOHAMED HAMAD

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for judicial review of a Senior Immigration Officer's [Officer] decision to reject the Applicant's PRRA application. The Officer determined under sections 96 and 97 of *IRPA* that the Applicant would not be subject to a risk of torture, persecution or cruel and unusual treatment or punishment or face a risk to her life if she returned to Sudan.

[2] The Applicant is a 74-year-old Sudanese woman. In 2005, she made a refugee claim in Canada. A negative decision resulted on June 6, 2006, due to a lack of credibility. The Applicant returned to Sudan after her subsequent PRRA was rejected on May 29, 2008. There is no connection between these previous claims and the Applicant's current claim.

II. Standard of Review

[3] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, majority reasons by Justice Rowe [*Canada Post*], which was issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority explains what is required for a reasonable decision, and importantly for present purposes, what is required of a court reviewing on the reasonableness standard:

> [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*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper*

> *Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [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).
>
> [Emphasis added]

[4] The Supreme Court of Canada in *Vavilov* at para 86 states, “it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies,” and provides guidance that the reviewing court review decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker’s approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
>
> [Emphasis added]

[5] Moreover, *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

> [128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

III. Issues

[6] In my view, the only issue is whether the decision is reasonable.

IV. Background facts

[7] The Applicant states she and two of her adult sons began to engage in political protests around December 2018. The Applicant also supplied financial aid to protestors.

[8] The Applicant states one of her sons, a doctor, participated in a particularly bloody protest in June 2019, during which Sudanese security forces killed his best friend. Her son went into hiding. Sudanese security forces searched the Applicant’s house, questioned her neighbours and threatened to arrest the Applicant if she did not inform them of her son’s whereabouts. The Applicant claims she required medical treatment for dehydration and stress after this intrusion and submitted medical information to that effect.

[9] The Applicant claims the security forces went to her house to ask about her son’s location on three further occasions.

[10] The Applicant notes her other politically active son was unjustly arrested twice and has claimed asylum in France.

[11] The Applicant decided it was not safe to remain in Sudan and arrived in Canada in September 2019 to stay with her adult daughter. The Applicant claims her daughter-in-law in Sudan has advised her that Sudanese security forces have been seeking her. She initiated a PRRA on October 23, 2019.

V. Decision under review and analysis

[12] On June 30, 2020, the Officer rejected the PRRA. The Officer accepted all of the evidence submitted by the Applicant.

[13] The Officer concluded they were unable to determine whether the Applicant’s son is a doctor, as the Applicant claims. This is important because the country condition evidence was that Sudanese forces were targeting doctors opposed to the government, that is doctors in the position of the Applicant’s son.

[14] The Applicant provided three documents to establish her son is a doctor: a Sudanese “Central Physicians List”, a Civil Registration Certificate and a scan of a Sudanese Doctor’s Union membership card to corroborate this claim. The Officer noted the Applicant did not

explain the meaning of the “Central Physicians List” or how she acquired it. In addition, her son’s full name is not included in the document, although the Officer acknowledged the list contains an incomplete name that may be referring to the Applicant’s son – it contained two of his five names. The Civil Registration Certificate states her son was a university graduate, but does not state he studied medicine or was a physician. Finally, the Officer found the Doctor’s Union membership card insufficient to establish the son’s occupation because the Applicant did not provide evidence that only doctors can hold membership in the union.

[15] In my view, the last finding concerning the Doctor’s Union membership is unreasonably microscopic – who else would be a member of a doctors’ union but a doctor one might ask. I note also that the son’s title is shown as “Dr.” on the Sudan Doctors Union card. The other findings are not unreasonable, but overall on this issue the Officer’s finding gives rise to a concern regarding unreasonableness with the finding regarding the son being a doctor.

[16] Next, the Officer found there was insufficient evidence to establish this same son took part in a protest on June 3, 2019. That said, the Officer found the Applicant provided “many affidavits” saying he did. He also provided social media evidence in support. However, the Officer concluded the social media posts were made in August 2019. Furthermore, the social media posts were made by the Applicant’s daughter for the purpose of soliciting funds for protestors and did not reference the Applicant’s son.

[17] However, and inexplicably in my view, given the “many affidavits” already on file, the Officer found there should have been more affidavit evidence, such as affidavits from the son’s

colleagues, to establish he had a leadership role. With respect, for whatever reasons, the Officer did not draw any conclusion from the "many affidavits" that were before them. The finding that more affidavits should have been filed than the "many" already filed seems illogical and flawed. Decisions like this should address the material filed, and possibly what is not filed where such additional filings are reasonably expected. This leads to a concern the Officer did not grapple with the affidavit evidence and come to grips with it.

[18] The Officer noted the Applicant's evidence (namely, her doctor's note, her statements and her daughter-in-law's affidavit) provided inconsistent dates for the Applicant's first encounter with the security forces. In addition, her doctor's note does not state she received medical treatment due to a confrontation with the security forces. The Applicant did not provide dates for the subsequent visits by the security forces.

[19] In this respect, the discrepancy in the dates is minor, a matter of a day or two, one way or the other. It seems to me this is trivial. In addition, I note the Officer in casting doubt on the hospital report engages in a classic Catch-22: if medical reports state the cause of a claimant's injuries, they are flawed because they are almost certainly hearsay given the treating physician did not likely see the injuries being inflicted. If they do not state the cause, it is suggested they are said to be flawed as incomplete, as here. In my view, medical reports are sufficient if they state observations such as diagnosis, treatment, how the patient responded and prognosis. The core aspects in this case are dealt with in the hospital material; it is not objectionable as the Officer seemed to hold. In the result, I am not satisfied the Officer properly came to grips with medical information.

[20] The Officer found the affidavit evidence regarding the whereabouts of the Applicant's son was "confusing", and found the Applicant did not provide adequate evidence to corroborate her statement that her second son was politically active and had claimed asylum in Europe. The Applicant agreed with this finding, stating the material filed referred in one instance to the wrong son. There is no fault on the Officer in this respect; more care should have been taken by the Applicant's professional advisor.

[21] The Officer also appeared to criticize the Applicant because she named the Sudanese security forces as the only agent of persecution. I agree to do so would be unreasonable because there is no requirement to establish multiple agents of persecution. While the Respondent submits this was a point of emphasis, in my respectful view there remains an ambiguity on the record. Notably, the Officer found there is little evidence the security forces will seek to harm her should she return to Sudan.

[22] The Applicant submits she supplied a number of country condition documents to establish the abuse and human rights violations of protesters, particularly professionals and physicians, by Sudanese security forces. I agree the country condition to this effect is critical to the Applicant's case. While the Officer decided country condition documentation did not support the Applicant's allegations, the Officer for whatever reason choose not to refer to any contrary country condition document in the Decision. In my view, this is problematic and constitutes a flaw in the reasoning process in that neither the Applicant nor this Court are able determine if the Officer assessed country condition documentation except for a bare conclusion on the point.

[23] In the result of these and other findings, the Officer found the Applicant failed to provide sufficient evidence to establish her statements as fact and therefore she was not at risk as defined by *IRPA* s 96. The Officer also found the Applicant did not meet the s 97 test because she provided little evidence she is personally at risk in Sudan. That said, I am not satisfied the foundational elements of this conclusion logically support the Officer's findings.

VI. Conclusion

[24] I appreciate that judicial review is not a treasure hunt for errors and that these decisions are to be read holistically. In addition, this Court is not to reweigh evidence, which is the responsibility of the decision-maker within constraints imposed by law. On balance, I am not able to conclude this Decision meets the standard of being justifiable, intelligible and transparent as per *Canada Post* and *Vavilov*. It would not be safe to leave it to stand. Therefore, the Decision will be set aside for redetermination.

VII. Certified Question

[25] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-6265-20

THIS COURT'S JUDGMENT is that judicial review is granted, the Decision is set aside, the matter is remitted to a differently constituted decision-maker for redetermination, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6265-20
STYLE OF CAUSE:	NEMAT ZAMRAWI MOHAMED HAMAD v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	MARCH 7, 2022
JUDGMENT AND REASONS:	BROWN J.
DATED:	APRIL 4, 2022

APPEARANCES:

Victoria A. Bruyn	FOR THE APPLICANT
Catherine Vasilaros	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Victoria A. Bruyn Barrister & Solicitor Hamilton, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT