Federal Court  Cour fédérale

Date: 20220502

Docket: IMM-873-21

Citation: 2022 FC 628

Ottawa, Ontario, May 2, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

IREN HORVATH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Iren Horvath, is a citizen of Hungary. She seeks judicial review of a decision rendered by a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada dated December 29, 2020 rejecting the Applicant's Pre-Removal Risk Assessment [PRRA] Application.

[2] The Applicant submits that the Officer erred (a) in failing to apply the correct test for persecution; (b) by failing to reasonably engage with the evidence; (c) by making a veiled credibility finding; (d) in their approach to the Applicant's affidavit evidence; (e) in failing to convoke an oral hearing; and (f) in assessing state protection.

[3] The Respondent submits that the Officer engaged with the evidence, applied the correct tests, and reasonably found that the Applicant was not at risk nor had she established a well-founded risk of persecution. The Respondent pleads that the Officer's decision was based on insufficiency of evidence, not credibility. While the Respondent acknowledges that the Officer used some inelegant language in one particular sentence, the Respondent submits that the Decision taken as a whole was reasonable.

II. Standard of Review

[4] Having considered the record and the submissions of counsel, I find that the numerous issues raised by the Applicant are properly reviewed on a standard of reasonableness.

[5] The Applicant sought to frame certain issues as errors of law, thus attracting the correctness standard. The Respondent submits that reasonableness is the standard of review applicable to the matter at hand.

[6] I agree with the Respondent. In *Vavilov*, the Supreme Court of Canada was clear: on judicial review of an administrative decision, a reviewing court should start with the presumption that the applicable standard of review for all aspects of that decision is reasonableness (*Canada*

(Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 25) and then determine whether one of the issues raised warrants a departure from this presumption. In my view, no such departure is warranted in the present case.

[7] 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). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[8] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). A reviewing court also refrain from reweighing or reassessing the evidence considered by the decision maker and must not, absent exceptional circumstances, interfere with factual findings (*Vavilov* at para 125). Nevertheless, *Vavilov* instructs that a 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" (at para 126).

[9] The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision-maker's place. As my colleague Justice McHaffie explains, this Court's role in judicial review "is to review the PRRA officer's assessment of the evidence for reasonableness, rather

than to impose its own assessment of that evidence" (*Newland v Canada (Citizenship and Immigration)*, 2019 FC 1418 at para 33).

III. Analysis

[10] During the hearing of this matter, both parties devoted a significant amount of attention to the Officer's statement concerning the Applicant's affidavit:

> I find the applicant has provided limited personal evidence to support her stated risks upon return to Hungary. The applicant's affidavit centers upon a narrative concerning an abusive marriage and divorce that involved children and extended family. **The affidavit is a statement and is not a document that holds probative value.** To support the narrative, the applicant has provided three letters of support, a tenancy agreement, and general country conditions documentation. I find the personal evidence to support the narrative is limited and carries little weight due to its low probative value. [Emphasis added]

[11] The Applicant's affidavit, filed in support of her PRRA application, was sworn on March 23, 2020, before a commissioner of oaths, and contains an interpreter's declaration wherein the Hungarian-English interpreter confirmed that the Applicant understood the contents. The Applicant's affidavit contains forty-seven paragraphs and is subdivided into several sections: (i) Life in Sajoszenpeter, Domestic Abuse, Denied Police Support; (ii) First Refugee Claim in Canada (May 2001-July 2004): Further Domestic Abuse and Returning to Hungary; (iii) Life in Hungary (July 2004-2012): Domestic Abuse, Lack of Police Protection, Racist Attacks and Homelessness; (iv) Life in Hungary, Attacks, Denied Police Protection (2012-2019).

[12] The Applicant submits that the Officer failed to understand the difference between an affidavit and a "mere" statement; diminished the evidentiary value of the affidavit by stating that

it holds no probative value; and adopted an approach that is in direct conflict with the Federal Court of Appeal's finding in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5 (FCA) that sworn allegations by applicants are presumed to be true unless there are reasons to doubt their truthfulness. The Applicant submits that the Officer made no mention of doubting the truthfulness of the contents of the affidavit, such that it would warrant no probative value. The Applicant argues that the balancing of evidence cannot have been done reasonably if the Officer simply treated the affidavit as if it had no evidentiary value.

[13] The Respondent submits that, contrary to the arguments of the Applicant, the Officer did not state that the affidavit is a "mere" statement, nor did the Officer diminish it in that way. Rather, what the Officer is saying, in the Respondent's view, is that the narrative provided in the affidavit is not sufficient to establish that she was at risk in Hungary. In other words, the Officer accepted the Applicant's evidence but found it insufficient, particularly in light of the finding that the evidence did not meet the threshold of clear and convincing evidence to show ineffective state protection. The Respondent highlights that the Officer understood that both sworn and unsworn statements can be given weight, as shown by the Officer having attributed "limited probative value" and "low weight" to the three letters of support, which were unsworn, that had been provided by the Applicant's relatives. The Respondent states that the Officer's comment was inelegant and open to some interpretation, but that, reading the entirety of the reasons, the Officer ultimately and reasonably weighed the evidence, and explained that the Applicant had not met her burden of providing that the PRRA application should be granted.

[14] The difficulty, in my opinion, is that one is left to wonder what the Officer meant by the statement "[t]he affidavit is a statement and is not a document that holds probative value." Each party has drawn their own interpretation, but ultimately, it is not open to this Court to speculate as to what the Officer might have been thinking (*Vavilov* at para 97). This is particularly the case where the document to which the Officer referred was central to the matter. The Officer stated, earlier in the Decision, that "[t]he central aspect of this application is the affidavit authored by the applicant." The Officer, however, provided no explanation for as to his statement regarding the probative value, or lack thereof, of the Applicant's affidavit.

[15] While the Respondent invites the Court to "connect the dots" on this page of the reasons as permitted by *Vavilov*, one must only do so "where the lines, and the direction they are headed, may be readily drawn" (para 97). I do not find that to be the case here. It is difficult to discern an internally coherent and rational chain of analysis in the Officer's treatment of the Applicant's affidavit. Consequently, I find that the Decision cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100). For this reason, I find the Decision unreasonable.

[16] Having found the Decision unreasonable, I find it is unnecessary for me to address the remaining issues raised by the Applicant.

IV. Conclusion

[17] For the foregoing reasons, this judicial review is allowed. The Decision is hereby set aside and the matter is remitted to a different officer for redetermination. No serious question of

general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-873-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is allowed;
2. The Decision is hereby set aside and the matter is remitted to a different officer for redetermination;
3. There is no question for certification arising.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-873-21
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APPEARANCES:

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