

Federal Court



Cour fédérale

Date: 20220713

Docket: IMM-4542-21

Citation: 2022 FC 1030

Ottawa, Ontario, July 13, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CESAR YUSIF MIKHAIL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The decision of a Senior Immigration Officer refusing the Applicant's request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds must be set aside. It is unreasonable. The decision lacks justification, transparency, and intelligibility. It relies on questionable statements from a travel blog. The decision maker is unduly obsessed with the Applicant's prior breaches of the *Immigration and Refugee Protection*

Act, SC 2001, c 27, rather than whether he has shown sufficient humanitarian and compassionate consideration to overcome those breaches.

Background

[2] The Applicant, Cesar Yusif Mikhail, is a citizen of Iraq and an ethnic Kurd. He is from Mosul. He left for Canada shortly after his father and brother were killed by Sunni Muslim extremists. The Applicant came to Canada in September 2008 and made a claim for refugee protection, which was ultimately granted in March 2011. However, on December 16, 2014, the Minister of Public Safety and Emergency Preparedness brought a motion to vacate the Applicant's refugee status, having become aware that he had failed to disclose that he had made a previous refugee claim in 2005 to the United Kingdom under a different identity. The Refugee Protection Division [RPD] vacated the Applicant's refugee status on July 26, 2019, due to this misrepresentation and due to the RPD's inability to verify the Applicant's identity.

[3] On November 1, 2019, the Applicant submitted an application for permanent residence from within Canada based on H&C considerations. There is currently an open removal order on the Applicant's immigration file. Canada is currently not removing persons to Iraq; Iraq is listed in the Temporary Suspension of Removals [TSR] Program. The TSR Program interrupts removals to a country or place when general conditions pose a risk to the entire civilian population.

[4] The officer focused the decision on establishment and hardship.

[5] The officer found that the Applicant's establishment had been achieved because of his misrepresentations to immigration authorities. Therefore, it was given "minimal weight" in the analysis.

[6] The officer acknowledged the Applicant's submissions that he will face hardship as a minority Kurd and Sunni Muslim in Iraq and that he has limited ties to Iraq and no prospects of employment.

[7] However, the officer noted that the Applicant has two sisters living in Mosul and an uncle who helped him in obtaining his current Iraqi passport. The officer also found that the Applicant's "re-establishment could take place elsewhere in the Kurdish region of Iraq."

[8] The officer noted, relying on an October 2020 post on the blog "Against the Compass" [the Travel Blog] that Iraqi Kurdistan is relatively safe and there have not been any terrorist attacks since 2014. The officer further noted that Mosul has been taken back from ISIL and stated that the 2017 Kurdistan independence referendum had "returned the situation back to normal." Relying on the National Documentation Package [NDP] for Iraq, the officer found that Kurdistan is rebuilding and safe.

[9] The officer considered articles submitted by the Applicant regarding country conditions but found that the concerns raised in these documents "do not necessarily pertain to this applicant." The officer noted that conditions had changed since the Applicant had left Iraq in 2008 and that his concerns "could be considered outdated, although not discounted."

[10] The officer noted that the Applicant “chose to stay in Canada under false pretences and any hardships in returning are of his own doing.” The officer gave hardship “little weight.”

Analysis

[11] I agree with the submission of the Respondent that it is open to an officer to discount an applicant’s establishment in Canada because it resulted directly from misrepresentation. The Federal Court of Appeal in *Canada (Minister of Citizenship of Immigration) v Legault*, 2002 FCA 125 at paragraph 19, says that “the Minister is at liberty to take into consideration the fact that the humanitarian and compassionate grounds that a person claims are the result of his own actions.”

[12] However, in this case, as the Applicant submits, the officer appears to be preoccupied by the fact that the Applicant failed to comply with the requirements of Canada’s laws on immigration and refugee protection.

[13] I agree with the Applicant that it is unreasonable for an officer to be preoccupied with an applicant’s lack of immigration status, as the whole purpose of an H&C application is to overcome that lack of status (see *Klein v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1004).

[14] There can be no clearer evidence of this preoccupation than the officer's statement, when considering the hardship the Applicant will experience if returned to Iraq, that the "applicant chose to stay in Canada under false pretenses and any hardships are of his own doing."

[15] The officer's hardship analysis is perverse. The officer's decision indicates that in addition to the H&C application and supporting documentation, the officer relied on the NDP and the Travel Blog.

[16] Although the officer purports to have considered all of the above, the decision specifically references only the Travel Blog. The officer writes:

As of 2021, reports indicate that the Kurdistan region in Iraq is relatively safe, there have not been terrorist attacks since 2014. It is further reported (Against the Compass, October 2020) that iraqi [*sic*] Kurdistan is safer than ever. Mosul has been taken back from ISIS and the referendum of independence in Kurdistan in October 2017 has returned the situation back to normal. National documentation packages from the IRB report that while Iraq still has its challenges, the Kurdistan region is rebuilding and safe.

[17] This finding is to be contrasted with what the documents in the NDP actually state.

According to the United Kingdom Home Office:

A fear of serious harm because the security situation presents a real risk to a civilian's life or person such that removal would be in breach of Article 15(c) (serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict) of European Council Directive 2004/83/EC of 29 April 2004 (the Qualification Directive), as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules.

United Kingdom Home Office, *Country Policy and Information Note: Iraq: Security and humanitarian situation*, (May 2020) at para 1.1.2 [emphasis added]

[18] This assessment is consistent with Canada's TSR order regarding Iraq.

[19] According to the Australian Department of Foreign Affairs and Trade:

The security situation in Iraq, while varying according to location, is highly unstable and fluid. Security incidents occur often and without warning, including rocket attacks, mortar attacks, attacks with improvised explosive devices (IEDs), grenade attacks, small arms fire, assassinations and kidnapping for ransom.

Australian Department of Foreign Affairs and Trade, *DFAT Country Information Report Iraq*, (17 August 2020) at para 2.2 [emphasis added]

[20] While the Travel Blog does state, "Iraqi Kurdistan is safer than ever", it must be kept in mind that the author is comparing Iraq today to the Iraq just after Saddam Hussein. It also says, "[p]lease keep in mind that this is a war zone and unstable region, hence could change overnight."

[21] I accept the Respondent's submission that an H&C officer may do independent research in addition to that provided by an applicant and the IRB, but relying on a travel blog rather than reports written by experts, in my view, is perverse and to be strongly discouraged. If this sort of research is permitted, then why not simply to use a search engine and enter "Is it safe to travel to [name of country]" and rely on the result?

[22] For these reasons, this decision is set aside. No question was proposed for certification.

JUDGMENT in IMM-4542-21

THIS COURT'S JUDGMENT is that this application is allowed, the decision under review is set aside, and the Applicant's humanitarian and compassionate application is to be assessed by a different officer.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4542-21

STYLE OF CAUSE: CESAR YUSIF MIKHAIL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 4, 2022

JUDGMENT AND REASONS: ZINN J.

DATED: JULY 13, 2022

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