Federal Court Cour fédérale

Date: 20220805

Docket: IMM-4762-21

Citation: 2022 FC 1173

Toronto, Ontario, August 5, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

MOHAMMED SALMAN K. ALDARURAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mohammed Salman K. Aldaruah, seeks judicial review of a decision of a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] who refused his application for a Pre-Removal Risk Assessment [PRRA] under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant is a citizen of Saudi Arabia who alleges a fear of persecution because of his alleged conversion from being a Shia Muslim to a Christian.

[2] The Applicant argues the Officer breached procedural fairness by misconstruing the amount of time afforded to him to provide evidence of his conversion, denying him an oral hearing despite veiled credibility findings, and exhibiting bias by mentioning prior RPD and RAD credibility findings. The Applicant also contests the reasonableness of the Officer's application of the "forward-looking" requirement of the test for refugee protection under section 97 of the IRPA.

[3] For the reasons that follow, I find that the application should be dismissed.

I. Background

[4] The Applicant is a citizen of Saudi Arabia who came to Canada in 2012.

[5] He made a refugee claim on February 15, 2017 based on his religion as a Shia Muslim and his political activism. On May 31, 2017, the Refugee Protection Division [RPD] rejected his claim. The determinative issue was credibility. The Refugee Appeal Division [RAD] upheld the RPD's decision on April 19, 2018.

[6] In March 2020, the Applicant filed his PRRA application and sought protection as a practicing Christian who would face death in Saudi Arabia as a Muslim converted to Christianity. The Applicant claimed he faced difficulty obtaining supporting statements from those directly involved in his conversion due to the COVID-19 pandemic. The independent evidence provided in support of his application consisted of a handwritten baptism certificate and

a short affidavit from a co-worker who stated that he knew the Applicant was a Christian because of his conversations with the Applicant.

[7] The Officer determined the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA. Regarding s 96, the Officer accepted that country documentation indicated that religious converts in Saudi Arabia are often subjected to persecution. However, the Officer concluded that the Applicant's evidence was limited and insufficient to establish his conversion as it did not include a statement from anyone "directly involved in the applicant's journey to Christianity". The Officer also had limited information relating to the Applicant's baptism and the priest (Father Vaso Rajak) identified on the certificate, including from his own searches of publicly available information. The Officer found the Applicant's statement that the COVID-19 pandemic prevented him from obtaining evidence from anyone directly involved was not reasonable in view of the time available to procure evidence. As the Officer found that the Applicant had failed to establish his conversion to Christianity, he concluded there was no nexus to a Convention ground.

[8] With respect to section 97 of the IRPA, the Officer found that as he could not establish the Applicant's baptism, and there was little indication that Saudi authorities or his family were aware of his activities in Canada, there was little to suggest that anyone would be interested in harming him on a forward-looking basis. As such, the Officer concluded section 97 of the IRPA was not met.

II. Preliminary Issues

A. *New evidence*

[9] As a preliminary issue, the Applicant seeks to introduce some new evidence on this judicial review that was not before the Officer. The evidence includes a Wikipedia article providing a timeline of the COVID-19 pandemic in Ontario (attached as Exhibit “A” to the affidavit of the Applicant); a letter from the priest (Father Vaso Rajak) identified on the baptism certificate, attaching corporate documents for the church (attached as Exhibit “E” to the affidavit of the Applicant); and an affidavit from Dmytro Derevianchenko, a friend of the Applicant, who was referenced in the Applicant’s affidavit.

[10] There are three recognized exceptions when new evidence can be introduced in a judicial review proceeding: (1) it provides general background in circumstances where that information might assist in understanding the issues relevant to the judicial review, but does not add new evidence on the merits; (2) it highlights the complete absence of evidence before the administrative decision-maker on a particular finding; or (3) it brings to the attention of the court defects that cannot be found in the evidentiary record of the administrative decision-maker: *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency,* 2012 FCA 22 at para 20; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 116. As acknowledged by the Respondent, new evidence may be admissible where it addresses an alleged procedural unfairness and is not directed at bolstering an applicant’s case on its merits.

[11] In my view, the Wikipedia article is acceptable as background information. Further, I will admit the letter from Father Rajak as it relates to the procedural fairness associated with the Officer's search of the church reflected on the baptism certificate. However, I do not consider the affidavit of Dmytro Derevianchenko to be permissible under any of the exceptions noted. Accordingly, this evidence will not be considered on this application. I note that even if I did consider this evidence, it does not address the shortcomings mentioned by the Officer and would not change my findings below.

B. *Style of cause*

[12] As a further preliminary matter, the style of cause for this proceeding has been amended to reflect the correct Respondent – The Minister of Citizenship and Immigration.

III. Issues and Standard of Review

[13] The Applicant raises the following issues in this application:

> A. Did the Officer breach procedural fairness by: (a) misconstruing the amount of time afforded to the Applicant to present further submissions; (b) denying the Applicant an oral hearing; or (c) exhibiting bias?
>
> B. Did the Officer unreasonably err by misinterpreting the "forward-looking" test for refugee protection?

[14] The standard of review for questions of procedural fairness is best reflected by the correctness standard, although they are not strictly speaking subject to a standard of review analysis. Instead, such questions are to be reviewed from the perspective of whether the procedure followed by the decision-maker was fair and just: *Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada*

(Immigration, Refugees and Citizenship), 2020 FCA 196 at para 35; *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 13.

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

[16] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision is reasonable if, when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

IV. Analysis

A. *Was there a breach of procedural fairness*

(1) Time Allocation

[17] The Applicant argues the Officer breached procedural fairness by finding he had from February 2020 - October 2020 to prepare his submissions and supporting evidence when he allegedly had far less time. The Applicant submits that he only had 28 days to prepare his submissions - 14 days before the initial COVID lockdown, and 14 additional days after he received a notice from IRCC providing an additional 30 days from August 26, 2020 to provide

any further submissions before processing of his application would resume. He argues that he could not reasonably have been expected to do any additional preparation from March 2020 - September 2020 as he believed his application was finalized. He contends that the Officer's misunderstanding of the available time is a "significant error that impacted his judgement while assessing the totality of the evidence that was presented."

[18] I do not find this argument persuasive. First, there is no indication that the Officer conducted his review of the evidence differently because of the time period noted. Rather, the Officer's comment simply responded to the Applicant's assertion that he was prevented from procuring evidence.

[19] Second, it is well established that PRRA officers are obliged to receive all evidence that may affect their decision up until the date the decision is delivered to the affected party: *Chudal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1073 at para 16; *Gil v Canada (Citizenship and Immigration)*, 2014 FC 330 at paras 10-11.

[20] In my view, it was reasonable for the Officer to comment on the time period that had transpired between initiating the Applicant's application and the extension date and to be of the view that within this time period there was sufficient time to procure evidence. As noted by the Respondent, the Applicant realistically also had additional time from the extension date to the date he received the Decision and could have commissioned evidence remotely.

[21] I find no breach of procedural fairness associated with the Officer's comments.

(2) Lack of Oral Hearing

[22] Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] states that:

DIVISION 4 – Pre-Removal Risk Assessment	**SECTION 4 - Examen des risques avant renvoi**
[. . .]	
Hearing – prescribed factors	**Facteurs pour la tenue d’une audience**
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	167 Pour l’application de l’alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d’une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant’s credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l’existence d’éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	b) l’importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	c) la question de savoir si ces éléments de preuve, à supposer qu’ils soient admis, justifieraient que soit accordée la protection.

[23] The Applicant argues the Officer breached “the principles of natural justice” by not providing the Applicant with an oral hearing despite questioning the credibility of his conversion

to Christianity. He asserts that he should have been able to address the Officer's concerns regarding the baptism certificate and the lack of evidence.

[24] The Respondent asserts, and I agree, that the Officer did not rely on veiled credibility findings, but rather an insufficiency of the evidence and was therefore not obliged to hold an oral hearing pursuant to s 167 of the IRPR.

[25] As stated in *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paragraph 41, credibility and sufficiency of evidence are distinct concepts:

> The term "credibility" is often erroneously used in a broader sense of insufficiency or lack of persuasive value. However, these are two different concepts. A credibility assessment goes to the reliability of the evidence. When there is a finding that the evidence is not credible, it is a determination that the source of the evidence (for example, an applicant's testimony) is not reliable. ... A sufficiency assessment goes to the nature of quality of the evidence needed to be brought forward by an applicant in order to obtain relief, to its probative value, and to the weight to be given to the evidence by the trier of fact, be it a court or an administrative decision-maker. ...

[26] In this case, the Officer states that the Applicant's statements and supporting evidence are "insufficient to establish either his baptism, or any other church-related activity." The Officer notes that the Applicant's affidavit only "generically details how his colleague Dmitry guided him towards Christianity when the [A]pplicant was feeling depressed after his RAD appeal was refused." The only evidence beyond the Applicant's statement in support of his Christianity was a hand-written baptism certificate and an affidavit from a co-worker without any direct knowledge of the Applicant's conversion or practices.

[27] The Applicant takes issue with the search that was conducted by the Officer of the church and of Father Rajak. In his Decision the Officer states:

> ...Moreover, after a public search, I am unable to establish the church's address at 524 St. Clarens Avenue, Toronto, ON, M6H 3W7. Instead, Saint Vasilye of Ostrog is a registered charity at 169 Cooperage Crescent, Richmond Hill, ON, L4C 9K9 (Canada Helps, n.d.). Furthermore, I am unable to find any publicly available information that associates Vaso Rajak with the organization since 2009 (Canadian Charities, n.d.). The aforesaid dramatically lowers the probative value of the document.

[28] The Applicant submits that the letter from Father Rajak (submitted with this judicial review application) and the attached corporate documents confirm the address of the church and explain why the church does not have a website. He argues that the Officer failed to conduct an adequate public search of the church. He further argues that it was unreasonable to draw a negative inference because Father Rajak was not on the internet. The Applicant asserts that he should have been entitled to speak to this evidence.

[29] While the Officer relied on search findings that were not disclosed to the Applicant, I do not consider this to be a fatal error as these results were not determinative of the PRRA application: *Silva v Canada (Citizenship and Immigration)*, 2012 FC 1294 at paras 15-16. The Officer did not conclude that the church did not exist. Rather, he did not have any information about the church, its activities or Father Rajak. Even with the letter from Father Rajak provided with the new evidence, these insufficiencies still exist.

[30] Further, I do not agree that the Officer's search or his findings create a veiled credibility finding with respect to the Applicant as required by section 167 of the IRPR.

[31] The Officer conducted a search relating to the priest and the church in an effort to try to obtain further information because there was insufficient evidence provided by the Applicant. As highlighted by the Officer, an affidavit from the priest, the Applicant's godparents who were noted on the certificate, or anyone with first-hand knowledge of his baptism or conversion was not submitted.

[32] The Officer's conclusions were based on the finding that he was not able to establish that the Applicant had converted to Christianity through the "limited evidence provided". I do not agree that the Officer improperly relied on veiled credibility findings. Rather, the Officer was focussed on the Applicant's failure to meet his evidentiary burden.

[33] As stated in *Gandhi v Canada (Citizenship and Immigration)*, 2020 FC 1132 at paragraph 41: "An applicant's stated belief in a great danger to his life or safety must be supported with factual evidence; a finding of insufficient evidence contrary to a stated belief does not, on its own, trigger a right to a hearing".

[34] There was no basis or requirement for the Officer to grant the Applicant an oral hearing.

(3) Bias

[35] I further agree with the Respondent that the Applicant's allegation of bias is not persuasive, nor does it warrant an oral hearing.

[36] An allegation of bias must be supported by concrete evidence not mere suspicion or conjecture: *Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 27-29; *Zhu v Canada (Citizenship and Immigration)*, 2018 FC 1139 at para 40. There is no such concrete evidence here.

[37] The Applicant submits the Officer exhibited bias by mentioning the credibility findings from the RPD and RAD at the beginning of the Decision without any context. However, I do not view the reference to the RPD's finding in this manner, but rather as background for the Decision as expressly noted by the Officer.

[38] In the Decision, the Officer states under the heading "Background":

> On May 31st, 2017, the RPD rejected his claim. The RAD upheld this decision on April 19th, 2018. Based on the totality of the evidence before them the panel found that the applicant did not establish he was at risk as defined by section 96 or section 97 of IRPA. The determinative issue was credibility. As per the RAD:
>
> > "The RAD agrees with the RPD that the Appellant is not credible with respect to his allegations that he is sought by authorities in Saudi Arabia due to his political activities and that he would not be persecuted nor face a risk to life due to his religious affiliation" (para. 60).
>
> Mr. Aldarurah submitted this PRRA application on March 11, 2020.

[39] The Officer then goes on to separately consider the allegations made, and evidence submitted, in the PRRA application under the heading "Assessment and Findings". The PRRA application is based on new facts (the alleged conversion from Islam to Christianity) from what was alleged in the Applicant's RPD and RAD submissions.

[40] The circumstances here are similar to those found in *Liyanage v Canada (Citizenship and Immigration)*, 2019 FC 194 [*Liyanage*], where an argument was raised that the Officer wrongly imported the RPD's negative credibility findings. In *Liyanage*, the Court found such allegation to be without merit (at paragraph 15):

> Relatedly, and before considering the Officer's analysis of the evidence, it is also necessary to briefly address the Applicant's assertion that the Officer imported credibility concerns from the RPD's decision without granting him an oral hearing at which the Officer could have put those concerns to the Applicant and provided him an opportunity to respond. Upon review of the Officer's reasons and their structure, I am not persuaded that the Officer imported the RPD's credibility findings. The Officer described and quoted paragraphs of the RPD decision, including the negative credibility findings, and stated that the Applicant had the burden of displacing the RPD's findings with sufficient new evidence. The Officer then proceeded to analyze each "new" piece of evidence proffered by the Applicant. Nothing in that analysis suggests that the RPD's credibility concerns influenced the Officer's findings in relation to the newly filed evidence. Rather, the Officer gave the evidence little to no weight for the reasons he or she set out and it did not convince the Officer that the risk alleged by the Applicant had changed since the RPD hearing. In short, the Applicant's argument that the Office [*sic*] wrongly "imported" the RPD's negative credibility findings is without merit.

[41] Similarly, in this case, the structure of the Decision makes clear that the Officer was referring to the RPD and RAD's findings as background. There is no indication that the Officer improperly imported these credibility findings into the Decision. The Applicant's claim of "clear bias" is not justified on the facts.

B. *Did the Officer unreasonably err by misinterpreting the "forward-looking" test for refugee protection?*

[42] The Applicant argues the Officer misconstrued the "forward-looking" test for refugee protection by relying on the finding that there is "little indication that Saudi authorities or his family are aware of his activities in Canada ...". The Applicant submits the Officer should have considered the persecution the Applicant would face if he returned to Saudi Arabia and started openly practicing Christianity there.

[43] The Respondent argues that the Applicant excerpted the above quote out of context, and improperly relies on this editing to claim an error. The Respondent notes the entire sentence reads: "As I am unable to establish the applicant's baptism, and there is little indication that Saudi authorities or his family are aware of any of his activities in Canada, I find there is little to suggest anyone is interested in harming him on a forward-looking basis".

[44] The Respondent submits, and I agree, that when read in context, the Officer is indicating that because the Applicant did not sufficiently establish his conversion, or any activities as a practising Christian, there was no foundation for the Officer to conclude there was a forward-looking risk in Saudi Arabia, pursuant to s 97 of the IRPA.

[45] In my view, it was not unreasonable for the Officer to find that the evidence was lacking and that section 97 of the IRPA had not been met. I do not consider the statement highlighted to suggest that an erroneous test was applied that led to an improper finding or analysis.

[46] There is no basis to conclude that this statement makes the Decision unreasonable.

V. Conclusion

[47] For all of these reasons, the application is dismissed.

[48] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4762-21

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to correctly identify the Respondent as The Minister of Citizenship and Immigration.

2. The application for judicial review is dismissed.

3. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4762-21
STYLE OF CAUSE:	MOHAMMED SALMAN K. ALDARURAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

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