

Federal Court



Cour fédérale

Date: 20221214

Docket: IMM-7844-21

Citation: 2022 FC 1726

Ottawa, Ontario, December 14, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

K.M.

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the application for judicial review of the decision of a senior immigration officer [Officer] denying the pre-removal risk assessment [PRRA] application of KM [the Applicant].

Background

[2] The Applicant is a 72-year-old citizen of Iran. She entered Canada in 2007 to visit her daughter, who had been in an accident, and made a claim for refugee protection based on her fear

of her abusive ex-husband. Her claim for protection was granted by the Refugee Protection Division [RPD] in 2009. The Applicant became a permanent resident of Canada on July 7, 2010.

[3] The Applicant submits she travelled to Iran in October 2010 to support her recently wed daughter and elderly parents who were ill. She claims that while in Iran, she took special care to ensure that her ex-husband would not know of her presence by remaining confined to her daughter's apartment. She remained in Iran until early 2011 when she returned to Canada.

[4] The Applicant claims that later in 2011, her elderly parents' health deteriorated. She returned to Iran a second time on October 8, 2011, believing that her mother was dying. While there, she confined herself to her parents' or her daughter's home and, other than her children, her sister, and her sister's husband, no one else knew of her presence in Iran. Her mother died in late 2011 and her father died in March 2012. She claims that while in Iran, she did not take the same medication for depression and anxiety which she had begun taking in Canada. Her mental health deteriorated and she found it difficult to make decisions. As such, her emotional state did not permit her to leave Iran until September 26, 2012. During this second visit to Iran, she also obtained a new Iranian passport, which she utilized when returning to Canada.

[5] On March 11, 2014, the Applicant returned to Iran for a third time. She claims that her daughter had landed in Canada in 2013, but had returned to Iran to sell her property and prepare for the permanent move. Since her daughter was struggling with this, she sought her mother's support. The Applicant returned to Canada on June 16, 2014, utilizing her renewed Iranian passport.

[6] The Minister of Citizenship and Immigration Canada [Minister] commenced an application to cease the Applicant's refugee protection, pursuant to s 108(1)(a) of the *Immigration and Refugee Protection Act, SC 2001 c 27 [IRPA]*, as she had voluntarily re-availed herself to the protection of her country of nationality by twice returning to Iran and obtaining a new Iranian passport from within Iran and, in so doing, demonstrated that she no longer requires Canada's surrogate protection. On February 20, 2015, the RPD heard the Minister's application and, on that same day, issued its oral decision allowing the application.

[7] It appears that through various miscommunications and misunderstandings, the Applicant was not aware of and did not participate in the cessation hearing.

[8] On November 26, 2020, the Applicant filed an application for a PRRA. In her application, the Applicant submitted that she is afraid of her ex-husband, at whose hands she has suffered severe abuse, and that her ex-husband would hurt or kill her if he knew she was in Iran. She explained that she received protection in 2009 but her status was ceased without her having an opportunity to participate in the cessation hearing. And, although she has previously visited Iran, she did so in hiding in order to see her dying parents and visit her daughter. She submitted that she cannot maintain a life of hiding over an extended period in Iran and that the authorities will not protect her against her ex-husband and his family.

[9] By decision dated August 24, 2021, the Officer rejected the Applicant's PRRA application. This is the judicial review of that decision.

Decision Under Review

[10] The Officer outlined the Applicant's travel to and from Iran in 2011-2012 and 2014, including that she had renewed her Iranian passport while in Iran and used it to travel through the United Arab Emirates when returning to Canada in 2014. The Officer noted that the Applicant stated she was hidden the entire time she was in Iran and took precautions to safeguard her identity, but that the Applicant applied for a new passport and travelled to and from Iran multiple times on that passport, which seemed to challenge her counsel's assertions that the Applicant's ex-husband would be able to control her movements and determine whether or not the Applicant could leave Iran.

[11] The Officer further noted that the Applicant had provided affidavits and letters from family members in Iran stating that her ex-husband still continues to search for her and that he visits their houses enquiring about the whereabouts of the Applicant. However, the Officer found these letters and affidavits to have little probative value, as no concrete dates were provided, events were described generally using years or general months, few locations were provided, such as where the Applicant's ex-husband met the individuals involved, the time and the details of what was discussed, and that the letters were, in some instances, written almost identically, such as two 2019 letters from the Applicant's sister and brother-in-law, where whole paragraphs were functionally the same.

[12] The Officer also found that the Applicant had lived in Iran for approximately 15 months "while being sought by her husband", which showed that he does not have the means or ability to

find her, or to use official sources to compel her return to him, and the absence of forward looking risk.

[13] With respect to s 96 of the *IRPA*, the Officer concluded that the Applicant does not face more than the mere possibility of persecution were she to return to Iran. Further, with respect to s 97 of the *IRPA*, the Officer concluded that the Applicant had provided little evidence that she is personally at risk. With the exception of her ex-husband, the Applicant did not name one person or group that are presently targeting her specifically for harm in Iran and that there is little evidence that her ex-husband or other persons are currently specifically looking to harm the Applicant if she was to return to Iran. The Officer also noted that the Applicant has been absent from Iran for seven years without direct contact from her ex-husband.

Preliminary Issue

[14] The Applicant raises a preliminary issue, being whether the Court should grant her request to anonymize her application and, in that regard, refers to the Federal Court's Practice Guidelines for Citizenship, Immigration and Refugee Law Proceedings, June 22, 2022. The Applicant submits that her request for refugee protection was dealt with on a confidential basis and that she is concerned that the Iranian authorities will become aware of the Canadian refugee proceedings.

[15] The Respondent does not contest the Applicant's request for anonymity.

[16] In my view, given that the RPD has previously found that the Applicant is a victim of domestic abuse and, as such, accepted that she would not be protected from that harm by Iran, and considering that she now claims she remains in fear of and at risk from her ex-husband, the granting an anonymity order is justified (see *AB v Canada (Citizenship and Immigration)*, 2021 FC 714).

Issue and Standard of Review

[17] In my view, only one issue arises from the Officer's decision, being whether the decision is reasonable.

[18] In assessing the merits of the Officer's decision, the parties submit and I agree, that there is a presumption that the reviewing court should use the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]). Here, none of the circumstances warrant a departure from that presumption.

[19] On judicial review, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing 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).

Was the Decision Reasonable?

Analysis

[20] While the Applicant has raised a number alleged errors by the Officer in her submissions, in my view, the Officer's treatment of the Applicant's submissions as to forward looking risk is determinative.

[21] In *Vavilov*, the Supreme Court of Canada held that "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" (para 128).

[22] I agree with the Applicant that the Officer's assessment of her forward looking risk upon return to Iran ignores the circumstances that allowed her to hide on her previous visits and the changes to those circumstances that she would be faced with if she now returned to Iran. In my view, this was a key issue raised by the Applicant.

[23] In her affidavit, submitted in support of her PRRA application, the Applicant states that she fears violence and oppression from her ex-husband, that she is still afraid of him and his family, and that he has been inquiring about her in Iran for years, including currently. Further, on the previous occasions when she returned to Iran, she stayed either with her daughter or her parents who helped her hide. She states that during her first visit, she confined herself to her daughter's apartment, where her ex-husband did not visit because of the strained relationship her

daughter has with her father, especially after he had assaulted the Applicant at that daughter's wedding. The Applicant stated that if her daughter had guests, then the Applicant would remain in a second bedroom out of sight and, by doing so, she ensured that no one knew she was in Iran. During her second visit, the Applicant confined herself to her parents' home and only her children, sister, and brother-in-law knew she was in Iran. When she travelled between her parents' and daughter's houses, she covered her head and body. She did not go out shopping or visit any other places. She states that she continues to fear her ex-husband and had to hide from him and his family when she returned to Iran. If she were to return now, she would be alone and she cannot live her life in hiding.

[24] One of her daughter's affidavit states that she last saw her father in 1999 and has not spoken to him in nearly 20 years. Recently, she reconnected with him by phone and speaks to him briefly about once a month. She views these calls as therapeutic to her, as she is safe in Canada where he cannot harm her. She states that her father still asks about her mother but she does not tell him anything and refuses to provide him with contact information. She states that if her father learned that her mother was in Iran, he would try to keep her there. She states that her mother cannot hide permanently in Iran from her ex-husband and his family.

[25] However, the Officer did not engage with these concerns in their reasons, instead stating:

I find that the applicant having lived in Iran for approximately 15 months *while being sought by her husband* shows that he does not have the means or the ability to find her, or to use official sources to compel her return to him. As risk is forward looking, it is apparent that *the applicant's husband lacks the means and ability to find the applicant in Iran*, or to use official bodies to compel her return to him, or to force her to stay in Iran against her will.

[Emphasis added.]

[26] I understand the Officer's reasons as follows. The Applicant was previously able to return to Iran without her ex-husband finding her, despite looking for her. Therefore, the Applicant should be able to return to Iran in the future, even if he is still looking for her, because he was unable to find her during her prior visits.

[27] However, the Officer failed to consider the differences in the Applicant's past circumstances that allowed her to stay in Iran without being found by her husband – namely that she stayed with her daughter and parents who provided her with a safe place to hide and who were able to assist her in remaining undetected – and her future circumstances if she is returned to Iran, being that she will be unable to avail herself of that help because her daughter is no longer in Iran and her parents have since passed away. That is, her ability to hide has changed.

[28] And although the Respondent submits that the Applicant has not demonstrated that the Officer ignored her submissions about the factors that allowed her to hide previously as the Officer had noted that “[t]he applicant states that she was hidden the whole time and that she took precautions to safeguard her identity”, in my view, this statement does not meaningfully grapple with the Applicant's concerns. Nowhere in the decision does the Officer acknowledge and address the Applicant's submission that she can no longer hide at her parents' or daughter's homes and that she will be alone, or, that she cannot remain in hiding indefinitely in Iran without support, and as an elderly woman with mental health conditions, this would be unsustainable. In other words, that her risk has changed. The Officer did state that they accepted that the Applicant suffers from depressive disorder of moderate severity, attenuated psychosis syndrome and post-traumatic stress disorder, but did not address what, if any, impact this might have on the

Applicant's ability to hide from her ex-husband should she return to Iran in her current circumstances. As such, the Officer was not alert and sensitive to the matter before them.

[29] In short, if the Applicant's ex-husband continues to look for her, as the Officer seems to accept, then if her ability to hide has changed then potentially so too has his ability to find her. The Officer erred in failing to address this change of circumstances and risk. The Officer's reasons also raise the prospect of the Applicant living in hiding indefinitely – as her husband continues to look for her – but do not address whether this is a reasonable way of mitigating her risk.

[30] I acknowledge the Respondent's submission that the Applicant failed to establish she would need to hide to remain in Iran on the basis that the Officer found that she did not establish that she faced forward looking risk given her past stays in Iran and insufficient evidence that she faced forward looking risk from her ex-husband. However, even though the Officer afforded the Applicant's supporting evidence as to the activities of her ex-husband little probative value, the Officer's ultimate basis for concluding that the Applicant's ex-husband did not pose a risk to her upon her return was that he was unable to find her – despite looking for her – when she had returned to Iran in the past. The Officer's reasoning in that regard is also somewhat contradictory as it appears to suggest that there was insufficient evidence of a forward looking risk, while at the same time seems to acknowledge that the Applicant's ex-husband continues to look for her, suggesting a continued risk.

[31] Given the RPD's prior findings as to the abuse the Applicant suffered at her ex-husband's hands and the fact that the Officer seems to accept that her ex-husband continues to look for her, the Officer's assessment of forward looking risk failed to grapple with a key issue raised by the Applicant, contains a fundamental gap and lacks justification (*Vavilov* at para 83, 85 and 96). It was therefore unreasonable.

[32] Given my conclusions above, it is not necessary to address the remainder of the Applicant's submissions.

JUDGMENT IN IMM-7844-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to another officer for redetermination;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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