Federal Court  Cour fédérale

Date: 20231127

Docket: IMM-12529-22

Citation: 2023 FC 1564

Toronto, Ontario, November 27, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ANANTHA RUPINI NEERANJAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision, dated August 29, 2022 [the Decision]. In the Decision, a Senior Immigration Officer [Officer] determined that the Applicant would not face a risk to life or risk of cruel and unusual treatment or punishment, if returned to Malaysia.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a Malaysian citizen. In Malaysia, she witnessed and experienced domestic violence from her parents and brother. She first entered Canada in 1999, when she met her husband who eventually sponsored her. The Applicant became a permanent resident on September 24, 2001. She and her husband separated in 2013. The Applicant now lives with her two adult children, both of whom were born in Canada.

[4] In 2012, the Applicant was convicted of two counts of possession of property obtained by crime over $5000 pursuant to section 354(1) of the *Criminal Code*, RSC, 1985, c C-46 [the *Code*]. She was also convicted of participation in activities of a criminal organization pursuant to section 467.11(1) of the *Code*. She was subsequently found to be inadmissible to Canada on the grounds of organized criminality pursuant to paragraph 37(1)(a) and for serious criminality pursuant to paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. On December 11, 2019, she was ordered deported from Canada.

[5] The Applicant made a PRRA application in February 2020. The application was rejected on February 24, 2021, but after this Court granted leave for judicial review of that decision, the parties settled and the application was remitted to a different officer for re-determination.

[6] The Applicant's PRRA submissions asserted that she will face discrimination in almost every area of life due to deep-rooted discrimination against women and against members of the Indian and Hindu minority in Malaysia. She further argued she would face discrimination because she suffers from mental illness. The Applicant supplemented these submissions with additional evidence and further submissions dated September 30, 2022.

[7] The Officer's rejection of her PRRA is the Decision now under review.

III. Decision under Review

[8] At the beginning of the Decision, the Officer explained that, because the Applicant was determined to be inadmissible on grounds of organized criminality, she is a person described in section 112(3)(a) of the IRPA, and her PRRA application was therefore assessed under only section 97 of the IRPA.

[9] The Officer then observed that, as there was minimal country condition evidence [CCE] related to the Applicant's specific situation and profile, she submitted an expert report identifying that she would face discrimination in employment, social services, healthcare, housing and from the general public [Report].

[10] The Officer accepted that the Applicant suffers from mental health conditions but found that the risk to life under section 97 of the IRPA must not be caused by the inability of the country of return to provide adequate health or medical care. In considering the CCE and the Report to assess whether Malaysia engages in persecutory practices in providing access to

medical treatment, the Officer found there was little evidence to suggest the Applicant would be refused medical care based on her profile. The Officer found she may feel discouraged from seeking treatment in Malaysia, but there was insufficient evidence to suggest persecutory practices preventing access to medical treatment.

[11] In considering the discrimination the Applicant was likely to experience in Malaysia based on her ethnicity, the Officer found based on the Report that discrimination against Indians in Malaysia does not exist to a point of widespread violence. The Officer further found that the Indian community has not been prevented from practicing non-Muslim faiths, and Hindus are usually able to live free from societal discrimination on a day-to-day basis and to worship freely without significant official interference.

[12] As for the Applicant's financial prospects in Malaysia, the Officer found that the majority of the Indian community generally hold low-income jobs due to non-preferential treatment systems and a lack of economic opportunities. Moreover, the evidence indicated that Indian-headed female households have the lowest average income. The Officer recognized this as an issue but found there were income-generating programmes for single mothers such as the Applicant.

[13] The Officer also found there are programs in place that could assist the Applicant. With respect to her mental health conditions, she could register with the Welfare Department for an OKU card. The Officer accepted that such a process would be lengthy, tedious and onerous but found the government does nonetheless have a system in place to assist the Applicant. The

Officer also found that government social housing and discounted rental units exist for people with disabilities, albeit with very limited availability.

[14] Finally, the Officer found that gender-based violence remains a major concern in Malaysia, particularly for those who are poor and from an ethnic minority, but found there are nonetheless options for the Applicant if required. Such options include the Domestic Violence Act and the Emergency Protection Order, as well as shelters and assistance for victims, albeit inadequate for the demand.

[15] The Officer found that, although the Applicant is likely to face some discrimination, it did not rise to the level of persecution, even when the discrimination was considered cumulatively. For discrimination to be considered persecution, it must be serious and persistent, and the Officer did not find that it would be serious, even if it may be persistent. The Officer further concluded that the discrimination the Applicant would face was not a sustained or systemic violation of basic human rights. The Applicant had not sufficiently demonstrated that she would be refused medical care, housing, or that she would not be free to practice her religion in Malaysia. Based thereon and on resources available to her in Malaysia and laws intended to prevent gender-based violence, the Officer found that the discrimination did not amount to persecution.

[16] The Officer therefore concluded, on a balance of probabilities, that the Applicant would not face danger of torture, risk to life, or risk of cruel and unusual treatment or punishment if

returned to her country of nationality as per section 97 of the IPRA. The record indicates that the Officer completed this component of the analysis in the Decision as of August 29, 2022.

[17] Finally, in an undated Addendum included within the document setting out the Decision, the Officer considered the Applicant's supplementary submissions. The Officer considered the evidence the Applicant filed, including a report from a chronic pain consultant; outpatient records from the Outpatient Mental Health Unit at the Markham-Stouffville Hospital; and two articles on mental healthcare and social stigma in Malaysia.

[18] In considering the article titled *Mental Disorders in Malaysia: an increase in lifetime prevalence*, the Officer found the Applicant had not sufficiently demonstrated that Malaysia would engage in persecutory practices with respect to the provision of access to medical treatment for her. Moreover, the Officer found the same article indicated there have been efforts made to combat the social stigma against those with mental health conditions in Malaysia. The Officer also considered the second article, titled *A qualitative exploration of the perspectives of mental health professionals on stigma and discrimination of mental illness in Malaysia*. The Officer found that, while the Applicant is likely to experience some discrimination based on her mental health, the discrimination is not serious enough to qualify as persecution, as it does not consist of a key denial of a core human right.

[19] The Officer restated the availability of programs for financial support and housing and found there may be a potential reduction in future discrimination towards the Applicant. The

Officer again concluded that the discrimination in Malaysia does not amount to persecution, even when considered cumulatively, and the PRRA application was refused.

IV. Issues and Standard of Review

[20] The issue for the Court's determination is whether the Decision was unreasonable. As suggested by that articulation, the standard of review applicable to the Court's review of the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17).

[21] The Applicant's written submissions also raised an issue as to whether the Officer breached the duty of procedural fairness by failing to consider the Applicant's supplementary evidence. However, at the hearing of this application, the Applicant's counsel advised that she was not pursuing that issue.

V. Analysis

[22] The Applicant argues that the Officer erred by ignoring the evidence in the Report as to intersectional discrimination that the Applicant would face as a result of her multiple identities that would be subject to discrimination in Malaysia, including discrimination and exclusion related to employment, housing and healthcare, and by relying on the existence of programs and legislation that are not actually available or relevant to the Applicant's personal circumstances.

[23] As the Applicant acknowledges, the Officer relied heavily on the Report in performing the analysis underlying the Decision, including noting that there was otherwise minimal CCE relating to the Applicant's specific situation and profile. As such, it is obviously not possible to conclude that the Officer overlooked the Report, and it is difficult to conclude that that the Officer overlooked portions of the Report upon which the Applicant's submissions rely. Indeed, the Officer expressly quotes the portion of the Report that describes discrimination and exclusion where employment, housing and healthcare are concerned.

[24] Similarly, the Applicant notes that the Officer relied on the Report's explanation of the government benefits available from obtaining an OKU card, but she argues that the Officer ignored the Report's identification of the shortcomings of this program. However, the Officer expressly notes that the process for obtaining an OKU card is lengthy, tedious and onerous, which observations are clearly drawn from the Report's identification of such shortcomings. As such, it is not possible to conclude that this evidence was overlooked. To the extent the Applicant is arguing that the evidence in the Report does not support the Officer's conclusions, I find this to be an argument related to the Officer's weighing of the evidence, which is not the Court's role in judicial review.

[25] In relation to the Officer's finding as to the availability of government programs, such as government social housing and discounted rental units for persons with disabilities, the Applicant submits that the Officer's analysis is unreasonable, because the fact that such programs exist does not, without further evidence, establish that they are available. In support of her position, the Applicant refers the Court to *Camargo v Canada (Citizenship and*

Immigration), 2015 FC 1044 [*Camargo*] at paras 26-31. However, *Camargo* is a state protection analysis, which requires consideration of operational adequacy as opposed to state efforts (see para 27). I do not consider *Camargo* to apply to the present Decision so as to render the Officer's reasoning unreasonable in the absence of an operational adequacy analysis.

[26] In relation to the effects of the Applicant's mental health conditions, the Applicant argues that the Officer unreasonably concluded that there was insufficient evidence to identify persecutory practices with respect to the provision of access to treatment. She notes that, while the Report identifies that Malaysia is an upper middle income country, it also explains that Malaysia does not have a specific budget for mental health, which has resulted in a lack of accessible and affordable mental health care services in the country. The Applicant refers the Court to *Covarrubias v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365 [*Covarrubias*], which held that the exclusion from protection in subsection 97(1)(b)(iv) of the IRPA relates to circumstances where the country is unable to provide adequate medical care because it chooses in good faith, for legitimate political and financial priority reasons, not to provide such care to its nationals. If it can be proved that there is an illegitimate reason for denying the care, such as persecutorial reasons, that may suffice to avoid the operation of the exclusion (at para 41).

[27] I accept the principle described in *Covarrubias* upon which the Applicant relies. However, the Decision recognizes the need to analyse the objective evidence to assess whether Malaysia engages in persecutory practices with respect to the provision of access to medical care. The Decision expressly references the portions of the Report upon which the Applicant's

arguments rely but finds insufficient evidence to suggest that persecutory practices exist. The Applicant emphasizes the Report's reference to the stigmatization of mental health conditions in Malaysia and argues based thereon that the Malaysian government's resource allocation decisions related to mental health represent persecution. However, this portion of the Report was also referenced by the Officer. Again, I find the Applicant's argument to relate to the Officer's weighing of the evidence.

[28] In relation to the Officer's analysis of the discriminatory effects of the Applicant's ethnicity and religion, she argues that the Officer erred by concluding that she was not at risk of cruel treatment in the absence of evidence that these elements of her profile would result in violence. However, I agree with the Respondent that evidence of violence would be relevant to this assessment and it was therefore appropriate for the Officer to consider such evidence. Moreover, the analysis was not restricted to that consideration. The Officer also observed that the Indian community had not been restricted from practising non-Muslim faiths, noting that the Report states that Hindus were usually able to live free from societal discrimination on a day-to-day basis and to worship freely without significant official interference. This analysis demonstrates consideration of not only risk of violence, but also the possibility of government interference and broader societal discrimination.

[29] In relation to gender, the Applicant notes that the Officer's analysis acknowledges that gender-based violence remains a major concern in Malaysia, particularly for those who are poor and come from an ethnic minority. However, the Applicant submits that the Officer erred by relying on the mitigating effects of the Domestic Violence Act and the availability of shelters for

women who are in need of protection. She argues that the Officer has no idea if these remedies would apply to the Applicant, particularly given that she would be returning to Malaysia as a single aging woman, such that she is more likely to be exposed to community violence than domestic violence.

[30] I agree with the Respondent's position that, particularly given the Applicant's submissions as to her history of gender-based domestic violence, it was not inappropriate for the Officer to reference these resources and remedies. I also note that, in describing gender-based violence in Malaysia, the Report adduced on the Applicant's behalf focused upon domestic violence.

[31] Finally, returning to the Applicant's overall position as to discrimination that she would face as a result of her multiple identities, she submits that the Officer failed to assess cumulatively the intersectional nature of this discrimination. She acknowledges that the Officer states that the discrimination identified in the Decision would not amount to persecution, even when considered cumulatively. However, the Applicant argues that this is a bald assertion, void of analysis. In support of this position, she relies on *Kundukhashvili v Canada (Citizenship and Immigration)*, 2022 FC 1081 [*Kundukhashvili*] at paras 50-51, which set aside a decision of the Refugee Appeal Division based on the absence of a cumulative analysis of the effects of different aspects of a claimant's risk profile (see also *Djobok v Canada (Citizenship and Immigration)*, 2014 FC 497 [*Djobok*] at paras 18-19).

[32] I accept the jurisprudential principle upon which the Applicant relies. Unlike in *Kundukhashvili* (see para 52), the "Conclusion" section in the Officer's Decision expressly states that the analysis is a cumulative one. I would not regard such a statement as determinative, if a review of the Officer's reasoning demonstrated that the elements of the Applicant's risk profile were analysed as if they existed in discrete silos, as was the case in *Djobok* (see para 18). However, my review does not support such a conclusion. Elements of the Officer's analysis expressly consider the intersectionality of the Applicant's assertions. For instance, the Officer acknowledges that gender-based violence is a major concern in Malaysia, particularly for those who are poor and come from an ethnic minority. Indeed, the Conclusion section of the Decision itself expressly considers together the various aspects of the Applicant's identity upon which her submissions rely.

[33] Moreover, the reasoning in the Conclusion is intelligible, as the Officer finds that, while the discrimination to which the Applicant may be exposed may be persistent, it is not serious because it does not represent a sustained or systemic violation of basic human rights. At the hearing of this application, the Applicant raised concern as to the appropriateness of the Officer's reference to human rights as the standard for assessment of persecution. The Applicant's counsel noted that *Liang v Canada (Citizenship and Immigration)*, 2008 FC 450 [*Liang*] relied on a definition of persecution as sustained or systemic violation of basic human rights (at para 17). However, the Applicant's counsel argued that the definition employed by the Federal Court of Appeal in *Rajudeen v Canada (Minister of Employment and Immigration)*, [1984] FCJ No 601 (QL), which is also cited in *Liang* at paragraph 17, affords a broader interpretation which could include an affront to personal dignity falling short of human rights infringement.

[34] The Decision does not conduct an analysis of any of these authorities. However, sufficient authority exists for interpreting persecution to mean discrimination that amounts to a serious and persistent violation of basic or core human rights (see, e.g., *Liang* at paras 16-19; *Taib v Canada (Citizenship and Immigration)*, 2021 FC 768 at para 20) that I find no error in this aspect of the Officer's analysis.

[35] Having considered the Applicant's arguments and concluding that they do not undermine the reasonableness of the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-12529-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Barbara Jackman	FOR THE APPLICANT
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jackman & Associates Toronto, Ontario Barristers & Solicitors	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT