

Federal Court



Cour fédérale

Date: 20231201

Docket: IMM-619-22

Citation: 2023 FC 1614

Ottawa, Ontario, December 1, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

MASIH ALLAHBAKHSHIHAFSHEJANI

Applicant

and

**MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant, a citizen of Iran, seeks judicial review of a decision by a Senior Immigration Officer [Officer] refusing his application for a Pre-Removal Risk Assessment [PRRA] pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] I am allowing the application because the Officer's analysis of the asserted risk faced by the Applicant in Iran based on his refusal to transfer confidential data to SADRA, an Iran-based company, is unreasonable. In finding that there was insufficient evidence to conclude that the Applicant faces forward-looking and personalized risk on this ground, the Officer failed to engage with the totality of the evidence, misapprehended the evidence, and made irrational and illogical findings. Given this determination, it is not necessary to address the other issues raised by the Applicant.

II. Background

[3] The Applicant came to Canada in September 2016 on a study visa as a PhD candidate in Engineering at Memorial University of Newfoundland in St. John's, Newfoundland. His doctoral supervisor was a permanent resident in Canada and a citizen of Iran [supervisor].

[4] The Applicant worked on a research project with his supervisor that was sponsored by Wood Group, one of the world's largest engineering and consulting firms. The project was to "develop deep water petrochemical infrastructure, such as undersea pipelines": Applicant's PRRA Narrative dated June 4, 2021 at para 9 [PRRA Narrative]. The Applicant was the only member of the research team with the relevant experience to operate a key piece of equipment called a centrifuge.

[5] In April 2017, the Applicant was charged with assault, which was later upgraded to attempted murder. He was convicted of attempted murder in December 2020. The Applicant was found inadmissible to Canada under subsection 36(1)(a) of the *IRPA* because of his conviction.

[6] In May 2021, the Applicant applied for a PRRA. He claims that one of the main reasons he will face a risk of torture and a risk to life or cruel and unusual punishment if returned to Iran, is his refusal to transmit confidential research information to SADRA as requested by his supervisor.

[7] According to the Applicant, his supervisor exerted enormous pressure on him to transmit sensitive research data to SADRA, which is controlled by Iran's Islamic Revolutionary Guard Corps [IRGC] and is subject to international sanctions under the *Special Economic Measures Act*, SC 1992, c 17. His supervisor had worked at SADRA from 2000 to 2005, including as a Senior Project Engineer from 2003 to 2005. The Applicant alleges that the supervisor maintains ties to SADRA.

[8] Given that SADRA was not involved in the university research project, the Applicant asserts that he repeatedly refused his supervisor's request to transfer the data. The Applicant further asserts that he believes the requested transfer of data would violate both the university research agreement and Canadian and international sanctions.

[9] The Officer rejected the Applicant's PRRA application on December 30, 2021. The Officer found that "there [was] insufficient evidence to conclude that the applicant faces forward-looking and personalized risk of torture or risk to life or cruel and unusual punishment or treatment" under subsection 97(1) of the *IRPA* if returned to Iran: Officer's Notes to file dated December 30, 2021 at p 9 [Officer's Notes].

[10] With respect to the Applicant's refusal to transfer scientific data to SADRA, the Officer concluded that there was insufficient evidence to substantiate the Applicant's allegation that his supervisor was attempting to provide SADRA with confidential information. In support of that conclusion, the Officer made the following findings: (i) there is little information or evidence about how the supervisor reacted to "essentially being accused of espionage and violating international sanctions"; (ii) the supervisor's email was sent from his university email account, rather than from a private account; and (iii) there is no indication that the Applicant or his supervisor attempted to involve university officials: Officer's Notes at p 6.

III. Standard of Review

[11] There is no dispute that the applicable standard of review is reasonableness. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 95 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC at para 8 [*Mason*].

[12] A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at para 59-61. Furthermore, the reviewing court "must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable": *Vavilov* at para 100. Ultimately, the court must be satisfied that the decision maker's reasoning "adds up" based on the relevant facts and the law: *Vavilov* at para 104.

[13] A reviewing court must not reweigh or reassess the evidence. However, a decision must be justified in light of the facts. Where the decision maker fundamentally misapprehends or fails to account for the evidence before them, the decision is unreasonable: *Vavilov* at paras 125-126.

IV. Analysis

A. *Flawed insufficiency of evidence finding*

[14] For the reasons that follow, I find that the Officer's analysis of the Applicant's fear that he is at risk in Iran because of his refusal to transfer confidential data to SADRA is unreasonable. The Officer grounded their analysis in a lack of sufficient evidence. More specifically, the Officer concluded that there was insufficient evidence to substantiate the Applicant's allegation that his supervisor was "attempting to evade international sanctions and provide SADRA with confidential information": Officer's Notes at p 6.

[15] While decision makers are entitled to significant deference when making sufficiency of evidence findings, they must be explained, with reference to the evidence on the record or by providing a rationale for the finding: *Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 618 at para 35; *Sarker v Canada (Citizenship and Immigration)*, 2020 FC 154 at para 11; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35 [*Magonza*]. Here, the Officer concluded that there was insufficient evidence without meaningfully engaging with the totality of the evidence.

[16] Furthermore, this Court has said that, when reviewing an insufficiency of evidence finding, it is useful to ask: “what other evidence could reasonably have been brought?”: *Bonilla Monge v Canada (Citizenship and Immigration)*, 2023 FC 233 at para 22; *Magonza* at para 58; *Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 640 at para 15.

[17] The relevant question in this case is: what sort of further evidence could the Applicant have reasonably adduced to substantiate the allegations that his supervisor was attempting to transfer confidential data in violation of international sanctions? In that regard, the Officer made the following findings about the sort of evidence they would have expected: (i) a more specific reaction from the supervisor in response to the Applicant’s refusal than just general anger; and (ii) the involvement of other university officials: Officer’s Notes at pp 6, 10.

[18] In my view, in concluding there was insufficient evidence, the Officer (i) failed to engage with the totality of the evidence; (ii) misapprehended and mischaracterized the evidence; and (iii) made irrational and illogical findings. These three flaws render the Officer’s decision unreasonable.

(1) The Officer failed to engage with the totality of the evidence

[19] In finding insufficient evidence to support the Applicant’s serious allegation that his supervisor was “attempting to evade international sanctions and provide SADRA with confidential information”, the Officer failed to engage with the totality of the evidence and explain why it was insufficient.

[20] The Officer acknowledged the supervisor's 2000-2005 employment history with SADRA and that the supervisor's request could be read as "suspicious". However, in reviewing the email from the supervisor about the transfer of the data, the Officer found that the statement – "for the main project related to the strategic plan in SADRA" – did not necessarily mean the data transfer would violate international sanctions: Officer's Notes at p 6.

[21] The supervisor's email reads as follows:

Please extract and discover all schemes, manuals, charts, records and software. Learn the required data such as the models, technology and techniques. Take some in detail photos about designs, prototypes, technical information, the material of the C-CORE main lab and its Centrifuge chamber for the main project related to the strategic plan in SADRA. Then let's have a meeting to exchange the required data on a Thumb drive. You shall explain to me how it is working as soon as you have completely learned everything relative to our future plan: Officer's Notes at p 5.

[22] The Officer found that beyond the "two emails, and statements contained in his narrative, the applicant ha[d] offered little context or information for these emails and requests": Officer's Notes at p 6. Yet, the Applicant's narrative does in fact contain context and information that is relevant to the Officer's consideration and assessment of his allegations. Notably, the Officer did not refer to this evidence in the decision, discount it as not credible, or explain why it is insufficient.

[23] The Applicant's evidence was that his research work at Memorial University of Newfoundland was confidential in nature, and that SADRA was not involved in the project at all. According to the Applicant's narrative, SADRA is controlled by the IRGC, an Iranian paramilitary organization. Based on this control, SADRA has been sanctioned by the international community: PRRA Narrative at para 14. The Officer did not take issue with this evidence.

[24] Furthermore, the Applicant offered significant evidence about his conversation with his supervisor, and the reason why the supervisor wanted him to transfer the data to SADRA:

I found [my supervisor's] request highly unsettling. After I found out about SADRA, I asked [my supervisor] why I should transmit this data to them. He said that having this information was very important for Iran as a country because it is suffering under the weight of sanctions. He said SADRA and Iran need the information from the centrifuges to develop the offshore oil reserves in the Persian Gulf: PRRA Narrative at para 15.

[25] The Officer did not engage with this evidence in finding that the Applicant adduced insufficient evidence. Instead, the Officer focused on one statement in the supervisor's email to the Applicant in support of the insufficiency finding. In my view, the Officer erred in failing to explain the lack of sufficient evidence with reference to the totality of the evidence.

(2) The Officer misapprehended the evidence

[26] The Officer misapprehended key evidence, and then seized on the mischaracterization, to find that there was insufficient evidence the Applicant was at risk in Iran for refusing to transfer the data to SADRA. As expressed by the Supreme Court, "the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it": *Vavilov* at para 126. I find that this is precisely what occurred in this case.

[27] The Officer ultimately determined that there was "little evidence" about what transpired after the Applicant "indirectly accused" his supervisor of "violating university contracts and international sanctions": Officer's Notes at p 10. Earlier in the reasons, the Officer characterized

the Applicant's accusations in even stronger terms: "There is little information or evidence about how the professor reacted to essentially being accused of espionage and violating international sanctions" [emphasis added]: Officer's Notes at p 6.

[28] The Officer reasoned that the supervisor's response was "critical context" for determining the nature of his requests and "his connections to officials in Iran": Officer's Notes at p 10. The fatal flaw in the Officer's reasoning, however, is the starting premise that the Applicant had "indirectly" or "essentially" accused his supervisor of espionage. This misapprehension coloured the Officer's entire analysis of the Applicant's alleged fear of reprisal in Iran for refusing to transfer the data.

[29] It is evident that the Officer was searching for an expected response from the Applicant's supervisor to an accusation that was never made. Notably, the Officer concluded that, "I find it likely that there would have been a more specific reaction to these events than just general anger": Officer's Notes at p 6.

[30] A review of the evidence does not support the Officer's characterization that the Applicant accused his supervisor of espionage or of violating confidentiality or international sanctions. I agree with the Applicant that while he did express those fears and while they do form the basis of his PRRA application, the evidence supports that he did not communicate his concerns to his supervisor in those terms. Rather, in his email to his supervisor, the Applicant "couches his concerns in the guise of the confidentiality of the Researcher Participation Agreement" that the Applicant had signed: Applicant's Memorandum of Argument at para 27.

[31] The Applicant's email to his supervisor reads as follows:

Further to our previous discussion and meeting in your office, I have to mention again given the "Researcher Participation Agreement" and its Articles particularly Article 1, 3, 4 and 5, I am afraid to follow your request without informing the C-CORE staffs and the University in advance. Please find the attached "Researcher Participation Agreement" file, which I have signed as the main prerequisite of working at the C-CORE Centrifuge Center.

[32] In addition, the Applicant explains in his narrative that he "did not wish to anger" his supervisor more than he already had as he "needed him to graduate". He further explains that he told his supervisor that, "because I am a signatory to the confidentiality agreements governing this research project, I could not make the transfer of information to SADRA without the express authorization of MUN and the project's financier": PRRA Narrative at para 16. This further supports the Applicant's position that the Officer erred in misapprehending the evidence.

[33] For these reasons, I am satisfied that the Officer fundamentally misapprehended and mischaracterized the evidence.

(3) The Officer made irrational and illogical findings

[34] In accordance with *Vavilov*, "a decision must be based on reasoning that is both rational and logical": *Vavilov* at para 102. Here, the Officer based the decision on irrational and illogical findings.

[35] The Officer found that the fact that neither the Applicant nor his supervisor "attempted to involve other university officials" is a relevant consideration in assessing whether the Applicant's

claim is substantiated. As pointed out by the Applicant, if the supervisor was instructing his student to share confidential data in violation of the research agreement, it is unreasonable to expect that the supervisor would raise the Applicant's refusal with university officials: Applicant's Memorandum of Argument at para 30.

[36] Further, finding that it would be "reasonable to expect" that the Applicant would have involved other professors or officials ignores the entire basis of the Applicant's claim. The Applicant feared reprisals for refusing to share the data with SADRA and his evidence was that he did not want to anger his supervisor: PRRA Narrative at para 16. Escalating the matter to university officials would surely only raise the stakes.

[37] Ultimately, the Officer relied on the failure to involve university officials to buttress the finding that there was insufficient evidence that the Applicant's supervisor was attempting to share confidential information with SADRA.

V. Conclusion

[38] Based on the foregoing, there are serious shortcomings in the Officer's analysis of the Applicant's claim that he is at risk in Iran based on his refusal to share confidential scientific research data with SADRA, as requested by his supervisor. The Officer's decision is set aside and the matter is remitted for determination so that a new officer can properly consider and assess the evidence.

[39] The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-619-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The Officer's decision dated December 30, 2021 is set aside and the matter is remitted for determination by another officer.
3. There is no question for certification.

"Anne M. Turley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-619-22

STYLE OF CAUSE: MASIH ALLAHBAKHSIHAFSHEJANI v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 16, 2023

JUDGMENT AND REASONS FOR JUDGMENT: TURLEY J.

DATED: DECEMBER 1, 2023

APPEARANCES:

Lee Cohen FOR THE APPLICANT

Jack Townsend FOR THE RESPONDENT

SOLICITORS OF RECORD:

M. Lee Cohen & Associates FOR THE APPLICANT
Barristers & Solicitors
Halifax, Nova Scotia

Attorney General of Canada FOR THE RESPONDENT
Halifax, Nova Scotia