Federal Court Cour fédérale

Date: 20240305

Docket: IMM-11194-22

Citation: 2024 FC 363

Vancouver, British Columbia, March 5, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

GERGO KISS
GERGONE KISS
LILIANA ESZTER KISS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Gergo Kiss, Ms. Gergone Kiss, and Ms. Liliana Eszter Kiss [together, the Kiss Family], are seeking judicial review of a Pre-Removal Risk Assessment [PRRA] decision rendered on October 6, 2022 [Decision] by a senior immigration officer [Officer], pursuant to subsection 112(1) of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [IRPA]. In the Decision, the Officer found insufficient evidence to determine that the Kiss Family would face more than a mere possibility of harm or persecution if they were removed to Hungary, their country of citizenship. The Decision followed negative decisions of the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD], which had both dismissed the Kiss Family's claim for refugee protection because of their failure to provide sufficient evidence establishing that the discrimination they experienced was tantamount to persecution.

[2] The Kiss Family seeks to have the Decision set aside. They submit that the Officer breached their right to procedural fairness by failing to convene an interview or oral hearing. They further submit that the Decision is unreasonable because the Officer allegedly failed to consider all of the evidentiary documents they filed.

[3] For the reasons that follow, the application for judicial review will be dismissed. The Kiss Family has not demonstrated that their right to procedural fairness was violated. Moreover, the Decision is reasonable in light of the insufficiency of evidence submitted by the Kiss Family to the Officer.

II. Background

A. *The factual context*

[4] The Kiss Family are citizens of Hungary who first entered Canada in November 2016. At the time, the Kiss Family entered Canada under the surname of "Leco." Upon their arrival, they made a refugee claim grounded on their Roma ethnicity. In July 2017, the RPD refused their refugee claims based on its conclusions that the Kiss Family was not credible, the experiences

they reported did not constitute persecution, and they failed to rebut the presumption of state protection. The RAD upheld the RPD's conclusions on appeal and this Court did not allow the judicial review of the RAD's decision.

[5] Subsequently, in 2019, the Kiss Family returned to Hungary. Thereafter, they were unable to get permission to return to Canada, so they changed their names and obtained visas for the United States.

[6] In December 2021, the Kiss Family returned to Canada and made another refugee claim at the border, under their new name. They were then issued deportation orders. This time, they were given the chance to apply for a PRRA—something they did not do in 2019 before retuning to Hungary.

B. *The PRRA Decision*

[7] The Kiss Family grounded their PRRA application on their Roma identity. To this effect, they highlighted the alleged mistreatments they suffered when they returned to Hungary in 2019, such as rudeness from various authorities, problems enrolling their child in school, difficulties receiving medical care, issues in securing housing, unemployment, and other similar events.

[8] The Officer conducting the PRRA assessment acknowledged that there is continued discrimination against Roma in Hungary, but concluded that this fact alone does not, in and of itself, mean the Kiss Family are at risk. Furthermore, the Officer took issue with the fact that the Kiss Family did not provide sufficient evidence in support of their alleged negative experiences in Hungary, including evidence the Officer determined could have reasonably been available.

Indeed, the Officer determined that full weight could not be accorded to the joint statement filed by the Kiss Family, as it was unsworn and unaccompanied by supporting evidence.

[9] Moreover, the Officer determined that the Kiss Family did not demonstrate a subjective fear, as they changed their names in order to re-enter Canada, were willing to be misleading, did not respect the laws of Canada, and took part in asylum-shopping when they chose Canada over the United States and other countries.

[10] Finally, in response to the Kiss Family's argument that showed that other Roma refugee applications had been accepted in Canada, the Officer noted that PRRA considerations are personal to individual circumstances and must be substantiated by evidence.

[11] Ultimately, the Officer concluded that despite having potentially suffered discrimination in Hungary due to their Roma ethnicity, the Kiss Family had not demonstrated that they suffered discrimination tantamount to persecution. Their PRRA application was therefore refused.

C. *The standard of review*

[12] It is well established that the standard of review applicable to the assessments made by PRRA officers is reasonableness (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 36; *Bah v Canada (Citizenship and Immigration)*, 2023 FC 570 at para 11; *Rinchen v Canada (Citizenship and Immigration)*, 2022 FC 437 at para 15; *Ashkir v Canada (Citizenship and Immigration)*, 2020 FC 861 at paras 10–12; *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at paras 19–20; *Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v*

Vavilov, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in all judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[13] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[14] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125).

[15] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

[16] With respect to issues of procedural fairness, however, the Federal Court of Appeal has repeatedly stated that these do not require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33–56 [*CPR*]). It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*CPR* at para 54). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct." Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted (*CPR* at para 56). Reviewing courts are not required to show deference to administrative decision-makers on matters of procedural fairness.

III. Analysis

A. *The Kiss Family's right to procedural fairness was not violated*

[17] The Kiss Family first submits that the Officer breached their right to procedural fairness by failing to convene an interview or oral hearing since, according to them, they had requested one and the Decision was anchored on credibility issues.

[18] I do not agree.

[19] With respect, and as noted by the Respondent, the Minister of Citizenship and Immigration [Minister], the Kiss Family's submissions do not represent an entirely accurate reading of the Officer's conclusions. Indeed, contrary to these submissions, the Officer's concern was not with the Kiss Family's credibility, but with the sufficiency of the evidence they provided to support their allegations of risk. The Officer noted on multiple occasions in the Decision where the Kiss Family had failed to provide adequate evidence. Notably, only general submissions were provided with respect to the treatment of Roma. The evidence tendered by the Kiss Family did not address anything personal to them, no proof was provided for the alleged medical fees they were charged, and they failed to provide evidence showing other instances of negative experiences they allegedly faced outside of their statement—which was not sworn.

[20] Moreover, the Officer observed that no evidence supported their allegation that their children were given medicine that did not work, that local authorities and Roma communities denied them assistance, that they were evicted, or that they had to pay a fine to the police. According to the Officer, these were all elements a PRRA claimant should be able to

demonstrate. In sum, the Officer's findings were not that the Kiss Family were not credible, but that they did not provide sufficient evidence.

[21] As this Court has noted on numerous occasions, "every claimant must demonstrate personalized risk […] To the extent that a claimant relies on generalized evidence of similar situated persons, the claimant must show that that evidence is relevant to them, i.e. that they are sufficiently similar to those described in the evidence" (*Begum v Canada (Citizenship and Immigration)*, 2023 FC 1452 at para 19, citing *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 at para 38; *Sokhi v Canada (Citizenship and Immigration)*, 2009 FC 140 at para 46). In this case, the Officer did not conduct a credibility exercise. The Officer instead determined that the Kiss Family did not meet their evidentiary burden and failed to demonstrate their assertions. This is not a procedural fairness violation.

[22] I acknowledge that the line between an insufficiency of evidence and a veiled credibility finding is sometimes difficult to draw and that "[t]he reference to a *bona fide* concern in the [d]ecision must not be conflated with a credibility concern" (*Abbas v Canada (Citizenship and Immigration)*, 2022 FC 378 at para 22, citing *D'Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 at para 65 and *Patel v Canada (Citizenship and Immigration)*, 2020 FC 517 at para 14). It all depends on the particular facts of each case. Here, the Officer's reasoning and assessment are worded in terms of insufficiency of the evidence and, despite the able submissions to the contrary made by counsel for the Kiss Family, I cannot identify passages that could be characterized as an implicit or veiled credibility finding. A careful reading of the Decision confirms that, in the eyes of the Officer, the issue was one of insufficiency of evidence,

not credibility. In sum, I do not read the Officer's reasons as amounting to veiled credibility findings, or as expressing suspicion or skepticism vis-à-vis the Kiss Family's statements.

[23] In their submissions, the Kiss Family relied on Justice Mactavish's decision in *Bozik v Canada (Citizenship and Immigration)*, 2017 FC 961 [*Bozik*] to support their claim that the Officer had to consider whether it was necessary to hold an oral hearing. In *Bozik*, Justice Mactavish noted that "what the Officer characterized as a question of the sufficiency of the evidence was in fact a disguised negative credibility finding on an issue that was central to the risk that the Boziks faced in Hungary […] Before making such a negative credibility finding, the Officer was bound to consider whether it was necessary to hold an oral hearing, in accordance with the provisions of subsection 113(a) of the [IRPA]" (*Bozik* at paras 18–19, citing *Majali v Canada (Citizenship and Immigration)*, 2017 FC 275 at para 29).

[24] However, the factual matrix in *Bozik* can be distinguished from the case at bar. In *Bozik*, Justice Mactavish noted that the affidavit provided by Mr. Bozik was given under oath, and was supported by documentary evidence regarding his allegations. Here, it is the opposite, as the Kiss Family's evidence was unsworn and not accompanied by personalized evidence.

[25] Again, the Kiss Family is conflating an adverse finding of credibility with a finding of insufficient proof. This Court has detailed the distinction between these two conclusions on numerous occasions. For example, in *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 41, the Court stated the following:

> [41] An adverse finding of credibility is not to be confused with a finding of insufficient probative evidence. As I stated in *Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at paragraph 35, "[a]n adverse finding of credibility is different from

> a finding of insufficient evidence or an applicant's failure to meet his or her burden of proof". It cannot be assumed that, in cases where an immigration officer finds that the evidence does not establish the applicant's claim, the officer has not believed the applicant (*Gao v Canada (Citizenship and Immigration)*, 2014 FC 59 at para 32).

[26] In the case at bar, I am satisfied that the Officer did not conduct a veiled credibility finding, and simply concluded that there was insufficient evidence to establish the Kiss Family's claims. There was therefore no obligation for the Officer to hold an oral hearing, and no violation of the Kiss Family's right to procedural fairness.

B. *The Decision is reasonable*

[27] As a second argument, the Kiss Family submits that the Officer failed to consider all the supporting documents filed, thus rendering the Decision unreasonable. They further submit that the Officer's conclusion that Mr. Kiss' narrative should be afforded "little weight" was unreasonable, as they allege the Officer came to this conclusion solely because the document was not sworn. Finally, they claim that the Officer unreasonably ignored evidence related to positive decisions given to other Roma in Canada in their refugee claims.

[28] These arguments cannot stand.

[29] First, the Officer did not fail to consider all of the supporting documents—which, I might add, were limited. It was not an error for the Officer to find that the Kiss Family failed to provide evidence to prove their allegations. Indeed, as was explained by Justice LeBlanc in *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at paragraph 19:

> [19] Moreover, while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return (*Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056, at paras 67-70 [*Csonka*]; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, at para 22 [*Ahmad*]. Both subjective fear and objective fear are components in respect of a valid claim for refugee status (*Csonka*, at para 3). The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Prophète v Canada (Citizenship & Immigration)*, 2008 FC 331, at para 17; *Jarada v Canada (Minster of Citizenship and Immigration)*, 2005 FC 409, at para 28; *Ahmad*, at para 22).

[30] Consequently, the Kiss Family had the burden of establishing a link between the general documentary evidence and their specific circumstances, but failed to discharge this burden. I am satisfied that it was reasonable for the Officer to conclude as they did, given the lack of evidence. While this Court has acknowledged that, in some cases, it may be unreasonable to expect a refugee claimant to generate or collect documentation not already available before fleeing (*Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 7), that is not the case here. The Kiss Family was not fleeing immediate persecution nor prevented from obtaining evidence by their alleged persecutors. They therefore could have procured evidence relevant to their allegations, but failed to do so.

[31] Second, it is incorrect to say that the Officer gave little weight to Mr. Kiss' narrative simply because it was unsworn. The reasons detailed in the Decision rather illustrate that the Officer reached that conclusion because the narrative was "not accompanied by supporting personalized evidence for many of the reported incidents." This issue once again comes back to

the failure of the Kiss Family to provide sufficient evidence. As was highlighted above, it was not unreasonable for the Officer to conclude as they did, given the lack of evidence.

[32] Finally, the Kiss Family argues that other individuals of Roma ethnicity have received positive decisions in their refugee and PRRA applications, and the fact that the Officer failed to consider these cases renders the Decision unreasonable. This argument is without merit.

[33] As the Officer specifically noted, PRRA decisions are based on the factual evidence presented for every particular application. Moreover, as the Minister correctly notes, the cases relied on by the Kiss Family display important evidentiary, factual, and contextual differences from this case. The Kiss Family themselves concede that, "a large number of cases decided by this Court have established that the IRB is not bound by the result in another claim, even if the claim involves a relative, because refugee status is determined on a case by case basis, and because it is possible that the other decision was incorrect" (*Bakary v Canada (Citizenship and Immigration)*, 2006 FC 1111 at para 10 [*Bakary*]). The conclusions drawn by Justice Pinard in *Bakary* have been reaffirmed by this Court on numerous occasions (see, for example, *Mansour v Canada (Citizenship and Immigration)*, 2022 FC 846 at para 30; *Basbaydar v Canada (Citizenship and Immigration)*, 2019 FC 387 at para 51). It was therefore reasonable for the Officer not to consider themselves bound by the cases cited by the Kiss Family, due to important factual and evidentiary discrepancies distinguishing this case from others. Refugee status is determined on a case-by-case basis grounded in the evidence and individual facts of each case.

IV. Conclusion

[34] For the reasons set forth above, this application for judicial review is dismissed. I am satisfied that the PRRA Officer reasonably considered the evidence in concluding that the Kiss Family would not face a risk of persecution upon their return to Hungary. Similarly, there was no breach of procedural fairness as no credibility issues were raised before the Officer. There are no grounds for the Court to intervene.

[35] There are no questions of general importance to be certified.

JUDGMENT in IMM-11194-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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