Federal Court  Cour fédérale

Date: 20240716

Docket: IMM-1334-23

Citation: 2024 FC 1114

Toronto, Ontario, July 16, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

JEFFREY MARK LABRA

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]. The Applicant based his PRRA application on his profile as an individual with an addiction to crystal methamphetamine [crystal meth]. Drug users, the Applicant claimed, are subjected to multiple forms of mistreatment in the Philippines and, as such, he would face a personalized risk of harm should he be returned to that country.

[2] A PRRA officer [the Officer] accepted that the Applicant has struggled with addiction, but concluded that the Applicant was not at risk of persecution, torture, a risk to life, or a risk of cruel and unusual treatment or punishment in the Philippines.

[3] For the reasons that follow, I will grant this application for judicial review. In brief, I conclude that the Officer's reasons were speculative and disconnected from the evidence. I also find that the decision under review lacks a reasonable analysis of the Applicant's risk under section 96 of the *Immigration and Refugee Protection Act* [IRPA].

II. BACKGROUND

A. *Facts*

[4] The Applicant is a 40-year-old citizen of the Philippines. He has been living in Canada since 1994, when he arrived as an 11-year-old child with his mother, landing as a permanent resident. Mr. Labra's parents separated when he was young, and he maintains only casual and infrequent contact with his father, who lives in the Philippines.

[5] Mr. Labra developed an addiction to crystal meth in 2015, after he was diagnosed with cancer. His cancer treatment prevented him from working, as he received his chemotherapy through a catheter. The stress of his cancer diagnosis and his inability to work led to increased crystal meth use. This, in turn, led to his separation from his wife, who left their home with their two children. Since 2015, the Applicant's life has involved many periods of intense crystal meth use, homelessness, brief periods of sobriety, and several periods of incarceration.

[6] During this time, the Applicant was convicted of various offences, ranging from mischief and failures to comply with recognizances, to motor vehicle theft and operation while prohibited, to assault, and break and enter with intent. He asserts that he was under the influence of crystal meth during each of his criminal offences.

[7] As a result of his criminal convictions, Mr. Labra was reported for being inadmissible to Canada for serious criminality, pursuant to paragraph 36(1)(a) of the IRPA. A deportation order was issued; however, in June 2021 the Applicant was given a three-year stay of removal by the Immigration Appeal Division [IAD] of the Immigration and Refugee Board on humanitarian and compassionate [H&C] grounds. In July 2021, Mr. Labra relapsed and was unable to meet the conditions for his stay of removal, which therefore came back into force. The Applicant also failed to attend the subsequent appeal of his removal order in December 2021, and so the stay was considered abandoned in May 2022. Mr. Labra was scheduled to be removed from Canada on February 19, 2023, though his removal date was subsequently cancelled.

[8] Over the years, the Applicant participated in various treatment programs, though each was followed by periods of relapse. When using crystal meth, the Applicant engages in behaviour that he describes as bizarre, and that attracts the attention of law enforcement. Most recently, he was incarcerated after he was found walking beside Highway 401.

[9] The Applicant has limited contact with his remaining family in the Philippines. He corresponds infrequently with his father. He has no relationship with his father’s children from subsequent partners, and has never been close with his aunts or uncles. While his paternal grandmother cared for him when he was a boy, he is no longer close with her, as she cannot hear

well or use technology. These are his only remaining family in the Philippines. The Applicant notes that his family in the Philippines are quite traditional, and are not aware of his crystal meth addiction.

III. PRRA DECISION

[10] The Applicant applied for a PRRA, which was rejected in a decision dated December 23, 2023. The Officer determined that Mr. Labra failed to establish a nexus to the Refugee Convention grounds because of his drug addiction. As such, the PRRA Officer found that "section 96 of the IRPA does not apply to the applicant."

[11] In assessing the Applicant's risk under section 97 of the IRPA, the Officer acknowledged that "conditions in the Philippines are less than ideal for those known or suspected to be drug users or dealers" and that the war on drugs policy had resulted in "egregious" human rights abuses.

[12] However, the Officer ultimately concluded that the Applicant was not at risk in the Philippines. This determination was based on several key findings:

- The Applicant's drug use was not known in the Philippines and he failed to establish that the authorities in the Philippines perceive him to be a drug user or drug dealer.
- The Applicant has had periods of sobriety and has made efforts to undergo treatment; he has insight into his substance dependency and a desire for abstinence, and has learned skills from his treatment programs to remain abstinent. While there is a "possibility" that the Applicant will relapse in the Philippines, community support is an important factor in preventing this from happening, and there was insufficient evidence that the Applicant's family would not support him if he were to return.
- The focus of the drug war in the Philippines had shifted away from punishment and towards treatment, and therefore the Applicant would be able to access treatment for his addiction, were he to relapse.

- While the Applicant had submitted other PRRA decisions, in which drug users facing removal to the Philippines were granted protection in Canada, each case is decided on its own merits, based on the facts of the particular case.

IV. ISSUES

[13] The Applicant advances several issues on judicial review. However, I find the determinative issues are as follows:

a) Whether the Officer erred by relying on speculative findings unsupported by the evidence.

b) Whether the Officer erred by failing to adequately analyze evidence of similarly-situated persons.

[14] While not explicitly raised by the Applicant, I also find that the Officer erred in inconsistently, and unreasonably, articulating the analysis that was being undertaken pursuant to section 96 of the IRPA. To this extent, the Officer's decision lacks intelligibility and transparency and, as such, is unreasonable.

V. RELEVANT PROVISIONS

[15] IRPA

Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is	**a)** soit se trouve hors de tout pays dont elle a la nationalité et

unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Application for protection

112 (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Demande de protection

112 (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

Consideration of application

113 Consideration of an application for protection shall be as follows:

…

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

Examen de la demande

113 Il est disposé de la demande comme il suit :

…

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

VI. STANDARD OF REVIEW

[16] It is not a matter of dispute between the parties that the standard of review in respect of the issues identified above is reasonableness.

[17] A reasonable decision displays justification, transparency and intelligibility, with a focus on both the decision actually made and the reasons for it: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]. To do so, a decision must be based on an "internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" (*Vavilov* at para 85).

[18] Reasonableness is a deferential standard, but it is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability: *Vavilov* at para 13.

[19] At the same time, reasonableness review is not a "line-by-line treasure hunt for error"; any flaws or shortcomings relied upon must be sufficiently central or significant, to render the decision unreasonable: *Vavilov* at para 100, 102. The failure of a decision-maker to "meaningfully grapple" with "key issues or central arguments" raised by the parties may call into question a decision's reasonableness, as it speaks to whether the decision-maker was actually "alert and sensitive" to the matter before it: *Vavilov* at para 28.

[20] In addition to the above, I note that the impact of PRRA proceedings on applicants is profound, as these proceedings may directly implicate the life, liberty, dignity, and security of those seeking protection. Moreover, the PRRA process takes place at a moment in time when the

deprivation of these most basic of rights may be both imminent and a direct consequence of a negative outcome. The *Vavilov* framework clearly establishes that, in this context, reviewing courts must assess whether the justification provided by a decision-maker reflects these high stakes: *Vavilov* at para 133; *Layug v Canada (Citizenship and Immigration)*, 2023 FC 1545 at paras 10-11 [*Layug*]. This Court in stated in *Vavilov* at para 135:

> Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.

[21] As in *Layug*, the Applicant in this case has not had a previous claim for protection considered by Canadian authorities. The PRRA determination was the first, and likely the last, assessment of the Applicant's risk if returned to the Philippines. The Officer's reasons must therefore reflect the seriousness of this particular administrative law context.

[22] In addition to the issues identified above, the Applicant also argues that the Officer breached principles of fairness in failing to convene a PRRA hearing. While there is some debate in the jurisprudence as to the appropriate standard of review on this issue, I will not address it here, given my other findings.

VII. ANALYSIS

A. *Speculative Findings*

[23] As noted above, the Officer acknowledged the possibility that the Applicant would relapse following his release from detention and return to the Philippines. The Officer noted, however, that to "stay clean" requires the existence of a supportive community and that the Applicant had not established that his family in the Philippines would not be able to provide such a community.

[24] While the Officer's reasoning in this regard is couched in the language of the sufficiency of evidence, I find that it was made in disregard of important evidence and was, as such, speculative. To state the obvious, one cannot find that evidence is insufficient without properly considering the evidence that *has* been provided.

[25] As noted above, the past several years of the Applicant's life have been defined by multiple periods of intense drug use, followed by brief periods of sobriety. The Applicant's testimony was that this downward spiral of addiction and homelessness has taken place despite strong family support in Canada, namely his mother, his Canadian siblings, and his wife. Also before the Officer was data suggesting that those addicted to crystal meth have a relapse rate of 61% within the first year and 87% after five years. Viewed in this light, it is difficult to understand how the Officer could have concluded that the Applicant had failed to establish the likelihood of relapse, homelessness, and mistreatment if returned to the Philippines, where he has

not lived since he was a child, and where his support network is almost assuredly more tenuous than his network in Canada.

B. *Similarly Situated Individuals*

[26] In support of his PRRA application, the Applicant submitted positive PRRA decisions in respect of three unrelated individuals who were all granted protection on facts very similar to the Applicant's case, namely a fear of harm in the Philippines arising from crystal meth addiction. The Officer addressed these similar cases as follows:

> I note the submitted PRRA decisions whereby the applicant received a positive decision or a positive risk opinion. The applicant submits that these decisions represent similarly situated persons from the Philippines, those who also struggle with addiction. While I have read these decisions, I note that each case is decided on its own merit, based on the facts of the particular case. I have decided this PRRA based on the evidence before me and based on the applicant's personal circumstances.

[27] It is clear that the decisions submitted by the Applicant were not, strictly speaking, binding on the Officer. It is also true that each case must be decided on its own merits. Neither of these facts, however, absolves the Officer from the responsibility of explaining, even briefly, *why* the facts in this case justified a different outcome from the "similarly situated" cases provided by the Applicant. The above passage from the Officer's reasons is not an exercise in justification, but is rather a summary conclusion with no indication that it is rooted in the evidence.

[28] In the context of the Refugee Protection Division of the Immigration and Refugee Board, my colleague Justice Strickland in *Montano Alarcon v Canada (Citizenship and Immigration)*,

2022 FC 395 at paragraph 30 explained the obligation to justify departures from like cases as follows:

> the RPD is not bound by its prior decisions and every case must be decided on its own merits. However, the RPD must review the similarities and explain why a different result is being reached from earlier decisions based on the same or very similar circumstances and country condition documentation.

[29] Similarly, in *Faisal v Canada (Citizenship and Immigration)*, 2021 FC 412, Justice Gleeson recently found (at para 26):

> An administrative tribunal is expected to assess each claim that comes before it on a case-by-case basis. In doing so, the tribunal is properly constrained by its previous decisions, but importantly, it is not bound by its previous decisions. A tribunal may depart from one of its previous decisions where it reasonably justifies the departure. [citations omitted]

[30] I find that the Officer did not reasonably justify the departure from the other submitted cases. Perhaps there is a perfectly reasonable explanation as to why the Officer in this case did not arrive at the same conclusion as the Officers in the other cases – it may be, for example, that the mere passage of time alters the analysis. However, it is not for the Applicant, nor this Court, to speculate as to whether there may have been a reasonable basis on which to distinguish these seemingly similar cases.

C. *Section 96 Analysis*

[31] Finally, I conclude that the Officer erred in failing to clearly articulate whether the application was considered under section 96 of the IRPA. To the extent that the application was

not considered under section 96 of the IRPA, I further find that the Officer failed to adequately justify the determination that this provision was inapplicable to the Applicant's PRRA.

[32] In the part of the PRRA decision that consists of forms and checkboxes, the Officer indicated that the matter had been considered under both section 96 and subsections 97(1)(a) and 97(1)(b) of the IRPA. However, in the analysis section of the decision, the Officer states:

> I have considered all the risks presented by the applicant. I note that s.96 requires a nexus between the treatment feared and a nexus to the Convention Grounds, namely race, religion, nationality, political opinion, or a membership in a particular social group. Based on the evidence before me. I do not find that the applicant has established there is a nexus to the convention grounds because of the his drug addiction [sic]. Therefore section 96 does not apply to the applicant. [emphasis added]

[33] As indicated above, there are two distinct problems with the Officer's treatment of section 96 of the IRPA. The first is that there is a dissonance within the decision as to whether the matter was fully canvassed in respect of section 96. On the one hand, the Officer checked the boxes to indicate that section 96 was considered. On the other hand, the Officer explicitly stated, "section 96 does not apply to the applicant." It may be that the Officer checked the boxes to indicate that section 96 was initially considered, but was then found inapplicable because of the lack of a nexus. However, even on this somewhat charitable reading of the decision, I find that the Officer's consideration of section 96 of the IRPA lacks a coherent chain of analysis and is, as such, unreasonable.

[34] Second, and more importantly, I find that the Officer failed to justify the summary conclusion that the Applicant's drug addiction does not constitute a nexus to a "particular social group" for the purposes of section 96 of the IRPA.

[35] An assessment as to whether an individual belongs to a particular social group under the Refugee Convention must be rooted in the "underlying themes of the defence of human rights and anti-discrimination": *Canada (Attorney General) v. Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 [*Ward*]. In *Ward*, the Supreme Court of Canada identified the following groups of individuals that will generally constitute a particular social group:

> (1) groups defined by an innate or unchangeable characteristic;
>
> (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and
>
> (3) groups associated by a former voluntary status, unalterable due to its historical permanence.

[36] Applying the above categories, it has become uncontroversial in Canadian law that refugee protection may be granted under the Convention for those fearing persecutory treatment based on disability. Indeed, those living with a range of disabilities have been found to constitute a "particular social group" within the meaning of the Convention: *Liaqat v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 893 at para 29; *Luse v. Canada (Citizenship and Immigration)*, 2017 FC 464 at paras 13-14; *Louis v. Canada (Citizenship and Immigration)*, 2012 FC 1055 at para 10; *Domerson v. Canada (Citizenship and Immigration)*, 2009 FC 145 at para 9. See also: James C. Hathaway and Michelle Foster, *The Law of Refugee* Status, 2nd ed (Cambridge: Cambridge University Press, 2014) at 451-451; Mary Crock, Christine Ernst, and

Ron McCallum, “Where Disability and Displacement Intersect: Asylum Seekers and Refugees with Disabilities” (2013) 24:4 Int’l J Refugee L 735 at 750-753 [“Disability and Displacement”].

[37] It is similarly uncontroversial in Canadian law outside the refugee context that drug addiction is properly characterized as a disease: *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at paras 99-101 [PHS]. In PHS, the Supreme Court noted (at para 101):

> The ability to make some choices, whether with the aid of Insite or otherwise, does not negate the trial judge’s findings on the record before him that *addiction is a disease in which the central feature is impaired control over the use of the addictive substance* (para. 142). At trial, Pitfield J. adopted the definition of addiction developed by the Canadian Society of Addiction Medicine:
>
> > A primary, chronic disease, characterized by impaired control over the use of a psychoactive substance and/or behaviour. Clinically, the manifestations occur along biological, psychological, sociological and spiritual dimensions. Common features are change in mood, relief from negative emotions, provision of pleasure, pre-occupation with the use of substance(s) or ritualistic behaviour(s); and continued use of the substance(s) and/or engagement in behaviour(s) despite adverse physical, psychological and/or social consequences. Like other chronic diseases, it can be progressive, relapsing and fatal. [para. 48]
>
> That finding was not challenged here. Indeed, *Canada conceded at trial that addiction is an illness*. [emphasis added]

[38] To sum up the above: i) following the decision of the Supreme Court of Canada in *Ward*, diseases and disabilities have been found to constitute particular social groups for the purposes of section 96 of the IRPA; and ii) pursuant to the decision of the Supreme Court of Canada in *PHS*, drug addiction is properly understood as a disease. In considering these two strands of Canadian jurisprudence, I find that it was unreasonable for the PRRA officer to summarily conclude that section 96 of the IRPA did not apply to the Applicant.

[39] Finally, I note that the Officer's disregard of a section 96 element to the Applicant's PRRA was potentially significant due to the elevated legal standard associated with section 97 applications: *Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1.

VIII. CONCLUSION

[40] For the above reasons, this application for judicial review will be granted. No question of general importance was proposed and I agree none exists.

JUDGMENT in IMM-1334-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a new decision-maker for redetermination.
3. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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