

Federal Court



Cour fédérale

Date: 20240905

Docket: IMM-8233-23

Citation: 2024 FC 1387

Ottawa, Ontario, September 5, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

MARK FRED ANTHONY ANDRADA

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Mark Fred Anthony Andrada, asks the Court to set aside a pre-removal risk assessment (PRRA) decision. A senior immigration officer (Officer) decided that Mr. Andrada would not face persecution, torture, a risk to life, or a risk of cruel and unusual treatment or punishment under sections 96 or 97 of the *Immigration and Refugee Protection Act* (SC 2001, c 27) [*IRPA*] if he is returned to his country of citizenship, the Philippines.

[2] Mr. Andrada came to Canada in 2005 as a permanent resident. In 2022, after serving time in prison for drug trafficking, possession of a weapon, and possession of the proceeds of crime, Mr. Andrada was found inadmissible to Canada for serious criminality. He is subject to a removal order.

[3] Mr. Andrada's PRRA application alleged that, as someone who has struggled with drug abuse for years, he would be personally subjected to the risks described in section 97 of the *IRPA* due to the "war on drugs" in the Philippines. He alleged that isolation from his family in Canada and the risk of poverty in the Philippines would trigger his addiction and make him a prime target in the war on drugs.

[4] Mr. Andrada submits that the PRRA decision was procedurally unfair and unreasonable. He states the Officer: made a veiled credibility finding without providing an oral hearing or an opportunity to respond; "cherry-picked" the evidence and failed to explain the logical leap that, despite a history of drug abuse, there was no forward-looking risk because "he currently is not a drug user"; selected "no" beside "penalty unlawfully imposed" or "penalty imposed in disregard of accepted international standards" on a checklist of common PRRA considerations, without considering the risk of unlawful sanctions for being, in his words, a drug addict or drug user; and improperly restricted the analysis under section 96 of the *IRPA* by failing to examine whether there was a nexus to a section 96 risk of persecution by reason of membership in a particular social group, as a drug addict.

[5] The respondent submits that the Officer did not make credibility findings and the PRRA decision was reasonable. Mr. Andrada simply failed to meet his onus of establishing, with evidence that was not general or speculative, that he would become a drug user and/or drug trafficker at risk of being targeted in the Philippines. The respondent contends that allowing foreign nationals to obtain protection on the basis that they may contravene the laws of their home country would bring Canada's immigration system into disrepute.

II. Issues and Standard of Review

[6] As a preliminary issue, the respondent objects to Mr. Andrada's reliance on extrinsic evidence relating to his recent issues with the criminal justice system. While Mr. Andrada states he only relies on this evidence to support his request to extend the time for filing the application for leave and judicial review, the leave judge already granted that request. The impugned evidence was not before the Officer, it is not relevant to any issue that is before me, and I have not considered it.

[7] At the hearing of this matter, Mr. Andrada withdrew the ground of review related to the Officer's assessment of his section 96 risk of persecution. That issue is no longer before me.

[8] Mr. Andrada states that the remaining issues before the Court attract different standards of review. He contends that whether the Officer made a veiled credibility finding without an oral hearing is a question of procedural fairness that should be reviewed for correctness. He states that the other alleged errors relate to the substance of the Officer's reasons, and should be reviewed in accordance with the principles for reasonableness review set out in *Canada*

(Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*]. In this regard, Mr. Andrada submits that the PRRA decision is unreasonable because the Officer relied on illogical and incoherent findings that were not grounded in the evidence.

[9] The respondent states the Officer did not make credibility findings—veiled or otherwise. The respondent contends that the issues in this case should be reviewed according to the reasonableness standard, based on the principles in *Vavilov*.

[10] I agree with the respondent that the Officer did not make a veiled credibility finding. I would add that my finding on this issue would be the same regardless of the standard of review.

[11] In this case, the reasonableness of the PRRA decision is determinative. As the parties point out, reasonableness review is conducted according to the guiding principles in *Vavilov*. I find that the Officer's assessment of Mr. Andrada's risk was unreasonable.

III. Analysis

A. *Did the Officer make a veiled credibility finding?*

[12] Mr. Andrada states his PRRA application pointed out that his struggles with drug abuse were linked to family separation, and the Officer made a veiled credibility finding based on contradictions between the evidence in three statutory declarations submitted in support of his PRRA application (his own statutory declaration and those of his mother and common law partner) and the evidence he gave months earlier during a parole interview. Mr. Andrada states it is unclear why the Officer preferred the parole interview evidence, and the Officer's doubts

about the evidence in the statutory declarations constituted a veiled credibility finding. He contends that any doubt about a link between family separation and the risk of relapse would have required the Officer to consider whether to hold an oral hearing pursuant to subsection 113(b) of the *IRPA* and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[13] Mr. Andrada also states that the respondent advances a flawed argument—that the Officer was entitled to prefer “objective” evidence, such as the Parole Board’s decision, over “self-serving” statements in the more recent statutory declarations. He states there is no distinction to be made between “subjective” versus “objective” evidence in this case. Like his statutory declaration, the evidence before the Parole Board was based on his own statements. Furthermore, the Parole Board, Crown prosecutor, and judge expressed reservations about it. According to Mr. Andrada, the evidence before the Parole Board was not more objective than the statements in the statutory declarations.

[14] I disagree with Mr. Andrada that the Officer made veiled credibility findings based on contradictions in the evidence. In my view, the Officer did not prefer the Parole Board evidence over the evidence in the statutory declarations or reject any evidence in the statutory declarations as non-credible. The respondent’s argument that the Officer was entitled to prefer objective evidence over self-serving statements is flawed, but not for the reason Mr. Andrada suggests. In my view, the Officer did not characterize the Parole Board evidence as more objective or prefer it over the statutory declarations, and therefore the respondent’s argument is based on reasons that the Officer did not give: *Vavilov* at para 97.

[15] I do not accept Mr. Andrada's argument that any doubt about a link between family separation and the risk of relapse would have required the Officer to consider whether to hold an oral hearing pursuant to subsection 113(b) of the *IRPA* and section 167 of the *IRPR*. The Officer was entitled to make findings based on the weight and sufficiency of the evidence, and it is not enough for Mr. Andrada to point to an assertion in his PRRA application or a statement in his statutory declaration to argue that the Officer made a veiled credibility finding. Based on the record, it was open to the Officer to find that family separation was not the reason for Mr. Andrada's past substance abuse. I am not persuaded that the Officer made a veiled credibility finding in doing so. There was no basis to invoke subsection 113(b) of the *IRPA* and section 167 of the *IRPR*, and Mr. Andrada has not established that the Officer erred by proceeding without an oral hearing.

B. *Was the PRRA decision unreasonable?*

[16] As noted above, Mr. Andrada alleges the Officer "cherry-picked" the evidence and failed to explain the logical leap that, despite a history of abuse, there was no forward-looking risk because "he currently is not a drug user". Mr. Andrada submits the Officer was asked to take into account a history of substance abuse and the socioeconomic factors that could lead to relapse in assessing forward-looking risk. Not being a "current" user would not negate a forward-looking risk. Mr. Andrada also states that the Officer drew distinctions between the risks associated with being a drug user, drug addict, and drug pusher or trafficker, which are not clear distinctions in the Philippines. He contends the Officer made questionable findings about risk based on distinctions that were not supported by the country condition evidence.

[17] The respondent submits that a drug user is not necessarily addicted and Mr. Andrada failed to produce any evidence, such as medical evidence, to prove he has a drug addiction. The record only supports that Mr. Andrada has used drugs in the past. The respondent states that Mr. Andrada's PRRA submissions speculated he would relapse for two reasons: isolation from his family, and the risk of unemployment. However, the Officer thoroughly reviewed Mr. Andrada's submissions and evidence and found that family isolation was not the reason for his substance abuse and criminal behaviour, and that he had been able to support himself through legitimate means of employment but lacked motivation and trafficked in drugs to make easy money.

[18] Mr. Andrada counters that he has a long history of drug use and socioeconomic problems, regardless of which one caused the other, and he is being deported for drug-related criminality. Even if he was not a drug user at the time of the Officer's assessment, the Officer should have assessed forward-looking risk based on the non-speculative evidence of his history and profile because it is indicative of the risk he would face in the Philippines.

[19] As noted above, I find Mr. Andrada has established that the Officer's assessment of his risk was unreasonable. The Officer supported the conclusion that Mr. Andrada would not face forward-looking risk with findings that he "used to have substance problems", "is not a current drug user", and "has never been a drug dealer in the Philippines". In view of the evidentiary record that was before the Officer, these findings do not provide a sufficient basis for concluding that Mr. Andrada would not face a forward-looking risk due to relapse.

[20] While it may have been open to the Officer to reject Mr. Andrada's submissions that family separation and unemployment would increase the risk of relapse, the PRRA decision fails to explain how the evidence of Mr. Andrada's past substance abuse and unemployment factored into the Officer's assessment of forward-looking risk. It does not follow, from findings that Mr. Andrada was not using drugs at the time of the PRRA assessment and has never been a drug dealer in the Philippines, that he would not face a forward-looking risk.

[21] Mr. Andrada also alleges that, by selecting "no" for the question about lawful sanctions on the PRRA checklist, the Officer failed to consider the risk of unlawful sanctions for being a drug addict or drug user. The respondent submits Mr. Andrada misapprehends the checklist, which is not part of the reasons of the decision. The respondent also states that Mr. Andrada conflates vigilante actions with the rule of law and there is no evidence the government of the Philippines has enacted unlawful penalties that fall below international standards.

[22] I am not satisfied that the Officer's answer on the PRRA checklist amounts to a separate reviewable error. Regardless of whether the checklist forms part of the reasons, the Officer clearly acknowledged what they described as "the challenging human rights situations amid the government's drug war in the Philippines". The Officer noted that Mr. Andrada had submitted 190 pages of country condition evidence that "document in detail the human rights violations, unlawful killings, and police abuses linked to the ongoing 'War on Drugs' which targets drug users and pushers", and also found there was other documentary research that "corroborates these human rights violations". The Officer referred to Mr. Andrada's submissions about neighbourhood watch lists of drug pushers or users and found that "these abusive drug watch

lists” were corroborated by an Amnesty International report. The Officer also referred to evidence that the victims of drug-related killings were mostly poor and unemployed. Therefore, the Officer did not fail to consider the risk of unlawful sanctions for being a drug user or being addicted to drugs in the Philippines. The Officer considered the risks and accepted that they exist.

[23] The determinative question on this application for judicial review is whether the Officer reasonably assessed the likelihood that Mr. Andrada would face the risks that the Officer acknowledged exist—not only for drug traffickers but for drug users as well. In my view, the Officer did not. The reasons for the negative PRRA decision were not supported by an internally coherent and rational chain of analysis that was justified in relation to the evidentiary record before the Officer: *Vavilov* at para 85.

IV. **Conclusion**

[24] Mr. Andrada has established that the Officer’s decision is unreasonable. Accordingly, the decision is set aside and the matter is remitted to another officer for reconsideration.

[25] Neither party proposes a question for certification. I find there is no question of general importance to certify.

JUDGMENT IN IMM-8233-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The PRRA decision is set aside and the matter shall be remitted to a different officer for redetermination.
3. There is no question of general importance to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8233-23

STYLE OF CAUSE: MARK FRED ANTHONY ANDRADA v MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

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