Federal Court Cour fédérale

Date: 20240906

Docket: IMM-3743-23

Citation: 2024 FC 1395

Toronto, Ontario, September 6, 2024

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

DAVID SHVANGIRADZE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, David Shvangiradze [the Applicant], seeks judicial review of the decision of a Pre-Removal Risk Assessment Officer [the Officer], dated February 21, 2023 [the Decision], wherein the Officer denied the Applicant's Pre-Removal Risk Assessment application [the PRRA Application].

[2] For the reasons that follow, I find that the Applicant has failed to discharge his burden of showing that the Decision is unreasonable. Accordingly, this application for judicial review is dismissed.

II. Facts

[3] The Applicant is a citizen of Georgia. He arrived in Canada on May 31, 2017, and made a refugee protection claim on July 20, 2017, pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[4] The Applicant alleged that he worked as the head of the electrical safety unit of Telasi, a company in Georgia, which oversees the construction of high voltage electrical transmission lines. The Applicant claimed that he discovered that the transmission lines under construction in the Khando region were violating safety standards. According to the Applicant, due to his findings, he was kidnapped, threatened and beaten by the representatives of the Ministry of Energy. He says they also forced him to resign from his position as the head of the electrical safety unit.

[5] The Applicant alleged that he and his family have been receiving threats since the incident.

A. *The RPD and RAD Decisions*

[6] The Refugee Protection Division [RPD] did not find the Applicant credible, and rejected the Applicant's claim for refugee protection on October 25, 2017. The Refugee Appeal Division [RAD] confirmed the RPD's decision on September 5, 2019.

B. *The Applicant's PRRA Application*

[7] The Applicant made a PRRA Application on July 26, 2022. He asserted the same fears and allegations as before the Immigration and Refugee Board [IRB], but also alleged that people from the Ministry of Energy are looking for him, and that people close to him have received new threats since the RAD decision. In support, the Applicant provided five witness statements from people close to him about the alleged new events. The statements were from the Applicant's wife, son, sister, cousin and his neighbour [collectively, the Witness Statements].

[8] The Officer found that the information provided by the Applicant in the Witness Statements was not new and was a continuation of the same allegations and fears that he presented before the IRB, which were found by both the RPD and RAD to be not credible. Moreover, the Officer determined that the evidence provided was insufficient to support the Applicant's allegations, as he did not provide any evidence from neutral sources to support the Witness Statements. The Officer therefore found that the evidence provided was neither new nor sufficient to establish the risks alleged by the Applicant, and rejected the Applicant's PRRA Application.

III. Issues and Standard of Review

[9] The Applicant submits that the PRRA Officer erred in three ways:

A. The Officer mischaracterized the Witness Statements as having all come from the Applicant's relatives when one of them was written by his neighbour;

B. The Officer erred by discounting the Witness Statements on the basis that they came from the Applicant's relatives; and

C. The Officer mischaracterized the Witness Statements as not being new evidence.

[10] The parties agree that the applicable standard of review is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In conducting a reasonableness review the Court must consider whether the decision is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrained the decision maker (*Vavilov* at para 85). It is a deferential standard of review, which means that a reviewing court must intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

IV. Analysis

A. *Did the Officer mischaracterize the Witness Statements?*

[11] The Applicant submits that the Officer wrongly characterized all five Witness Statements as having come from the relatives of the Applicant when one is from his neighbour. This submission seems to be based on the French word "proches" which the Officer used to describe

the people who provided the Witness Statements in the original French version of the Decision. However, "proches" is not strictly limited to one's relatives. Rather, as seen in the English version of the Decision, the word denotes "the people close to him" and not "relatives." In any event, it was not unreasonable for the Officer to consider the neighbour's statement to fall under the category of evidence coming from people close to the Applicant as distinct from "neutral evidence" which the Officer reasonably expected the Applicant should also have been able to submit. Therefore, I find no error in the Officer's characterization of the evidence.

B. *Did the Officer erroneously discount the Witness Statements on the basis that they were written by the Applicant's relatives?*

[12] The Applicant submits that the Officer erred in discounting the Witness Statements on the basis that they were from the Applicant's relatives. The Officer did not reject the Witness Statements; but considered them to be of "little probative value" as they were insufficiently supported by evidence from neutral sources which the Officer considered it "reasonable to expect" the Applicant to be able to do. This is very different from the "outright rejection of evidence provided by relatives" criticized in *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24 at paragraph 4.

C. *Did the Officer err by finding the Witness Statements not to be new evidence?*

[13] The Applicant submits that the Officer erred by wrongly concluding that the Witness Statements are not new evidence. Under paragraph 113(a) of the *IRPA*, the evidence that may be presented to the PRRA officer is limited to new evidence that arose after the rejection or was not

reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[14] The Applicant asserts that the fact that the Witness Statements pertain to new events that post-date the RAD decision makes the evidence new. Notably, the Applicant has not pointed to any aspect of the content of the evidence that makes it new.

[15] Importantly, an assessment of the "newness" of evidence is not determined strictly by the date on which the document was created (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 16 [*Raza*]). The Federal Court of Appeal affirmed in *Raza* that a PRRA officer can reject the evidence submitted by an applicant if "it cannot prove that the relevant facts as of the date of the PRRA application are materially different" from the facts that were before the IRB (*Raza* at para 17).

Here the Officer concluded that the information provided by the Applicant was not significantly different from the information considered by the IRB given that the Witness Statements merely showed a continuation of the same allegations and fears previously presented. The Officer considered that the evidence was therefore not sufficient to rebut the IRB's credibility findings. I can see no error in the Officer's conclusion that the evidence is not new in substance.

V. Conclusion

[16] The Applicant has not shown the PRRA Decision to be unreasonable; accordingly, this application for judicial review is dismissed.

JUDGMENT in IMM-3743-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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