Federal Court Cour fédérale

Date: 20241001

Docket: IMM-17309-24

Citation: 2024 FC 1543

Ottawa, Ontario, October 1, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ARWA ALMSRAWI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant, Arwa Almsrawi, seeks a mandatory interlocutory injunction barring Immigration, Refugees and Citizenship Canada ("IRCC") from withdrawing the support of its resettlement partner, the International Organization on Migration ("IOM"), until a decision is rendered on her application for judicial review of a negative reassessment decision of a Senior Migration Officer dated September 17, 2024. The Applicant also seeks a direction to facilitate

her immediate transfer to Canada through the granting of a Temporary Resident Permit ("TRP"). The Applicant brings this motion pursuant to section 18.2 of the *Federal Courts Act*, RSC 1985, c F-7 and Rule 373 of the *Federal Courts Rules*, SOR/98-106 (the "Rules").

[2] For the following reasons, this motion is dismissed.

II. Facts and Underlying Decisions

[3] The Applicant is a transgender woman and convert to Christianity from Syria. From 2011 to 2024, she lived as an undocumented person in Saudi Arabia.

[4] In January 2024, IRCC approved the Applicant's application for a permanent residence visa under the Government Assisted Refugee ("GAR") overseas program.

[5] In February 2024, IOM arranged for the Applicant to travel to Canada from Saudi Arabia. The airline refused to board the Applicant. IOM then arranged to fly the Applicant to Canada via Turkey. However, the airline for this flight also refused to board the Applicant, stating that her name appears on the United States Transportation Security Administration's No-Fly List (the "No Fly List").

[6] Consequently, IRCC cancelled the Applicant's Permanent Resident Visa ("PRV") and reopened her application for permanent residence under the GAR program.

[7] Since February 2024, the Applicant has resided in the secure transit zone of the airport in Turkey. During this time, IOM has facilitated access to food, healthcare, and accommodations. As IOM is not authorized to enter the secure transit zone without the authority of the Istanbul Grand Airport Authority (the "IGAA"), IOM has contracted the IGAA to provide the Applicant with these services.

[8] In April 2024, the Officer interviewed the Applicant in Turkey. The purpose of the interview was to "sort out [IRCC's] concerns over why [the Applicant] would have been on the [No Fly List] to begin with" as "it appears that there may be more facts and details in [her] history that may be material to an assessment of [the Applicant's] admissibility." During the interview, the Applicant stated that she had not previously applied for a visa.

[9] On July 10, 2024, IRCC issued a procedural fairness letter to the Applicant. The letter described the Officer's concerns with respect to sections 11(1) and 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"), which relate to inadmissibility and applicants' duty of candour, respectively. As stated by the Officer, "[w]hat follows from this is my concern with the credibility of the information you provided me during our interview that is important for an accurate assessment of your admissibility, in light of the contradictory evidence found in" an application for a Temporary Resident Visa ("TRV") submitted in 2019.

[10] On August 10, 2024, the Applicant responded to the procedural fairness letter. The Applicant brought allegations of abuse of process and asserted that her procedural rights had been breached.

[11] By this point, the Applicant had brought three applications for judicial review. These applications were related to a request for a TRP (the "TRP Application"), the reopened permanent residence application (the "PR Application"), and the Applicant's request for disclosure concerning allegations contained in the procedural fairness letter (the "Disclosure Application").

[12] On August 20, 2024, the Applicant filed a motion for case management of the TRP Application, the PR Application, and the Disclosure Application. In a decision dated September 20, 2024, this motion was granted.

[13] In a decision dated September 17, 2024, the Applicant's permanent residence application and her request for a TRP were refused (the "Reassessment Decision"). The Officer determined that the Applicant's credibility had been impugned by her contradictory and evolving evidence concerning a previous passport and the 2019 TRV application, resulting in there being "insufficient credible and clear information with which to complete an assessment that [the Applicant is] not inadmissible to Canada." The Applicant was informed that, as a result, she would cease receiving IOM support on October 2, 2024.

[14] The Applicant sought judicial review of the Reassessment Decision. This is the underlying application in this motion.

III. **Analysis**

[15] The test for a mandatory interlocutory injunction is set out in *R v Canadian Broadcasting Corp*, 2018 SCC 5 ("*CBC*"), citing *RJR-MacDonald Inc v Canada (Attorney General),* 1994 CanLII 117 (SCC), [1994] 1 SCR 311 ("*RJR-MacDonald*"). According the *CBC* and *RJR-MacDonald*, the Applicant bears the onus of establishing that: (1) there is a serious issue to be tried, or "a strong prima facie case that [the Applicant] will succeed at trial"; (2) "irreparable harm will result if the relief is not granted"; and (3) the "balance of convenience favours granting the injunction" (*CBC* at para 18).

[16] The Applicant has failed to establish all three requirements of this test.

A. *There is No* Prima Facie *Case*

[17] The Applicant submits that there is a strong *prima facie* case that the Officer breached their duty of procedural fairness, that the refusal decision is unreasonable, and that IRCC breached the Applicant's rights under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("*Charter*") by revoking the approval of the Applicant's GAR application.

[18] I disagree. With respect to procedural fairness, the Applicant misapprehends the scope of the IRCC's disclosure obligations. The Applicant requested disclosure of the notes from five interviews with immigration officers, as well as "documents pertaining to the basis on which [the

Applicant's] application was re-opened, including any information about the airline carrier having indicated she was on the [No-Fly List]." Having only received redacted notes from the April 2024 interview, the Applicant alleges a breach of her procedural rights.

[19] IRCC was not obliged to disclose information beyond the April 2024 interview, as "[t]here is no obligation to disclose information that is not relied upon" (*Hasi v Canada (Citizenship and Immigration)*, 2013 FC 1115 at para 49). The Reassessment Decision was rendered on the basis of the April 2024 interview. Consequently, IRCC did not breach their duty of procedural fairness by declining to disclose other material.

[20] Furthermore, the disclosure provided is adequate to satisfy IRCC's procedural obligations. This Court has held that "[f]airness does not require disclosure of each document relied upon by the decision maker, but it does demand that the Applicant be given an adequate understanding of the gist of the concerns" (*Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at para 74). IRCC provided the Applicant with the notes from the April 2024 interview. Together with the procedural fairness letter issued on July 10, this document clearly conveys the Officer's concerns, namely, that "information obtained from [the Applicant]" during the interview "about [her] activities, travel, residence, and legal status" from 2011 to 2024 is directly contradicted by a TRV application submitted in 2019. The Officer clearly explained during the interview and in the procedural fairness letter that this information was material to the issue of inadmissibility given the Applicant's inclusion on the No-Fly List. Therefore, I find that IRCC provided adequate disclosure of the information relied upon in the refusal decision. There is no serious issue with respect to procedural fairness.

[21] With respect to the reasonableness of the Reassessment Decision, I agree with the Respondent that there is no issue with the Officer's reasons that warrant granting this motion.

[22] The Applicant submits that the Reassessment Decision is not transparent or justified. The Applicant submits that the Officer failed to make definitive findings concerning inadmissibility on security grounds, despite the Applicant's PRV having been cancelled due to her inclusion on the No-Fly List. The Applicant further submits that the Officer disregarded evidence that contradicted his conclusion, including the Applicant's voluntary admission to IRCC in 2023 that she had applied for a TRV.

[23] The absence of inadmissibility findings on security grounds does not render the decision unreasonable. The determinative issue in the Reassessment Decision is credibility. As stated by the Officer, the "application was refused because after setting aside the information [the Officer] had credibility concerns with, [the Officer] had insufficient clear and credible information with which to feed into an assessment to satisfy [them] that [the Applicant was] not inadmissible to Canada." It was within the Officer's discretion to deny an application for permanent residence on this basis, "including one based on membership in the Convention refugee abroad class and the humanitarian-protected persons abroad classes" (*Shafique v Canada (Citizenship and Immigration)*, 2023 FC 226 at para 8).

[24] Moreover, I find no error in the Officer's credibility assessment. During the April 2024 interview, the Officer asked the Applicant whether she had "ever use[d her] passport to apply for a visa anywhere," whether she had "hired anyone to represent [her] on any applications

anywhere," whether she had "pa[id] anyone to apply for a visa on [her] behalf," or whether "friends" or "lovers ever applied on [her] behalf." The Applicant stated that she had not. After being presented in the procedural fairness letter with allegations that she had applied for a visa in 2019, the Applicant stated in an affidavit that "[she] hired an agency in Saudi to make a visa application to Canada," that a friend signed "a sort of contract" to pay for the application, that the Applicant sent personal documents in support of the application, that the agent "called [her] and told [her] the papers were submitted to the embassy," and that the agent then abruptly "disappeared" before the Applicant paid for their services. This evidence contradicts the Applicant's responses in the April 2024 interview and undermines her credibility.

[25] Given the evidentiary record, I cannot agree that the Applicant has provided a "complete answer" to the Officer's concerns. On this point, the present case is distinguishable from *Takhar v Canada (Minister of Citizenship and Immigration),* 1999 CanLII 7544 (FC) ("*Takhar*"). In *Takhar*, the applicant admitted that he had presented fraudulent information in his refugee claim on the instructions of an agent. Here, the Applicant stated that she had never submitted a visa application or hired an agent to do so. This is not a case where a refugee claimant was unreasonably penalized for not "hav[ing] regular travel documents" or for presenting fraudulent information on "the instructions of the agent who organized their escape" (*Takhar* at para 14). This is a case of an applicant failing to disclose their immigration history, contrary to section 16(1) of the *IRPA*.

[26] The Applicant's submission that she did not understand the Officer's questions due to medication and interpretation issues is similarly not a "complete answer." The Respondent

rightly notes that the Applicant did not raise these issues "at the first opportunity" (*Baloch v Canada (Citizenship and Immigration)*, 2022 FC 1373 at para 29), despite the Officer asking the Applicant twice about interpretation issues and inviting the Applicant to request breaks during the interview as needed. I agree with the Respondent that the Applicant's submissions remain speculative and at odds with the interview notes.

[27] The Applicant has not brought sufficient evidence to justify preferring her account of the interview over that of the Officer. The Applicant states that, in the April 2024 interview, the Officer simply asked her "if [she] had travelled to other countries, or had other nationality or citizenship," not whether she had applied for a visa in the past. The Officer's notes confirm that the Applicant was asked about travel, nationality, and citizenship in other countries. However, the notes also indicate that the Applicant was asked a series of questions about visa applications, and that she denied submitting an application. As my colleague Justice Pentney has held, "[t]he jurisprudence of this Court is that an Officer's notes are generally to be given significant weight, because they reflect the contemporaneous record of the interaction by a trained officer with no vested interest in the outcome" (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 687 at para 39). Given the weight attached to the Officer's notes, it is not sufficient for the Applicant to simply canvas "possible explanations for the discrepancies," such as issues concerning medication and interpretation.

[28] Consequently, I find no strong *prima facie* case with respect to the Applicant's submission that she misunderstood the Officer during the April 2024 interview. The Applicant submits that it is illogical to determine that she attempted to conceal the 2019 visa application,

given that she disclosed the application to an immigration official in October 2023 and stated in the April 2024 interview that "there is an office that [she] spoke to" six years ago "who said they were doing visas but it was just talk." The Applicant submits that it is more probable that she simply misunderstood the Officer, believing that she had been asked about attempts to secure fraudulent documents, rather than submit bona fide visa applications. However, the evidence on the record is that the Applicant was asked repeatedly about whether she had applied for a visa and that she denied having done so. The Applicant's submissions on this issue highlight the contradictory and evolving nature of her evidence, both during the April 2024 interview and in her response to the procedural fairness letter. They do not disclose a strong *prima facie* case that the Reassessment Decision is unreasonable.

[29] The Applicant's submissions regarding contradictory evidence similarly fails to establish a strong *prima facie* case. The Applicant submits that her record of departure from Saudi Arabia "is definitive corroboration of her version of the events," and that the Reassessment Decision is unreasonable for having failed to address this document. However, the record of departure does not bear on the determinative issue in the Reassessment Decision: misrepresentation and non-disclosure relating to the 2019 TRV application. The Officer was not obliged to address this document because it does not contradictthe credibility issues at the heart of the refusal decision. Moreover, there is a presumption that the Officer considered all of the evidence, a presumption the Applicant has not rebutted in this motion (*Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28).

[30] Finally, with respect to the alleged *Charter* breaches, there is no strong *prima facie* case because the Applicant has failed to establish a nexus to Canada. An applicant may establish nexus "by being present in Canada, by there being criminal proceedings in Canada, or by Canadian citizenship" (*Zeng v Canada (Attorney General)*, 2013 FC 104 at para 72). None of these scenarios applies to the Applicant in this proceeding.

[31] For these reasons, I find the Applicant has not established a strong *prima facie* case. The motion for a mandatory interlocutory injunction is dismissed on this basis.

B. *Irreparable Harm is Not Established*

[32] In any event, I find that the Applicant has also not established irreparable harm.

[33] At the second stage of the test, applicants are required to demonstrate that irreparable harm will result if relief is not granted. Irreparable harm does not refer to the magnitude of the harm; rather, it is a harm that cannot be cured or quantified in monetary terms (*RJR-MacDonald* at 341). This Court must be satisfied on a balance of probabilities that the harm is not speculative, but does not have to be satisfied that the harm will occur (*Xu v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 746, 79 FTR 107 (FCTD); *Horii v Canada (CA)*, [1991] FCJ No 984, [1992] 1 FC 142 (FCA)).

[34] The Applicant submits that unless the mandatory interlocutory injunction is granted, she will be returned to Syria and face serious risk of violence, death, and torture as a transgender returnee. The Applicant also submits that she faces imminent risk of self-harm or death by

suicide due to the loss of her immigration status and transphobic conditions at the Istanbul airport.

[35] The Respondent submits that the relief sought by the Applicant is beyond the jurisdiction of IRCC and that the Applicant's submissions indicate that irreparable harm would occur whether or not the injunction is granted, which does not satisfy the second element of the test in *CBC* and *RJR-MacDonald*.

[36] I agree with the Respondent.

[37] Crucial to the Applicant's motion is this Court's ability to grant the relief sought. But the Applicant seeks relief that IRCC is not, by itself, in a position to offer. The support currently received by the Applicant is facilitated by IRCC in collaboration with the IOM and the IGAA. The IOM is affiliated with the United Nations ("UN"). The IGAA is "an infrastructure company established through a public-private partnership with the Turkish government to build and manage the Istanbul Airport." I agree with the Respondent that the Applicant has failed to establish whether the Court has the jurisdiction to bind third parties such as the IOM and IGAA through a mandatory interlocutory injunction.

[38] Furthermore, albeit in the context of judicial review, the Court's jurisdiction to transfer the Applicant back to Canada is unclear (*Rocha Badillo v Canada (Citizenship and Immigration)*, 2024 FC 1092 at para 37). This is especially so given the Applicant's current status as a foreign national, with non-citizens not bearing an "unqualified right to enter" Canada

(*Medovarski v Canada (Minister of Citizenship and Immigration); Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para 46). It should be noted that compelling the Respondent to provide the Applicant a visa granting entry to Canada is a truly extraordinary measure, let alone then compelling the Respondent to transfer the Applicant to Canada. This exercise would exceed the bounds of judicial oversight of government action; it would be judicial reinvention of Canada's immigration system. I find that the Applicant's submissions fundamentally depend upon a request for "disguised *mandamus*," a remedy that the Applicant has certainly not established the basis for in this motion (*Canada v Boloh 1(a)*, 2023 FCA 120 at paras 61-63).

[39] In any event, the Applicant submits that irreparable harm would be caused by remaining in the airport or by being returned to Syria. According to the Applicant, "[she] would face a strong likelihood of experiencing sexual violence, torture, and other human rights abuses" in Syria. Moreover, remaining at the airport would allegedly cause the Applicant to continue experiencing harm to her mental health, as she is currently "subjected to transphobia and denied access to gender-affirming products…and reliable medical care." I do not see how granting this motion, absent compelling the Respondent to do something the Applicant has not established the Respondent must do (or perhaps even what the Court could do) establishes that irreparable harm will follow if the motion is or is not granted (*CBC* at para 18).

[40] The Applicant's medical report speaks to the alleged harms, with a registered psychiatrist determining that "[r]emaining at Istanbul Airport or being sent back to Syria would likely exacerbate [the Applicant's] symptoms," including psychosis, major depressive episodes, and

suicide attempts (emphasis added). However, the Respondent rightly identifies the limited probative value of the Applicant's medical report. The medical report was produced on the basis of self-reported facts shared during a single, 45-minute appointment, without the opportunity to review the notes of medical professionals who were treating the Applicant at the airport in Turkey. These factors attenuate against the report's reliability (*Chehade v Canada (Citizenship and Immigration)*, 2017 FC 293 at para 15; *Esahak-Shammas v Canada (Citizenship and Immigration)*, 2018 FC 461 at para 33; *Hernadi v Canada (Public Safety and Emergency Preparedness)*, 2018 CanLII 126350 (FC) at para 6; *Egwuonwu v Canada (Citizenship and Immigration)*, 2020 FC 231 at para 75). Nonetheless, it is significant that a medical document provided by the Applicant herself confirms that irreparable harm would flow regardless of whether the mandatory interlocutory injunction is granted.

[41] For these reasons, I find that irreparable harm is not established.

C. *The Balance of Convenience does not Favour Granting the Injunction*

[42] The third stage of the test requires an assessment of the balance of convenience—a determination to identify which party will suffer the greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits (*RJR-MacDonald* at 342; *Manitoba (A.G.) v Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 SCR 110 at 129). It has sometimes been said, "[w]here the Court is satisfied that a serious issue and irreparable harm have been established, the balance of convenience will flow with the Applicant" (*Mauricette v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 420 (CanLII) at para 48).

However, the Court must also consider the public interest to uphold the proper administration of the immigration system.

[43] I find that the public interest in upholding the proper administration of the immigration system outweighs the Applicant’s interests in this motion. Here, the Court has found that the Applicant has not established a *prima facie* case, nor irreparable harm. Moreover, the public interest in upholding the proper administration of the immigration system is particularly significant in this case, as issues concerning credibility, misrepresentation, and the Applicant's contradictory evidence on the 2019 TRV application arose in the context of the No Fly List.

[44] Like the Officer, I recognize and sympathize with the difficult circumstances of the Applicant. The Reassessment Decision rightly states, “[the Applicant’s] visa was cancelled and [her] flight reopened after [she] made irreversible and significant life decisions on the basis of that approval.” This decision is not intended to minimize or dispute the seriousness of the Applicant’s situation. However, the Officer’s reasons are thorough and sensitive to the Applicant’s concerns. The record demonstrates that the Officer clearly communicated the absolute imperative that the Applicant respond completely and truthfully to their questions, stating at the April 2024 interview, “I am here to help you but I can not help you unless you are completely open and honest in all your responses today.” The Officer transparently outlined their concerns in the procedural fairness letter and accommodated the Applicant’s request for an extension of 28 days to respond. Given the evidentiary record before the Court, I must find that the Applicant does not meet the three-part test for a mandatory interlocutory injunction. This motion is therefore dismissed.

IV. **Conclusion**

[45] I find that the Applicant does not meet the three-part test in *CBC* and *RJR-MacDonald*. I therefore dismiss this motion for a mandatory interlocutory injunction.

ORDER in IMM-17309-24

THIS COURT ORDERS that the motion for a mandatory interlocutory injunction is dismissed.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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