Federal Court  Cour fédérale

Date: 20160401

Docket: IMM-3935-15

Citation: 2016 FC 370

Ottawa, Ontario, April 1, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

EHTISHAM-UL HAQ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the decision of a Senior Immigration Officer [Officer] rejecting the applicant's Pre-Removal Risk Assessment [PRRA] application. The decision under review is a redetermination of the applicant's first PRRA on which the applicant received a positive result in his judicial review application in *Haq v Canada (Minister of Citizenship and Immigration)*, 2015 FC 380 [*Haq*].

[2] The current judicial review application turns, in part, on the extent to which the Officer on the second PRRA was bound by the first PRRA and the decision in *Haq*. For the reasons that follow the application is dismissed.

I. Background

[3] The applicant is a citizen of Pakistan. Since June, 1996 he has been a member of the Muslim League party [PML(N)]. The applicant sought refugee protection in Canada in September, 2006 after a series of separate but allegedly interconnected events:

A. In May, 2005 the applicant made a short trip from Pakistan to Dubai during which he was informed that the police were looking for him due to his alleged involvement in a murder in Pakistan. Upon his return to Pakistan the applicant provided evidence to the police of his absence from the country at the time of the murder. He was informed not to worry about the incident but his name was not removed from the First Information Report [FIR] which had identified him as being involved;

B. In October, 2005, the applicant visited his siblings in Toronto, and while in Toronto, the applicant was again informed that the police were looking for him but in connection with a new FIR detailing a different murder that occurred on November 1, 2005 in Pakistan. The applicant again returned to Pakistan to clear his name and the police confirmed he was not in the country during the murder but his name was not removed from the FIR.

C. After the November, 2005 event the applicant began to suspect that individuals were targeting him;

D. In January 2006 the applicant, while in Gujranwala, was the victim of an attack from several unknown assailants who threatened his life should he continue to participate in political activities. He reported the incident to the police but no arrests occurred as a result of the investigation;

E. The applicant experienced another attack in May, 2006 in Pakistan, and again filed a complaint with the police but no serious action occurred.

F. The applicant became concerned for his well-being in light of the prevalence of violence in Pakistan and the inability of the police to protect its citizens. He travelled to Canada in June, 2006. He subsequently learned that his family experienced harassment at the hands of those attempting to locate him. Moreover, a fellow member of the PML(N) disappeared and was found murdered. The applicant determined he could not return to Pakistan.

[4] In December, 2008 the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected the applicant's refugee claim finding he was neither a Convention refugee nor a person in need of protection after making negative credibility findings based on what the RPD characterized as inconsistent and evasive testimony. Therefore, the RPD concluded that the applicant failed to present credible and trustworthy evidence to support any of the central elements of his claim.

[5] This Court denied the applicant's Application for Leave and Judicial Review of the RPD decision in May, 2009 and the applicant then applied for a PRRA [First PRRA] in May, 2010 on the basis that new evidence had arisen since the RPD decision demonstrating that as a PML(N) supporter he is at risk if returned to Pakistan. He brought the following as new evidence:

A. An article from the Daily Nawa-i-waqat dated September 4, 2006 as evidence of the murder of a fellow member of PMNL(N);

B. Two arrest warrants that named the applicant as an accused: one dated June 18, 2009, Case No 501-06 Offence 302-149, the other dated July 13, 2009 Case No 335 Offence 148-249 based on the outstanding charges in the two above-referenced 2005 FIRs [the 2009 Warrants];

C. A newspaper report from the Daily Samaj Gujranwala of January 7, 2010 stating that the police raided the applicant's house in connection with the 2009 Warrants issued by the Anti-Terrorist Court against the applicant [the 2010 Article];

D. A FIR, dated March 13, 2010 regarding a complaint made by the applicant's wife regarding a raid on her house by unknown assailants threatening to kill her husband [the 2010 FIR]; and

E. Sworn statements from the applicant's father, wife, father-in-law and two friends regarding their personal experiences of ongoing harassment and threats from individuals looking for the applicant, including the police.

[6] The Officer concluded that the applicant had essentially restated the same circumstances presented to the RPD, provided insufficient objective evidence of new risk developments since the RPD decision, and failed to rebut any of the RPD's findings on credibility. Therefore, on November 29, 2013, the application was rejected on the basis that the applicant failed to discharge his burden to establish that he would face more than a mere possibility of persecution, or that he was more likely than not to face a danger of torture, risk to life or a risk of cruel and unusual treatment or punishment if returned to Pakistan.

[7] The applicant sought judicial review of the First PRRA and on March 25, 2015, Justice Roger Hughes in *Haq* allowed the application and returned the matter for redetermination by a different Officer.

[8] Justice Hughes took issue with the delay, in excess of three years between the May, 2010 application for a PRRA and the rendering of the First PRRA in November of 2013, finding the delay tainted the Officer's treatment of the 2009 Warrants. He further found the Officer had unreasonably minimized the above-referenced affidavits of the applicant's friends and relatives notwithstanding case-law to the contrary:

> [8] **The Officer's decision was written some three years after the submission of the PRRA application. There is no apparent reason for the delay which leaves the puzzling remark in the Officer's decision that evidence was required to show that the 2009 warrants remained outstanding as of 2013, some four years later, unanswered** [emphasis added]. Does an Applicant bear some onus to report on some periodic basis that, in respect of the evidence submitted upon the filing of the PRRA application, nothing has changed during the period that it languishes with Citizenship and Immigration Canada?
>
> [9] **The Officer failed to recognize that the 2009 arrest warrants not only validate the claims found not to be credible**

> **by the Refugee Board but, more importantly, provide evidence that, since the Board's decision, the Applicant continues to be at risk** [emphasis added].
>
> [10] The 2010 newspaper article which reports on the 2009 arrest warrants provided evidence of public awareness of the fact of the warrants and supports the validity of the warrants. **The Officer fails entirely to note the importance of that evidence. Possibly this is because the file had not been looked at for three years** [emphasis added].
>
> [11] The Officer minimizes the sworn statements of relatives and friends of the Applicant because it was from relatives and friends. As pointed out by Justice de Montigny of this Court in *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 at paragraph 28, it is unreasonable to distrust evidence from relatives and friends simply because it came from such sources. Often they are the best or only persons capable of giving such evidence.
>
> [12] Further, it was wrong to ignore such evidence because it is like that given at the refugee hearing. If such evidence is as to harassment continuing after the refugee hearing, it is new and relevant evidence.
>
> [13] Yet further, the Officer mishandled the report as to the complaint of the Applicant's wife to the police. The evidence shows only that they undertook to make a report. There is no evidence that they took appropriate action to protect her or investigate as to her assailants (see Justice Kane in *Flores v Canada (Minister of Citizenship and Immigration)*, 2013 FC 938 at paragraph 45).

[9] Justice Hughes concluded his decision, reiterating at paragraph 14 that the problematic First PRRA may have been due to the delay in considering the application: "I find that there are sufficient errors in the Officer's decision, possibly caused by the long delay in giving attention to the matter, that the decision must be considered to be unreasonable."

II. Impugned Decision

[10] The applicant received an opportunity to provide further submissions in support of the PRRA redetermination. In April, 2015 he provided further submissions that relied upon the above-referenced new evidence from the First PRRA along with updated country condition evidence. He also provided additional affidavits from his wife, family and friends. In addition, he provided a letter from his lawyer in Pakistan, describing efforts to assist the applicant in Pakistan, an April, 2015 certification from the lawyer in Pakistan as to the continued validity of the 2009 Warrants, 2005 FIRs, and a police report.

[11] On July 23, 2015, the second PRRA application was rejected with the Officer finding that the applicant would not face more than a mere possibility of persecution or be subject to a danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Pakistan [Second PRRA].

[12] The Officer found the applicant presented the same risk allegations as at the RPD and did not identify a new risk allegation. The Officer considered the applicant's new evidence admitting everything except the 2006 article alleging the murder of a fellow member of PMNL(N) on the grounds that the article pre-dated the RPD hearing and the applicant failed to explain why it was not provided at that time. The remaining evidence was considered by the Officer as follows:

A. *2010 Newspaper Article* - the 2010 newspaper article, post-dating the RPD hearing, states the applicant is wanted for two pending anti-terrorist cases. The Officer gave the article little weight on the basis that it lacks details such as the

author's name, how the information came to the attention of the author, the charges, and why an alleged murder charge is before an Anti-Terrorist Court in Pakistan. In addition, the Officer noted that the objective documentary evidence on Pakistan shows that fake articles can be published in newspapers and there are no sanctions in that country regarding publishing fake stories;

B. *Arrest Warrants & FIRs* - The Officer gave the above-referenced 2009 Warrants and police report that support the 2005 FIRs little weight because they do not overcome the RPD's findings relating to the applicant's actions of presenting himself at the police station without arrest or detention, regardless of whether the FIRs were legitimate. In addition, the Officer found the objective evidence showing the widespread availability of fraudulent documents in Pakistan, including the ease of filing a false FIR by bribing a police officer, further detracts from the weight given to the documents;

C. *Affidavit of Applicant's Lawyer in Pakistan* - The Officer gave little weight to the evidence of the applicant's lawyer in Pakistan due to credibility. The lawyer in Pakistan's evidence was inconsistent with the applicant's evidence at the RPD, wherein the applicant testified he visited the police station and presented his passport as proof that he was not in Pakistan when the murders occurred, whereas the lawyer's letter states said lawyer went to the police station and presented the passport;

D. *Affidavits of Friends and Relatives* - The Officer admitted the affidavits from the applicant's friends and relatives which post-date the RPD hearing but accorded

them little weight. Some of those affiants stated they had experienced questioning and harassment regarding the applicant's whereabouts since 2006 notwithstanding that the applicant did not declare this information to the RPD or provide an explanation as to why he did not. The Officer further notes that evidence of the police questioning the applicant's family and neighbours on the applicant's whereabouts does not in and of itself put the applicant at risk. Furthermore, in light of the applicant's testimony to the RPD that he could go the police, without incident and demonstrate he was not in Pakistan at the time of the murders, indicated that the applicant had provided insufficient evidence to explain why this could not be done again;

E. *Wife's FIR*- The Officer accorded the 2010 FIR filed by the applicant's wife minimal weight due to its relevance to the applicant's request for protection. The incident occurred five years ago and there is insufficient evidence in the wife's more recent affidavit of April, 2015 that unknown assailants had approached her since then.

[13] The Officer also found the applicant's evidence did not resolve the credibility issues at the RPD hearing including the RPD's alternative finding that even if the FIRs were not fraudulent, there is no police interest in the applicant as evidenced by his own actions of freely coming and going from Pakistan in 2005 and 2006, including personally speaking to the police without incident.

III. Issues

[14] The application raises the following issues:

A. Did the Officer unreasonably disregard prior findings of the First PRRA and of this Court in *Haq*;

B. Did the Officer misapprehend and ignore the applicant's evidence; and

C. Did the Officer err in failing to address the country condition evidence relating to Pakistan?

IV. Standard of Review

[15] The issues raised relate to findings of fact and mixed fact and law, including the assessment of the documentary evidence before the Officer and thus attract the reasonableness standard of review (*Dhrumu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 172 at para 18, 198 ACWS (3d) 794).

V. Analysis

[16] A PRRA application by a failed refugee claimant is not an appeal or reconsideration of an RPD decision but rather an opportunity for a failed refugee claimant to demonstrate that, due to changes in country conditions or personal circumstances since the RPD decision, the claimant is now at risk (*Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at paras 12-13, 289 DLR (4th) 675 [*Raza*]). Where a PRRA claimant does not meet this burden then the

application will fail (*Torvar v Canada (Minister of Citizenship and Immigration)*, 2015 FC 490 at para 16).

A. *Did the Officer Unreasonably Disregard Prior Findings?*

[17] The applicant takes the position that the First PRRA, and this Court in *Haq*, implicitly determined that the 2009 Warrants were genuine and that the Officer in the Second PRRA was required to provide clear and compelling reasons to justify deviating from this finding. The Officer, the applicant argues, deviated from the finding that the 2009 Warrants were genuine by attributing them little weight partly on the grounds that the documentary evidence suggests the Warrants may be fraudulent. In the applicant's submission the absence of clear and compelling reasons for this deviation renders the Second PRRA unreasonable. I respectfully disagree.

[18] First, I am not convinced that either the First Officer or Justice Hughes in *Haq* even implicitly concluded that the 2009 Warrants were genuine. The First PRRA made no express finding that the 2009 Warrants were valid but rather dealt with them on the basis that there was insufficient objective evidence to establish what steps the applicant had taken to address the 2009 Warrants or to establish they remained outstanding. The applicant argues that in dealing with the 2009 Warrants in this manner, there is an implied finding that the warrants were genuine. Again, I disagree. It is equally plausible to conclude that the First PRRA found there was no need to address the question of whether or not the 2009 Warrants were genuine in light of the insufficiency determinations.

[19] Moreover, in *Haq*, at paragraphs 8 and 9 Justice Hughes was critical of the manner in which the First PRRA dealt with the 2009 Warrants and took issue with the First PRRA dismissing them due to the passage of time given their relevance to the applicant's claim. I am unable to conclude that in doing so Justice Hughes either endorsed a prior implied finding that the 2009 Warrants were genuine or otherwise concluded that they were.

[20] In addition, I find that the following cases the applicant relied upon to submit that the Second PRRA needed to provide clear and compelling reasons are distinguishable: *Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2007 FC 6, 154 ACWS (3d) 673 [*Siddiqui*], *Alexander v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1305, 88 Imm LR (3d) 75 [*Alexander*], *Osagie v Canada (Minister of Citizenship and Immigration)*, 2007 FC 852, 63 Imm LR (3d) 146 [*Osagie*] and *Burton v Canada (Minister of Citizenship and Immigration)*, 2014 FC 910, 30 Imm LR (4th) 294 [*Burton*].

[21] In *Burton* Justice Mary Gleason concluded that the PRRA Officer's decision was unreasonable, in part because the PRRA Officer, on a redetermination application, failed to provide compelling reasons for departing from the risk assessment of the first PRRA Officer. However, in *Burton*, Justice Gleason notes that Justice Mactavish in allowing the judicial review application of the first PRRA provided directions as to the conduct of the redetermination (*Burton* para 6). Specifically, Justice Gleason notes that Justice Mactavish ordered that the redetermination be conducted "in accordance with these reasons." On this basis Justice Gleason further concludes that the only issue to be reconsidered was the question of state protection, the

risk assessment was to remain unchanged absent clear and compelling reasons to the contrary (*Burton* at paras 38 and 39).

[22] In this case Justice Hughes neither expressly nor by implication concluded that any implied findings had been made by the First PRRA nor did he provide any specific direction in his order returning this matter for re-determination. The order was limited to a direction that the "matter is returned for re-determination by a different officer."

[23] However, even if Justice Hughes's decision was binding on the Second PRRA, the decision required the Officer to:

A. not discount the affidavit evidence of the applicant's wife, family and friends simply due to their interest in the outcome;

B. not make a negative finding on the level of risk emanating from the 2009 Warrants merely due to the existence of a lapse in time since the issuing of those Warrants given that the delay was due to the Officer in that case;

C. not ignore newspaper articles from Pakistan that relate to the 2009 Warrants;

D. not rely on the existence of a report from the police as evidence in and of itself of state protection; and

E. consider and decide the application in a timely manner.

[24] In reviewing the Second PRRA it is evident that the Officer did not deviate from *Haq*.

[25] With respect to the applicant's reliance on *Siddiqui* and *Alexander* to argue that the Second PRRA needed to provide clear and compelling reasons, *Siddiqui* at para 18 addresses contradictory findings from the RPD on the same documentary evidence. *Alexander* was decided on the basis that the prevalence of decisions from this Court relating to domestic abuse against women in St. Vincent and the Grenadines narrowed the range of possible acceptable outcomes. Neither of these cases is analogous to the present one.

[26] The applicant also relies on *Osagie*, where Justice Maurice Legacé states at para 32:

> [32] In the present instance, a member of the Immigration Division had previously determined that Mr. Osagie's national identity card was authentic. The Board was entitled to depart from this conclusion based on its own review of the evidence, and in fact did so. However, given the existence of the previous decision, the Board was required to explain why it was departing from the conclusion of the Immigration Division. The failure to do so results in inconsistent and arbitrary decision-making.

[27] Unlike the situation in *Osagie*, in this case, the Officer was presented with additional evidence on the issue of risk, and there was no previous finding of the existence of a circumstance determinative of the outcome.

[28] As was the case in *Sutherland v Canada (Minister of Citizenship and Immigration)*, 2016 FC 278 at paras 13-1513 [*Sutherland*]), the cases relied on by the applicant here do not reflect the circumstances in this matter. I find no reviewable error by the Officer in the Second PRRA in limiting the weight to be attached to the 2009 Warrants due in part to the objective evidence before the Officer indicating they may not be genuine.

B. *Did the Officers Overlook or Misconstrue Evidence?*

[29] The applicant submits that the Officer's determination that the new evidence advanced by the applicant was to be given little weight and failed to demonstrate evidence of new risk was unreasonable. Again, I must respectfully disagree.

[30] The Officer addressed the new evidence advanced by the applicant, articulated the concerns the Officer had with the evidence and often linked those concerns to the objective documentary evidence. The applicant's submissions with respect to the manner in which the Officer dealt with the evidence are, in my opinion, disagreement with the weight the Officer attached to both the applicant's evidence and the objective documentary evidence. It is well established in the jurisprudence that it is not for this court on judicial review to reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at para 61 [*Khosa*]).

[31] The Officer addressed the 2010 newspaper article, the letter from the applicant's lawyer in Pakistan and affidavits from the applicant's wife, family and friends and reached conclusions grounded in the evidence that are transparent, justifiable and intelligible (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]). The fact that the applicant can advance a different reasonable interpretation of the evidence does not in and of itself render the Officer's conclusions unreasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*, [2011] 3 SCR 708 at para 17 [*Newfoundland Nurses*]; *Baragar*

Canada (Deputy Minister of Citizenship and Immigration), 2016 FCA 75 at paras 17-19 [*Baragar*]).

[32] I am similarly not persuaded that the absence of a specific reference in the Officer's decision to a police report connected to the 2005 FIRs amounts to a reviewable error as submitted by the applicant. It is clear from the record that the Officer was aware of the report, the translation having been brought to the Officer's attention by the applicant on August 6, 2015, after the Officer rendered her July 23, 2015 decision. The Officer addressed receipt of the translation in a short addendum to the decision on August 12, 2015. It is well-established in the jurisprudence that a decision-maker need not reference all evidence. While the failure to address evidence that squarely contradicts a decision-maker's finding may make it easier to infer the evidence was overlooked (*Cepeda-Gutierez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17, 157 FTR 35 (TD)), no such glaring contradiction exists in this case, and the addendum indicates the Officer had not overlooked the evidence. As such I draw no such inference in this case. To do so would necessitate finding the decision in error for failing to provide comprehensive reasons. The Court on a reasonableness review cannot maintain such an expectation just as it cannot undertake to reweigh the evidence or approach the decision with the presumption that the outcome the Court prefers supersedes the outcome chosen by the decision-maker (*Baragar* at para 19; *Newfoundland Nurses* at para 18; *Khosa* at para 61; *Dunsmuir* at para 47).

C. *Did the Officer fail to consider Current Country Condition Risks?*

[33] Although the applicant provided evidence of the fatal shootings of two PML(N) leaders, one in 2010 and the other in 2015, this evidence does not disclose a new risk, rather this is the very risk the RPD initially assessed. I would note Justice Hughes in *Haq* did not take issue with the First PRRA's finding that there was not a significant change in country conditions in Pakistan since the RPD's decision and again the evidence does not indicate a change in the period between the First and Second PRRA. Recalling that a PRRA is not an appeal of the RPD determination I am satisfied that the Second PRRA should not be interfered with on this basis (*Raza* at para 12).

VI. Conclusion

[34] I am satisfied that the Officer reasonably concluded that the applicant's new evidence of risk fails to overcome the RPD's decision including on credibility. The parties have not identified a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3935-15
STYLE OF CAUSE:	EHTISHAM-UL HAQ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 15, 2016
JUDGMENT AND REASONS:	GLEESON J.
DATED:	APRIL 1, 2016

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