Federal Court  Cour fédérale

Date: 20171214

Docket: IMM-2252-17

Citation: 2017 FC 1149

Ottawa, Ontario, December 14, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SAJID HUSSAIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Hussain is a citizen of Pakistan who faces removal from Canada to Pakistan. He brings this application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] seeking review of the negative decision rendered on his application for a Pre-Removal Risk Assessment [PRRA].

[2] For the reasons set out below the application is allowed. I am of the opinion that the Senior Immigration Officer's [Officer] failure to address the submissions and evidence in relation to Mr. Hussain's stated risk of detention and mistreatment by Pakistani authorities, a risk that he claims arises from his criminal inadmissibility to Canada, undermines the intelligibility and transparency of the decision and renders it unreasonable.

II. Background

[3] Mr. Hussain accompanied his parents to Canada as a dependent child. The family was sponsored by Mr. Hussain's older brother Farakat. Mr. Hussain became a permanent resident in 1995 at the age of fifteen.

[4] His brother, Farakat, married his cousin Shazia Bi in Pakistan and also sponsored her permanent residency application. Ms. Bi arrived in Canada and became a permanent resident in 1998. The couple divorced less than a year later.

[5] Mr. Hussain submits that as a result of the divorce, and to maintain the honour of the two families, he was forced to marry his brother's ex-wife. The two were married in January 2002 but divorced in July 2012. Their divorce application lists a separation date of July 2005 although Mr. Hussain states they twice attempted to reconcile, once in 2008 and again in 2010.

[6] Mr. Hussain reports that after the separation from Ms. Bi he entered into a relationship with a Philippine national. They had a child together in Canada in 2006 and Mr. Hussain sponsored her permanent resident application as his common-law spouse in 2008. Mr. Hussain's

Philippine partner became a permanent resident in 2009 but the relationship appears to have broken down with Mr. Hussain being charged with assault.

[7] Mr. Hussain states that the attempt to reconcile with Ms. Bi in 2010 ended when Ms. Bi became aware of his relationship with his Philippine partner and that he was the father of a child from that relationship. He claims that since the failed 2010 attempt to reconcile with his wife, Ms. Bi's family have threatened to harm him if he were to return to Pakistan.

[8] In 2010 he was convicted of a number of fraud-related offences under paragraphs 362(1)(a) and 380(1)(a) of the *Criminal Code*, RSC, 1985, c C-46. He was subsequently found to be inadmissible to Canada for serious criminality under IRPA paragraph 36(1)(a). On October 12, 2012 he was ordered deported from Canada.

[9] His PRRA submissions were based on the risk that he would be the victim of an honour killing or honour-related violence from Ms. Bi's family if returned to Pakistan, and that he would be at risk from the Pakistani authorities as a result of his removal from Canada on the basis of criminal inadmissibility.

III. Decision under Review

[10] Evidence relating to honour-related violence was provided in two affidavits from Mr. Hussain's father. The Officer identified concerns with the affidavit evidence of the father, noting: (1) it did not address why family honour was not affected by Ms. Bi's first divorce from Mr. Hussain's brother; (2) it did not address why threats of harm emanated from Ms Bi's family

in Pakistan but not from immediate family members in Canada; and (3) that the evidence was not corroborated by any objective documentary evidence indicating Ms. Bi's family sought to harm Mr. Hussain.

[11] The Officer also afforded the affidavit evidence "low probative value as it is from a person who has an interest in the outcome of this application."

[12] The Officer noted the country condition documentation relating to honour killing and violence but disregarded this evidence as it was not linked to the "personalized situation of the applicant." The Officer found the country condition evidence did not establish Ms. Bi's family was seeking to harm Mr. Hussain "nor that the applicant is of interest to persons in Pakistan due to the risks cited or for any other reason." The Officer concluded that harm related to the cited risks was speculative and not supported by the evidence.

[13] The Officer then considered state protection, relying on a 2015 United States Department of State Human Rights Report on Pakistan to conclude that "[w]hile state protection is not perfect, I find that it is adequate and the applicant has access to such protection should he choose to seek it." The Officer noted that the applicant had not provided clear and convincing evidence that the state was unwilling or unable to provide police protection in Pakistan if he sought it out.

[14] The Officer concluded that, on the totality of the evidence, there was less than a mere possibility that the applicant faces persecution under IRPA section 96, and there were no

substantial grounds to believe he faces torture, nor were there reasonable grounds to believe he faces a risk to life or a risk of cruel and unusual treatment or punishment under section 97.

IV. Issues

[15] Mr. Hussain has raised the following issues:

A. Was it unreasonable for the Officer to give little weight to the affidavit evidence?

B. Was it unreasonable for the Officer to conclude the country condition evidence did not apply to the applicant?

C. Was the Officer's failure to address the applicant's risk of imprisonment and torture unreasonable?

[16] I am of the opinion that the Officer's failure to engage the evidence and address Mr. Hussain's stated risk of imprisonment and torture upon return to Pakistan based on his deportation from Canada renders the decision unreasonable and is determinative of the application.

V. Standard of Review

[17] The parties agree that PRRA decisions involve mixed questions of fact and law and are reviewable against a standard of reasonableness (*Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15). In conducting a reasonableness review, a reviewing court is concerned with whether the decision-making process reflects the elements of justification, transparency and

intelligibility and whether the decision falls within the range of reasonable acceptable outcomes based on the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VI. Analysis

[18] In requesting the PRRA, Mr Hussain claimed that he was at risk upon return to Pakistan: (1) from the family of his ex-wife; and (2) of being detained by Pakistani authorities upon his return, which would in turn expose him to a real risk to his life, a risk of torture and a risk of cruel and unusual punishment as the result of prison conditions in Pakistan.

[19] In respect of the risk relating to detention Mr. Hussain acknowledged in submissions to the Officer that there is no evidence that he is on a watch list in Pakistan. However, in his PRRA submissions he relies on a report entitled United Kingdom: Home Office, Country of Origin Information Report – Pakistan, 9 August 2013. He quotes from that report to the effect that the Pakistan Federal Investigation Agency investigates all persons deported to Pakistan and that involvement in illegal activity can result in charges. He argued that his deportation on the basis of his criminal inadmissibility, information that Canadian authorities would report to Pakistani authorities, places him at risk.

[20] The decision accurately acknowledges the risks identified by Mr. Hussain in the risk identification portion of the decision. The analysis portion of the decision addresses the risk of harm from Ms. Bi's family in significant detail. The Officer does reference other risks in a paragraph addressing country condition documentation relating violence and honour killings in Pakistan, stating:

> I find that the documentary evidence before me does not support that the applicant is of interest to persons in Pakistan due to the risks cited or for any other reason. The belief that the applicant will be harmed upon his return to Pakistan for the risks cited or for other reasons is speculative and not supported by the objective documentary evidence before me.

[21] However, no express reference to Mr. Hussain's stated risk of detention and mistreatment by Pakistani authorities is found in the analysis portion of the decision.

[22] The respondent argues that the two sentences set out above indicate the Officer fully considered but rejected the risk of detention and mistreatment as speculative. Even if I were to accept the respondent's argument that these two sentences are intended to fully address the risk of detention and mistreatment, the finding, absent more, remains problematic. The Officer's conclusion that the risk is speculative is directly contrary to the information set out in the country condition documentation Mr. Hussain points to in his submissions. The Officer neither acknowledges nor addresses this evidence.

[23] A decision-maker need not address every submission and every piece of evidence. However, where directly relevant and contradictory evidence is not identified and analyzed a court may be more willing to infer that the decision-maker reached their conclusion without regard to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 1998 CanLII 8667 (TD) at para 17). In this case the Officer's bare conclusion, absent any consideration of the evidence or analysis of the stated risk does, in my opinion, render the decision unreasonable.

[24] Having reached this conclusion I need not consider and address the parties' submissions as they relate to the Officer's treatment of the affidavit and country condition evidence relating to honour killings and violence.

VII. Conclusion

[25] The application is granted and the matter returned for redetermination by a different decision-maker.

[26] The parties have not identified a question of general importance for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is granted.

2. The matter is returned for redetermination by a different decision-maker.

3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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