Federal Court  Cour fédérale

Date: 20190201

Docket: IMM-3057-18

Citation: 2019 FC 139

Ottawa, Ontario, February 1, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ABDIRIZAK ABDULLAHI MOHAMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], by Abdirizak Abdullahi Mohamed [the "Applicant"] of a negative Pre-Removal Risk Assessment ["PRRA"].

II. Background

[2] The Applicant was born in Mogadishu, Somalia, on January 1, 1984. The Applicant claims to be a member of the Madhiban tribe. The Madhiban tribe (also known as the Midgaan) are an oppressed “low caste” tribe in Somalia that are traditionally discriminated against and barred from a plethora of economic and social opportunities.

[3] The Applicant argues that during the Somali civil war, he and his family were attacked due to their Madhiban status. The Applicant submits that because his father was unable to pay off the United Somali Congress [“USC”], his father was killed in 1991 and his sister was sexually assaulted. He gave evidence that he was shot in the leg when he was seven and that with the help of relatives, he and his family were able to flee to Kenyan refugee camps.

[4] In 1999, the Applicant was sponsored by his brother to move from the Kenyan refugee camps to the United States. In January 2001, the Applicant arrived in Minneapolis with his family. The Applicant reports that soon after he arrived, his brother left, and his mother passed away. He asserts that at such a young age (approximately 18), with no assistance, he began to consume alcohol and to commit numerous crimes to get by.

[5] In 2005, the Applicant pled guilty to stealing a vehicle and operating that vehicle while under the influence of alcohol. On May 22, 2006, he was involved in a robbery where the Applicant and another individual approached a senior citizen, assaulted him, and stole the elderly man’s alcohol and cigarettes. Two Good Samaritan bystanders, seeing this assault, intervened

and were able to subdue the Applicant and his accomplice. On another occasion in 2008, the Applicant was charged with entering a building without consent with intent to steal, and then stealing.

[6] As a result of these criminal acts, the Applicant pled guilty to a number of charges.

[7] The Applicant reports that in or around 2017, he heard that other Somalis were having their status revoked by the Trump administration. He asserts that this prompted him to decide to claim refugee status in Canada and that he walked (or was driven) over the border into Canada on April 10, 2017. There is no evidence of what his status is in the United States.

[8] On the same day, the Officer at the Emerson Port of Entry found that the Applicant was inadmissible to Canada under section 36 of the IRPA due to his past criminal convictions.

[9] On May 10, 2017, a member of the Immigration Division of the Immigration and Refugee Board confirmed after an admissibility hearing that the Applicant was inadmissible on grounds of serious criminality pursuant to section 36 of the IRPA.

[10] On May 30, 2017, the Applicant submitted his PRRA application. With the assistance of counsel, the Applicant subsequently prepared further submissions to bolster his PRRA application. On June 11, 2018, the Officer rejected the Applicant's PRRA application.

[11] I will dismiss this application for the following reasons.

III. Issue

[12] The issue is whether the Officer's decision was reasonable.

IV. Standard of Review

[13] In *Mbaraga v Canada (Minister of Citizenship and Immigration)*, 2015 FC 580 at paragraph 22, Justice Simon Noël held that a review of a PRRA decision is to be reviewed on the reasonableness standard. I agree.

V. Analysis

[14] The Applicant raises three central arguments. First, he argues that the Officer did not undertake a cumulative assessment of risk. Second, he argues that the Officer did not properly consider the country conditions, including the question of family support, Al Shabaab, and the Madhiban. Third, he argues that it is irrelevant as to whether the Applicant is at risk if returned to the United States.

A. *Cumulative Assessment of Risk*

[15] The Applicant states that a PRRA application has to be considered as a whole and not in bits and pieces. He argues that the Officer erred by weighing individual risks and inappropriately compartmentalizing the risks (Al Shabaab on the one hand, family connections on the other).

[16] The Applicant relies on a curious analogical form of reasoning to support this argument. He notes that the risk from clan membership might be 20%, but the risk from fundamentalists, lack of family support, and country condition information (if each weighs 20%) adds up to an 80% risk on a balance of probabilities.

[17] The Applicant argues that not only should the various risks be added together, but the risk could actually increase exponentially. In other words, he submits that the Officer erred by not weighing the risks cumulatively. To support this proposition, the Applicant relies on *Rahman v Canada (Minister of Citizenship and Immigration)*, 2009 FC 768 at paragraph 64 and *Hegedüs v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1366 at paragraph 2.

[18] I do not agree that the Officer failed to assess the risks cumulatively in a reasonable way.

[19] On page 17 of the decision, the Officer notes the following:

> I have given careful consideration to the applicant's specific circumstances and situation as they apply to him. I acknowledge that he is a single, Somali male from a minority clan, who bears tattoos and who lacks family support in Somalia. While I find that he is bound to encounter difficulties upon his return to Somalia, I do not find that the applicant has established with objective documentary evidence that the difficulties he may face upon his return to Somalia differs from that of any other person returning to a country he/she has not inhabited for over 24 years.

[20] I also find that the Officer did not err by rejecting the Applicant's suggested measure of compounded risks. The Applicant was not able to provide any evidence to suggest that cumulative risk assessments should be done in the manner that he is proposing-that is, to view separate risk factors as exponential growth factors that must be dealt with mathematically.

[21] Justice Strickland dealt with a very similar argument in *Shire v Canada (Minister of Citizenship and Immigration)*, 2014 FC 795:

> [68] The Applicant also submits that the Officer erred in failing to consider his grounds of persecution cumulatively. It is correct that where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of the conduct (*Munderere*, above). However, what the Applicant proposes in this case is that the Officer failed to consider the grounds of persecution and risk of being perceived to be a Westerner and of being a Marehan together. This is not a series of discriminatory actions but rather two separate alleged grounds of risk, both of which were assessed by the Officer. The cases cited by the Applicant do not support his interpretation and the Officer did not err in failing to consider these separate risks cumulatively.

[22] Indeed, the Respondent correctly notes that the case law stands for the proposition that when a person makes an allegation that they were persecuted, all past acts of violence and harassment must be weighed cumulatively. It does not support the Applicant's proposed understanding, where three separate (and unsuccessful) grounds of persecution should be blended together as larger risk factors on a compounding or exponential basis.

[23] In my assessment, the Officer's cumulative findings on risk were reasonable. Specifically, it was reasonable to find that the Applicant was not at risk due to his tattoos or lack of family support and that the Madhiban clan could offer him protection.

[24] On the basis of the above, and on the basis of the rest of the decision and the record, I find that the Officer appropriately gave consideration to the intersectional circumstances of the Applicant. I find that the Officer did measure the risks cumulatively. The Officer did so by first considering each allegation separately and then considering them together before coming to a

final conclusion. The Officer did not err by weighing the individual sources of the Applicant's alleged risks, as they informed the ultimate cumulative analysis. Therefore, the Officer completely considered the required cumulative risk assessment.

B. *Consideration of Country Conditions*

[25] The Applicant argues that the Officer erred by failing to reasonably assess a number of factors arising from the country conditions.

[26] First, somewhat repeating his earlier arguments, the Applicant argues that the Officer erred by not finding he was a person in need of protection given that he is tattooed, Madhiban, and isolated.

[27] Secondly, he asserts that the Officer erred by suggesting that there was a possibility of the Madhiban tribe supporting him. The Applicant suggests that the Madhiban, as a matter of fact, are incapable of supporting him in the same way that majority clans can support a member. Therefore, the Officer erred in its analysis of family support.

[28] Thirdly, the Applicant argues that the Officer mischaracterized the nature of the threat that he faces from Al Shabaab. The Applicant argues that he faces more threat than most from Al Shabaab by virtue of his tattoos and membership in a minority clan and that the Officer therefore mischaracterized the threat.

[29] Fourth, the Applicant argues that the Officer relied on a British case *MOJ v ORS* [the "*UK Decision"*] on the Madhiban, in a way that is heavily distinguishable from his case, and in any case, the Officer's approach was misleading.

[30] Finally he submits that Canada does not generally remove anyone to Somalia unless they are inadmissible.

[31] The Officer's decision was driven by the following factors:

Membership in the Madhiban

- The Applicant did not put forward evidence to demonstrate his membership in the Madhiban minority group.
- The Applicant did not put forward evidence to verify his narrative that his father was killed, that his sister was sexually assaulted, or that he was shot in the leg.
- The Applicant failed to provide police reports, medical reports, or affidavits from any family members or other individuals.
- The Officer acknowledged that the objective documentary evidence demonstrated the Madhiban experience discrimination; however, this discrimination did not rise to the level of persecution. Therefore, even if the Applicant was a member of the Madhiban, this was insufficient to establish persecution.
- While the Madhiban are discriminated against, the Officer found that the USC, the paramilitary organization that apparently attacked the Applicant's family, was no longer active.

- Thus, there was insufficient evidence to support the argument that the Applicant's membership in the Madhiban resulted in a risk of harm in Somalia.

Lack of Support

- The Officer found that the Applicant had not supported his assertion that he did not have any family members in Somalia and that he was at particular risk as a result. The Officer found that the evidence suggested that the Applicant made no effort to research his family history or to determine whether he had any ties to any person or clan in Somalia.
- In any case, the Officer found that the significance of clan relationships, including membership in the Madhiban, had diminished in Somalia (page 23 of the Decision) and that the Applicant had therefore not established any sort of risk.

Concerns around Al Shabaab

- The Officer did not find the Applicant's claims of being "tattooed" placed him in danger from terrorist groups like Al Shabaab.
- The Officer found that while Al Shabaab poses an existential threat in Somalia, based on the objective country information, Al Shabaab does not generally target the majority of civilians.
- The Officer found that the main targets of Al Shabaab are journalists, human rights activists, federal state officials, and Al Shabaab defectors.
- The Officer found that a nexus of three factors determines whether an individual is likely to be at risk from Al Shabaab:
    - The background of the person (what links the person has);
    - His/her behaviour in conformity with Al Shabaab's approach to Sharia law; and
    - Acts and attitudes that can raise suspicions of spying.

- The Officer concluded that the Applicant's profile (single, male, ostensibly from a minority clan, with tattoos) did not lead to concerns that Al Shabaab would target him. Rather, the Officer found that the Applicant did not establish how he would be different from any other person returning to a country he/she has not inhabited for over 25 years.

C. *The UK Decision*

[32] The Applicant submits that the Officer erred by not considering certain factors that were considered in the decision of the UK Upper Tribunal (Immigration and Asylum Chamber) of the *UK Decision*.

[33] It is true that the Officer likely made a clerical error is misnaming the Home Office Presenting Officer “Ms. Parker” as “Mr. Parker”, but I do not think anything turns on that.

[34] I agree with the Respondent that the UK tribunal was applying a different law on a different standard and that the Officer cannot be faulted for not conducting an analysis relevant to UK law.

[35] Nor do I find anything turns at all on the interpretation of this case, as it is merely one citation amongst many in the Officer's characterization of the Madhiban clan. This argument has no weight.

D. *Returning to the United States*

[36] The Applicant argues that any risk he may face in the United States is irrelevant. He describes this as a "legal irrelevancy".

[37] The Applicant submits that he is not a national of the United States and is only a habitual resident. Thus, under the IRPA, risk in the country of habitual residence needs to be established only when an applicant has no nationality.

[38] While the Applicant does mention in his PRRA Application Form that his status in the United States was revoked in 2008, there was absolutely no evidence presented to buttress this statement.

[39] There is indeed evidence to the contrary: the Applicant married a United States citizen in 2013 and was working and living in the United States until he came to Canada in 2017. While the evidence of the Applicant's immigration history is vague and unclear, the onus is ultimately on the Applicant to submit the aforementioned evidence.

[40] In *Parshottam v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 355 [*Parshottam*], the Federal Court of Appeal noted the following in its majority decision:

> [18] Counsel argued that the PRRA officer had erred in law by applying the wrong standard of proof. That is, the officer required Mr. Parshottam to prove as a matter of certainty that he had lost his permanent resident status in the United States. Counsel relied on *Mahdi v. Canada (Minister of Citizenship and Immigration)* (1995), 191 N.R. 170 (F.C.A.), at paragraph 12, as authority for the

> proposition that the officer should have asked whether on a balance of probabilities Mr. Parshottam had lost his status, taking into account the possibility that United States' authorities might no longer recognize him as a permanent resident because of the expiry of his green card, the length of time that he had been in Canada and the fact that he had left the United States to apply for permanent resident status in Canada as a refugee.
>
> [19] I do not agree. Although the PRRA officer did not articulate the standard of proof that she was applying, it is to be assumed in the absence of indications to the contrary that she applied the correct one, namely, a balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 S.C.R. 41, at paragraph 54 (F.H.). In my opinion, the officer's reasons, including her observation that whether Mr. Parshottam was still a permanent resident would ultimately be determined by an immigration judge in the United States, do not establish that she applied some standard other than a balance of probabilities.

[41] To return to first principles, the Officer here was not provided any evidence to demonstrate that the Applicant was not a United States national. Given that the Applicant:

- presumably came to the United States legally as per his own narrative,
- that he married a United States citizen,
- that he has lived and worked in the United States for years,
- that no evidence was put forward that the Applicant would be deported from the United States,

[42] I find that the Officer reasonably found that the risk of the Applicant being deported from the United States was speculative and did not demonstrate a risk of being returned to the United States. I agree with the Federal Court of Appeal in *Parchottam*, above, and do not find that the Officer erred in law.

E. *Removal to Somalia*

[43] Finally, the Applicant's argument that Canada only removes individuals to Somalia in limited circumstances so the Officer should have considered that in his decision.

[44] I find that the Officer did not need to specifically refer to and analyse human rights instruments to which Canada is a signatory. In *Thiara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 151 [*Thiara*], the Federal Court of Appeal held that an immigration officer does not have to "specifically refer to and analyse the international human rights instruments to which Canada is signatory"; rather, "substance prevails over form", and it is sufficient that the "officer addresses the substance of the issues raised" (*Thiara* at paras 2-3, 9).

VI. Conclusion

[45] The Officer found there was insufficient credible evidence to determine that there was a "serious possibility" that the Applicant would be persecuted on a Convention ground. As well, the Officer was not satisfied that, on a balance of probabilities, there were substantial grounds to believe that he would be tortured or at risk of losing his life or being subjected to cruel and unusual treatment or punishment if he was deported to Somalia.

[46] The PRRA decision is 25 pages long and is extremely detailed in its canvassing of the objective country information. This attention to detail highlights the reasonableness of the decision. The Applicant does take some issue with the tenor and style of the decision, noting that "[t]he Officer appears to be writing a treatise on Somalia rather than an analysis of the risk the

applicant faces”. This is an unfair characterization of the decision: the cited objective country information provides a fair backdrop that renders the Officer's reasons ultimately more transparent and intelligible.

[47] Based on the foregoing, the Officer found that there was less than a mere possibility that the Applicant faced persecution as described under section 96 of the IRPA and that there were no substantial grounds to believe that he faced a danger of torture or a risk to life or of cruel and unusual treatment or punishment as described in paragraphs 97(1)(a) and (b) of the IRPA.

[48] Reasonableness requires that the decision exhibit justification, transparency, and intelligibility within the decision-making process and that it be within the range of possible, acceptable outcomes that are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). In summary, this decision meets that standard.

[49] The application is dismissed. No question for certification was presented, and none arose. Therefore, no question will be certified.

JUDGMENT in IMM-3057-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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