Federal Court Cour fédérale

Date: 20190411

Docket: IMM-4237-18

Citation: 2019 FC 446

Ottawa, Ontario, April 11, 2019

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

FERENC TAMAS SALLAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] The Applicant, Ferenc Tamas Sallai, seeks judicial review of the June 22, 2018 decision of a Senior Immigration Officer [the Officer] which rejected his application for a Pre-removal Risk Assessment [PRRA].

[2] For the reasons that follow, the Application is dismissed.

I. The Background

[3] The Applicant is a citizen of Hungary. He entered Canada on August 30, 2011 and made a refugee claim, alleging persecution based on his Roma ethnicity.

[4] The Applicant recounts that he experienced discrimination in elementary school, which affected his future opportunities. He states that he attended a segregated trade school for Roma and had difficulty finding work after leaving school. He recounts that he was fired from his job as a security guard because his supervisor did not want "a gypsy in his team" and that he was refused services, had difficulty finding housing, and often faced racial slurs in public. He states that he was physically attacked "a number of times", noting that he was beaten up in elementary school by students because of his ethnicity, attacked and chased in 2002 by men in "distinctive clothes" who used racial slurs, and pushed and spit on by a group of skinheads in approximately 2006. The Applicant states that the most serious incident occurred in 2009 when members of the Hungarian Guard rammed his car from behind, causing him to crash into a car wash and resulting in serious injuries to him and two passengers.

[5] In 2014, the Applicant was charged with theft from the mail and possession of break-in instruments. He received a conditional discharge, community service, a fine and probation.

[6] In February 2016, the Applicant was convicted of theft from the mail and possession of break-in instruments arising from incidents in July 2015. In December 2016, the Applicant was

convicted of break and enter with intent to commit an offence, arising from charges laid in August 2016. He was sentenced to imprisonment for 150 days.

[7] Due to his convictions for offences in Canada punishable by a maximum term of imprisonment of at least 10 years, the Applicant was found to be inadmissible to Canada on the grounds of serious criminality in accordance with paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. As a result, he is not eligible to have his refugee claim determined by the Refugee Protection Division [RPD]. However, he is eligible and applied for a PRRA.

II. The Decision under Review

[8] The Officer noted the Applicant's criminal record and the relevant provisions of the Act. The Officer noted that in the context of the PRRA, the Applicant was eligible to be assessed in accordance with both sections 96 and 97 of the Act. The Officer found that the evidence did not demonstrate that the Applicant faced the risk he claimed in Hungary. The Officer concluded that there is less than a mere possibility that the Applicant would face persecution as described in section 96 if he were returned to Hungary. The Officer also concluded that there are no substantial grounds to believe that the Applicant faces a danger of torture or reasonable grounds to believe that he faces a risk to life or of cruel and unusual treatment or punishment as described in section 97.

[9] To reach these conclusions, the Officer reviewed and assessed the evidence submitted by the Applicant in support of his claim.

[10] With respect to the most serious incident alleged, the Officer found that two medical reports and a blog post about the car crash did not establish the Applicant’s allegation that he was the victim of a racist attack. The Officer noted that the two medical documents—one for the Applicant and one for his uncle—described the injuries suffered, the treatment received and the recommended follow-up. The medical report referred to an accident and indicated that police action was taken. The Officer noted that the internet blog stated that a car crashed into a car wash, three passengers were injured, and the police attended at the scene. The Officer accepted that the Applicant, his uncle and another passenger were in a car accident in 2009 and that the police were involved. The Officer noted that the Applicant did not provide evidence, such as a sworn declaration from his uncle or the other passenger, to corroborate his allegation that members of the Hungarian Guard were responsible for the accident. The Officer added that the Applicant had not provided a sworn declaration from his former common law partner to support his statement that members of the Hungarian Guard had threatened her not to contact the police. The Officer also noted that the Applicant had not provided information about the outcome of the police involvement, as noted in the medical report, nor did he indicate that he was dissatisfied with the police response.

[11] The Officer considered the Applicant’s evidence that he was treated for his injuries at a Budapest Hospital and noted that he made no allegation of discrimination related to this treatment.

[12] The Officer concluded that the Applicant had provided “insufficient evidence to support that his car accident in December 2009 was caused by racially-motivated Guardists”.

[13] The Officer attached no weight to the Applicant's submissions regarding the immigration status of his former common law partner and their son. The Applicant had indicated that his former common law partner and son were refused refugee protection but were later granted a stay of removal. The Officer noted that the Applicant's claim was separate and that each determination is based on its own facts.

[14] The Officer found that the series of report cards submitted by the Applicant demonstrated only a negligible change in academic achievement in the fifth grade, which was not sufficient to support the Applicant's claim that his teachers mistreated him on the basis of his ethnicity.

[15] The Officer noted that the Applicant had not provided evidence to corroborate his allegation that he was fired from his security guard job, which he had held for four years, due to his ethnicity. For example, there was no sworn declaration from former co-workers.

[16] The Officer acknowledged that the objective country condition evidence describes discrimination against Roma, including in health care, education and housing and also describes human rights abuses and violence targeting Roma people. The Officer agreed that the situation in Hungary is not ideal. However, the Officer noted that the PRRA process "requires that the risks faced by the applicant be personalized."

[17] The Officer found, after reviewing the country condition documents, that the Applicant had not linked the information to his personalized, forward-looking risk in Hungary.

[18] The Officer noted that the onus is on the Applicant to provide evidence to support the risks claimed. Based on the Applicant’s narrative, the Officer acknowledged that the Applicant may have faced discrimination because of his ethnicity, which may pose some hardship upon his return to Hungary. The Officer found, however, that this evidence is insufficient to support a finding that the discrimination amounts either cumulatively or in isolation to persecution.

[19] The Officer addressed the Applicant’s request for an oral hearing and acknowledged that he had not had a hearing before the RPD. The Officer referred to the tripartite test in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] and concluded that the factors were not met and an oral hearing was not required. The Officer noted in particular that section 167 “includes the requirement that there be a serious issue of credibility with regard to evidence central to the decision which if accepted would justify the application.”

III. The Issues

[20] The Applicant argues that the Officer breached procedural fairness by not holding an oral hearing because the Officer made veiled credibility findings.

[21] The Applicant further argues that the Officer erred in law by misunderstanding the test for persecution pursuant to section 96.

[22] In addition, the Applicant argues that the Officer’s finding that the discrimination he faced did not amount to persecution is not reasonable because the Officer did not provide sufficient explanation and justification.

IV. The Standard of Review

[23] Issues of procedural fairness are reviewed on the correctness standard. Issues of mixed fact and law are reviewed on the reasonableness standard. Generally, a PRRA Officer's determination of risk is reviewed on the reasonableness standard because it is a question of mixed fact and law (*Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 11, 265 ACWS (3d) 1006).

[24] As noted above, the Applicant argues that the failure to hold an oral hearing to permit him to address alleged veiled credibility findings breached his right to procedural fairness. He submits that the application of section 167 of the *Regulations* points to the need for an oral hearing. The Applicant raised this issue with the Officer and the Officer found that section 167 did not apply. The Applicant submits that this issue should be reviewed on a standard of correctness.

[25] The applicable standard of review for determinations whether to hold an oral hearing has been the subject of a great deal of jurisprudence. To some extent, the standard of review depends on how the issue is characterized—whether as a breach of procedural fairness or as a misinterpretation or misapplication of section 167 of the Regulations. The jurisprudence is evolving and the current view is that where the issue is the application of the Act and Regulations, the standard of reasonableness applies.

[26] In *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at para 13, [2016] FCJ No 106 (QL) [*Zmari*], Justice Boswell noted that the jurisprudence is split on whether the decision to proceed without an oral hearing is an issue of interpreting the *Act* and *Regulations*, which is an issue of mixed fact and law, or whether it is an issue of procedural fairness.

[27] In *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940, [2018] FCJ No 963 (QL) [*Huang*], similar issues were raised. Justice Gascon considered the mixed jurisprudence on the standard of review and found that the standard of reasonableness applies, explaining at para 16:

> In my view, when the issue raised on judicial review is whether a PRRA officer should have granted an oral hearing, the standard of reasonableness applies: the decision on that issue turns on the interpretation and application of the officer's governing legislation, namely paragraph 113(b) of the IRPA providing that a hearing may be held if the minister, on the basis of the specific factors prescribed in section 167 of the IRP Regulations, is of the opinion that a hearing is required. In this case, it is even more so as the argument of Ms. Huang focused on the first of these factors, namely whether there was evidence that raised a serious issue of her credibility, and in particular whether the PRRA Officer's reasoning, which is expressed in terms of sufficiency of evidence, should be more properly characterized as a veiled credibility finding.

[28] Similarly, in *AB v Canada (Citizenship and Immigration)*, 2019 FC 165, [2019] FCJ No 149 (QL), Justice Pentney noted the jurisprudence which has canvassed the issue and concluded at para 11:

> I find that the more recent case law on this point has tended to find that the reasonableness standard should be applied, in light of the statutory framework governing the exercise of an officer's discretion. It is worth recalling that the leading authority on procedural fairness, Baker v Canada (Citizenship and Immigration), [1999] 2 SCR 817 at paras 23-27, lists the legislative

> framework as one of the five factors to be considered in assessing procedural fairness. More recently, the Supreme Court of Canada has affirmed once again that there is a presumption that the reasonableness standard applies to a decision-maker interpreting their governing (or "home") statute: see Canada (Canadian Human Rights Commission) v Canada (Attorney General), 2018 SCC 31.

[29] Most recently, in *Blidee v Canada (Citizenship and Immigration)*, 2019 FC 244, [2019] FCJ No 210 [*Blidee*], Justice Roussel again noted the two lines of jurisprudence. Ultimately, Justice Roussel found, based on the facts in *Blidee,* that the outcome would be the same regardless of whether correctness or reasonableness were applied, noting at para 11:

> The standard of review applicable to a decision to grant or not to grant an oral hearing in the context of a PRRA application has been mixed. In some cases, the Court applies a correctness standard because the matter is viewed as one of procedural fairness, while in others, the reasonableness standard is applied on the basis that the appropriateness of holding an oral hearing in light of the particular context of a file calls for discretion and involves the application of the statutory framework to the particular facts of the case (Huang v Canada (Citizenship and Immigration), 2018 FC 940 at para 12 [Huang]; Zmari v Canada (Citizenship and Immigration), 2016 FC 132 at paras 10-13). Regardless of the standard of review to be applied by this Court, I am satisfied that there is no error on either basis which would justify the intervention of this Court.

[30] The prevailing jurisprudence supports that the determination whether to hold an oral hearing should be reviewed on the reasonableness standard. Moreover, in the present case, it is apparent that the Officer considered the criteria which govern whether to hold an oral hearing. These criteria are set out in the Regulations to the Act—in other words, the home statute. In my view, the reasonableness standard clearly applies in the present case.

[31] The issue of whether the Officer applied the correct legal test to determine whether the Applicant faced a risk as described in section 96 of the Act is a question of law and should be reviewed on the standard of correctness (*Conka v Canada (Citizenship and Immigration)*, 2018 FC 532 at para 11, 292 ACWS (3d) 384).

[32] The Officer's finding with respect to the cumulative analysis is reviewed on the reasonableness standard.

[33] The reasonableness standard focuses on "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

V. The Applicant's Submissions

[34] The Applicant submits that the Officer breached procedural fairness by failing to hold an oral hearing. The Applicant submits that a hearing is required when the criteria in section 167 of the Regulations are met. The Applicant argues that the criteria were met in his case because his evidence regarding the attack by the Hungarian Guard, which caused him to crash into the car wash, was doubted by the Officer. The Applicant submits that this evidence raised a credibility issue central to the decision and, if his evidence had been accepted, it would have resulted in a positive PRRA. He argues that the Officer made veiled credibility findings, couched as findings about the sufficiency of the evidence, without providing him an opportunity to respond. He submits that this is a denial of fundamental justice. The Applicant adds that he never had a

chance to address his fear of racist extremists at an oral hearing, because he is inadmissible and not eligible for a refugee hearing.

[35] The Applicant notes a warning by the Court in *Strachn v Canada (Citizenship and Immigration)*, 2012 FC 984 at para 34, 416 FTR 312 that officers sometimes improperly frame true credibility findings as findings regarding sufficiency of evidence.

[36] The Applicant submits that no other conclusion can be reached than that the Officer did not believe his statement that members of the Hungarian Guard rammed his car and caused him to crash. He submits that his sworn statement must be presumed to be true (*Maldonado v Canada (Minister of Employment and Immigration),* [1980] 2 FC 302 at para 5, [1979] FCJ No 248 (QL) (CA) [*Maldonado*]) and that nothing has rebutted this presumption.

[37] The Applicant argues that *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 27, [2008] FCJ No 1308 (QL) [*Ferguson*], which held that an officer can attribute weight to evidence without determining credibility, should be distinguished. The Applicant notes that in *Ferguson* there was no sworn evidence, simply country condition evidence and submissions from counsel.

[38] The Applicant also argues that the Officer erred by applying the wrong legal test to determine risk under section 96 of the Act. The Officer stated that "the PRRA process requires that the risks faced by the applicant be personalized" and found that the Applicant had not linked country conditions to his personal, forward-looking risk. The Applicant submits that this

demonstrates that the Officer did not understand the test. He submits that the *Refugee Convention* is intended to protect large groups of people who face persecution collectively.

[39] The Applicant submits that evidence of similarly situated Roma individuals can support a finding that a claimant faces a forward-looking risk (citing *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at para 14, [2007] 3 FCR 400 [*Fi*]; *Alhezma v Canada (Citizenship and Immigration)*, 2016 FC 1300 at para 18, 273 ACWS (3d) 611). The Applicant submits that he provided ample evidence of human rights abuses against the Roma community in Hungary. He submits that the Officer's finding that this was not linked to the Applicant's personal situation is perverse.

[40] The Applicant also argues that the Officer did not explain why the discrimination and hardship he fears in Hungary do not amount to persecution. He submits that this finding is not justified or intelligible. The Applicant submits that country condition evidence before the Officer indicated severe and pervasive violence and discrimination against the Roma.

VI. The Respondent's Submissions

[41] The Respondent submits that the Officer did not make any veiled credibility findings regarding the Applicant's allegations of the attack by the Hungarian Guard and of discrimination in school. The determination was based on insufficient evidence.

[42] The Respondent acknowledges that oral hearings should be held where the criteria of section 167 are met. However, the Respondent notes that the weight of evidence may be assessed

before its credibility is assessed. The Respondent submits that the Officer weighed the evidence, noting where the Applicant failed to corroborate his allegations. The Court should not re-weigh the evidence.

[43] The Respondent disputes that the Officer misunderstood the test under section 96. The Respondent submits that it is necessary to consider a refugee claimant's specific circumstances when assessing risk (citing *Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 at para 15, [2017] FCJ No 977 (QL) [*Olah*]). The Respondent submits that being of Roma ethnicity does not mean that all Roma face treatment that rises to the level of persecution and does not bring one within the meaning of section 96 or 97 (citing *Olah* at paras 14-15). The Respondent submits that the Officer based his finding on the absence of evidence relating to the Applicant's personal situation and alleged risk.

[44] The Respondent further submits that the Officer's reasons, read as a whole, explain that there was insufficient evidence to demonstrate that the Applicant's experiences amounted to persecution. The Respondent notes that while the Applicant may believe that he was persecuted, a finding of persecution requires an objective basis. In particular, the Respondent notes that the Officer found that the Applicant was promoted through grade school, attended a Roma trade school, completed a security guard training course, and obtained employment. The Officer also noted that there was no suggestion that the Applicant was denied medical treatment and that there was no evidence to corroborate his assertion that he lost his job due to his ethnicity.

VII. The Officer Did Not Err by Not Holding an Oral Hearing

[45] Subsection 113(b) of the Act provides that a hearing may be held if the Minister, guided by the prescribed factors, is of the opinion that a hearing is required. Section 167 of the Regulations, prescribes the applicable factors as:

a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

b) whether the evidence is central to the decision with respect to the application for protection; and

c) whether the evidence, if accepted, would justify allowing the application for protection.

[46] These factors are cumulative (*Demirovic v Canada (Minister of Citizenship & Immigration)*, 2005 FC 1284 at para 9-10, [2005] FCJ No 1560 (QL)). If credibility is an issue which could result in a negative PRRA decision, then a hearing should be held to permit an applicant to face the credibility issues (*Tekie v Canada (Minister of Citizenship & Immigration)*, 2005 FC 27 at para 16, [2005] FCJ No 39 (QL)).

[47] To determine whether the Officer reasonably found that an oral hearing was not required, it is necessary to first determine whether the Officer made any credibility findings—either explicitly or implicitly. If so, it is then necessary to consider if any credibility findings were central and determinative of the PRRA.

[48] In some cases, it is difficult to distinguish between a finding of insufficiency of evidence and a veiled credibility finding (*Gao v Canada (Citizenship and Immigration)*, 2014 FC 59 at para 32, [2014] FCJ No 51 (QL) [*Gao*]; *AB v Canada (Citizenship and Immigration)*, 2019 FC

165 at para 26, [2019] FCJ No 149 [*AB*]; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35, 301 ACWS (3d) 832 [*Magonza*]).

[49] There is a great deal of jurisprudence on the issue of whether a decision-maker's findings are credibility findings stated to be, or disguised as, findings of insufficient evidence. If there is no explicit credibility finding, the Court must look beyond the words of the decision to determine whether credibility is the issue, expressly or implicitly.

[50] As I stated in *Gao* at para 32:

> I note that in some cases it is difficult to draw a distinction between a finding of insufficient evidence and a finding that the applicant was not believed i.e. was not credible. The choice of words used, whether referring to credibility or to insufficiency of the evidence is not solely determinative of whether the findings were one or the other or both. However, it can not be assumed that in cases where an Officer finds that the evidence does not establish the applicant's claim, that the Officer has not believed the applicant.

[51] In *Herman v Canada (Citizenship and Immigration)*, 2010 FC 629 at para 17, [2010] FCJ No 776 (QL), Chief Justice Crampton noted that there is a difference between not believing the applicant's evidence and "not being persuaded that an Applicant has met his or her burden of proof on the balance of probabilities, without ever having considered whether the evidence is credible."

[52] In *Huang*, Justice Gascon addressed the same issue, noting at para 36 that the jurisprudence continues to grow but that the determination depends on the facts of the case:

> 36 I accept that a decision-maker's conclusion that there is insufficient evidence to support an assertion can sometimes hide what is actually a veiled or implicit adverse credibility finding. This was indeed the situation in the *Bozik* decision relied on by Ms. Huang. I further concede that there is a bubbling cauldron of decisions of this Court having similarly concluded that PRRA officers' conclusions on insufficient evidence effectively boiled down to implicit, disguised or veiled credibility findings. However, determining whether an insufficiency finding is actually a veiled credibility finding is very fact-specific. Sometimes it is; sometimes it is not. It depends on the language used in the reasons, the particular facts on the record as well as the context of the decision. As is the case on any aspect of a judicial review, the starting point is the decision itself and what it actually says. The Court must also look beyond the express wording of the decision to determine whether, in fact, the applicant's credibility was indeed in issue.
>
> [Emphasis added]

[53] In *Magonza*, Justice Grammond reviewed and explained various evidentiary concepts, including insufficiency of evidence, noting at paras 34-35:

> 34 In refugee law, the central fact that must be proven is that there is "more than a mere possibility of persecution" (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 120, citing *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (CA)). Usually, this can only be proved by indirect evidence and it is impossible to say in advance "how much." Deciding whether the evidence is sufficient is a practical judgment made on a case-by-case basis.
>
> 35 Because it is difficult to describe in words or in numbers the amount of evidence that will be sufficient to buttress a claim, sufficiency is an issue that will attract much deference on the part of reviewing courts (*Perampalam* at para 31). But like other factual findings, findings of insufficiency must be explained. One problem that often arises is that an "insufficient evidence" conclusion is really a manner of disguising an unexplained (or "veiled") credibility finding (*Liban v Canada (Citizenship and Immigration)*, 2008 FC 1252 at para 14; *Begashaw v Canada (Citizenship and Immigration)*, 2009 FC 1167 at paras 20–21; *Adetunji v Canada (Citizenship and Immigration)*, 2011 FC 869 at para 11; *Abusaninah v Canada (Citizenship and Immigration)*, 2015 FC 234 at para 54 [*Abusaninah*]; *Majali v Canada*

> *(Citizenship and Immigration)*, 2017 FC 275 [*Majali*]; *Ahmed* at para 38). Decision-makers should not "move the goalposts," as it were, when they have mere suspicions about credibility that they are unable to explain.
>
> [Emphasis added]

[54] As noted in *Ferguson* at para 33, deference is owed to the PRRA Officer:

> The weight the trier of fact gives evidence tendered in a proceeding is not a science. Persons may weigh evidence differently but there is a reasonable range of weight within which the assessment of the evidence's weight should fall. Deference must be given to PRRA officers in their assessment of the probative value of evidence before them. If it falls within the range of reasonableness, it should not be disturbed. In my view the weight given counsel's statement in this matter falls within that range.

[55] As recently noted by Justice Roussel in *Blidee* at para 16:

> I accept, as the Applicant contends, that a conclusion of insufficient evidence may actually amount to a veiled credibility finding and that it is sometimes difficult to distinguish a finding of insufficient evidence from a veiled credibility finding. However, it is important to mention as stated in *Huang* at paragraph 43, that the presumption of truth or reliability of statements made by refugee claimants, as discussed in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) (QL) and relied upon by the Applicant, cannot be equated with a presumption of sufficiency. <u>Indeed, even if evidence is presumed credible and reliable, the affidavit evidence of a claimant seeking protection cannot be presumed to be sufficient, in and of itself, to establish the facts on a balance of probabilities</u>. This determination rests with the trier of fact – in this case, the Officer (*Huang* at para 43).
>
> [Emphasis added]

[56] The onus rests on a claimant to support their claim with sufficient evidence and to put their best foot forward. A failure to provide details or corroborating materials can be a basis for finding that evidence is insufficient (*Ferguson* at para 27; *Haji v Canada (Citizenship and Immigration)*, 2018 FC 474 at para 20, 292 ACWS (3d) 619). Insufficient evidence is a valid reason to reject a claim.

[57] Several key principles emerge from the "bubbling cauldron of decisions". First, the onus rests on a refugee claimant to support their claim with sufficient evidence. Second, determining whether the decision-maker has based findings on insufficient evidence or credibility requires a case-by-case analysis which is not necessarily based on the terminology used, but on a careful reading of the decision-maker's assessment of the evidence in the context of the decision as a whole. Third, relying on a sworn statement and the presumption of truthfulness from *Maldonado* does not absolve a claimant from providing sufficient evidence to support their claim. A decision-maker need not doubt the credibility of a sworn statement to conclude that it remains insufficient to establish the allegations on a balance of probabilities. As noted in *Magonza* at para 34, "deciding whether the evidence is sufficient is a practical judgment made on a case-by-case basis". Fourth, like all factual findings, the decision-maker must provide an explanation for findings of insufficiency. Finally, deference is owed to the decision-maker in the determination of whether he or she is satisfied that a claimant has established their forward-looking risk of persecution.

[58] In this case, the Officer does not make any explicit reference to credibility. The Officer does not state that he disbelieved the Applicant's account that the Hungarian Guard were

responsible for the car crash, that the Applicant was mistreated in fifth grade or that the Applicant was fired from his security guard job due to his ethnicity. Despite the lack of such statements, the Officer's assessment of the evidence and reasons must be considered.

[59] The Officer considered the evidence provided by the Applicant—which was comprised of country condition documents, medical reports and a blog post regarding the 2009 car crash and school report cards—and indicated the weight or probative value attached to that evidence.

[60] The Officer reviewed the evidence submitted by the Applicant and repeatedly noted what was lacking. The Officer reviewed the medical reports and accepted that they described a serious car crash and injuries to the Applicant and his uncle. The Officer noted that the medical reports and the internet blog stated that the police were involved following the crash, yet there was no further information regarding this police involvement. The Officer also noted that there was no evidence from the uncle, who was also injured in the crash and treated in hospital, regarding the cause of the accident. Nor was there evidence from the Applicant's former common law partner or his cousin's wife, one of whom was allegedly present when members of the Hungarian Guard made threats to not contact the police. Apart from the Applicant's statement, there was no evidence to support the claim that members of the Hungarian Guard had caused the car crash. The Officer described the type of evidence that could have been provided and would be reasonably expected.

[61] Similarly, the Officer found that the report cards were insufficient to support the Applicant's claim that he was treated differently by his teachers due to his ethnicity. The Officer

found, based on a review of all the report cards, that there was no significant change in the Applicant's school performance in the grade in question. The Officer's finding is not one of credibility; rather, he found that the evidence simply did not support the claim of discrimination.

[62] The Officer also noted that there was no evidence submitted to corroborate the Applicant's claim that he was fired from his job as security guard, which he had held for four years, because of his ethnicity. Again, the Officer noted that no sworn declarations from co-workers were provided. The Officer's finding is one of insufficient evidence.

[63] The onus was on the Applicant to establish his claim with evidence that would meet the evidentiary and legal burden. The Applicant was well aware that no RPD hearing would occur and that his PRRA was the opportunity for him to establish the forward-looking risk he claimed**.** The Applicant did not meet his onus to establish his claim with sufficient evidence. As a result, the Officer reasonably concluded that an oral hearing was not required.

VIII. The Officer Did Not Apply the Wrong Test with respect to Section 96

[64] Sections 96 and 97, which deal with a well-founded fear of persecution and a personalized risk of harm respectively, require different analyses (*Paramananthalingam v Canada (Citizenship and Immigration)*, 2017 FC 236 at para 16, [2017] FCJ No 419 (QL)). The applicable test under section 96 requires an assessment of whether there is more than a mere possibility that an applicant will be persecuted on a Convention ground. This must be established on a balance of probabilities.

[65] A claim for protection under section 97 does not require a nexus to a Convention ground. An applicant must establish that the risk they face is personal—i.e., that it is not a risk generally faced by other citizens of the country (*Guerrero v Canada (Citizenship & Immigration),* 2011 FC 1210 at para 27, [2013] 3 FCR 20).

[66] The Applicant argues that the Officer's reference to "personalized" risk and "individualized" risk demonstrates that the Officer did not understand the test pursuant to section 96 or that the Officer confused the test with that applicable to section 97. I disagree. It is apparent, when the decision is read as a whole, that the Officer understood the purposes of and the different tests with respect to sections 96 and section 97. While personalized risk as opposed to generalized risk is required pursuant to section 97, the Officer's use of the term "personalized", in the present case, in the context of section 96 is not an error. A refugee claimant must establish that he or she faces a reasonable chance or serious possibility (also expressed as more than a mere possibility) of persecution on a Convention ground if returned to their country of origin.

[67] The Officer first noted that the Applicant was eligible to be assessed pursuant to sections 96 and 97. The Officer then focused on the Applicant's claim that he was persecuted due to his ethnicity as a Roma—i.e., the section 96 assessment.

[68] The Officer's use of terms such as "personalized" or "individualized" does not signal that the Officer conflated the two tests. A claim for refugee protection pursuant to section 96 requires both a subjective and objective basis. As noted, a refugee claimant must establish that he or she

meets the test for refugee protection; in this sense, the evidence must be linked to the personal situation of the refugee claimant.

[69] The Applicant relies on *Fi* at para 16 in support of his argument that the Officer erred in requiring a personalized risk and did not understand the test under section 96. In *Fi*, Justice Martineau stated at para 16:

> Unlike section 97 of IRPA, there is no requirement under section 96 of IRPA that the applicant show that his fear of persecution is "personalized" if he can otherwise demonstrate that it is "felt <u>by a group with which he is associated</u>, or even, <u>by all citizens</u> on account of <u>a risk of persecution based on one of the reasons</u> stated in the definition [of a Convention refugee]" (*Salibian*, above, at 258).
>
> [Emphasis in original]

[70] I regard this passage from *Fi* as addressing the subjective fear element. An applicant who claims persecution on a Convention ground must establish both a subjective fear and that their fear is well-founded in an objective sense.

[71] Providing objective evidence of risk for Roma in Hungary, including in education, housing, employment and human rights violations, is not sufficient to attract protection under section 96 for any or all members of this group. In *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426, 265 ACWS (3d) 746, Justice LeBlanc explained at para 19:

> Moreover, while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return *(Csonka v Canada (Citizenship and Immigration),* 2012 FC 1056, at paras 67-70 [*Csonka*]; *Ahmad v Canada (Minister of Citizenship and*

> *Immigration),* 2004 FC 808, at para 22 [*Ahmad*]. Both subjective fear and objective fear are components in respect of a valid claim for refugee status *(Csonka*, at para 3). The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Prophète v Canada (Citizenship & Immigration)*, 2008 FC 331, at para 17; *Jarada v Canada (Minster of Citizenship and Immigration),* 2005 FC 409, at para 28; *Ahmad,* at para 22).

[72] In *Olah*, Justice Southcott addressed similar arguments and noted, with reference to *Balogh,* at para 15:

> I read this reasoning as noting that the jurisprudence surrounding refugee claims by Hungarian Roma does not support a conclusion that the general country conditions are such that all Roma in Hungary face discrimination amounting to persecution. Rather, it is necessary to consider a particular claimant's specific circumstances, in combination with the general documentary evidence, to conclude whether that claimant faces a risk of persecution. The above statement from *Balogh* does not represent a departure from the principles surrounding s 96 upon which the Applicants rely but rather an application of those principles.

[73] The Officer did not err in finding that the country condition documents alone could not establish a forward-looking risk for the Applicant (*Balogh* at para 19) and that the Applicant's (i.e., his own, personal) risk of being persecuted upon return must be assessed. The Officer correctly stated that it is insufficient to refer to country conditions in general without linking the conditions to the personal situation of an applicant. The Officer noted that the assessment of an applicant's "risk of being persecuted or harmed" if returned to his country "must be individualized". The Officer reviewed all the allegations and the evidence, including the country condition evidence, and reasonably concluded that there was less than a mere possibility that the Applicant faces persecution as described by section 96 if he returned to Hungary. The Officer did not misunderstand or misapply the section 96 test.

IX. The Officer Reasonably Found that the Discrimination Claimed by the Applicant Did Not Cumulatively Amount to Persecution

[74] The Officer explained why the discrimination the Applicant may face in Hungary upon return does not amount to persecution. The Officer considered the Applicant's educational and employment history, noting that he was able to attend school and work. The Officer observed that the Applicant had obtained medical treatment following the car crash and did not allege any mistreatment. The Officer acknowledged the country condition evidence which described discrimination in health care, education and housing and other breaches of human rights. The Officer accepted that discrimination against the Roma occurs in Hungary. The Officer also accepted that the Applicant may face discrimination upon return, but found that his evidence was insufficient to support that the discrimination—either cumulatively or in isolation—would amount to persecution. It cannot be said that the Officer did not provide sufficient explanation for his finding. The Officer supported his conclusion with reference to the evidence, which the Officer had reasonably found was insufficient to support the Applicant's claim. This finding is justified, transparent and intelligible; in other words, it is reasonable.

JUDGMENT in IMM-4237-18

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is dismissed.

2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Amedeo Clivio	FOR THE APPLICANT
Leila Jawando	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Clivio Law Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT