Federal Court  Cour fédérale

Date: 20190501

Docket: IMM-5122-18

Citation: 2019 FC 549

Ottawa, Ontario, May 1st, 2019

PRESENT: Mr. Justice Grammond

BETWEEN:

RANIA WAFIC AZZAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Azzam seeks judicial review of the denial of her application for a pre-removal risk assessment [PRRA]. I am denying her application, as the PRRA officer did not overlook her allegations of systemic discrimination amounting to persecution, did not apply the wrong legal test and did not make veiled credibility findings. Thus, the PRRA officer's decision was reasonable.

I. Background

[2] Ms. Azzam is a stateless person. She was born in Lebanon, near Ein al-Hilweh, a camp for Palestinian refugees where her parents lived. She lived in the camp for the first seven years of her life. She then moved to the United Arab Emirates [UAE] with her parents. She later married a Palestinian refugee who obtained employment in the UAE. However, in 2017, Ms. Azzam's husband lost his job, with the result that both Ms. Azzam and her husband lost their right to reside in the UAE.

[3] After returning to Lebanon for a short visit to the camp in August 2017, Ms. Azzam and her husband travelled to the United States and then to Canada, where they claimed asylum. However, as Ms. Azzam was included in a similar claim that her parents made and abandoned many years ago, she was ineligible to make a new claim. Instead, she filed an application for a PRRA.

[4] In her PRRA application, Ms. Azzam alleged two kinds of risk. First, she stated that when she returned to the Ein al-Hilweh camp in August 2017, she found herself in the midst of factional strife and her house was requisitioned by one of the factions. She describes the events as follows:

> My uncle, Mohamed Azzam, was warned to clear his house immediately as the house location was claimed. He was occupying the ground floor, while we resided in the first floor. As he refused to leave his house, and so did we, we started facing restrictions and being chased. Our lives were threatened by extremist fundamentalist groups prevailing in the camp, but were also at stake outside the camps, across Lebanon.

[5] Second, Ms. Azzam alleged that Palestinians living in refugee camps in Lebanon suffer from systemic discrimination amounting to persecution.

[6] On August 8, 2018, Ms. Azzam's PRRA application was denied. The PRRA officer reviewed the evidence of the incidents with respect to Ms. Azzam's house, but found that Ms. Azzam "has failed to provide sufficient evidence of probative value to establish these facts and events." The PRRA officer also summarized US Department of State and UNHCR reports concerning Palestinian refugee camps in Lebanon and noted that the situation "is troubling, but far from ideal," but went on to note that Ms. Azzam returned to her home in the camp every year since 1997.

[7] Ms. Azzam now seeks judicial review of the negative PRRA decision.

II. Analysis

A. *Standard of Review*

[8] Decisions of PRRA officers are reviewed on a reasonableness standard, including where they interpret provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]: *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at paragraphs 28-31.

[9] Nevertheless, Ms. Azzam argues that the PRRA officer's articulation of the legal test must be reviewed on a correctness standard. In other words, the officer had to apply the correct test. For that proposition, Ms. Azzam relies on a number of recent decisions of our Court striking

down decisions that applied the "wrong test," which appear to suggest that correctness is the standard in those circumstances: see, for example, *Conka v Canada (Citizenship and Immigration)*, 2018 FC 532 at paragraph 11; *Sokoli v Canada (Citizenship and Immigration)*, 2018 FC 1072 at paragraph 12; *Cerra Gomez v Canada (Citizenship and Immigration)*, 2018 FC 1233 at paragraph 13; *Rodriguez Cabellos v Canada (Citizenship and Immigration)*, 2019 FC 40 at paragraph 16; *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at paragraph 31.

[10] The phrase "wrong test" may be useful shorthand for describing the outcome of those cases. However, the use of that language should not lead one to believe that reasonableness is no longer the standard of review, or that correctness applies to certain categories of issues. Indeed, if we push this logic to its conclusion, this would mean that correctness is the standard for questions of law, which would run contrary to the thrust of the Supreme Court of Canada's jurisprudence since *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]. Rather, what really happens in those cases is that there is only one reasonable outcome. Let me explain.

[11] Tribunals and administrative decision-makers are bound to follow the law, which includes the common law or judicial interpretations of legislation. At the same time, tribunals and administrative decision-makers are recognized a margin of appreciation in their own interpretation of the law, which, again, includes the manner in which they apply judicial precedent: *Céré v Canada (Attorney General)*, 2019 FC 221 at paragraphs 36-43. This may be particularly so where they decide whether to adapt the common law to a particular statutory context: *Nor-Man Regional Health Authority Inc v Manitoba Association of Health Care*

Professionals, 2011 SCC 59, [2011] 3 SCR 616; see also Paul Daly, "The Principle of Stare Decisis in Canadian Administrative Law" (2015) 49 RJTUM 757.

[12] Nevertheless, the manner in which a particular statutory provision is understood by the judges of a court of first instance may coalesce towards a consensual interpretation. An appellate court may also formulate a test, or an analytical method, that guides the application of a provision. In those cases, it may well be that a tribunal or administrative decision-maker may not reasonably depart from that test or interpretation. If it does so, we say that it applied the "wrong test." Indeed, several decisions of the Supreme Court of Canada rendered after *Dunsmuir* struck down decisions that had applied the "wrong test" or employed similar language to describe the grounds for review: *Lake v Canada (Minister of Justice)*, 2008 SCC 23 at paragraph 49, [2008] 1 SCR 761; *Alberta (Education) v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 SCC 37 at paragraph 37, [2012] 2 SCR 345; *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 at paragraph 194, [2013] 1 SCR 467. A careful reading of those cases, however, shows that the Court never intended to change the standard of review from reasonableness to correctness.

[13] To summarize, reasonableness is the standard of review with respect to all issues dealt with by a PRRA officer. Where a PRRA officer does not apply the legal test or analytical method established by this Court's jurisprudence, however, this may well render the decision unreasonable.

[14] At this juncture, I would also reiterate what the Supreme Court of Canada said in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708, namely that the reasons given by administrative decision-makers should be read generously and in light of the record before them, in an attempt to understand the decision-maker's reasoning rather than finding some deficiency in the manner in which that reasoning is expressed.

B. *Systemic Discrimination Against Palestinian Refugees*

[15] Ms. Azzam first argues that the PRRA officer failed to properly address or even make a finding regarding her allegations of "systemic discrimination amounting to persecution." Her original PRRA submission on this particular point read, in its entirety:

> Nous demandons au lecteur de prendre également connaissance de la documentation préparée par le Centre de documentation de la CISR soit le Cartable de documentation national sur le Liban qui contient de nombreux documents décrivant la situation de discrimination systémique existant dans ce pays à l'égard des palestiniens, [*sic*]

[16] In certain circumstances, PRRA officers may have a duty to do their own research in the national documentation package for the relevant country, which is publicly available on the Immigration and Refugee Board's website. However, this does not mean that the officers must review the whole package in order to build the applicant's case: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 79 [*Magonza*]. Yet this is exactly what Ms. Azzam asked the PRRA officer to do.

[17] Although she could have entirely disregarded Ms. Azzam's allegations of systemic discrimination, the PRRA officer nevertheless reviewed some of the most obvious sources of information in this regard.

[18] Ms. Azzam now argues that the PRRA officer did not reach a clear conclusion as to whether systemic discrimination against Palestinian refugees in Lebanon amounts to persecution. In reality, however, the PRRA officer rejected that part of Ms. Azzam's claim on the basis of her frequent returns to the Ein al-Hilweh camp. Although the decision could have been more explicit, anyone familiar with refugee law as applied in Canada would understand that the PRRA officer concluded that Ms. Azzam's return to Lebanon constituted "re-availment" negating subjective fear, which is an essential component of a claim under section 96 of IRPA.

[19] Having found that Ms. Azzam did not have a subjective fear, the PRRA officer did not need to reach any conclusion as to whether the conditions in Palestinian refugee camps in Lebanon give rise to an objective fear. The decision was reasonably based on Ms. Azzam's re-availment.

C. *Confusion Between Sections 96 and 97*

[20] Ms. Azzam's second argument is that the PRRA officer confused the analysis under sections 96 and 97 of IRPA. If I understand the argument correctly, her point is that the PRRA officer mistakenly required her to show that the risk she faces is not one that affects the Palestinian population as a whole. In doing so, the PRRA officer would have overlooked the well-recognized possibility that one may be a Convention refugee because one is a member of a

group subject to persecution: *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 (CA) [*Salibian*], *per* Décary JA.

[21] Indeed, some remarks found in the decision may lead the reader to believe that the PRRA officer misunderstood the proper legal test and failed to apply Justice Décary's teachings in *Salibian*. In particular, the PRRA officer found that

> … the situation in Lebanon is unfortunately applicable to the whole population of Palestinian refugees, and the applicant has failed to demonstrate how her risk would be more than that of the rest of the population.

[22] Taken in isolation, this sentence seems to contradict Justice Décary's decision in *Salibian*, which reads, at para 18:

> … the issue is not whether the claimant is more at risk than anyone else in her country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status.

[23] Statements to the effect that risk must be personalized may give the impression that the decision-maker failed to appreciate that, under section 96, a person may have a well-founded fear of persecution because of the manner in which other members of the same group have been treated. See *Alhezma v Canada (Citizenship and Immigration)*, 2016 FC 1300.

[24] In this case, however, the PRRA officer made the statement quoted above (at paragraph 21 of these reasons) after finding that Ms. Azzam could not claim asylum on the basis of the conditions that affect the population of the camps as a whole, mainly because she returned to the

camp every year in spite of the alleged risk. Hence, any misstatement of the relevant test would not have had any impact on the decision that was rendered. This argument therefore fails.

D. *Veiled Credibility Findings*

[25] Lastly, with respect to her claim that her life is now at risk at the hands of extremist fundamentalist groups, Ms. Azzam says that the PRRA officer made veiled credibility findings, and that she was not allowed to do so without holding a hearing.

[26] In addition to her statement, quoted above at paragraph 4 of these reasons, Ms. Azzam filed two handwritten documents, one from the Palestinian Popular Committee and the other from the Palestinian Liberation Organization, apparently written on official letterhead and bearing official stamps. These documents confirm that Ms. Azzam was a resident of the Ein al-Hilweh camp and go on to state that her life was threatened by extremist fundamentalist groups.

[27] The PRRA officer ascribed little weight to these documents, for a number of reasons. First, their authors are not identified. Second, they do not explain how the author knows Ms. Azzam and what their source of information is. Third, they do not provide any information as to the identity of the persons or groups who threatened Ms. Azzam, their motives or the particulars of the threats. Fourth, they do not corroborate Ms. Azzam's assertion that those groups forced her and her uncle out of his house.

[28] Ms. Azzam now claims that these are, in reality, negative credibility findings that the PRRA officer could only properly make after holding a hearing. The Minister replies that these

findings do not pertain to credibility, but to probative value, and that in the end, Ms. Azzam simply did not adduce sufficient evidence of her allegations.

[29] The issue, then, is to differentiate a conclusion of insufficiency of evidence from what has been called a "veiled credibility finding," which the PRRA officer may not make if the case is decided without a hearing: IRPA, s 113(b); *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 167. This task has proved difficult to rationalize, and it has been said that it is "fact-specific:" *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paragraph 36 [*Huang*], and usually made on a case-by-case basis: *Magonza*, at paragraph 34. I will nevertheless attempt to bring some clarity to the issue.

[30] Evidence is said to be sufficient if it meets the burden of proof. Given that, in immigration matters, that burden is on a balance of probabilities standard, evidence will only be deemed sufficient if makes the existence of the fact at issue "more likely than not" – which is the definition of the balance of probabilities standard. Conversely, evidence is insufficient if the fact at issue remains unlikely.

[31] A mere conclusory statement offered in evidence will often be insufficient. By conclusory statement, I mean a statement about the ultimate fact that, according to the legislation, triggers a legal consequence. It is not enough to say, "I have a well-founded fear of persecution," if the facts grounding that fear are not disclosed. Thus, we require the evidence to go beyond mere conclusions. Sufficient details must be provided.

[32] This is particularly important in the context of refugee law. The State does not have the resources to conduct its own inquiries into the facts that form the basis of a claim for asylum. Detailed evidence is necessary to satisfy decision-makers and ultimately the Canadian public, that asylum is granted for claimants who genuinely deserve that status. Moreover, detailed evidence allows decision-makers to test claimants' narratives for internal consistency and for coherence with known facts about their countries of origin.

[33] Evidence may be insufficient when it is not corroborated. This is not the issue here, and I will not delve into the debates as to what triggers a requirement of corroboration: see, for instance, *Chen v Canada (Citizenship and Immigration)*, 2019 FC 162. Evidence may also be insufficient where it does not contain enough detail to persuade the decision-maker of the existence of the facts necessary to trigger the application of a legal rule. This is the problem here.

[34] I acknowledge that it is difficult to describe in the abstract the level of detail that will constitute sufficient proof. An issue of fairness may arise when applicants cannot know in advance what level of detail is required of them. In an adversarial context, the difficulty may be overcome through the narrowing of issues resulting from the exchange of pleadings and the interactions between the parties and the decision-maker at the hearing. In a non-adversarial context, such as the PRRA process, decision-makers should not require evidence that an applicant cannot reasonably obtain or cannot reasonably be expected to know was required. None of that, however, happened in this case.

[35] Asylum claimants and PRRA applicants are given specific instructions as to the level of detail that they must provide in order for their claims to be successful. For example, the Basis of Claim form that asylum claimants are asked to fill contains the following instructions:

> Have you or your family ever been harmed, mistreated or threatened by any person or group?
>
> If "YES" explain in detail:
>
> What happened to you and your family.
>
> When the harm or mistreatment or threats occurred;
>
> Who do you think caused the harm or mistreatment or threats;
>
> What do you think was the reason for the harm or mistreatment or threats that occurred;
>
> Whether persons in situations similar to yours experienced such harm, mistreatment or threats.
>
> (indicate dates, names and places, wherever possible)

[36] The form indicates that a similar level of detail is required with respect to other issues, such as efforts to obtain state protection. While the instructions on the PRRA application form are less detailed, the burden is essentially the same. In any event, Ms. Azzam's narrative attached to her PRRA application is highly similar to her husband's narrative attached to his BOC form. Moreover, both were represented by an experienced immigration lawyer who must be taken to know the requirements.

[37] Unfortunately, the evidence provided by Ms. Azzam in support of her PRRA application falls well short. What she says regarding the alleged persecution is contained in a single short statement (reproduced above at paragraph 4), which fails to provide meaningful answers to many of the questions listed on the BOC form (reproduced above at paragraph 35). For instance, it

does not explain in detail what happened to the claimant, the "restrictions" imposed on her, or what she means by "being chased." There are no details as to the threats to her life, such as when they were made, by whom, how they were conveyed, the persons or "extremist fundamentalist groups" she alleges took the actions against her, and their motivation. This all makes it very difficult to relate Ms. Azzam's alleged mistreatment to one of the Convention grounds mentioned in section 96. Indeed, at the hearing, counsel for Ms. Azzam could not clearly state what the ground of persecution was.

[38] If the matter is viewed through the lens of section 97, the same problems arise. We have no way of assessing the seriousness of the threats allegedly made against Ms. Azzam. We do not know if those threats remain relevant today, assuming that the "extremist fundamentalist groups" are now in possession of her house.

[39] The letters provided by the Palestinian Popular Committees and the Palestinian Liberation Organization do not assist Ms. Azzam. They merely reproduce the bare statements contained in Ms. Azzam's PRRA application. The PRRA officer noted that "the author does not indicate by whom they were threatened, when these events took place, over what period of time they persisted, and for what reason they occurred," which are the same concerns that I mentioned above with respect to Ms. Azzam's narrative. Those letters do not overcome the insufficiency of Ms. Azzam's evidence.

[40] Thus, it was entirely reasonable for the PRRA officer to hold that Ms. Azzam had "failed to provide sufficient evidence." It also follows that the PRRA officer was not required to hold a hearing.

[41] I would simply add that this finding does not offend the well-known presumption of truth, mentioned in *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA), as well as in the manual for PRRA officers (see *Medina Cerrato v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1231 at paragraph 16). One manner of telling apart veiled credibility findings from insufficiency findings is "to ask whether the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application for protection:" *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 at paragraph 31. This is the process that I have followed here. Even if Ms. Azzam's concise statement is taken at face value, there are too many gaps that the reader is asked to fill that it is insufficient to prove the essential elements of a claim under section 96 or 97.

III. Conclusion

[42] Ms. Azzam failed to show that the decision of the PRRA officer is unreasonable. Hence, her application for judicial review will be dismissed.

JUDGMENT in IMM-5122-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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