Federal Court  Cour fédérale

Date: 20191127

Docket: IMM-1857-19

Citation: 2019 FC 1519

Ottawa, Ontario, November 27, 2019

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

KEMAL KAYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Kemal Kaya is a citizen of Turkey and identifies as Kurdish Alevi. While working on an overseas freighter, Mr. Kaya travelled from Singapore to Canada. On September 30, 2017, Immigration, Refugees, and Citizenship Canada [IRCC] granted him 72-hour leave from the ship. He never returned.

[2] On October 3, 2017, IRCC reported Mr. Kaya as inadmissible for failing to return to his ship or to depart Canada within 72 hours after ceasing to be a crew member and issued a warrant. IRCC next issued an exclusion order on January 11, 2018, barring Mr. Kaya from making a refugee claim. The warrant eventually was executed on February 2, 2018. Soon after, Mr. Kaya submitted an application for a Pre-Removal Risk Assessment [PRRA] pursuant to section 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] A Senior Immigration Officer [SIO] refused Mr. Kaya's PRRA about one year later on February 21, 2019, resulting in a Direction to Report for Removal issued by the Canada Border Services Agency [CBSA], and this application for judicial review pursuant to IRPA s 72(1). On March 26, 2019, Mactavish J. (as she then was) granted a stay of removal pending the outcome of the judicial review application.

[4] For the reasons that follow, this application is granted and the matter is to be remitted for reconsideration.

II. Background

[5] In his PRRA, Mr. Kaya alleges persecution on the basis of his ethnicity, religious identity, and political belief. He faces an exacerbated level of danger as a result of his mother's high profile as a political dissident. He further alleges both he and his mother were tortured in 2002 because of his mother's political activities and that even after she fled to Austria, the Turkish authorities kept his family under surveillance, and arbitrarily would detain them for short

periods of time and threaten them. His coworkers on the freight ships also would "give him a hard time" once they found out about his background.

[6] In June 2013, Mr. Kaya claims he was in Gezi Park when riots broke out. He explains he was detained by the police who, after learning about his relation to his mother, insulted him and beat him badly. Prosecutors questioned him prior to releasing him. Following this, AKP supporters attacked him with clubs after he told them "the coup attempt was a case scenario." He alleges the police did not bother launching an investigation.

[7] Mr. Kaya allegedly participated in an HDP demonstration following the arrest of the HDP co-chairs in November 2016. The police attacked the crowd with tear gas and water cannons before arresting him and others. Once again, he was questioned about his mother, his previous detentions, and illegal organizations; and beaten after objecting to an interrogator cursing his mother. The public prosecutor released him after one day.

[8] In April 2017, Mr. Kaya allegedly entered into a violent altercation with plain-clothes police officers after they began destroying flyers he was handing out. He explains he was beaten and taken to the police station, where he was placed in a cell within the anti-terror unit prior to being escorted to an interrogation room blindfolded. He alleges he was questioned thoroughly about his previous detentions, political activities, his mother, and illegal leftist organizations, and was accused of being a member of such organizations. After denying his involvement, they subjected him to violence and threats. After 36 hours, the public prosecutor again released him.

[9] Mr. Kaya explains he did not try to flee Turkey previously because he saw no way out of the country, as even the freighter ships he worked on were not going to safe countries and he was always escorted by security. The April 2017 event was too much, however; so in May 2017, he joined a freighter ship, which appears to have returned to Turkey within the month. Mr. Kaya alleges on his return, he once again was kept for several hours and subjected to many questions.

[10] On July 5, 2017, after paying an agent to make arrangements for safe passage through the airport, Mr. Kaya flew from Turkey to Singapore in order to join a freighter ship bound for Canada. He explains this was necessary because he could not fly straight to Canada from Turkey without a visa. He arrived in Mississauga on September 29, 2017 and left the ship with another crew member. He located an interpreter by December 2017 but, because of the holiday season, could not file his refugee claim right away. Further, given his alleged past experiences, he was fearful of being detained upon making a claim, as he had heard occurred with his colleague who also fled the ship. He eventually overcame this fear and made a claim after finding a lawyer.

[11] Mr. Kaya alleges the police in Turkey continue to inquire about him, as the captain reported to the Turkish officials that he was seeking status in Canada.

III. Impugned Decision

[12] The SIO agreed to analyze the full file given the exclusion order, but found it unnecessary to hold an oral hearing as Mr. Kaya's credibility was not at issue. As the purpose of a PRRA is to assess forward-looking risk, the SIO began by referencing segments of the most recent version of the US Department of State, *Country Report on Human Rights Practices* -

Turkey (2007). These segments concerned: the significant political changes which had occurred since 2016 and the resulting political repression; the functioning and effectiveness of the police and judicial system; and the discrimination faced by the Kurdish Alevi population. The SIO next considered Freedom House, *Freedom in the World 2018 – Turkey* and determined Turkey was "Not Free."

[13] The SIO summarized Mr. Kaya's alleged risk factors as follows:

- The applicant is Kurdish Alevi and has been persecuted and arrested in the past because of his mother's political involvements;
- The applicant's mother was arrested and tortured and fled for refugee protection to Austria;
- The applicant states he and his siblings were questioned on numerous occasions and detained for short periods of time between 2004 and 2014;
- The applicant stated "[m]y refugee case is based on being Kurdish Alevi, leftist, supporter of HDP and suspicions that I and my mother had ties with a leftist illegal organization"; and
- The applicant stated he was last detained and interrogated in April 2017 before boarding a ship for Canada from Singapore.

[14] The SIO noted Mr. Kaya presented a narrative of his life experiences in Turkey, in which he described how his mother was perceived as a political dissident, was arrested and tortured in 2002, and eventually fled to Austria where she made a successful refugee claim. Mr. Kaya also narrated events that he alleged happened to him and his family in Turkey up until 2017, and

provided translated documents from the Human Rights Foundation of Turkey to support that his mother had a claim of torture in Turkey.

[15] Accepting the evidence demonstrated Mr. Kaya's mother was a perceived political dissident and was imprisoned and tortured in 2002/2003, the SIO concluded this did not establish Mr. Kaya himself had been harmed, persecuted, or tortured. Further, the SIO gave little weight to Mr. Kaya's narrated allegations of past persecution, because Mr. Kaya presented little corroborative evidence that he personally had been persecuted or harmed when living in Turkey. As such, the SIO concluded Mr. Kaya did not meet sufficiently his evidentiary onus to demonstrate risk.

[16] The SIO found Mr. Kaya presented little evidence of current country reports or documentation regarding Kurdish/Alevi or political opponents/dissidents. Therefore, the SIO conducted his own research, citing excerpts from both Freedom House 2018 and Minority Rights Group International Report. Despite finding "some of the reports … troubling, [the SIO found] that they present information that affects the population as a whole. Kurds and Alevis in Turkey have a large numbers in Turkey. While they may be discriminated against… [this did not rise] to the level of persecution according to the publically available current country reports."

IV. Issues

[17] Did the SIO err in fact, law, breach of fairness or exceed jurisdiction?

V. Standard of Review

[18] PRRA assessments "are fact-driven inquiries that involve weighing evidence and which engage an officer's expertise in risk assessment." As such, they generally are reviewable on a reasonableness standard: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Semykin v Canada (Citizenship and Immigration)*, 2019 FC 496 [*Semykin*] at paras 11-12; *Namgyal v Canada (Citizenship and Immigration)*, 2019 FC 1327 at para 14.

[19] That said, as noted in *Ruszo* regarding the issue of procedural fairness, "[t]he selection of the applicable standard of review appears to depend on whether the Court in a particular case characterizes the issue of whether an oral hearing should have been granted as a matter of procedural fairness, in which case the standard is correctness, or as involving interpretation of the IRPA, in which case the standard is reasonableness. … when the issue is whether a PRRA officer should have granted an oral hearing, the appropriate standard is reasonableness, as the decision on that issue turns on interpretation and application of the officer's governing legislation, i.e. s. 113(b) of the IRPA and s. 167 of the IRPR": *Ruszo v Canada (Citizenship and Immigration)*, 2017 FC 788 [*Ruszo*] at para 16.

[20] Under the reasonableness standard, this Court will "defer to any reasonable interpretation adopted by an administrative decision maker, even if other reasonable interpretations may exist" so long as it falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 40; *Canada (Attorney General) v Heffel Gallery Limited*, 2019 FCA 82 at para 48; *Delios*

v Canada (Attorney General), 2015 FCA 117 at paras 27-28; *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47.

[21] If the decision maker's reasons, when read in context with the evidence, allow this Court to understand why the decision was made, it will be justifiable, transparent, and intelligible: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*NL Nurses*] at paras 15-18. Before seeking to subvert the decision maker's decision, the Court first must seek to supplement it: *NL Nurses*, above at para 12. This does not create, however, a "carte blanche [opportunity] to reformulate a tribunal's decision in a way that casts aside an unreasonable chain of analysis in favour of the court's own rationale for the result": *Petro-Canada v British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at paras 53 and 56, adopted in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta*] at para 54, and in *Delta Air Lines Inc v Lukács*, 2018 SCC 2 [*Delta*] at para 24.

VI. Relevant Provisions

[22] See Annex A for the applicable provisions of the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

VII. Analysis

[23] Mr. Kaya asserts he submitted corroborative evidence to support his narrative, pointing to English translations of the Human Rights Foundation of Turkey report concerning his mother,

and a document entitled Minutes of Statement, which allegedly details a police statement given by Mr. Kaya's mother to the Gazi Police Center. The former document shows his mother stated he was tortured, in addition to her own torture, while the latter document mentions that soldiers threatened his mother with his death should she do anything wrong. He indicates that where one document is silent on a point, such an omission does not harm credibility: *Sitnikova v Canada (Citizenship and Immigration)*, 2016 FC 464 [*Sitnikova*] at para 23, citing *Belek v Canada (Citizenship and Immigration)*, 2016 FC 205 at para 21.

[24] Further, Mr. Kaya submits that given his credibility was not an issue, his narrative must be accepted as proof of the facts: *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 [*Maldonado*] at para 5. He notes the SIO did not identify any additional information or evidence that could have been reasonably provided: *Mowloughi v Canada (Citizenship and Immigration)*, 2019 FC 270 at para 65. Mr. Kaya states there was no doubt that he and his family members were having problems, and submits this was not simply an issue of insufficient evidence as the facts could not support any other reasonable inferences but that he was a target of state agents.

[25] Mr. Kaya concludes that requiring further evidence from him, without clear explanation, was speculative and more akin to a veiled credibility finding, resulting in a breach of fairness as he was not afforded an oral hearing: *Ruszo*, above at para 17; *Balogh v Canada (Citizenship and Immigration)*, 2017 FC 654 at para 29.

[26] The Minister submits there is no serious issue for judicial review, as Mr. Kaya failed to satisfy his evidentiary onus of providing evidence on all elements of the PRRA application: *Luse v Canada (Citizenship and Immigration)*, 2017 FC 464 at para 5. The Minister explains even where evidence is presumed credible and reliable, this does not necessarily mean that the evidence in and of itself is sufficient to establish the facts or risk on a balance of probabilities: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*] at paras 20-22, 25-26; *Semykin*, above at para 19; *Cosgun v Canada (Citizenship and Immigration)*, 2010 FC 400 [*Cosgun*] at paras 38-41; *Haji v Canada (Citizenship and Immigration)*, 2009 FC 889 [*Haji*] at para 10. Sufficiency of evidence is a determination that rests with the trier of fact, which in this case is the SIO: *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 [*Sallai*] at paras 55, 57; *Blidee v Canada (Citizenship and Immigration)*, 2019 FC 244 [*Blidee*] at para 16.

[27] The Minister further submits Mr. Kaya's proposed corroborative evidence, while indicative that his mother was a political dissident who was imprisoned and tortured, does not establish personalized allegations of mistreatment nor demonstrate a claim under IRPA ss 96 or 97(1). With respect to references in the Human Rights Foundation of Turkey report and the Minutes of Statement, the Minister submits these documents are "clearly inconsistent", which affects both the probative value of this evidence and the weight they should be afforded. For example, as mentioned above, the Human Rights Foundation of Turkey report indicates Mr. Kaya was tortured, whereas the Minutes of Statement indicate he would be killed if his mother did anything wrong. In my view, however, these documents are not inconsistent on their face.

[28] Finally, the Minister concurs with the SIO's finding that Mr. Kaya provided little objective evidence of current country conditions concerning Kurdish/Alevis or political opponents/dissidents; a review of the most recent documentary evidence concerning Kurds and Alevis in Turkey does not disclose discrimination rising to the level of persecution.

[29] The line between the credibility versus sufficiency of evidence may be hard to draw, as the Court must look beyond the express wording of the SIO's decision to determine whether an applicant's credibility in fact was in issue: *Ferguson*, above at paras 16, 20-22; *Sallai*, above at paras 47-48. The determinative issue in this matter is whether the SIO unreasonably concluded Mr. Kaya provided insufficient evidence to support his PRRA, given his credibility was not in issue. This involves examining whether the SIO reasonably discounted Mr. Kaya's objective evidence and his personal narrative, especially as the SIO chose not to test Mr. Kaya's credibility through an oral hearing.

[30] In dismissing the PRRA, the SIO concluded:

> "First, I find that the applicant has presented little evidence that he personally has been persecuted in Turkey or harmed when living in Turkey. Other than his statements, and the statements from counsel which recount the applicant's statements, I find that there is little probative documentary evidence …. The onus is on the applicant to present documentary evidence to support all of the allegations of his claim and I find that the applicant has not met this onus.
>
> "I accept the information presented which shows that the applicant's mother was thought to be a political dissident and was imprisoned and tortured in 2002/2003 in Turkey. **I do not find however that this establishes that the applicant has been harmed, persecuted, or tortured in the same vein**. Again, there is little evidence presented that personally establishes that the applicant has been affected.

> "**Because of these findings, I give little weight to these narrated allegations of past persecution**." [emphasis added]

[31] In connection with determinations under IRPA ss 96-98, the SIO must be sensitive to the *Maldonado Principle* that a refugee claimant's testimony is presumed true and credible absent any reason to discount or disbelieve it: *Maldonado,* above at para 5. The *Maldonado Principle* is not determinative, however, of a sufficiency analysis. In some circumstances, otherwise credible testimony nonetheless may be insufficient to establish a claim for refugee protection: *Ferguson, above* at paras 26-27. This may occur, for example, where corroborative evidence is reasonably expected but not provided, or where objective evidence suggests the events as described are implausible, thus raising the evidentiary burden on the claimant: *Ferguson*, above at para 22; *Perampalam v Canada (Citizenship and Immigration)*, 2018 FC 909 at para 45; *Semykin*, above at para 19; *Cosgun*, above at para 41; *Haji*, above at para 10; *Sallai*, above at paras 48-58. As well, a refugee claimant's evidence may be insufficient where the claimant's evidence itself does not reasonably demonstrate or explain how the claimant's alleged risk emanates from a situation defined in IRPA ss 96 or 97: *Cosgun,* above at para 37; *Blidee,* above at para 17; *Haji v Canada (Citizenship and Immigration*), 2018 FC 474 at para 20.

[32] Based on the facts of any given case, an SIO may conclude the refugee claimant's personal narrative or testimony, in and of itself, is insufficient to support the claim. In doing so, however, the SIO must explain why, in the circumstances, the claimant's evidence was insufficient; otherwise, the conclusion runs afoul of the *Dunsmuir* criteria of intelligibility, justification, and transparency: *Dunsmuir*, above at para 47; *Sallai*, above at paras 57-63; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35.

[33] In the case before this Court, the SIO committed a reviewable error by failing to explain why Mr. Kaya's evidence was insufficient, and what other specific corroborative evidence Mr. Kaya was expected to provide. In other words, the SIO failed to articulate what aspects of his narrative were deficient absent additional proof, or what conditions raised Mr. Kaya's evidentiary burden.

[34] As previously mentioned, there is no clear inconsistency between the Human Rights Foundation of Turkey report and the Minutes of Statement. The SIO therefore should have considered whether either of or both these documents corroborated Mr. Kaya's account, in the absence of a reason to discount them: *Sitnikova*, above at paras 22-24. Given the importance and probative value of the Human Rights Foundation of Turkey report in particular to the crux of Mr. Kaya's claim, in my view the SIO was required to consider whether this evidence corroborated Mr. Kaya's allegations before determining whether Mr. Kaya had met his evidentiary burden: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17. At the very least, it is in my view unintelligible that the report is accepted as demonstrating Mr. Kaya's mother was a political dissident who was imprisoned and tortured before eventually fleeing Turkey, but that her statement her son was tortured was discounted. This is tantamount to a veiled credibility finding, as the only logical explanation for requiring additional corroborative evidence is that the SIO disbelieved Mr. Kaya's narrative.

VIII. Conclusion

[35] In my view, the impugned decision is unreasonable as it runs afoul of the *Dunsmuir* criteria of intelligibility, justification, and transparency. Without a clear explanation of why or

what aspects of Mr. Kaya's evidence were insufficient, it is impossible to determine whether the SIO's conclusion was reasonable or whether the SIO made an impermissible veiled credibility determination by requiring he corroborate his otherwise truthful statements: *Magonza, above* at para 35. In such circumstances, it is not the role of this Court to supplement deficient reasons and speculate whether the facts as alleged were sufficient to grant protection: *Delta, above* at para 24, citing *Alberta,* above at para 54; *Leahy v Canada (Citizenship and Immigration),* 2012 FCA 227 at para 100; *Canada v Kabul Farms Inc,* 2016 FCA 143 at paras 32-34; *Vavilov v Canada (Citizenship and Immigration),* 2017 FCA 132 at para 39. This judicial review application, therefore, is allowed and this matter is to be remitted to a different officer for redetermination, including reconsideration of whether to hold a hearing.

IX. Possible Question for Certification

[36] In oral submissions at the hearing, the Applicant raised a possible question for certification. As it was not raised 5 days in advance of the hearing in accordance with the Federal Court *Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings* (dated November 5, 2018), the Applicant was invited to submit it in writing later in the same day as the hearing and the Respondent was provided 5 days to make brief written submissions regarding the proposed question. The Applicant proposes the following question: "In a PRRA application, is the onus on an applicant whom the PRRA officer explicitly found credible, to corroborate all aspects of the allegations of risk?"

[37] In response, the Respondent submits that, rather than a lack of credibility, the SIO's decision turned on a lack of sufficiency of evidence. As mentioned, however, in this Court's

view there is insufficient explanation or intelligibility, justification and transparency in the decision to make a determination as to whether sufficiency of evidence or lack of credibility, or some combination, underpinned the decision.

[38] In any event, I believe that the applicable facts do not raise the proposed question, though serious, to the level of general importance required for certification and, hence, I decline to certify it.

JUDGMENT in IMM-1857-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is to be remitted to a different Senior Immigration Officer for redetermination, including reconsideration of whether to hold a hearing.
3. The proposed question is not certified.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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ANNEX A: Relevant Provisions

[1] Any individual in Canada who is subject to an in-force removal order, or named in an IRPA s 77(1) certificate, may apply to the Minister for protection. This is known as a "Pre-Removal Risk Assessment" or "PRRA": IRPA s 112(1).

112 (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).	**112 (1)** La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

[2] Given that a positive PRRA confers refugee protection, SIOs will assess risk against IRPA ss 96-98: IRPA ss 113(c), 114(1)(a).

113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
…	…
(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	**c)** s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
...	...
114 (1) A decision to allow the application for protection has	**114 (1)** La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.
(a) in the case of an applicant not described in subsection	

112(3), the effect of conferring refugee protection; and	

[3] A Convention refugee is an individual who is outside their country of origin and is unable or unwilling to avail themselves of their country's protection because of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion: IRPA s 96.

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[4] A person in need of protection is a person whose removal would subject them personally to a risk to their life, or of torture or cruel and unusual treatment or punishment: IRPA s 97.

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality,	**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a

their country of former habitual residence, would subject them personally	pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[5] PRRA applications are usually paper-based; a hearing may be held if the SIO, based on factors prescribed in the Regulations, determines a hearing is required: IRPA 113(b), IRPR s 167

113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
…	…
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	**b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(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;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.