Federal Court  Cour fédérale

Date: 20200114

Docket: IMM-1594-19

Citation: 2020 FC 50

Ottawa, Ontario, January 14, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MOHAMED AYANLE ALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of a Senior Immigration Officer (the "Officer") to deny the Applicant's Pre-Removal Risk Assessment ("PRRA") application pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] Mr. Mohamed Ayanle Ali (the "Applicant") is a 33-year-old citizen of Somalia who grew up in the United States ("U.S.") since the age of 12. He entered Canada from the U.S. on August 6, 2017 and made a refugee claim. By decision dated February 15, 2018, the Immigration Division ("ID") rejected the Applicant's refugee claim. The ID concluded the Applicant is inadmissible to Canada pursuant to section 36(1)(b) of the *IRPA*.

[3] The Applicant's first PRRA application in March 2018 was unsuccessful. This decision was remitted to another decision-maker for redetermination on consent of the parties, but the second PRRA application was also denied. By decision dated February 15, 2019, the Officer concluded that the Applicant did not face more than a mere possibility of persecution, and that on a balance of probabilities, he was not at risk of torture, death, or cruel and unusual punishment in Somalia. The Applicant seeks judicial review of the second PRRA decision and submits that 1) the Officer conflated the requirements under sections 96 and 97 of the *IRPA*, and 2) the Officer incorrectly applied the standard of proof under section 96 of the *IRPA*.

[4] Although I find the Officer's decision does not contain the errors alleged by the Applicant, the Officer's decision is unreasonable because the Officer failed to consider the evidence of the Applicant's mental health and failed to explain the reasoning underlying their review of the evidence. This application for judicial review is allowed.

II. **Facts**

A. ***The Applicant***

[5] The Applicant is a 33-year-old citizen of Somalia who arrived in the United States in 1997 as a permanent resident. He was sponsored to the U.S. by his family as a protected person. The Applicant claims his father lied about his age on the application, and that in reality, he is five years younger than the age on his official documents.

[6] In 2002, Child Protective Services placed the Applicant in foster care because the Applicant was physically abused and neglected while living with his father and cousins. The Applicant's foster parent, Ms. Sarazine, stated the Applicant reacted dramatically to loud voices and sudden movements. According to Ms. Sarazine, the Applicant required "constant supervision and redirection", and she believed he was younger than the age on his official records. The Applicant was discharged from foster care on his official 18th birthday. The Applicant was educated in the U.S. and completed two years of college.

[7] On November 22, 2006, the Applicant pled guilty to sexual assault in the fifth degree for non-consensual sexual contact—an offence contrary to section 609.345(1) of Minnesota Statutes—and was sentenced to one year in prison. On June 19, 2013, the Applicant was convicted of failing to register as a sex offender, which was a requirement from his last conviction, and he was sentenced to another 90 days in jail.

[8] The Applicant never became a U.S. citizen. While he was in foster care, the Applicant's mother did not file the appropriate forms for him to obtain U.S. citizenship. The Applicant states that U.S. Immigration and Customs Enforcement apprehended him and a judge in Omaha ordered his removal to Somalia.

[9] Although there is no diagnosis in the record, the Applicant states he has bipolar disorder. Ms. Sarazine stated in her affidavit that the Applicant had completed a neuro-psychological examination in 2003. At the ID hearing, the Applicant's counsel noted the Applicant's bipolar disorder and the fact that he was being medicated for his mental illness. The Applicant's counsel submitted this was "a factor" in his 2013 conviction. Furthermore, in his personal letter to the Officer, the Applicant explained that due to his bipolarity, he had "shut down mentally" when he was apprehended by U.S. Immigration and Customs Enforcement, and had not been keeping up with necessary annual checks required after his conviction. The ID found that the Applicant clearly had difficulty self-regulating, i.e. the ability to respond to stimuli with socially appropriate emotional responses.

[10] In August 2017, the Applicant arrived in Canada and made a refugee claim. He admitted his criminal conviction, but denied committing the offence. Instead, he said, "he had hurt himself by making a plea bargain". Similarly, on his PRRA application, he denied committing the offence and said that he and his friend hugged outside her home, but her mother reacted by calling the police. These descriptions are inconsistent with the facts underlying his conviction according to the victim. The ID found that there were reasonable grounds to conclude the Applicant committed an offence making him inadmissible to Canada as a refugee.

[11] The Applicant stated he fears returning to Somalia because he is not familiar with Somalia, having lived most of his life in North America. A rudimentary summary of the Applicant's PRRA claim is that he fears being killed in Somalia by Al Shabaab because he is too "westernized" and he does not know anyone in Somalia. In my view, however, the Applicant's claim is more complex and is premised upon the Applicant's fear that he does not know how to generally survive or live his life in Somalia. The Applicant submitted the PRRA application in his own words and he appears to have some difficulty cogently expressing himself. The following are excerpts from his application and personal letters:

> "I SEE MYSELF AS A BLACK MUSLIM AMERICAN OR NORTH AMERICAN SO I DO NOT KNOW ANYTHING ABOUT SOMALIA OR EVEN AFRICA AS A WHOLE."
>
> […]
>
> "MY FAMILY SATUITION [sic] IS VERY BAD BECAUSE THEY HAVE NEGLECTED ME FOR A LONG TIME AND THEY STILL DO…CANADA IS A COUNTRY WHERE I CAN BE SUCCEFUL [sic] AND LIVE IN A HEALTH [sic] LIFE."
>
> […]
>
> "…a judge ordered my removal to Somalia. I do not think that's fair, because almost all my life I lived in the U.S. I'm not a bad guy, I believe the foster care system and the system itself failed me."
>
> […]
>
> "I.C.E was trying to send me back to a land that I know nothing about."
>
> […]
>
> "Almost all my life I lived in North America USA. I know nothing about [Somalia]. I'm westernized. And I believe I won't be safe in Somalia."
>
> […]

> "Don't know how to [illegible] in a country like Somalia. I have a hard time getting along with Somalis here."
>
> […]
>
> "My case is simple. Almost all my life, I lived USA Minnesota. How can I survive in a country like Somalia? They would try to kill me or force me to be a terrorist, that's how I see Somalia in my views [sic]. Al-Shabaab is still strong in South of Somalia where I was born, but left when I was 9 months old. They [sic] still killing who they want to there – I'm too westernized."
>
> […]
>
> "All I know [illegible] my life is America USA. I know nothing about Somalia. And I don't hear any good things about Somalia."

[12] The Applicant only stated once in his PRRA submissions that he fears being killed by Al Shabaab as a "westerner". In the rest of his submissions, he explained that he is unfamiliar with Somalia generally and he fears for his safety because of the unknown. A holistic examination of the facts underlying the PRRA application yields the following portrait of the Applicant: he is a vulnerable person with a volatile mental health, difficulty self-expressing, a history of abuse, a criminal record, limited knowledge of Somalia, and unstable family relationships.

B. ***Conditions in Somalia***

[13] Al Shabaab is an international terrorist organization that has a hold on large rural sections of south-central Somalia. Al Shabaab employs guerilla tactics and suicide or car bombings among other tactics, and targets people and institutions that work against it, such as members of the international community and the Somalian government. Humanitarian aid workers, non-governmental organizations ("NGOs"), and journalists may also be targeted depending on their activities. Ordinary civilians are unlikely targets.

[14] However, the individuals or groups targeted by Al Shabaab, and those at risk of violence perpetrated by Al Shabaab are not necessarily the same group. Country conditions demonstrate that civilians are killed by attacks targeted at United Nations or government officials. One report listed a number of attacks between February and June of 2017 that took place in government-heavy areas. These attacks may target government personnel, but the attacks themselves kill indiscriminately; at both attacks, ten or more people were killed. One report stated that civilian casualties are unfortunately from "being in the wrong place at the wrong time" and that attacks directed at public places with no "high value targets" are unusual.

[15] The U.S. Department of State report also states that persons with disabilities experience many human rights abuses such as unlawful killings, forced evictions, and lack of access to health care. Furthermore, "without public health infrastructure, few services exist to provide support or education to persons with mental disabilities. It was common for such persons to be chained to a tree or restrained within their homes".

C. ***The Underlying Decision***

[16] The Officer first identified the risks that the Applicant alleges he would suffer in Somalia. The Officer quoted from the application where the Applicant stated that he was raised mostly in the United States, was unfamiliar with Somalia, and feared Al Shabaab would hurt him or forcibly recruit him because he is too "western".

[17] The Officer noted having "carefully considered" the February 2019 PRRA submissions, which included a letter of support from the Applicant's foster parent and a personal letter from

the Applicant. The Officer concluded the Applicant provided "insufficient objective evidence that he would be targeted by Al Shabaab". The Officer conducted an independent research and relied on country conditions published by the United Kingdom Home Office Reports. The Officer quoted a lengthy excerpt from a report stating that Al Shabaab mostly targets government employees, humanitarian or NGO workers, but rarely civilians.

[18] The Officer noted they were sensitive to the fact that the Applicant had not lived in Somalia and did not know anyone there, but concluded there was insufficient evidence that the Applicant would be targeted merely because he was a "westerner", based on country condition research. Given the Applicant's personal circumstances, the Officer concluded the Applicant was not similarly situated to frequent targets of Al Shabaab. The Officer acknowledged that attacks against civilians "have intensified", but explained that those risks were felt generally by all Somalians.

[19] The Officer concluded there was insufficient evidence that the Applicant "faces more than a mere possibility of persecution for any Convention ground", and that "on a balance of probabilities, it is not likely that the applicant will be at a risk of torture, or a risk to life, or a risk of cruel and unusual treatment or punishment upon return to Somalia".

III. **Issues and Standard of Review**

[20] The parties have identified the following issues:

1. Did the Officer err by requiring the Applicant to satisfy both sections 96 and 97 of the *IRPA* or conflating the requirements?

2. Did the Officer employ the correct standard of proof under section 96?

[21] However, I find the dispositive issue on this application for judicial review is whether the Officer's decision is reasonable. As such, I will not be addressing the other two issues.

[22] It is well established that a PRRA decision is reviewed on the ground of reasonableness (*Lai v Canada (Minister of Citizenship and Immigration)*, 2007 FC 361 (CanLII) at para 55; *Figurado v Canada (Solicitor General)*, 2005 FC 347 (CanLII)). Although the hearing for this matter was held prior to the Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], in my view, the presumption of reasonableness applies to the case at bar, since the two exceptions rebutting the presumption are not applicable (*Vavilov* at para 17).

[23] As noted in *Vavilov*, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker," (*Vavilov* at para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency," (*Vavilov* at para 100).

IV. **Analysis**

[24] A PRRA Officer "must analyze the evidence and the applicant's situation to determine whether removal would subject him to a danger of torture or persecution or to a risk to his life or

to a risk of cruel and unusual treatment or punishment" (*Eid v Canada (Citizenship and Immigration)*, 2010 FC 639 (CanLII) [*Eid*] at para 38). It is the officer's role to determine the weight that needs to be given to the submitted evidence (*Eid* at para 40).

[25] Furthermore, A PRRA officer is presumed to have considered all of the evidence and need not mention each and every piece of evidence (*Gombos v Canada (Citizenship and Immigration)*, 2017 FC 850 (CanLII) at para 56). However, where there is important material evidence that contradicts the factual findings, the Officer must provide reasons why the contradictory evidence was not considered relevant or trustworthy (*Ramirez Chagoya v Canada (Citizenship and Immigration)*, 2008 FC 721 (CanLII) at para 19; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] F.C.J. No. 1425 (QL); *Matute Andrade v Canada (Citizenship and Immigration)*, 2010 FC 1074 (CanLII) at para 64). In the case at bar, the Officer failed to consider the Applicant's evidence of his mental health and disorder and in doing so, committed a reviewable error.

[26] I accept the Applicant's evidentiary submissions to the Officer were not clear, as the Applicant only referenced his fear of Al Shabaab in one document, and otherwise described his fear of Somalia in a vague, all-consuming manner. However, as noted by the Applicant's counsel, the Applicant's mental illness understandably prevents him from clearly and logically articulating his struggles. The Applicant's illness permeates his ability to communicate. Although it may have been reasonable for the Officer to characterize the Applicant's claim narrowly—as being afraid of Al Shabaab—the Officer did not consider any additional evidence

in the Applicant's documentary submissions that supplemented and supported the Applicant's intense fear of the unknown.

[27] For instance, the Officer failed to consider the Applicant's personal letter stating that he was bipolar and that he had "shut down mentally" in the past. The Officer also failed to provide reasons on why the evidence put forward by Ms. Sarazine, the Applicant's foster parent, lacked relevance. In particular, Ms. Sarazine's support letter is critical. Her letter is only six paragraphs, and four of the six paragraphs describe the Applicant's history of abuse, neglect, and mental disturbance. However, the only reference to Ms. Sarazine's letter in the Officer's decision is the acknowledgement that the letter was received. The Officer did not explain why the letter did not provide evidence that the Applicant would be persecuted in Somalia, nor why the letter was not relevant to the application. Especially, in light of the relevant country condition evidence, the failure to provide reasons on why Ms. Sarazine's letter was irrelevant renders the Officer's decision unreasonable.

[28] Ms. Sarazine's letter and the Applicant's personal letter contain information that contradicts the Officer's findings in two ways. First, the Applicant's mental health discussed in the letter could have illuminated a basis for the Applicant's persecution in Somalia, which contradicts the Officer's reasons and analysis of section 96 of the *IRPA*. Second, the Applicant's bipolar disorder discussed in the letters contradicts the Officer's conclusion that the Applicant faces "the same generalized risk of violence as the entire population of the country".

[29] The Officer found the Applicant would not be targeted simply by virtue of being a "westerner" since civilians in Somalia are not specific targets. However, as the Applicant's counsel argued, the Applicant does not have the ability to understand the risks in Somalia, take precautions, or behave in a way that will not draw attention—skills that other Somalian citizens arguably possess because they have lived in Somalia. In addition, the Applicant submitted evidence in the form of his letter and his foster parent's letter which yielded a history of volatility, from "reacting dramatically to sudden moves or loud voices", to "[shutting] down mentally". I recognize the Officer was certainly not required to assess all of the various permutations of risk the Applicant's counsel expounded upon at the hearing. However, in view of the evidence presenting the Applicant's mental illness that hinders his behavioural skills, the Officer was required to assess the evidence in more than a cursory way, and at the very least, explain why it was not relevant.

[30] The evidence was important in demonstrating the Applicant's vulnerability and potential exposure to risk in Somalia, but there is nothing in the Officer's decision to suggest that the Officer recognized the Applicant as a vulnerable person. Instead, the Officer was "sympathetic to the applicant's desire to remain in Canada with his friends". In my view, the Officer minimized the distress of the Applicant to his desire "to be with his friends", and in doing so, occluded the vulnerability of the Applicant and belittled his plight.

[31] The case at bar can be distinguished from *Abdollahzadeh v Canada (Citizenship and Immigration)*, 2007 FC 1310 (CanLII) [*Abdollahzadeh*]. In *Abdollahzadeh*, the applicant had argued the PRRA Officer erred in the assessment of the evidence. Justice Noël concluded that

the Officer's decision was reasonable and reiterated that a PRRA is not a second refugee hearing (*Abdollahzadeh* at paras 17, 28-29). However, unlike in the case at bar, it is notable that the PRRA Officer in *Abdollahzadeh* reviewed all 36 documents submitted by the Applicant and explained the probative value of each document before rejecting the evidence. Likewise, in *Traoré v Canada (Citizenship and Immigration)*, 2011 FC 1022 (CanLII) [*Traoré*], the Court found the Officer's decision was reasonable and noted, "[t]he officer was entitled to weigh the evidence using her specialized expertise, and she provided reasons explaining the weight given to each item of the evidence," (*Traoré* at para 42). Although the officer in *Traoré* did not explicitly list each piece of evidence, "the officer wrote more than one paragraph on the…'new' evidence the applicant provided" (*Traoré* at para 45).

[32] In the case at bar, unlike in *Traoré* and *Abdollahzadeh*, the Officer failed to explain why the letters from Ms. Sarazine and the Applicant were not probative or reliable, although the evidence contained information that contradicted the Officer's ultimate findings. The Officer only noted that the evidence existed, and concluded they were insufficient. Ultimately, the Officer's reasons are not justified or transparent. It is impossible to know why the Officer disregarded evidence of the Applicant's turbulent mental health or whether that informed the analysis of the Applicant's risk of violence. As a result, the Officer's decision is unreasonable.

V. **Certified Question**

[33] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VI. **Conclusion**

[34] For these reasons, this application for judicial review is allowed.

JUDGMENT IN IMM-1594-19

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and the matter referred back for redetermination by a different officer.
2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1594-19
STYLE OF CAUSE:	MOHAMED AYANLE ALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	AUGUST 28, 2019
JUDGMENT AND REASONS:	AHMED J.
DATED:	JANUARY 14, 2020

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