

Federal Court



Cour fédérale

Date: 20200709

Docket: IMM-4741-19

Citation: 2020 FC 752

Ottawa, Ontario, July 9, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

ADRIAN EDMOND PASCAL

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] After being found inadmissible to Canada for serious criminality and organized criminality, Adrian Pascal was ordered removed from Canada to Jamaica. He applied for a Pre-Removal Risk Assessment [PRRA], claiming he would be at risk in Jamaica as a returnee, as a person who has been identified in Canada as a criminal and gang member, and as a person whose

criminal record would be known to Jamaican authorities. He asserted that these factors would put him at risk from Jamaican police, and from criminals and criminal gangs in Jamaica.

[2] A PRRA officer refused the application, concluding that Mr. Pascal had not demonstrated he was a person in need of protection. The PRRA officer found it highly unlikely that Mr. Pascal would face any risks as a returnee, and found that while unlawful killings by the police were a problem, they were rare. The PRRA officer also concluded that there was little evidence to suggest that Mr. Pascal was likely to be among the small percentage of the population affected by the risk of gang violence. Mr. Pascal argues that the refusal of his application was unreasonable, as the PRRA officer failed to properly assess the identified risks, and did not assess the risk due to the convergence of the various identified risk factors.

[3] I conclude that the PRRA officer's decision was reasonable. The PRRA officer considered the risks identified by Mr. Pascal and the evidence filed, and reasonably concluded Mr. Pascal had not shown he would be likely to face a personal risk to life, cruel and unusual treatment or punishment, or a danger of torture. Given the PRRA officer's findings in respect to those risks, their overall finding was also reasonable. Further, despite Mr. Pascal not having filed any evidence or made any submissions with respect to such cumulative risks, the PRRA officer did consider the totality of the evidence in assessing whether Mr. Pascal had established that he was likely to face a personalized risk.

[4] This application for judicial review is therefore dismissed. Mr. Pascal's application for judicial review of the Immigration Division's finding that Mr. Pascal was inadmissible on

grounds of organized criminality was heard together with this application. Separate reasons for dismissing that application are being released concurrently as 2020 FC 751.

II. Issues and Standard of Review

[5] Mr. Pascal raises the following issues on this application:

A. Did the PRRA officer err in assessing the risk to Mr. Pascal:

(1) from Jamaican police;

(2) from criminals and criminal gangs in Jamaica; and/or

(3) as a returnee from North America?

B. Did the PRRA officer err by considering these risks in isolation and failing to assess Mr. Pascal's cumulative risk in totality?

[6] The parties agree that the PRRA officer's decision is to be reviewed on the reasonableness standard: *Asiri v Canada (Citizenship and Immigration)*, 2018 FC 1025 at para 11; *Ahmed v Canada (Citizenship and Immigration)*, 2019 FC 80 at paras 17–18. The Supreme Court of Canada's recent decision in *Vavilov*, decided after the hearing of this matter, simply confirms that the reasonableness standard applies: *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[7] Review on the reasonableness standard involves assessing whether the decision is justified, transparent and intelligible. In other words, it asks whether the reasons allow the Court

to understand why the decision is made and to determine that the conclusion is reasonable: *Asiri* at para 12; *Vavilov* at paras 15, 79, 86–87. The Court is not to undertake a reweighing of the evidence or substitute its own view of a preferable outcome: *Asiri* at para 12; *Vavilov* at para 125.

III. Analysis

A. *The PRRA Officer Reasonably Assessed the Risks to Mr. Pascal*

[8] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] permits an individual in Canada who is subject to a removal order to apply for protection through a PRRA: *IRPA*, s 112. A PRRA has been described as the “last formal risk assessment given to qualifying individuals before they are removed from Canada”: *Valencia Martinez v Canada (Citizenship and Immigration)*, 2019 FC 1 at para 1. It seeks to ensure that individuals are not removed to a country where they would be at risk of persecution or are in need of protection from risks of death, torture or other cruel and unusual treatment or punishment: *Valencia Martinez* at para 1; *IRPA*, ss 96–97, 112–113. In Mr. Pascal’s case, a PRRA was only available on section 97 grounds—that is, on the basis of being a person in need of protection—as he had been found inadmissible on grounds of organized criminality and serious criminality: *IRPA*, ss 36, 37, 112(3)(a)–(b), 113(d).

[9] The background to Mr. Pascal’s inadmissibility, and thus to his PRRA application, is set out in the inadmissibility determination by the Immigration Division, reported as *Pascal v*

Canada (Citizenship and Immigration), 2019 CanLII 90444 (CA IRB), and in this Court's decision on judicial review of that decision, 2020 FC 751.

[10] Mr. Pascal's PRRA application identified risks associated with his criminal charges and convictions, the allegations against him of membership in a criminal organization known as the Galloway Boys, and the risks to returnees to Jamaica. He challenges the PRRA's assessment of each of these risks.

(1) Risks from Jamaican police

[11] While denying membership in the Galloway Boys, and underscoring that he had never been convicted of a gun or gang criminal offence, Mr. Pascal argued that information available on the internet would lead people to perceive him as a violent criminal associated with gangs. Further, the Canadian Border Services Agency (CBSA) would share information about Mr. Pascal with Jamaican authorities, so those authorities would be well aware of the allegations of gang membership leading to his removal. Mr. Pascal pointed to evidence that police in Jamaica employ extrajudicial violence and killings against those perceived to be criminals, and gang members in particular, carrying out "justice that they see as unavailable through the judicial system." He cited reports that there were an average of over 200 police killings per year in the 2000-2012 time period, including 236 in 2011 and 219 in 2012, and an Amnesty International report that there were as many as 272 police killings in 2007.

[12] The PRRA officer reviewed information indicating that the Independent Commission of Investigations (INDECOM), the body established by the Jamaican Parliament to investigate

abuses by agents of the state, had received 168 reports of security-force related fatalities in 2017 and 122 such reports in 2018. The PRRA officer concluded that “while unlawful killings are a problem, it appears that they are rare.”

[13] Mr. Pascal argues that the PRRA officer did not adequately address this risk, and unreasonably referred to Jamaican government statistics, which showed lower numbers of police fatalities than the independent sources he cited, without explaining the reason for doing so. He asserts that this concern is exacerbated by the state’s motivation to minimize the problem of state violence.

[14] I cannot accept these arguments for three reasons. First, the PRRA officer’s reason for referring to the statistics they did is clear on its face. As the PRRA officer noted, a PRRA is a forward-looking exercise. More recent information is therefore of particular relevance in that assessment. The most recent figures cited by Mr. Pascal dated from 2012, while some dated back to 2007 and even 2000. The PRRA officer reviewed equivalent figures from 2017 and 2018, which was not unreasonable for a PRRA decision in 2019, even without further explanation. Indeed, as the Minister notes, the more recent statistics were not inconsistent with the earlier ones, as the earlier reports indicated that rates of police killings in Jamaica were declining. The evidence cited by Mr. Pascal was therefore not “contrary” evidence as he alleges, but simply more dated evidence.

[15] Second, contrary to Mr. Pascal’s arguments, both the statistics he cited and those cited by the PRRA officer come from Jamaican government sources. The 236 and 219 figures cited by

Mr. Pascal are found in a January 14, 2013 Response to Information Requests published by the Immigration and Refugee Board entitled *Jamaica: Crime situation, including organized crime; police and state response, including effectiveness; state protection for witnesses and victims of crime (2009-December 2012)*. The 236 number came from a US Department of State report from 2012, which in turn reported “official statistics.” The 219 number comes, via news reports, from the same INDECOM body that is the source of the figures used by the PRRA officer. Even the figures found in the 2008 Amnesty International report, such as the 272 killings in 2007, come from the Bureau of Special Investigations of the Jamaica Constabulary Force. There is therefore no basis to suggest that some of the figures are more reliable than others as they are from an “independent source” and not “Jamaican government statistics.”

[16] Third, Mr. Pascal’s argument that it is unreasonable for the PRRA officer to describe even 122 police killings in a year as “rare” must also fail. While I accept that in some cases, it may be unreasonable to ascribe a qualitative descriptor such as “rare” to an occurrence that is not, I do not consider the use of the term to be unreasonable in this case. Certainly, we would not consider that many police killings in Canada to be “rare,” regardless of whether they were lawful or unlawful. However, it is clear that the PRRA officer was both considering the context identified in Jamaica and assessing the likelihood of Mr. Pascal himself being the victim of such a killing. In the circumstances, I cannot conclude that it was unreasonable for the PRRA officer to refer to unlawful killings in Jamaica as “a problem,” but “rare”.

(2) Risks from criminals and gangs

[17] Mr. Pascal asserted that there was a risk that local gangs in Jamaica would perceive him as a gang member and seek to recruit him. He would resist, and these gangs would then perceive him as a rival, putting him at risk of gang violence. He cited evidence of gang violence and overall murder rates, noting the high percentage of overall murders in Jamaica that are gang-related.

[18] The PRRA officer rejected this argument, stating first that Mr. Pascal had provided little evidence that he is not already affiliated with the Galloway Boys, and noting that there are strong ties between criminal organizations in Canada and Jamaica. He concluded that while homicide rates, and gang-related homicide rates in particular, were a serious issue, there was little evidence to suggest that Mr. Pascal would likely be among the small percentage of the Jamaican population affected.

[19] Mr. Pascal argues that the officer unreasonably imposed a reverse onus on him to establish that he is not a member of the Galloway Boys. In my view, this overstates the PRRA officer's reasoning. The PRRA officer was assessing Mr. Pascal's argument that he would be an unwilling, but coerced, recruit into a Jamaican gang as a result of the perception that he was a gang member in Canada. The primary difficulty with this argument is that it was unsupported by any evidence and, as counsel conceded during oral argument, was simply a theory. The PRRA officer noted the absence of evidence to support the theory, given the unusual context that Mr. Pascal was asserting that he was not a gang member, but would nonetheless be

perceived to be. I do not find that the PRRA officer either imposed a reverse onus, or found Mr. Pascal to be a gang member.

[20] To the contrary, the PRRA officer concluded that there was little evidence to suggest that Mr. Pascal would be among the small percentage of the population affected by gang killings. The PRRA officer also considered Mr. Pascal's reference to *Burton v Canada (Citizenship and Immigration)*, 2013 FC 549, noting that while Mr. Burton was a gang member who worked with police as an informant, Mr. Pascal was not. Although Mr. Pascal argued that he would be particularly subjected to violence as a perceived (but not actual) gang member, he could not point to evidence suggesting that group was subject to risks greater than the general population.

[21] In this regard, I agree with the Minister that the PRRA officer's conclusion that Mr. Pascal's situation was different from that of Mr. Burton was reasonable. In *Burton*, the PRRA officer accepted that Mr. Burton faced a risk of harm from gang members, noting that "individuals who are known to be police informers in Jamaica are frequently the targets of violence from members of criminal organization": *Burton* at paras 14–15. The PRRA officer in the present case noted that Mr. Pascal was not, and was not identified as, a police informant, a significant point of distinction, even if one accepts that perceived gang members who deny their gang involvement are at similarly heightened risks to actual gang members.

[22] Mr. Pascal points to the conclusion in *Burton* that the officer in that case did not engage with the risks faced by Mr. Burton as someone who had been publicly identified as a convicted criminal and gang member: *Burton* at para 21. However, in addition to Mr. Pascal not being

convicted as a gang member (although he is a convicted criminal), and denying his gang affiliations, the conclusions in *Burton* related to the officer's conclusion that state protection was available: *Burton* at paras 16–18, 21–29. In the present case, the PRRA officer found that there was no likelihood of a section 97 risk, such that the state protection issue did not arise. I note, as did the Minister, that these points of distinction with *Burton* were also identified by Justice Gleeson in *Johnson*, which also involved an asserted perception of gang membership upon return to Jamaica: *Johnson v Canada (Citizenship and Immigration)*, 2017 FC 68 at paras 9–11.

[23] While brief, I cannot conclude that the PRRA officer's assessment of Mr. Pascal's risk of death or violence from criminal gangs as a perceived member of a gang was unreasonable.

(3) Risks to returnees

[24] Mr. Pascal also submitted "more generally" that returnees from North America are perceived as having wealth in Jamaica and are therefore victims of violent crime. He cited a 2018 news article in support of this submission. The PRRA officer considered this submission and the article, noting that there was little evidence that a significant portion of those returning from western countries are targeted, given that even the figures in the article showed that killing of returnees was highly unlikely. Again, Mr. Pascal argues that the term "highly unlikely" is unreasonable. For the reasons set out above in respect of the term "rare," I do not accept that it was unreasonable for the PRRA officer to describe the risks in this manner. This is particularly so given that the article on which Mr. Pascal relies relates to "Jamaican expats who retire there," a situation that does not apply to Mr. Pascal.

B. *The PRRA Officer did not Unreasonably Fail to Assess Overall Risk*

[25] Mr. Pascal asserts that the PRRA officer unreasonably addressed the identified risks in a “siloeed” fashion and failed to consider the cumulative risk resulting from a combination of the above factors. He cites this Court’s decisions in *PK v Canada (Citizenship and Immigration)*, 2013 FC 969 and *KS v Canada (Citizenship and Immigration)*, 2015 FC 999 for the proposition that it is unreasonable to consider risk factors in isolation and not assess those factors cumulatively. I disagree.

[26] I note that Mr. Pascal did not make any submissions to the PRRA officer regarding the cumulative effect of the risks he identified. In this regard, it must be recognized that while Mr. Pascal referred to different potential sources of risk (Jamaican police, criminals and gangs), he ultimately identified only two aspects of his profile giving rise to such risk: being a perceived violent criminal associated with gang membership, and being a returnee from Canada. Mr. Pascal made no submissions to the PRRA officer, and filed no evidence, as to how these aspects of his profile might cumulatively increase his risk. That is to say, there was no information as to how being a perceived violent criminal associated with gang membership returning from Canada was any different from being a perceived violent criminal associated with gang membership in Jamaica. To the contrary, as noted above, the only information relied on by Mr. Pascal regarding the risks of being a returnee related to being an expat returning to Jamaica upon retirement.

[27] In any case, having considered each of the allegations of risk raised by Mr. Pascal, the PRRA officer noted that the question of risk was forward-looking and “that the risks faced by the applicant be personalized.” The PRRA officer continued by noting that:

From the totality of the information before me I find the applicant’s evidence is of insufficient probative value to establish that the police, gangs, or any individual, have an ongoing personalized interest in harming him. The applicant provided little personalized information to suggest a particular person or group of people are presently targeting him specifically for harm in Jamaica.

[Emphasis added.]

[28] While brief, I am satisfied that in the context of the entirety of the PRRA decision, these statements show that the PRRA officer considered the entirety of Mr. Pascal’s profile in assessing whether there was sufficient evidence to show that he was likely to be at risk of harm so as to be a person in need of protection.

[29] I note that given the particular risks that Mr. Pascal identified, the situation is very different from one in which various aspects of a person’s profile might cumulatively result in more than a mere possibility of risk even if each aspect alone might not. For example, at issue in *KS* was whether the applicant—who was a Tamil male from northern Sri Lanka, had visible scarring, had a brother who was a member of the Liberation Tigers of Tamil Eelam (LTTE), had been a passenger on the *MV Sun Sea*, had been questioned by Canadian authorities, and was a failed refugee claimant—was at risk of persecution at the hands of the Sri Lankan authorities as a suspected supporter of the LTTE: *KS* at paras 30, 43–46. Justice Southcott concluded that it was unreasonable not to consider how these factors cumulatively might affect whether he would be

viewed as a LTTE supporter and thus face persecution: *KS* at paras 46–49. This is not the situation of Mr. Pascal.

IV. Conclusion

[30] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-4741-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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