Federal Court  Cour fédérale

Date: 20200827

Docket: IMM-4971-19

Citation: 2020 FC 861

Ottawa, Ontario, August 27, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

FARHAN ASHKIR

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"), wherein the Applicant's Pre-Removal Risk Assessment ("PRRA") application was refused. The Applicant is a Convention refugee in the U.S. and is therefore ineligible to make a refugee claim in Canada. However, the Applicant was entitled to apply for a PRRA under the principle of *non-*

refoulement pursuant to subsection 115(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] On this application for judicial review, the Applicant submits that the PRRA Officer ignored relevant information and failed to consult publicly available reports on country conditions.

[3] For the reasons below, I find that the Officer's decision is reasonable. Accordingly, this application for judicial review is dismissed.

II. **Facts**

[4] The Applicant is a 47-year-old citizen of Somalia. The Applicant fled Somalia in 1992 after he and his family were evicted from their home and threatened by a dominant clan. The Applicant fled to Kenya, and in 2004, travelled to the U.S. and was granted asylum. The Applicant married in the U.S. and later divorced. He has five children from this relationship.

[5] With the change in the U.S. administration, the Applicant states that he noticed Somalis were being arrested for deportation irrespective of their status; fearing deportation, the Applicant entered Canada on October 28, 2018 between ports of entry.

[6] On October 31, 2018, the Immigration Division ("ID") determined that the Applicant was a Convention refugee in the U.S. and could be returned to that country. Therefore, the

Applicant's claim was ineligible to be referred to the Refugee Protection Division ("RPD") pursuant to subsection 101(1)(d) of the *IRPA*.

[7] Instead, the Applicant was entitled to apply for a PRRA application under the principle of *non-refoulement* under subsection 115(1) of the *IRPA*. The PRRA application would assess whether the Applicant would be at risk if removed to his country of nationality or the country that recognized him as a Convention refugee.

[8] On December 20, 2018, the Applicant submitted a PRRA application. The Applicant alleged that he would be at risk if returned to Somalia due to Al-Shabaab and other terrorist organizations. The Applicant also alleged he would face risk if returned to the U.S. as he feared deportation under the current administration, which he believed was "anti-Muslim and Somali".

[9] By letter dated June 28, 2019, after considering the Applicant's submissions, supporting evidence, and publicly available documents concerning country conditions in the U.S., the Officer concluded that there was insufficient evidence to substantiate the Applicant's claim that the U.S. would return him to Somalia. The Officer further concluded that the Applicant had failed to demonstrate he would be at risk of persecution or of torture or cruel and unusual treatment if removed to the U.S., where he is recognized as a Convention refugee.

III. **Issue and Standard of Review**

[10] The sole issue on this judicial review is whether the Officer's decision is reasonable.

[11] Prior to the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the review of a PRRA officer's decision attracted the reasonableness standard: *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 (CanLII) at para 13. There is no need to depart from the standard of review followed in previous jurisprudence, as the application of the *Vavilov* framework results in the same standard of review: reasonableness.

[12] As noted by the majority 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. **Relevant Legislative Provisions**

[13] Subsection 101(1)(d) of the *IRPA* reads as follows:

Ineligibility **101 (1)** A claim is ineligible to be referred to the Refugee Protection Division if	**Irrecevabilité** **101 (1)** La demande est irrecevable dans les cas suivants:
[…]	[…]
(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;	**d)** reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;

[14] Subsection 115(1) of the *IRPA* reads as follows:

Protection **115 (1)** A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	**Principe** **115 (1)** Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée

V. **Analysis**

[15] The Applicant submits the Officer erred by disregarding the evidence before them and by failing to independently research current country conditions in the U.S. The Applicant cites *Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 (CanLII) [*Jama*] at paras 17 and 18 for the proposition that a PRRA officer cannot confine or exhaust its analysis to the exact arguments raised by an applicant or even to the exact evidence presented. The Applicant submits the Court must be satisfied that the PRRA officer's expertise is based on "meaningful research" and "an intimate familiarity with the current country conditions in the applicant's country of removal".

[16] The Applicant argues there are publicly available documents that illustrate numerous counts of individuals who have been wrongfully deported from the U.S. as a result of the expedited removal process, contrary to the Officer's finding that there is little evidence to

establish the Applicant would not continue to receive protection in the U.S. In particular, the Applicant references an open letter from the Human Rights Watch dated September 23, 2019. The Applicant submits that such evidence was relevant to the Applicant's risk assessment and that the Officer failed to conduct meaningful research or display an "intimate familiarity" with relevant country conditions.

[17] The Applicant submits that the Officer's reasons do not allow the Court to assess whether the analysis or consideration of the evidence was justified. The Applicant asserts it was unreasonable for the Officer to merely state there was "little information" to support the Applicant's submission that Convention refugees in the U.S. may be repatriated to their countries of origin.

[18] The Applicant submits that the Officer's consideration of the recent and publicly available U.S. country condition reports was in relation to the issue of state protection, and not of the risk of return to Somalia. The Applicant points out the country condition analysis in the Officer's reasons is followed by the finding that there is insufficient evidence to indicate a serious possibility of risk of persecution in the U.S. The Applicant contends the reasons do not demonstrate that the Officer conducted an independent research on the likelihood of the Applicant's *refoulement* despite his status as a Convention refugee.

[19] Moreover, the Applicant submits there may be a duty upon a PRRA officer to conduct meaningful research, especially where a PRRA applicant is unrepresented and where the application concerns a country with dangerous conditions such as Somalia, as in the case at bar.

In support of this argument, the Applicant relies on *Pacheco v Canada (Citizenship and Immigration)*, 2018 FC 872 (CanLII) [*Pacheco*] at para 55, citing *Jama* at paras 17-19. Furthermore, the Applicant notes that this PRRA application is the only assessment of the Applicant's risk of removal.

[20] The Respondent submits the Officer duly considered all of the evidence and satisfied the duty to examine recent, publicly available reports on country conditions in the U.S. The Respondent submits that the Applicant has not pointed to evidence that the Officer ignored or failed to consider the record, and argues that a blanket statement of a failure to consider evidence is insufficient for a meaningful review by this Court.

[21] The Respondent notes that the Officer listed and duly considered all the documents and submissions received from the Applicant, including the narrative information; past and current information regarding the Safe Third Country Agreement in the U.S. and Canada; information regarding those claiming refugee protection in the U.S.; and reports regarding current country conditions in Somalia. The Respondent submits that the Officer's decision clearly demonstrates a consideration of the Applicant's arguments and evidence submitted in the PRRA application. The Respondent takes the position that the Applicant's assertion on this issue merely amounts to a disagreement with the weight placed on the evidence by the Officer.

[22] With regard to the Applicant's argument that the Officer failed to consider current country conditions in the U.S., the Respondent submits that the Officer satisfied the duty to consult recent and publicly available reports on country conditions in the U.S. The Respondent

argues that the Officer referenced three current, objective, and reputable sources on U.S. country conditions, and cites *Ariyaratnam v Canada (Citizenship and Immigration)*, 2010 FC 608 (CanLII) at para 38 for the proposition that an officer is entitled to a high degree of deference on the specific source of country conditions consulted. While these sources dealt with conditions for refugees, asylum-seekers, and migrants in the U.S., the Respondent submits that the evidence simply did not support the Applicant's assertion that he would be repatriated to Somalia if returned to the U.S.

[23] Furthermore, the Respondent submits that the Applicant bears the onus of providing a complete, clear, and detailed application and producing relevant evidence (*Borbon Marte v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 930 (CanLII) [*Borbon Marte*] at para 39), and that the Officer was not obligated to gather or search for additional evidence or to make inquiries (*Yousef v Canada (Minister of Citizenship and Immigration)*, 2006 FC 864 (CanLII) [*Yousef*] at para 33; *Gnanaseharan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 872 (CanLII) at paras 21-22).

[24] In my view, the Officer exercised a reasonable consideration of the evidence before them. Despite the Applicant's assertion that the evidence shows many individuals are wrongfully deported from the U.S., such articles in the record pertain to individuals seeking asylum in U.S., and not to individuals like the Applicant, who already have obtained Convention refugee status. In fact, there is little to no information in the record that supports the Applicant's allegation that Somali nationals with Convention refugee status in the U.S. will be repatriated to Somalia. The Officer did not merely state that there was "little information" to support the Applicant's

submissions, but reasonably based it on the available evidence. The Officer found that while there may be heightened removals for unlawful residents of the U.S. under the current administration, the evidence did not demonstrate that this would directly affect the Applicant as a Convention refugee.

[25] The single example referenced by the Applicant—an open letter from the Human Rights Watch dated September 23, 2019—is not contained in the record, and as the Respondent correctly notes, post-dates the Officer's decision. As such, this particular document is inadmissible as evidence and cannot be considered on this application for judicial review. In light of the scant evidence presented in the PRRA application, it was reasonable for the Officer to conclude there was insufficient evidence to establish that the Applicant would not continue to receive protection in the U.S.

[26] Moreover, it is well established that the Applicant bears the onus to submit a complete application with relevant supporting evidence (*Borbon Marte* at para 39). Although the Applicant argues that the Officer failed to conduct independent research on the likelihood of the Applicant's *refoulement* despite his status as a Convention refugee, in my view, the Officer was not obligated to search for additional evidence or to make inquiries on behalf of the Applicant (*Yousef* at para 33). Given the Officer's determination that there was little evidence to indicate the Applicant would be repatriated to Somalia, it was reasonable for the Officer to focus the analysis on the Applicant's risk under ss. 96 and 97 of the *IRPA* in the U.S., and to consider country conditions in the U.S. with regard to the issue of state protection.

VI. **Conclusion**

[27] No questions for certification were raised, and I agree that none arise.

[28] Overall, the Officer's decision is reasonable. This application for judicial review is dismissed.

JUDGMENT IN IMM-4971-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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