Federal Court Cour fédérale

Date: 20210608

Docket: IMM-199-20

Citation: 2021 FC 565

Ottawa, Ontario, June 8, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

AGOSTIN QOSAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On December 4, 2017, the Applicant, Mr. Agostin Qosaj, submitted an application for a Pre-Removal Risk Assessment [PRRA]. The Applicant alleged that he was at risk of being killed if he returned to Albania due to a long standing blood feud between his family and a family by the name of Qarri.

[2] By decision dated November 6, 2019 [the Decision], a PRRA Officer determined that there was insufficient evidence to establish that the Applicant was a person in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[3] This is an application for judicial review of the Decision.

[4] As explained below, this application is allowed, because I have found that the PRRA Officer in fact took issue with the credibility of the Applicant's evidence, and not its sufficiency.

II. Background

[5] The Applicant is citizen of Albania.

[6] On March 10, 2017, the Applicant entered Canada as a tourist via Cuba using an invalid green card and was detained by the Canada Border Services Agency [CBSA]. A CSBA Officer explained to the Applicant that he was not eligible to make a refugee claim due to his criminal inadmissibility.

[7] On March 20, 2017, the Applicant was found inadmissible to Canada by the Immigration Division under section 36(1)(b) of the *IRPA* and a deportation order was issued against him. He was allowed by CBSA to apply for a PRRA.

A. *Risk Identified by the Applicant*

[8] The Applicant's former lawyer submitted numerous documents in support the application for a PRRA, including statements from his sister, brother and other individuals. The risk identified by the Applicant may be summarized as follows.

[9] The Applicant's father, Mr. Kole Qosaj, was a political activist and one of the first persons to fight against the communist regime in Albania. The Qosaj family wanted democratic changes, freedom and liberty from government oppression. After the collapse of communism, the Applicant's father and two of his brothers, Genc and Arben, continued their work as activists. The Applicant's father received many threats and, in September 2002, he sent his sons, Arben Genc and Alfred to the United States, where the latter two sons' refugee claims were eventually accepted.

[10] In November 2000, when the Applicant was just six months old, his father was murdered in front of his family in broad daylight by Mr. Lulzim Qarri. The Applicant claims the murder was the result of a blood feud resulting from his father's political activism.

[11] Mr. Qarri was convicted of murder and sentenced to 13 years of imprisonment. In 2010, he was pardoned by the president of Albania.

[12] The Applicant's family believe that most threats they received were made by the Qarri family members. The Applicant also said that his father's enemies swore that no male heir of Kole Qosaj would live past 12 years old.

[13] In 2002, the Applicant's mother left Albania and was accepted as a Convention Refugee in the United States. In August 2005, the Applicant, along with two of his younger brothers and his older sister left Albania and entered the United States.

[14] On April 19, 2012, the Applicant was arrested in Florida and accused of home invasion robbery with arms at the age of 18. He pled guilty and was convicted and sentenced to 4 years imprisonment.

[15] After his release from detention, the Applicant was detained by the United States Immigration and Naturalization Service. He was found inadmissible to the United States and was deported from the country on January 6, 2017 and sent back to Albania

[16] The Applicant stated that he stayed in hiding at a hotel as he feared he would be killed due to the blood feud with the Qarri family. Fearing for his life, the Applicant left Albania on February 27, 2017 and arrived in Cuba. On March 10, 2017, the Applicant entered Canada and sought asylum.

III. The PRRA Decision

[17] The sole issue before the PRRA Officer was whether, pursuant to section 97 of the *IRPA*, the Applicant could establish that due to his personal circumstances, he was more likely than not to be subjected to danger of torture, threat to life, or cruel and usual punishment or treatment.

[18] The PRRA Officer found that the Applicant's objective evidence was insufficient, because the objective evidence the Applicant provided was not corroborated by other reliable objective evidence.

[19] In reaching the Decision, the PRRA Officer acknowledged that the death certificate provided by the Applicant established that his father died in 2000, but that it was not sufficient objective evidence that he was murdered due to his political activism or that it was related to a blood feud.

[20] The PRRA Officer gave "minimal weight" to statements provided by the Applicant's siblings which outline the family history in Albania because they were not witnessed by a third party, nor accompanied by any type of information.

[21] The PRRA Officer also gave "minimal weight" to newspaper articles related to blood feuds in Albania. While noting that some of these articles specifically referenced the Applicant's family, the PRRA Officer gave these articles little weight as the author of the articles was not

properly defined, there was insufficient objective evidence in the articles as to the source of the information, and they were general and vague.

[22] The PRRA Officer concluded, based on country information, that there was more objective evidence which indicates that the Albanian press, hungry for sensation, report murders as blood feud, and that some journalists have reportedly accepted money to create fake reports in order that family members might then use the invented blood feud in an asylum bid. The PRRA Officer found that in light of the statistical information in the National Documentation Package specifying the active number of blood feuds in Shkoder (where the Applicant and his family resided), the Applicant had failed to discharge his burden.

[23] The PRRA Officer also noted that the Applicant's brother Arben returned to Albania after the death of their father and remained there for almost six years, suggesting a lack of objective fear. There was also insufficient objective evidence of any threats or risk to the Applicant's life when he returned to Albania for approximately one month.

[24] Finally, the PRRA Officer concluded that the National Documentation Package did not support the Applicant's position that his stated risk would be present in every part of Albania.

IV. Issue to be Determined

[25] This application for judicial review only raises one issue: did the PRRA Officer render an unreasonable decision?

V. Standard of Review

[26] There is no dispute regarding the applicable standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at paragraph 10, the Supreme Court of Canada concluded that the presumptive standard of review is reasonableness, and a reviewing court should only derogate from that presumption "where required by a clear indication of legislative intent or by the rule of law." There is no such indication in this case.

[27] When reviewing for reasonableness, the Court asks whether the decision bears the hallmarks of reasonableness (i.e., justification, transparency and intelligibility) and whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov*, at para 99.

[28] It is not enough that the decision is justifiable. In cases where reasons are required, the decision "must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86). Therefore, review under the reasonableness standard is concerned with both the outcome of the decision and the reasoning process that led to that outcome (*Vavilov* at para 87). That said, the reviewing court must focus on the actual decision made by the administrative decision maker, including his or her rationale, and not on the conclusion that the Court itself would have reached had it been in the shoes of the decision maker.

VI. Analysis

A. *Selective Review of the Applicant's Evidence*

[29] The Respondent submits that the PRRA Officer's Decision here rests solely on the insufficiency of evidence. According to the Respondent, the PRRA Officer did not make a veiled credibility finding in assessing the Applicant's claims. I disagree.

[30] There is no dispute that the Applicant bears the burden of proving that the PRRA application should be granted. (*Daniel v Canada (Citizenship and Immigration)*, 2011 FC 797 at paras 13-14). Moreover, decision makers are owed greater deference on findings of fact and weighing of evidence (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 11 [*Huang*]).

[31] However, a decision maker cannot make a decision based on a selective reading of the evidence (*Rigg v Canada* (*Citizenship and Immigration*), 2010 FC 341 at para 13). Nor can a decision maker completely discount evidence by simply attributing minimal weight to it.

[32] In the case at bar, the issue of the credibility of the Applicant's evidence was central to the PRRA Officer's analysis underlying the Applicant's claim that he was a person in need of protection. There were several factors at play in the evidence surrounding the credibility of the Applicant's evidence, the existence of blood feuds in Albania and the possible fabrication of evidence by refugee claimants. By resolving the conflicted evidence with a flick of the hand, the

PRRA Officer did not, in my opinion, satisfactorily address the issue when considering the content of the evidentiary record before him.

[33] By way of example, the PRRA Officer relied on one passage from the United Kingdom [UK] Home Office Country Policy Information Note Albania: Blood Feuds, October 2018 and decided to give more weight to this “objective evidence”. However, the passage concerns the issuance of fake blood feud attestations and presentation of such certificates by asylum seekers. The concern expressed is that some organizations have taken advantage of the request for blood feud attestations and some Albanians have obtained documents falsely claiming they are caught in a blood feud.

[34] I agree with the Applicant that the passage relied on by the PRRA Officer is not relevant to the Applicant’s case since he did not present any blood feud attestation or certificate in his PRRA Application. Furthermore, the PRRA Officer gave “more weight” to one particular irrelevant part of the UK Home Office Report which discusses false and invented blood feud stories, without considering any other relevant information in that same section.

[35] This would suggest that the PRRA Officer reached the Decision in an unjustified manner, applying incorrect legal principles. While the outcome may be reasonable, the chain of analysis was not. Moreover, this selective review of the evidence is inextricably linked to the second error committed by the PRRA Officer, and that is dressing up credibility findings as ones of sufficiency.

B. *The Applicant's Credibility*

[36] The PRRA Officer's chain of analysis and selective review of the evidence makes one thing clear: the Officer did not believe the Applicant.

[37] While the correctness standard is usually applied to questions of procedural fairness, for example if a hearing is required, this standard is typically displaced in PRRA application cases: *Huang* at paras 13-16.

[38] As per section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, an oral hearing will be required if there is a serious credibility issue regarding evidence that is central to the decision and which, if accepted, would justify allowing the application. The Respondent submits that the Applicant confuses a finding of insufficient probative evidence with an adverse finding of credibility.

[39] A credibility assessment goes to the reliability of the evidence. When there is a finding that the evidence is not credible, it is a determination that the source of the evidence (e.g. an applicant's testimony) is not reliable. A sufficiency assessment goes to the nature and quality of the evidence needed to be brought forward by an applicant in order to obtain relief, to its probative value, and to the weight to be given to the evidence by the trier of fact. Where a decision is based solely on the insufficiency of the evidence provided, no oral hearing is required.

[40] Put another way, the question of credibility involves an assessment of whether the evidence is believable (*Diallo v Canada (Citizenship and Immigration)*, 2019 FC 1324 at para 19). The question of sufficiency of evidence goes to the amount of evidence required to establish a fact or to meet an evidentiary burden. This was concisely described by Justice John Norris in *Ahmed v Canada (Citizenship and Immigration),* 2018 FC 1207 at para 31:

> …One useful test in the present context is for the reviewing court to ask whether the factual propositions the evidence is tendered to establish, assuming to be true, would likely justify granting the application for protection. If they would not, then the PRRA application failed, not because of the any sort of credibility finding, but simply because of the insufficiency of the evidence. On the other hand, if the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application and, despite this, the application was rejected, this suggests that the decision maker had doubts about the veracity of the evidence.

[41] In my view, the PRRA Officer made many findings that were veiled credibility findings that could have been remedied by an oral hearing. For example, the PRRA Officer indicated that he did not believe that the Applicant's family was involved in a blood feud, that his father was murdered, or that the Applicant feared for his life.

[42] While the Applicant provided some objective evidence to support all these claims, the PRRA Officer gave essentially no weight to his evidence despite it going to a core issue.

[43] The Applicant signed the declaration in the PRRA application that the information given was truthful, complete and correct.

[44] I note that the Applicant was required to set out in chronological order all the significant incidents that caused him to seek protection outside his country of nationality. The PRRA application refers to an annex, however the annex is not reproduced in the Certified Tribunal Record. However, it appears this information was before the PRRA Officer when making the Decision.

[45] When an applicant declares the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness. Where no valid reason has been provided to doubt an applicant's truthfulness, it would be an error to require corroborative evidence of such allegations as this would defeat the presumption of truthfulness.

[46] In any event, the Applicant provided numerous documents in support of his application, including his father's death certificate and statements from family members. The PRRA Officer reviewed the Applicant's evidence and dismissed all of them individually as being insufficient.

[47] Firstly, he dismissed the Applicant's father's death certificate as corroborating his father's death. He stated that there is insufficient objective evidence that his death was related to a blood feud. The PRRA Officer considered this evidence in isolation from the Applicant's evidence relating to the history of a blood feud in his family, the supporting letters provided by the Applicant's family members and newspaper articles that specifically referred to a blood feud between the Qarri and Qosaj family and the murder of Kole Qosaj by Lusash Qarri.

[48] Secondly, the PRRA Officer decided that the letters of support should be given minimal weight because they “are not witnessed by a third party, nor are they accompanied by any type of identification.” While it is certainly open to a PRRA officer to question the source or credibility of information, it is unclear why he did so in this case. Supporting letters from family members are not always witnessed by a third party, nor is such formality mandatory in most cases. Should a decision maker have credibility concerns on a central issue, they must address these concerns before reaching a decision. The death of the Applicant’s father and the subsequent risks the Applicant faced as a result of the blood feud are central to the risks and the credibility of the Applicant.

[49] Moreover, the Applicant’s former counsel had stated in his submissions that should the PRRA Officer have any questions regarding credibility, the Applicant proposed to have his sister, Anitla, his brother, Arben, his cousin’s wife Katherine, and himself testify. Therefore, the PRRA Officer could have had the opportunity to test the credibility of these letters by assessing the oral evidence given by the Applicant and his family.

[50] The PRRA Officer similarly dismissed the fact that two of the Applicant’s brothers were granted asylum in the United States and said that the Applicant provided “insufficient objective evidence as to how his brothers’ circumstances are related to his personal circumstances”. However, the Applicant’s former counsel did set out the facts in his submissions, explaining the threats and risk the Qosaj brothers faced in Albania.

[51] Here, I find that the PRRA Officer implicitly disbelieved the Applicant's evidence that he faces a risk to his life due to the blood feud between his family and the Qarri family, which also resulted in the murder of his father. While such a finding may have been open to the PRRA Officer on the record before them, it was incumbent on them to do so explicitly.

VII. Conclusion

[52] The decision as a whole must be transparent, intelligible and justified. Judicial review is concerned with both outcome and the reasoning process that led to the outcome.

[53] The PRRA Officer was required to consider all of the evidence. In so doing, I find that the PRRA Officer made credibility assessments that are not reflected in the Decision, in other words, the PRRA Officer made veiled credibility findings. As such, the PRRA Officer rendered an unreasonable decision.

[54] For the above reasons, the application for judicial review must be granted.

[55] There are no questions for certification.

JUDGMENT IN IMM-199-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The Decision of the Pre-Removal Risk Assessment Officer in this matter is set aside.
3. The matter is remitted to a different Pre-Removal Risk Assessment officer for reconsideration and determination whether an oral hearing is required.
4. No question is certified.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-199-20
STYLE OF CAUSE:	AGOSTIN QOSAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 26, 2021
JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	JUNE 8, 2021

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