Federal Court  Cour fédérale

Date: 20211102

Docket: IMM-1708-20

Citation: 2021 FC 1168

Ottawa, Ontario, November 2, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

A.B.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of an immigration Officer's decision refusing the Applicant's application for a Pre-Removal Risk Assessment ("PRRA"). In a decision dated February 18, 2020, the Officer determined that the Applicant had not rebutted the presumption of state protection available in Colombia.

II. Background

[2] The Applicant is a citizen of Colombia who entered Canada on August 6, 2019. In October 2019, the Applicant was arrested and plead guilty to breaking and entering under section 348(1)(b) of the *Criminal Code*, RSC, 1985, c C-46. He was sentenced to three months imprisonment, given that he was the driver of the car, and based on the allegation that he thought he was being hired for an "odd job" at a restaurant.

[3] The Applicant asserts he fears for his life at the hands of a paramilitary group in Colombia resulting from an unpaid debt allegedly extorted from his father by the paramilitary group when the Applicant was small child. The paramilitary group has targeted the Applicant and his family as retribution for this unpaid debt; all of the Applicant's family members have fled Colombia. The Applicant was taken to the United States by his mother when he was a teenager after various family members had been attacked and threatened.

[4] The Applicant returned to Colombia from the United States for a brief period roughly 14 years ago to try to build a life there as an adult. He opened a café, but was soon attacked and threatened by men claiming to represent the paramilitary group and demanding he repay his father's debt. The Applicant fled to Spain. After five years in Spain, the Applicant was deported back to Colombia, despite being married to a Spanish woman who was sponsoring him. The Applicant claims he was wrongly placed on a deportation flight after being detained at a traffic stop.

[5] Back in Colombia after being deported from Spain, the Applicant applied for a driver's license in order to apply for transportation jobs. The Applicant claims that doing so alerted the paramilitary group to his presence in the country, because the paramilitary group has infiltrated the government. The Applicant claims that men associated with the paramilitary group immediately started following him, and he fled back to the United States.

[6] The Applicant's wife and child joined him in the United States from Spain, and they later had another child. After five years, the Applicant was deported to Mexico. He obtained a Mexican passport and came to Canada. His wife and children remain in the United States.

III. Issues

[7] The issues are:

A. Did the Officer violate a principle of natural justice?

B. Was the Officer's decision reasonable?

IV. Standard of Review

[8] On the merits of the Officer's decision, the standard of review is reasonableness. As set out by the Supreme Court of Canada in *Canada (MCI) v Vavilov*, at paragraph 23 [*Vavilov*], "where a court reviews the merits of an administrative decision … the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness." Reasonableness review begins with the principle of judicial restraint and respect for the distinct role of administrative decision-makers, and the Court does not conduct a

de novo analysis or attempt to decide the issue itself (*Vavilov*, at paras 13, 83). Rather, it starts with the reasons of the administrative decision-maker and assesses whether the decision is reasonable in outcome and process, considered in relation to the factual and legal constraints that bear on the decision (*Vavilov*, at paras 81, 83, 87, 99). A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the administrative setting, the record before the decision-maker, and the submissions of the parties (*Vavilov*, at paras 81, 85, 91, 94-96, 99, 127-128).

[9] As for the standard of review for issues of procedural fairness, the standard of review is correctness. As written de Montigny JA, in *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees, and Citizenship),* 2020 FCA 196 at paragraph 35, wrote that neither *Vavilov*, nor, *Dunsmuir v New Brunswick*, 2008 SCC 9, addressed the standard for determining whether a decision-maker complied with the duty of procedural fairness. In those circumstances, de Montigny JA preferred to rely on the jurisprudence according to which the standard of review with respect to procedural fairness remains correctness (see, e.g. *Khela v Mission Institution*, 2014 SCC 24). As observed by Justice Binnie in *C.U.P.E. v Ontario (Minister of Labour)*, 2003 SCC 29 at paragraph 102, "What matters, at the end of the day, is whether or not procedural fairness has been met." This is more akin to a yes-or-no determination than it is an application of the standard of review.

V. Analysis

A. *Did the Officer violate a principle of natural justice?*

[10] The Applicant submits that there was a breach of a principle of natural justice because he was not able to gather the necessary evidence to support his PRRA application while he was in immigration detention, and because the Officer made a veiled credibility finding without providing an oral hearing to assess the Applicant's credibility. Given the constraints of immigration detention and the very short timeline of his PRRA decision, the Applicant alleges that the Officer did not properly consider the relevant evidence of a threat to his life.

[11] The Applicant argued that section 167 of the *Immigration and Refugee Protection Regulations* (SOR /2002-227) [*IRPR*] was not met because:

- 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 *Immigration and Refugee Protection Act* (SC 2001, c. 27) [*IRPA*];
- There is evidence that is central to the decision with respect to the application for protection; and
- The evidence, if accepted, would justify allowing the application for protection.

[12] The Applicant cites case law supporting the view that a hearing may be required where there the Officer makes a finding that amounts to a credibility finding without hearing the Applicant.

[13] The argument regarding the breach of procedural fairness is related to the affidavits he provided from his family members for this hearing. The Applicant alleges that these affidavits corroborate his account of the events that led him to flee Colombia and the dangers he would face if deported back. The Applicant alleges that it was the absence of these affidavits before the decision-maker which led to the violation of the principle of natural justice, both because he was prevented from submitting his full case by his situation in immigration detention. As well he alleges a breach because the Officer made a veiled credibility finding in the face of insufficient objective evidence supporting the Applicant's account of the risk he faces.

[14] These affidavits were not before the Officer deciding the Applicant's PRRA application. I will not consider the affidavits and they cannot factor into the Court's assessment of the reasonableness of the Officer's decision.

[15] Though it is a violation of the principle of natural justice to prevent an applicant from gathering the evidence necessary to corroborate their account, this is not what happened in the instant case. There is no evidence that the Applicant could not have obtained this evidence. Though it may be more difficult to prepare your materials from detention, there is no evidence that he could not or was denied access. On the facts before me, I am not convinced that this was the case here, and do not find there was any procedural unfairness. Also of note is that there is a possibility that after 1 year (i.e. February 2021), the Applicant may be able to make another PRRA application, wherein he can present new evidence.

[16] Similarity, I do not think the Officer was obligated to hold a hearing, as I do not find that he made credibility finding. The case law cited by the Applicant recognizes that a valid distinction exists between a finding on the sufficiency of evidence, and a finding on the credibility of evidence; in the case of the former, a hearing is not required. I accept that in the instant case, the Officer's finding was based on the sufficiency of evidence, rather than the credibility of the evidence, and thus no hearing was required.

B. *Was the Officer's decision reasonable?*

[17] The Applicant argues that the sole question before the Officer is whether there is a substantial and objective risk of torture or death if the Applicant were to be deported back to Colombia. He asserts that whatever view the Officer may have held about his credibility, there is sufficient objective evidence to demonstrate a substantial risk to his life. Essentially, the Applicant argues that the Officer committed a reviewable error by misapplying the country information related to state protection and selectively considering the evidence before them.

[18] I do not agree with the Applicant. While the reasons were not perfect, they demonstrated that the Officer was aware of the objective country conditions in Colombia. The test, as enumerated by Justice Laforest in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, is that in the absence of a complete breakdown of state apparatus, it must be presumed that a state is able to protect its citizens. In the absence of an admission from the state of its inability to provide protection, a claimant must submit clear and convincing evidence on that point. In the view of the Officer, the Applicant failed to meet this threshold.

[19] For a decision such as this to be unreasonable on judicial review, “the burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, 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). The Applicant failed to establish that his personal subjective conditions were sufficient to meet the aforementioned threshold of clear and convincing evidence, and thus render the decision unreasonable. The Applicant did not, in the view of the Officer, demonstrate sufficient clear and convincing evidence that their personal circumstances were such that the PRRA should be granted.

[20] I am of the opinion that this analysis does not need to be long – it is fact-driven, and relates to sufficiency of evidence rather than credibility. I find that this decision was reasonable and will dismiss the application.

[21] The parties did not present a question for certification.

JUDGMENT IN IMM-1708-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1708-20
STYLE OF CAUSE:	A.B. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 5, 2021
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	NOVEMBER 2, 2021

APPEARANCES:

Arlene Rimer	FOR THE APPLICANT
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Arlene Rimer Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT