

Federal Court



Cour fédérale

Date: 20220125

Docket: IMM-845-20

Citation: 2022 FC 78

Ottawa, Ontario, January 25, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

**WASI HYDER, SHAHEEN WASI HYDER
AND SYEDA ALINA HYDER JAFRY**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Wasi Hyder is a citizen of Pakistan who identifies as Shia and alleges that he is a renowned activist in the Shia community. Mr. Hyder came to Canada on a temporary resident visa in April 2017, with his co-applicants who are his wife and daughter. Upon their arrival, they filed a claim for refugee protection. The Applicants fear that the people,

who previously attacked and threatened them, namely alleged anti-Shia militants, will harm or kill them if they return to Pakistan.

[2] Mr. Hyder alleges that he retired early from the government in 2008 and returned to university to study electronic engineering. On January 16, 2009, while out with his son (who is not a part of this application) and daughter, Mr. Hyder encountered two robbers who attempted to hijack their vehicle. During this encounter, Mr. Hyder was shot, and his son rushed him to the hospital. The police apprehended one of the hijackers, while the second one fled, and the incident was reported in a local newspaper.

[3] Mr. Hyder further alleges that the second hijacker threatened to kill Mr. Hyder and his family unless he cancelled the case against him. Packing up their belongings, the family fled to other cities. About one and a half years later, the second hijacker located them and started to threaten them again. Mr. Hyder asserts that he went to the police but they refused to help him with the threats.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] found that there was no credible basis for the Applicants' claims, pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [IRPA], and held that they are neither Convention refugees nor persons in need of protection. The Applicants' application for leave and judicial review of the RPD's decision was dismissed.

[5] The Applicants sought a pre-removal risk assessment [PRRA] which was rejected on December 12, 2019 [PRRA Decision]. The Applicants now seek judicial review of the PRRA Decision.

[6] At the hearing before the Court, the Applicants conceded that the main issue of contention is the reasonableness of the PRRA Decision, specifically whether the PRRA Officer reasonably considered their new evidence. Having considered the parties' written material, their oral submissions and the applicable law, I am not satisfied the Applicants have met their onus of demonstrating that the PRRA Decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 100. I thus dismiss their judicial review application for the reasons that follow.

II. Analysis

[7] Bearing in mind that it is not the role of the reviewing Court to reweigh and reassess the evidence considered by the decision maker, I am not persuaded that the PRRA Officer here “fundamentally misapprehended or failed to account for” the Applicants’ new evidence: *Vavilov*, above at paras 125-126. Looking at the PRRA Decision holistically and contextually, I also am not persuaded that the PRRA Officer’s reasons exhibit a reviewable failure of justification, intelligibility or transparency; rather, they permit me to “connect the dots”: *Alexion Pharmaceuticals Inc. v Canada (Attorney General)*, 2021 FCA 157 [Alexion] at paras 15 and 17.

[8] In support of their PRRA application, the Applicants submitted documentation comprised of two affidavits, a news article from Dawn.com and three police reports. The PRRA Officer

considered the affidavits notwithstanding that they were not accompanied by photo identification for the affiants, that they described events pre-dating the RPD decision, and that no reasons were provided why they reasonably could not have been presented to the IRB, further to paragraph 113(a) of the *IRPA* and subsection 161(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. Noting that the affidavits do not state the affiants witnessed any of the relevant events nor how the affiants came to know of them, the PRRA Officer found that the affidavits have little probative value.

[9] The first and second police reports relate to the murder of a prominent Shia businessman. The first report describes that the accused “Shan,” a professed anti-Shia extremist, confessed to the killing of some individuals and the attack on the Mr. Hyder and his children, while the second police report pertains to Shan’s arrest.

[10] The Dawn.com article mentions that the individuals involved in the businessman’s murder have been identified but it does not mention any names. It further mentions possible political motivation for the murder but nothing about being Shia. Through a Google search, the PRRA Officer located an updated article on the same website, Dawn.com, that named four individuals indicted for the murder of the Shia businessman but made no mention of anyone named Shan, and thus, did not corroborate the Applicants’ evidence.

[11] The PRRA Officer, therefore, finds these items also have little probative value.

[12] The third police report relates to attacks and threats against Mr. Hyder's son who remained in Pakistan and is not a party to this judicial review application. After outlining the report's shortcomings (no description of the assailants, undefined threats, insufficient information about whether the previous attack on his father, allegedly because of religious hatred, was one and the same as the attack described in Mr. Hyder's basis of claim form, and unsigned), the PRRA Officer assigned it little weight. The PRRA Officer further noted that only risks associated with the Applicants could be considered; the incidents associated with the son in Pakistan, in themselves, do not demonstrate risks to the Applicants, nor is there sufficient information to support targeting because of the familial relation.

[13] The PRRA Officer concludes that the Applicants' documentary evidence is insufficient to establish that Mr. Hyder is a prominent Shia activist or that he was targeted because of his religion or status.

[14] The Applicants essentially ask that this Court reweigh their evidentiary documentation, which, as mentioned above, is not the role of the reviewing Court. For example, at the hearing before me, the Applicants' counsel pointed to other articles about the murder of the prominent Shia businessman, located through Google searching, that were not before the decision maker for consideration, even though they pre-date the PRRA Decision by about two weeks.

[15] The onus is on the Applicants throughout the PRRA application process to put their best foot forward, in the sense of "put[ting] together applications that are convincing and that anticipate adverse inferences contained in the evidence and local conditions and address them":

Singh v Canada (Citizenship and Immigration), 2012 FC 526 [*Singh*] at para 52. See also *Choufani v Canada (Citizenship and Immigration)*, 2010 FC 611, at para 26, citing *Lupsa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 311, 159 ACWS (3d) 419; and *Sufaj v Canada (Citizenship and Immigration)*, 2014 FC 373, at para 39.

[16] If, as in the case before me, an officer's reasons show that they reasonably considered the evidence before them and reached a justified determination, the Court should avoid stepping in and second guessing the outcome: *Quraishi v Canada (Citizenship and Immigration)*, 2021 FC 1145, at para 15, citing *Singh* above, at para 56. This is what the Applicants request that the Court do by pointing to the other articles located in their own Google search.

[17] In my view, the PRAA Officer's reasons demonstrate that they considered and weighed the Applicant's supporting documentation and provided intelligible conclusions that permit the Court to understand the reasoning process. In other words, I find the PRRA Officer's determinations are "based on an internally coherent and rational chain of analysis" and justified in relation to the facts and law that constrained them: *Vavilov*, above at para 85. In the end, I am satisfied that the reasoning adds up: *Alexion*, at para 25.

III. Conclusion

[18] For the foregoing reasons, I dismiss the Applicants' judicial review application.

[19] Neither party proposed a serious question of general importance for certification, and I find that none arises in the circumstances.

JUDGMENT in IMM-845-20

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review of the December 12, 2019 PRRA Decision is dismissed.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Immigration and Refugee Protection Act, SC 2001, c 27
Loi sur l’immigration et la protection des réfugiés, LC 2001, ch 27

<p>Convention refugee</p> <p>96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>Définition de réfugié</p> <p>96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p>Person in need of protection</p> <p>97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless</p>	<p>Personne à protéger</p> <p>97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p>a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,</p> <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf</p>

<p>imposed in disregard of accepted international standards, and</p> <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> <p>Person in need of protection</p> <p>(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.</p>	<p>celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,</p> <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> <p>Personne à protéger</p> <p>(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.</p>
<p>Decision</p> <p>107 (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.</p> <p>No credible basis</p> <p>(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.</p>	<p>Décision</p> <p>107 (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.</p> <p>Preuve</p> <p>(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.</p>
<p>Consideration of application</p> <p>113 Consideration of an application for protection shall be as follows:</p> <p>(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection ...</p>	<p>Examen de la demande</p> <p>113 Il est disposé de la demande comme il suit :</p> <p>a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet ...</p>

Immigration and Refugee Protection Regulations, SOR/2002-227
Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

<p>Submissions</p> <p>161 (1) Subject to section 166, a person applying for protection may make written submissions in support of their application and for that purpose may be assisted, at their own expense, by a barrister or solicitor or other counsel.</p> <p>New evidence</p> <p>(2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.</p>	<p>Observations</p> <p>161 (1) Sous réserve de l'article 166, le demandeur peut présenter des observations écrites pour étayer sa demande de protection et peut, à cette fin, être assisté, à ses frais, par un avocat ou un autre conseil.</p> <p>Nouveaux éléments de preuve</p> <p>(2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113a) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.</p>
---	---

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-845-20

STYLE OF CAUSE: WASI HYDER, SHAHEEN WASI HYDER AND
SYEDA ALINA HYDER JAFRY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: JULY 7, 2021

JUDGMENT AND REASONS: FUHRER J.

DATED: JANUARY 25, 2022

APPEARANCES:

Hussain Bukhari FOR THE APPLICANTS

Suzanne Bruce FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hussain Bukhari FOR THE APPLICANTS
Woodbridge, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario