Federal Court Cour fédérale

Date: 20220209

Docket: IMM-6596-20

Citation: 2022 FC 165

Ottawa, Ontario, February 9, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

TAHEREH PAYROVEDENNABI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a Pre-Removal Risk Assessment [PRRA] decision pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Immigration Officer found the Applicant would not be subject to a risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned

to her country of nationality and determined the removal order made against her is now enforceable.

[2] This matter was perfected and originally set down for hearing on Monday, October 4, 2021. Prior to that date the Applicant elected to act in person and counsel withdrew from the record. On October 4, 2021, the Applicant requested an adjournment which was not opposed by the Respondent. It was rescheduled to be heard on December 15, 2021 by Zoom video conference before the undersigned judge.

[3] On the morning of December 15, 2021, the Applicant advised the Registry by email that she was having technical difficulties with her computer and was unable to connect to the hearing. An attempt was made to conduct the hearing by telephone. Although a connection by telephone was made with the Applicant, the quality of the transmission was such that she could not be heard clearly. In the circumstances and in the absence of a timely and substantiated request for an adjournment, I elected to proceed on the basis of the written materials and oral submissions from counsel for the Respondent.

[4] Counsel for the Respondent was reminded of their duty of candour to the Court when appearing in the absence of the opposing party. Counsel also acknowledged his ethical responsibilities as a member of the Law Society of Ontario. The matter proceeded with a series of questions posed by the Court to counsel for the Respondent based on the Applicant’s Memorandum of Fact and Law and Reply to the Respondent’s Memorandum.

[5] During the course of the hearing, the Registry received an email from the Applicant which, slightly abridged, reads as follows:

> I just wanted to let Your Honor know that :
>
> - I'm a known activist and my activities are well described in my file. I'm surprised why the officer believed my activities not gone to the attention of Iranian regime.
> - my removal was stayed on the date I was being removed at Pearson airport.
> - Minister himself accepted that I'm at risk if I go back to Iran.
> - Now, my file for Canadian PR was approved and I'm waiting for my status.
> - The PRA officer decision was wrong and unfair.

[6] On the basis of this communication, it appears that the Applicant has received a positive response to her application for permanent residence and that this matter may, therefore, be moot. However, the Court has no formal evidence of this and considers it necessary to deal with the application as it is.

II. **Background**

[7] The Applicant is a national of Iran who arrived in Canada on July 21, 2010 as a visitor. She made a refugee claim on October 1, 2010. In the claim, she identified as a political activist who supported the Green Movement in Iran. She claimed her political activity created issues with the university where she worked, eventually attracting the attention of the Iranian government. After she saw herself in her hijab and veil in photographs posted online, she decided to leave for Canada on a visa previously obtained for a conference.

[8] The claim was rejected by the Refugee Protection Division [RPD] on October 17, 2012. The RPD found that the Applicant was not credible, because of discrepancies between her evidence and her Personal Narrative and the absence of corroborative documentary evidence. The RPD found that she had not established a subjective fear as she delayed for six months after obtaining the visa before travelling to Canada and delayed a further three months after arriving in Canada to make her claim.

[9] The Applicant did not leave Canada following the rejection of her claim and spent the subsequent years prior to submitting her PRRA on January 11, 2019 engaged in activism related to Iranian politics and human rights issues.

III. **Decision under Review**

[10] The Officer did not hold an oral hearing pursuant to section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. In the decision, the Officer provided a detailed overview of the RPD decision and the Applicant's history in Iran. Letters tendered in support of the application were considered. The Officer acknowledged that the Applicant has attended and been photographed at political and human rights events and that these photos have been published in print and social media. The Officer noted that the Applicant does not use her legal name in her activities. In the only published photo where the Applicant is identified she used an abbreviated form of her name.

[11] The Officer reviewed extensive objective evidence on the country conditions in Iran, both those provided by the Applicant and those obtained from their own research. On the basis of the evidence as a whole, the Officer concluded as follows:

A. Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside of Iran, including critical social media comments. The Officer concluded that the Applicant's participation in political and human rights events would not garner the attention of Iranian authorities because she did not use her legal name, and relies on the RPD Decision to find she did not have an existing high profile when she left Iran.

B. The Applicant is unlikely to face punishment because of her failed asylum claim in Canada.

C. Although civil liberties and political rights are significantly hampered in Iran and "impunity is pervasive" in government and security authorities, these are general country conditions that are not unique to the Applicant.

[12] The Officer concluded that the Applicant failed to demonstrate that "she faces more than a mere possibility of persecution on any Convention ground, as per section 96 of IRPA and that, on a balance of probabilities, the applicant is unlikely to face risk as defined in section 97 of IRPA."

IV. **Issues and Standard of Review**

[13] The issues raised by the Applicant in her written materials can be summarized as follows:

A. Did the Officer err in not holding an oral hearing?

B. Is the Decision reasonable?

[14] The Applicant frames the first issue as a breach of procedural fairness requiring correctness review, relying on *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 [*Ahmed*] at 23. I am satisfied that in light of the presumption of reasonableness instituted in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraphs 16 and 25, and the absence of a reason to rebut the presumption that the question should be reviewed on a reasonableness standard. I find support for that conclusion in the decisions of Justice Gascon in *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 [*Huang*] at para 16 and *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 [*Garces Canga*] at paragraph 23.

[15] There is no dispute that an Officer's decision on a PRRA is reviewed on a reasonableness standard: *Huang* at para 10; *Garces Canga* at para 20.

V. **Analysis**

A. *Did the Officer Err by Not Holding an Oral Hearing*

[16] The Applicant contended in her written argument that the evidence she provided in support of her PRRA application was sufficient to meet her burden. Therefore, by rejecting the application, the Officer must have made an implicit credibility finding that required a hearing. She argues that the Officer erred in relying on the RPD decision and failed to provide reasons for not holding a hearing.

[17] Hearings are not normally held in PRRA applications. When the factors set out in section 167 of the *IRPR* are met, a hearing will be held pursuant to paragraph 113(b) of the *IRPA*. These factors are engaged when there is a serious credibility issue relating to evidence that is central to the PRRA decision: *Garces Canga* at para 31, *Huang* at paras 13-14 and 34-35, *Ahmed* at paras 26-29.

[18] A serious credibility issue arises when a piece of evidence raises a serious issue regarding an applicant's credibility, or when a piece of evidence may not be believed because of a serious issue with an applicant's credibility (*Ahmed* at para 29). However, referring to a credibility finding made by the RPD is insufficient on its own to trigger a hearing under paragraph 113(b) of the IRPA (*Ahmed*, at para 36).

[19] Findings by an Officer, as here, that the evidence is insufficient to support an applicant's assertion can by difficult to distinguish from credibility findings. The difference was discussed by Justice Gascon in *Garces Canga* at paras 39-42. Credibility or reliability goes to whether the evidence is accepted. Sufficiency goes to whether the evidence is of sufficient probative value to prove the facts for which it is advanced on a balance of probabilities. Another way of looking at

it was described by Justice Norris in *Ahmed* at para 31: would the factual propositions the evidence is tendered to establish be likely justify granting the application? If not, then the PRRA failed not because of a credibility finding but because of the insufficiency of the evidence.

[20] In the present matter, the Officer relied on the RPD decision for the proposition that the Applicant did not have a high profile in Iran before her departure. The Officer accepted the evidence of the Applicant’s activism in Canada, but found that it would be unlikely to come to the attention of the Iranian authorities. The opinion evidence tendered in support of the Applicant’s contention that she would be detained, tortured and imprisoned if she were to return to Iran was insufficient to support her claim.

[21] There was no evidence that the Applicant requested an oral hearing for her PRRA. Accordingly, the Officer was not obliged to provide reasons for not holding one.

B. *Was the Decision Reasonable?*

[22] The Applicant’s arguments on this issue amount to a disagreement with the Officer’s findings that her evidence was insufficient to satisfy her burden of proof. I agree with the Respondent that the Applicant seeks to have the Court reweigh the evidence in an effort to find error rather than considering the decision as a whole.

[23] The Officer properly identified the legal standards applicable to sections 96 and 97 of the *IRPA*. As discussed in *Garces Canga* at paras 49-52, for section 96 an applicant must demonstrate a subjective fear of persecution that is objectively well-founded due to risks to a

group based on a Convention ground like race, religion, nationality or political opinion. While this doesn't require individualized risk, some connection to the applicant's personal circumstances must be demonstrated. For section 97, an applicant must show that the risk is specific to them individually.

[24] In this matter, the central finding was that the Applicant did not have a high enough profile to attract attention from the Iranian authorities. In my view, the Officer adequately considered the Applicant's subjective fear of persecution based on her political opinion and whether that fear was objectively well-grounded under s 96 of the *IRPA*. She did not have the profile of, for example, the filmmaker identified in her PRRA submissions. The reasons demonstrate that in a thorough review of the evidence the Officer considered both the asylum claim and the Applicant's activities while in Canada.

[25] The Officer's reasons do not achieve a state of perfection. It is arguable that they fail to grapple with the risks posed to political activists in Iran generally and whether the Applicant's political opinions, which the Officer appears to accept that she holds, give rise to more than a mere possibility of persecution. It would have been open to the Officer to find that the Applicant had discharged her burden. But it is not for the Court to transform a review on the reasonableness standard to correctness review: *Canada (Citizenship and Immigration) v Mason,* 2021 FCA 156 at paras 36-40.

VI. **Conclusion**

[26] In my view, the decision sufficiently bears the hallmarks of reasonableness – justification, transparency and intelligibility – to show it is justified in relation to the relevant

factual and legal constraints bearing on the decision: *Vavilov* at para 99. There are no serious shortcomings that would warrant interference by the Court.

[27] No serious question of general importance was proposed and none will be certified.

JUDGMENT IN IMM-6596-20

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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