Federal Court Cour fédérale

Date: 20211118

Docket: IMM-1574-21

Citation: 2021 FC 1268

Ottawa, Ontario, November 18, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

MOHAMMED NAJMALDIN ABDULLAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mohammed Najmaldin Abdullah is a citizen of Iraq from the city of Erbil, which is in the Kurdistan Region of Iraq that is under the control of the Kurdistan Regional Government. Mr. Abdullah alleges that his removal from Canada would subject him to a danger of torture, a risk to his life, or a risk of cruel and unusual treatment or punishment: section 97 of the *Immigration and Refugee Protection Act*, SC 1991, c 27 [*IRPA*]. He applied for a pre-removal risk assessment (PRRA) on the basis that he would face a risk of arrest by the Erbil police for

deserting his position as an accountant at the Erbil police headquarters, as well as a risk of being detained and abused by the Kurdish security and intelligence agency, the Asayish, for supporting a friend who had attended an anti-government demonstration. If he is arrested or detained, Mr. Abdullah alleges he would be subjected to harsh and life-threatening prison conditions. On this application for judicial review, Mr. Abdullah seeks to set aside a senior immigration officer's (Officer) decision that refused the PRRA.

[2] The Officer found that Mr. Abdullah had not established he is being sought after by the Erbil police, the Asayish, or other authorities in Iraq, and there are not substantial grounds to believe that he would be subjected to the treatment described in section 97 of the *IRPA*. Mr. Abdullah submits that the Officer's decision was premised on a fundamental misunderstanding of central facts. Furthermore, Mr. Abdullah submits the Officer failed to justify, with transparent and intelligible reasoning, findings that the evidence he submitted has low probative value. Based on these errors, he alleges the Officer's decision is unreasonable.

[3] I am not persuaded that the Officer's decision was premised on a fundamental misunderstanding of central facts. However, I find Mr. Abdullah has established that the Officer failed to justify findings that his evidence has low probative value, rendering the decision unreasonable. Accordingly, this application for judicial review is granted.

II. **Standard of Review**

[4] The parties agree that the applicable standard of review is reasonableness, conducted according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*,

2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, and consider whether the decision as a whole is transparent, intelligible and justified: *Vavilov* at paras 15 and 83. In this regard, it is not enough for the outcome of a decision to be *justifiable*; the decision must be *justified* by the decision maker, by way of the reasons: *Vavilov* at para 86. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

III. **Analysis**

[5] Mr. Abdullah arrived in Canada in July 2018, and claimed refugee protection. His refugee claim was suspended when a Canada Border Services Agency (CBSA) officer issued a report under subsection 44(1) of the *IRPA* alleging that Mr. Abdullah is inadmissible to Canada. The CBSA officer referred the matter to the Immigration Division (ID) of the Immigration and Refugee Board of Canada for an inadmissibility hearing. The ID found Mr. Abdullah to be inadmissible on security grounds pursuant to section 34(1)(f) of the *IRPA*, a decision that is the subject of a separate judicial review proceeding in this Court.

[6] Mr. Abdullah was offered a PRRA prior to his removal. Since he was found to be inadmissible on security grounds, the PRRA was restricted to an assessment of whether his removal would subject him to a danger of torture, a risk to his life, or a risk of cruel and unusual

treatment or punishment under section 97 of the *IRPA*. The negative PRRA decision is the subject of this application.

A. *Did the Officer misunderstand central facts?*

[7] Mr. Abdullah submits the Officer's conclusion that he would not be subjected to a section 97 risk was premised on a fundamental misunderstanding of central facts, for two reasons: (i) the decision refers to one arrest warrant when there were two; (ii) the Officer misconstrued country condition evidence about the process for issuing an arrest warrant in Iraq. According to Mr. Abdullah, these factual errors go to the heart of the Officer's finding that he would not face a section 97 risk from being detained or imprisoned in Iraq because he is not being sought after.

[8] Mr. Abdullah submits the Officer conflated the evidence by referring to a single arrest warrant throughout the decision when there is an arrest warrant from the Erbil police for deserting the job, and another from the Asayish for supporting citizens engaged in an anti-government demonstration. Mr. Abdullah argues that this error alone renders the decision unreasonable.

[9] I am not persuaded that the Officer misunderstood the evidence regarding the arrest warrants. Furthermore, even if the Officer did err by referring to a single arrest warrant, the error is not material and it does not render the decision unreasonable. I agree with the respondent that the Officer clearly understood Mr. Abdullah's allegations that he is being sought after by the Erbil police on the accusation that he abandoned his position and by the Asayish on the accusation that he supported citizens in an anti-government demonstration, as well as the risks

Mr. Abdullah alleged that he would face as a result of being arrested or detained based on either of these accusations. The Officer addressed all of the allegations.

[10] Mr. Abdullah submits that the Officer misconstrued country condition documentation that describes the procedure for issuing arrest warrants in Iraq. Mr. Abdullah argues the Officer improperly concluded that the country condition evidence describes a single procedure for issuing arrest warrants in Iraq, whereby a judge issues a summons before a warrant for arrest is issued, and unreasonably found Mr. Abdullah's evidence to be inconsistent with country condition documentation because it does not mention a summons. Mr. Abdullah argues that the country condition documentation in fact describes three ways that an arrest warrant may be issued.

[11] In my view, the Officer did not conclude that the country documentation describes a single method for issuing a warrant; rather, the Officer found that the process described in the country condition documentation is not consistent with the information provided in the letters from Mr. Abdullah's friends, brother, a co-worker who is a police officer, and the General Director of Regional Police (Major General Tariq Ahmed Ibrahim).

[12] The translated letter from the Major General is addressed to the General Directorate and copied to "all the General Directorate / Legal department". It purports to attach a copy of an arrest warrant and Mr. Abdullah's identification (the attachments are not in the evidence) and states, "We are sending you a copy of the arrest warrant with the ID of the Absence without leave (R.P 8/ Mohammed Najmadin Abdulla [*sic*]), if you see the above mentioned, arrest him

and send him to us." The Officer found "this process is inconsistent with what is described as being customary in the objective documentary evidence".

[13] Mr. Abdullah has not established an error in the Officer's interpretation of country condition documentation that describes the process for issuing arrest warrants in Iraq. The Officer's finding that the information in the letters is inconsistent with the customary process outlined in the objective country condition evidence was within the Officer's role in assessing the evidence and open to the Officer to make. This is a relevant consideration in deciding whether Mr. Abdullah had met his onus to establish a section 97 risk.

B. *Did the Officer fail to justify findings that the evidence has low probative value?*

[14] The main point of disagreement between the parties is whether the Officer's determination is based on Mr. Abdullah's failure to provide sufficient evidence to establish a section 97 risk, as the respondent contends, or a concern with credibility—that is, the authenticity and reliability of the evidence in the sense of whether it is worthy of belief—as the applicant contends. This issue is related to the Officer's finding that the information in the letters is inconsistent with country condition evidence. The parties disagree on whether that finding constitutes a veiled attack on the letters' credibility, as opposed to a reason for assigning low probative value to the letters' ability to establish a risk of arrest for a crime that would result in a prison sentence or detention, and consequently, harsh or life-threatening treatment.

[15] Mr. Abdullah argues that the Officer avoided making a credibility finding while giving the evidence reduced weight on what were effectively credibility grounds. He submits the

Officer failed to justify, with transparent and intelligible reasoning, the finding in the following passage that letters from his friends, co-worker, brother, and the Major General "are of little probative value":

> Considering that I have not been presented with any objective evidence, such as a summons or an arrest warrant, and taking into account that the process described in the letters is inconsistent with the process described in the documentary evidence, I find the letters from the applicant's friends, co-workers, brother and Major General Tariq are of little probative value in establishing that the applicant is being sought after by the Erbil police, the Asayish or any other authority. Overall, I am not persuaded, on a balance of probabilities, that the applicant is being sought after by the Erbil police, the Asayish or anyone else in Iraq, or that he has been or will be charged with any crime in Iraq.

[16] According to Mr. Abdullah, the Officer's statement that there was no "objective evidence, such as a summons or an arrest warrant", as well as a later statement that the evidence did not include a summons or arrest warrant to "corroborate the allegations made in the letters", support his position that the Officer made a veiled credibility finding. Furthermore, Mr. Abdullah argues the Officer should have considered the Major General's letter separately from the other letters because it is not in same category. His submissions address the Major General's letter separately.

[17] With respect to the Major General's letter, Mr. Abdullah argues the Officer erred in finding it to have low probative value for the following reasons: (i) the Officer appears to reject this potentially probative evidence from an "adverse and hostile party" on the basis that it is not objective or corroborated (*Tabatadze v Canada (Minister of Citizenship and Immigration)*, 2016 FC 24 at para 6; *Avril v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1512; *Magonza v Canada (Minister of Citizenship and Immigration)*, 2019 FC 14 [*Magonza*]); (ii) the

Officer found the letter to be inconsistent with the objective country documentation because it does not mention a summons, but the letter merely refers to an arrest warrant and asks that it be executed; (iii) the Officer assigned low probative value to the letter without conducting any assessment of its credibility; the Officer did not question the genuineness of the letter and it was an error to give it little weight based on what were, in effect, credibility grounds (*Osikoya v Canada (Minister of Citizenship and Immigration)*, 2018 FC 720 at paras 50-51 [*Osikoya*]; *Nti v Canada (Minister of Citizenship and Immigration)*, 2020 FC 595 at paras 19-23 [*Nti*]; *Liu v Canada (Minister of Citizenship and Immigration)*, 2020 FC 576 at para 91; *Magonza* at paras 30-31; *Abdillahi v Canada (Minister of Citizenship and Immigration)*, 2020 FC 422 at para 26 [*Abdillahi*]).

[18] With respect to the letters from his friends, co-worker, and brother, Mr. Abdullah submits that the Officer failed to rationally explain why they were considered to be of low probative value. Mr. Abdullah takes issue with the Officer's finding that the letters are vague and lack important details. He submits that these criticisms are not borne out by the letters themselves; the letters are "patently not vague" and provide details about the authors' knowledge of the arrest warrants, including how they learned about the arrest warrants and the underlying accusations.

[19] The respondent submits the Officer did not question the credibility of the evidence or Mr. Abdullah's credibility but rather, concluded that Mr. Abdullah did not provide sufficient evidence to establish a section 97 risk. It is not always necessary to consider the credibility of evidence or the credibility of its source before considering the probative value of the evidence, and it was open to the Officer to examine the evidence and find it unpersuasive, without

requiring a credibility finding: *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at para 17; *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at paras 26-27 [*Ferguson*]; *Nnabuike Ozomma v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1167 at paras 54-56; *Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2014 FC 837. The respondent submits the Officer reasonably assessed the evidence according to the principles in the jurisprudence, and it is possible to follow a rational chain of analysis that led to the Officer's findings.

[20] Importantly, the respondent states the Officer found the evidence was insufficient to establish that Mr. Abdullah would be charged with a crime. Mr. Abdullah had submitted a copy of the *Internal Security Forces Penal Code* (2008) and news articles from 2014 that relate to members of the internal security forces (ISF). The Officer found that the penal code offences would not apply to Mr. Abdullah as the code only applies to officers, enlisted ranks of ISF, and students training with the ISF, and there was no evidence Mr. Abdullah was a member of the ISF.

[21] I agree with Mr. Abdullah that the Officer failed to justify, with transparent and intelligible reasoning, the finding that the letters from his friends, co-worker, brother, and the Major General "are of little probative value in establishing that the applicant is being sought after by the Erbil police, the Asayish or any other authority". The Officer did not explain why the evidence has low probative value, even if it is believed, and it appears from the reasons that the Officer avoided making a credibility finding while giving the evidence reduced weight on what were effectively credibility grounds.

[22] While I disagree that the Officer misconstrued the country condition evidence about arrest warrants (for the reasons explained in the previous section), it is unclear how that finding relates to the probative value of the letters, apart from the effect on their credibility. The respondent submits the Officer found Mr. Abdullah was not being sought after for “a crime”, and therefore, the Officer reasonably gave the letters low probative value as they do not detail the underlying charges. The respondent’s nuanced interpretation of the Officer’s decision—that the Officer was not satisfied Mr. Abdullah would be charged with crimes that would lead to an arrest or detention, and thereby subject him to harsh and life-threatening prison conditions—is not clear from the reasons. In this regard, I agree with Mr. Abdullah that the Officer does not seem to be concerned with the nature of the alleged charges against him. If the Officer’s determination was based on more than a simple disbelief that Mr. Abdullah is being sought after and would be charged with a crime, that reasoning is not explained or otherwise apparent from the record.

[23] As I read the decision, the Officer made two separate findings: the Officer was not satisfied that Mr. Abdullah is being sought after by the Erbil police or the Asayish, and in addition, the Officer was not satisfied that Mr. Abdullah has been or would be charged with a crime. The Officer did not state that the finding about not being sought means “not being sought for a crime”, or explain how the two findings are connected. If the statements in the letters were accepted to be true, it is not clear why they would not be probative of whether Mr. Abdullah is being sought after and/or would be charged with a crime. In my view, the reasons suggest that the Officer did not believe the information in the letters without seeing an actual arrest warrant or summons as corroboration (*Abdillahi* at para 26), not that the Officer made a determination that

the letters fail to establish the accusations by the Erbil police and the Asayish amount to crimes that would lead to an arrest or detention.

[24] Where a document could have high probative value because its contents are closely linked to an alleged risk, its probative value cannot be separated from an assessment of its credibility: *Nti* at paras 19-22; *Magonza* at paras 30-31; *Osikoya* at paras 48-51. In this case, it is not apparent from the reasons that the Officer's assessment of the letters could be separated from their credibility.

[25] Judicial review is concerned with both the outcome and the reasoning process; an otherwise reasonable outcome cannot stand if it was reached on an improper basis: *Vavilov* at paras 82-87. The Officer's assessment of the letters as having low probative value is not transparent, intelligible and justified.

IV. **Conclusion**

[26] Mr. Abdullah has established that the Officer's decision is unreasonable. Accordingly, the decision is set aside and the matter is remitted to another officer for reconsideration.

[27] Neither party proposes a question for certification. I find there is no question of general importance to certify.

JUDGMENT in IMM-1574-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. The Officer's decision is set aside and the matter shall be referred to another decision maker for redetermination.

3. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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