Federal Court Cour fédérale

Date: 20220927

Docket: IMM-6558-21

Citation: 2022 FC 1341

Ottawa, Ontario, September 27, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

DAVID LINADI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Albania, seeks judicial review of a negative Pre-Removal Risk Assessment (PRRA) decision made on November 24, 2020 (the Decision).

[2] The PRRA Officer (the Officer) found the Applicant will face less than a mere possibility of persecution for any Convention grounds under section 96 and will be unlikely to face a risk to their life, torture or cruel and unusual treatment or punishment under section 97.

[3] For the reasons that follow, this application is granted and the matter will be returned to a different PRRA Officer for redetermination.

II. **Background Facts**

[4] The Applicant arrived in Canada and submitted a refugee claim in March 2005. His parents made a claim in the United States and he left Canada to join them in April, 2005. His Canadian claim was then deemed to be abandoned and a removal Order was issued.

[5] When the Applicant's parents lost their claim in the United States, they were returned to Albania.

[6] The Applicant alleges that he and his family have been supporters of the Democratic Party of Albania (DP) of which he became a member on November 20, 2010. His application for a PRRA was made on the basis that, due to his affiliation with the DP, he fears Paulin Sterkaj, the leader of the Socialist Party of Albania (SP), and other state and non-state actors related to Mr. Sterkaj.

III. **Preliminary Issue**

[7] The Applicant's wife and two sons were found by the Refugee Protection Division (RPD) to be Convention refugees based on the political activism of the Applicant and persecution by Mr. Sterkaj. The Applicant submitted this information in an affidavit filed as part of his application. The affidavit included as an exhibit the Decision and Reasons of the RPD.

[8] The Respondent objects to my receiving and considering the affidavit and exhibit as it was not before the PRRA Officer. They note as well that it is distinguishable on the facts and possibly on the evidence.

[9] The Affidavit and Exhibit are not admissible.

[10] There are certain limited exceptions to the general rule that on an application for judicial review only the evidence that was before the decision maker is to be considered. None of the exceptions are present in this instance: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency* (*Access Copyright*), 2012 FCA 22 at paras 19 and 23.

IV. **The Decision**

[11] The main issue identified in the Decision was insufficiency of evidence. It is determinative in this application.

[12] The PRRA Officer found the Applicant failed to provide sufficient evidence to support his allegations against Mr. Sterkaj and to establish how he safely lived in Albania from July to December 2019, after a death threat was made against him.

[13] The Officer found that although current conditions in Albania allow police abuse and corruption to occur, the Applicant failed to provide sufficient evidence showing he had been a victim of police abuse himself.

[14] The Officer concluded that although the Applicant submitted he fears the Sterkaj clan, there was insufficient objective evidence of encounters with the alleged perpetrators to establish the threat put him at risk for his life.

V. **Issue and Standard of Review**

[15] The issue is whether the Decision is reasonable.

[16] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[17] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The

role of courts in these circumstances is to review, and at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at para 83.

[18] To set a decision aside, a 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. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

[19] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

[20] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

VI. **Analysis**

[21] The determinative issue in this review is the Officer's veiled credibility findings.

[22] The Applicant submits there were two veiled credibility findings: (1) that he had not provided sufficient evidence that he received an ultimatum at gunpoint from Leonard Sterkaj

threatening to kill the Applicant if he ever saw him; and (2) that while the Applicant may have faced difficulties leaving Albania, the Applicant had not provided sufficient evidence to establish that he was unable to leave Albania sooner.

[23] The Applicant's affidavit before the Officer attests to a number of matters, including that he was arrested at his home by five police officers. He was imprisoned, interrogated and beaten. He states that he contacted the DP leader and the DP lawyer and they advised him to leave Albania.

[24] In addition to his own affidavit, the Applicant filed with his PRRA submissions an affidavit from the Chairman of the DP for the Applicant's region and a letter from the DP lawyer.

[25] The Chairman's affidavit confirmed that after the protest he had been advised that the Applicant, who was his personal driver, had been arrested. The Chairman attested that he then called the lawyer to deal with obtaining the release of the Applicant on an urgent basis.

[26] The Chairman's affidavit also indicated he had been notified by Members of Parliament who were near the Police Directorate that those arrested were being mistreated in a barbaric manner by the police.

[27] The lawyer went to the Police Directorate and made contact with the Applicant who had been detained for 72 hours. The Applicant was then granted house arrest following a court appearance where he was represented by the lawyer.

[28] The lawyer's letter stated "the police exercised violence and used tear gas in a provocative manner even though the protest was peaceful, and permission was issued by the authorities." However, the Officer reasonably found the letter was hearsay as the lawyer was recounting what the Applicant had told him.

[29] The Officer determined that the threats alleged by the Applicant had not been established on a balance of probabilities. While acknowledging that the Applicant may have faced difficulties leaving Albania, the Officer found that neither the affidavit nor the letter referred to the advice provided to the Applicant to leave Albania.

[30] The Officer concluded that the Applicant had provided "insufficient supporting evidence to establish the incidents expressed in the application."

[31] On the face of the Decision, the Officer does not make any explicit negative credibility findings in their assessment of the Applicant's allegations in 2013, 2014 and 2019.

[32] I find the line of reasoning concerning the 2019 events to be troubling. The Officer first noted the Applicant alleged he was held at gunpoint and told by Sterkaj that he had to leave Albania. The Officer then noted that the affidavits of the Chairman and the lawyer, do not

mention this death threat. From this, the Officer concludes "[i]n the case at hand, the applicant has not provided sufficient evidence that he received an ultimatum, which triggered his latest exit from Albania. For the reasons cited above, I assign little weight to this occurrence."

[33] The only reason "cited above" however, was there was no corroborative evidence in support of the Applicant's sworn affidavit. This indicates to me that the Officer began their analysis from the premise that corroborative evidence was required to assign weight for an "occurrence".

[34] It has been held by this Court that requiring corroboration in the absence of a pre-existing "reason to doubt" effectively reverses the presumption of truthfulness established in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at 305 (CA); *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 27 [*Senadheerage*].

[35] In my view, the Officer made veiled credibility findings cloaked in the language of insufficiency.

[36] Justice Norris provided a useful test to distinguish between sufficiency and credibility in the context of PRRA decisions 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 them to be true, would likely justify granting the application for protection. If they would not, then the PRRA application failed, not because of 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.

[37] With respect to the Officer's first insufficiency finding, the factual proposition the evidence was tendered to establish was that the Applicant was in fact, threatened at gunpoint to leave Albania because of his opposition against the SP and his continued support for the DP.

[38] Applying the above-noted test, if this proposition is assumed to be true, I find it would likely justify granting the application. The Officer was clearly concerned about the veracity of the Applicant's claim. There are no reasons, other than noting the absence of corroboration in the affidavit and letters of support that indicate another possibility. This is in part, the problem itself, as the duty to give reasons acts as a safeguard to prevent the requirement for corroboration from becoming "a disguised expression of unsupported belief": *Senadheerage* at para 34.

[39] With respect to the second insufficiency finding, it seems that the Officer may have reasonably expected documentary evidence to be available to shed light on why there was a delay in fleeing Albania following the death threat. In such circumstances, this Court has held "precision [is] required as to the nature of the documentation expected and a finding made to that effect": *Rojas v Canada (Citizenship and Immigration),* 2011 FC 849 at para 6. In the case at hand, the Officer failed to do so.

[40] In addition to the veiled credibility findings, the Officer found that the Applicant had not provided sufficient evidence to establish that he had received an ultimatum that caused him to leave Albania. For that reason, the Officer assigned little weight to the evidence.

[41] If a decision-maker is not convinced of the authenticity of a document, then they should say so and give the document no weight whatsoever. Decision makers should not cast aspersions on the authenticity of a document, and then endeavour to hedge their bets by giving the document "little weight": *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 20. As Justice Nadon, then a judge of this Court, observed in *Warsame v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 1202 at para 10, "[i]t is all or nothing".

[42] The Officer in *Chekroun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 737 at paragraphs 68-71[*Chekroun*], cited no inconsistencies, contradictions or implausibilities in the sworn evidence and did not say why the Applicant's affidavit alone was insufficient. On review, the Court found that the refusal to accept affidavit evidence because there are no corroborating documents or because the documents were insufficient is a veiled credibility finding: *Chekroun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 737 at paras 68-71.

VII. **Conclusion**

[43] Based on all of the above, I agree with the Applicant that the Officer's requirement for corroborative evidence, led to veiled credibility findings cloaked as insufficiency. That renders the Decision unreasonable.

[44] The application is granted. This matter shall be returned for redetermination by another PRRA Officer.

[45] There is no serious question of general importance arising on these facts.

JUDGMENT in IMM-6558-21

THIS COURT'S JUDGMENT is that:

1. The application is granted.

2. The matter shall be returned for redetermination by another PRRA Officer.

3. There is no serious question of general importance arising on these facts.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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