

Federal Court



Cour fédérale

Date: 20240207

Docket: IMM-2547-23

Citation: 2024 FC 197

Ottawa, Ontario, February 7, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

FOZIA ANWAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant, a citizen of Pakistan, seeks judicial review of a decision of a Senior Immigration Officer [Officer] denying her Pre-Removal Risk Assessment [PRRA] application pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] I am allowing the application because the Officer failed to assess the Applicant's risk of persecution in Pakistan under section 96 of the *IRPA* based on her alleged profile as an unwed mother. The jurisprudence makes clear that persecution under section 96 can be established by examining the treatment of similarly situated individuals. In this case, the Officer erroneously focused on whether there was sufficient evidence to establish that the Applicant had been persecuted in the past or would be at risk of persecution in the future.

II. Background

[3] The Applicant came to Canada in May 2017 and made a refugee claim shortly thereafter based on a fear of returning to Pakistan due to her sexual orientation. Both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] denied her claim based on a lack of credibility.

[4] In Canada, the Applicant gave birth to three children – born in 2019, 2021, and 2022. The Applicant submitted a PRRA application in July 2022 based on a new fear of persecution in Pakistan due to her status as an unmarried mother with three children conceived outside of marriage. The Applicant claimed that having children outside of wedlock is prohibited under the Islamic religion and, as a result, she has experienced hostility from her family and friends in Pakistan.

[5] The Applicant alleged that her brother threatened to kill her and her children when he next sees her. The Applicant also alleged that the Taliban ordered her family to carry out an honour

killing against her. Further, a First Information Report [FIR] was registered in Pakistan in May 2022, accusing the Applicant of prostitution under the Pakistan Penal Code.

[6] The Officer rejected the Applicant's PRRA application, finding that she 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 Pakistan.

[7] The Officer acknowledged that the Applicant presented a new risk in her PRRA application that had not been assessed in her refugee claim, namely "the fear of a honour killing based on her profile of a single mother without a marriage": Pre-Removal Risk Assessment Notes to File dated January 17, 2023 at p 5 [Officer's Decision].

[8] Based on the objective evidence, the Officer found that honour killings are "not uncommon" in Pakistan. Indeed, honour-based crimes are increasing with more women and girls reporting acts of violence. While the government passed the Anti-Honour Killings Bill in October 2016, the Officer recognized that "much more still needs to be done, including changing cultural norms and laws that enshrine women's status as second-class citizens": Officer's Decision at p 6.

[9] After reviewing the evidence and submissions, however, the Officer denied the PRRA application based on an overall lack of sufficient evidence. In particular, the Officer found: (i) a scarcity of details or statements to establish any threats from individuals other than the Applicant's brother; (ii) insufficient evidence of a linkage of the FIR to a forward-looking risk for the Applicant; (iii) little information provided by the neighbour's affidavit to indicate that they

witnessed any physical harm or threatening behaviour against the Applicant or her family; (iv) little information about which brother threatened the Applicant; (v) little information about the personal beliefs of the Applicant's mother; (vi) vague details about the threats by the Applicant's brother; and (vii) scarce details about the Taliban's threats towards the Applicant and her family: Officer's Decision at pp 6-7.

III. Issues and Standard of Review

[10] The Applicant raises two issues in this judicial review application: (i) whether the Officer failed to conduct a proper assessment of risk under section 96 of the *IRPA* based on the Applicant's profile as an unwed mother; and (ii) whether the Officer failed to properly take into account the Applicant's evidence of her personal circumstances.

[11] In my view, the first issue is dispositive and it is therefore unnecessary to consider the second issue. The applicable standard of review with respect to whether the Officer applied the proper analytical framework in assessing the Applicant's section 96 claim is that of reasonableness: *Begum v Canada (Citizenship and Immigration)*, 2023 FC 1452 [*Begum*]; *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 [*Fodor*].

[12] 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit

the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59-61. Furthermore, the reviewing court “must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para 100.

IV. Analysis

[13] To establish persecution under section 96 of the *IRPA*, an applicant need not show that they themselves have been persecuted in the past or would be persecuted in the future. Rather, persecution can be established by “examining the treatment of similarly situated individuals”: *Debnath v Canada (Citizenship and Immigration)*, 2018 FC 332 at para 31 [*Debnath*]; *Begum* at paras 19-20; *Fodor* at paras 40-41; *Thornton v Canada (Citizenship and Immigration)*, 2019 FC 792 at para 14.

[14] In this case, the Officer failed to conduct a section 96 risk assessment based on the Applicant’s profile. The Applicant specifically articulated her “fear of an honour killing based on her profile as a single mother”: Officer’s Decision at p 5. While the Officer acknowledged the objective country evidence that honour killings are on the rise in Pakistan, the Officer did not undertake the requisite risk analysis based on the evidence of similarly situated individuals to determine whether the Applicant had established her claim under section 96.

[15] It was incumbent on the Officer to assess whether the Applicant provided sufficient objective documentary evidence to support that her profile was similar to those persons facing

persecution in Pakistan: *Debnath* at para 33. I agree with the Applicant that “the Officer erred by side-stepping the issue completely”: Applicant’s Memorandum of Fact and Law at para 30.

[16] The Officer’s analysis was instead entirely focused on whether the Applicant’s evidence was sufficient to establish that she had faced or would face risk if returned to Pakistan: Officer’s Decision at pp 6-7. For example, the Officer concluded that there was: (i) “little evidence to indicate any threats made to the applicant aside from those noted to have been made by the [sic] her brother”; and (ii) “little information to indicate the witnessing of any physical harm or threatening behaviour against the applicant’s family or any threats made against the applicant”: Officer’s Decision at p 6.

[17] As fairly conceded by the Applicant, this line of inquiry is relevant to a section 97 analysis. However, because the section 96 claim was based on membership in a particular group, the Applicant was not required to demonstrate that she had herself been persecuted in the past or that she herself would be persecuted in the future: *Lakatos v Canada (Citizenship and Immigration)*, 2019 FC 864 at para 55.

[18] As the Applicant appropriately emphasized, this was the first opportunity for the assessment of the Applicant’s alleged risk as an unwed mother, given that it was not the same risk that was previously assessed by both the RPD and the RAD in her refugee claim. Where the stakes are high, there is a heightened responsibility on decision-makers to ensure that their reasons reflect the seriousness of the consequences and that “those consequences are justified in light of the facts and the law”: *Vavilov* at para 135. In this case, the Officer failed on this account.

[19] I do not accept the Respondent's argument that the Officer made a "clear finding" that the Applicant did not meet the profile of a single woman who had children outside of wedlock. In that regard, the Respondent erroneously seized on the following passage at the end of the Officer's Decision:

I note that whilst not a determinative factor, wherein the applicant indicates her current marital status as "married" little information has been provided with respect to the father of her children. The applicant has identified Kamran Khan as her husband on the PRRA application. There is also little information or evidence to indicate any initiation of divorce proceedings against the applicant's husband. I refer back to the RPD decision wherein the board had concerns about the applicant's marriage certificate and in conjunction with other credibility concerns stated the following: "... the board finds on a balance of probabilities that there is not enough credible or trustworthy evidence to establish that the claimant married Khan or anyone else."

[Emphasis in original]

[20] I do not agree that this passage supports that the Officer rejected the Applicant's claim as not credible. Indeed, as the Applicant argued, if it is interpreted as a credibility finding, it raises another issue – that the Officer breached procedural fairness in failing to provide the Applicant an opportunity to address credibility concerns before drawing an adverse inference.

[21] The law is clear that drawing adverse inferences based on credibility concerns, without first putting them to the claimant, is a breach of procedural fairness: *Elias Moran v Canada (Citizenship and Immigration)*, 2022 FC 90 at paras 17-20; *Huang v Canada (Citizenship and Immigration)*, 2019 FC 1123 at para 32; *Jurado Barillas v Canada (Citizenship and Immigration)*, 2019 FC 825 at paras 15-18; *Ananda Kumara v Canada (Citizenship and Immigration)*, 2010 FC 1172 at paras 3-5.

[22] Furthermore, the Respondent cannot now offer after-the-fact explanations for the Officer's decision. In accordance with *Vavilov*, the Court must focus on the Officer's reasons and whether they are "justified"; not whether the outcome is "justifiable": *Vavilov* at para 86. The Officer's reasons in this case are wholly inadequate and fail to meaningfully engage with a central issue.

V. Conclusion

[23] Based on the foregoing, the Officer's analysis of the Applicant's risk of persecution under section 96 of the *IRPA* is flawed and must be set aside. The matter is remitted to another officer for redetermination.

[24] The parties did not propose a certified question and I agree that none arises in this case.

JUDGMENT in IMM-2547-23

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The Officer's decision dated January 17, 2023 is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

"Anne M. Turley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2547-23

STYLE OF CAUSE: FOZIA ANWAR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 25, 2024

**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

DATED: FEBRUARY 7, 2024

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