

Federal Court



Cour fédérale

Date: 20231221

Docket: IMM-7791-22

Citation: 2023 FC 1742

Ottawa, Ontario, December 21, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

KARANBIR SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Karanbir Singh, filed a Pre-Removal Risk Assessment [PRRA] where he asked to remain in Canada because he was at risk if returned to India, his country of citizenship. An officer at Immigration, Refugees and Citizenship Canada [IRCC] rejected his PRRA.

[2] On judicial review, Mr. Singh challenges the PRRA refusal based on two grounds. First, he argues that the Officer failed to consider his complete risk profile by only focusing on whether he had established his membership in Sikhs for Justice, and not considering his political profile as a person who supports Sikh separatism, who will be perceived as a “Khalistani” by the Indian government. Second, Mr. Singh argues that the Officer’s determination about his active membership in Sikhs for Justice was a credibility finding on a determinative issue and therefore fairness required that a hearing be held.

[3] I agree with Mr. Singh that the Officer narrowly construed the risk he was alleging as being only in relation to his membership in the group Sikhs for Justice. Mr. Singh’s statement and his counsel’s submissions provided with the PRRA do not frame Mr. Singh’s risk as being solely about his membership in Sikhs for Justice, but instead allege risk based on a broader political profile. The Officer’s failure to assess the claim based on the risk profile alleged by the applicant requires the decision be redetermined. Accordingly, it is unnecessary for me to consider Mr. Singh’s second argument about the breach of procedural fairness in not holding a hearing in this case.

[4] Based on the reasons below, I grant the application for judicial review.

II. Procedural History

[5] Mr. Singh first arrived in Canada as a student in July 2014. Approximately five years later, in June 2019, he filed a claim for refugee protection. He claimed a risk of persecution

based on his political opinion, including his prior membership in an organization called All India Sikh Students Federation [AISSF].

[6] In March 2021, during an interview with a Canada Border Services Agency [CBSA] officer, Mr. Singh learned that his past membership in AISSF was flagged as a potential inadmissibility issue because it was alleged that the group had engaged in acts of terrorism between the 1970s and 1990s.

[7] The RPD suspended Mr. Singh's refugee protection hearing pending a determination by the Immigration Division on Mr. Singh's admissibility. The Immigration Division held an admissibility hearing in March 2022. Mr. Singh conceded that he was a member of the AISSF from February 2013 to July 2014 and later disassociated himself from the organization after coming to Canada. During his admissibility hearing, Mr. Singh also testified that he continues to support Sikh separatism and became a member of "Sikhs for Justice" which he alleged promotes peaceful Sikh self-determination and separatism. The Immigration Division found Mr. Singh to be inadmissible under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], finding that he was a member of a group that there were reasonable grounds to believe had engaged in acts of terrorism between the 1970s and 1990s.

[8] As a result of being found inadmissible under paragraph 34(1)(f) of IRPA, Mr. Singh was no longer eligible to have a refugee hearing before the Refugee Protection Division (paragraph 101(1)(f) of IRPA). Instead, he was offered the PRRA process. His inadmissibility under section

34(1)(f) also meant that the PRRA officer had to limit their review of his claim to section 97 of *IRPA*, and not consider the claim under section 96 of *IRPA* (subsection 113(d) of *IRPA*).

[9] Mr. Singh filed his PRRA on July 13, 2022. The Officer rejected his PRRA on August 5, 2022.

III. Issue and Standard of Review

[10] As noted above, the only issue I am considering is the Officer's characterization of the risk alleged by Mr. Singh. The parties agree, as do I, that I should review this issue on a reasonableness standard. The Supreme Court of Canada described a reasonable decision as "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 [*Vavilov*] at para 85). Administrative decision makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

[11] The PRRA process was the first and only evaluation of Mr. Singh's risk claim. The PRRA is generally, as it was in Mr. Singh's case, a written process. The statutory deadline to have the PRRA forms completed is 15 days after having been offered to make the application (s 162 of *Immigration and Refugee Protection Regulations*, SOR/2002-227), with further submissions and evidence required to be filed within another 15 days.

[12] The key issue on judicial review is the Officer's framing of the risk alleged by Mr. Singh. I agree with Mr. Singh that the Officer narrowly construed his risk claim in a fragmented way as being limited only to his alleged active membership in the group Sikhs for Justice.

[13] The Officer describes Mr. Singh's claim under the section "Risks Identified by the Applicant": "the applicant states he is a member of the Sikhs for Justice (SFJ) and that he would face personalized risk at the hands of the Indian Government or Hindutva groups such as the Rashtria Swayamsevak Sangh (RSS)."

[14] Though the Officer notes Mr. Singh's past involvement in Sikh political advocacy through the AISSF (the group the Immigration Division found Mr. Singh was a member of in 2013-2014), the Officer finds this irrelevant to risk because "the applicant makes no claim that he fears returning to India as a result of his former membership in the [...] (AISSF), nor does his representative." The rest of the analysis then turns to the sufficiency of evidence establishing active membership in the SFJ.

[15] Mr. Singh's involvement in the AISSF was presented in his PRRA as evidence of his longstanding activities and political opinion in support of a separate Sikh homeland. It was not described as irrelevant to Mr. Singh's risk claim; instead, Mr. Singh's involvement with AISSF was repeatedly referenced in counsel's submissions to explain Mr. Singh's longstanding political advocacy for Sikh separatism.

[16] Mr. Singh stated in his PRRA: “There is a risk to my life if I am returned to India because of my political opinions. I am a Sikh man who will be perceived as a “Khalistani” or terrorist by the current government and police/security apparatus in India.” Despite Mr. Singh and his counsel describing his risk as one related to his political opinion, the Officer narrowly construed the claim as being only about membership in the SFJ.

[17] The Officer’s approach meant that once they found past membership in AISSFF irrelevant and insufficient evidence to establish membership in SFJ, there was really no personalized aspect to the risk claim. In other words, the Officer evaluated the country condition evidence not with a view of the risk to someone with the political profile alleged by Mr. Singh, but instead considered India’s human rights record in general terms.

[18] Mr. Singh’s asserted fear was broadly based on his political opinion as someone who holds strong Sikh separatist beliefs and has engaged in activities in furtherance of those beliefs and alleges he will continue to act on those beliefs if returned. The Officer’s fragmented, narrow construction of Mr. Singh’s risk is inconsistent with how Mr. Singh framed his own risk. The Officer failed to “meaningfully account for the central issues and concerns raised by the parties” (*Vavilov* at para 127; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 74), rendering the decision unreasonable.

[19] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-7791-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The PRRA decision dated August 5, 2023 is set aside and sent back to be redetermined by a different decision maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7791-22

STYLE OF CAUSE: KARANBIR SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 6, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: DECEMBER 21, 2023

APPEARANCES:

Raj Sharma FOR THE APPLICANT

Meenu Ahluwalia FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sharma Harsanyi FOR THE APPLICANT
Barristers and Solicitors
Calgary, Alberta

Attorney General of Canada FOR THE RESPONDENT
Calgary, Alberta