Federal Court  Cour fédérale

Date: 20240722

Docket: IMM-8088-23

Citation: 2024 FC 1136

Toronto, Ontario, July 22, 2024

PRESENT: Mr. Justice Diner

BETWEEN:

MARKO NIKOLIC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Nikolic seeks judicial review of a decision made by a senior immigration officer [Officer] denying his application for a pre-removal risk assessment [PRRA]. The Officer found that Mr. Nikolic had not provided sufficient evidence to establish a risk upon his return to Serbia [Decision]. For the reasons below, this application is dismissed. The Decision is justified, intelligible and transparent.

I. Background

[2] Mr. Nikolic is a citizen of Serbia. He became a permanent resident of Canada in 2005, after which he returned to live in Serbia with his family. While in Serbia, Mr. Nikolic developed severe drug addiction problems, which led to him incurring debts to members of a criminal organization.

[3] He returned to Canada in 2010. In 2019, he was convicted for Possession for the Purpose of Trafficking, contrary to subsection 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19. He lost his permanent resident status and became inadmissible for serious criminality under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] Mr. Nikolic initially applied for a PRRA in April 2021. A negative decision was rendered, but sent back for re-determination. His PRRA application was re-evaluated and then denied, per the Decision.

II. Analysis

[5] The sole issue before the Court in this application for judicial review is whether the Decision is reasonable (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 59–63; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

[6] Mr. Nikolic argues that the Officer erred in the analysis of the risk posed by the criminal organization, the assessment of the religious discrimination Mr. Nikolic would face in Serbia as a Muslim convert, and the failure to undertake a cumulative risk analysis.

[7] I disagree. Mr. Nikolic's application was a restricted PRRA under section 97 of the IRPA, which required him to establish, on a balance of probabilities, that his return to Serbia would "more likely than not subject [him] to a personal risk of torture, death or cruel and unusual treatment" (*Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 3, relying on *Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para 29).

[8] The Officer reasonably found that his drug debt in Serbia did not establish such a risk. Mr. Nikolic bore the burden of providing sufficient evidence to support his claim that his drug debt to the criminal organization satisfied the threshold for a restricted PRRA (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paras 20–23). Based on the limited evidence provided about the risk faced in Serbia, the Applicant has not shown how the Officer's finding that the evidence was insufficient strayed outside of the factual constraints of the application. The Officer was not satisfied with Mr. Nikolic's evidence, and it is not for this Court to reassess this evidence (*Vavilov* at paras 100-101).

[9] Furthermore, I am not persuaded by Mr. Nikolic's arguments that the Officer erred in the analysis of the discrimination against Muslims and drug users in Serbia. The Officer assessed the evidence that was provided regarding the discrimination of Muslims and drug users in Serbia, and reasonably concluded that these forms of discrimination were not widespread, and did not

meet the high threshold to establish a personalized and forward-facing risk. It bears repeating that Mr. Nikolic had a restricted PRRA assessment pursuant to section 97 of the IRPA, and as such, had to establish a personalized risk under this provision, rather than persecution pursuant to a Convention ground under section 96 of the IRPA.

[10] Mr. Nikolic has failed to establish how his particular "risk profile" as a Muslim convert and former drug user required a "cumulative" risk assessment under a section 97 analysis. The cases he raised in support of his position that a cumulative risk assessment was required are distinguishable from the present case, as they dealt with applicants whose intersecting risk profiles were well-established by the evidence and put them at risk of persecution (*Sathanantharajan v Canada (Citizenship and Immigration)*, 2020 FC 512 at para 42; *K.S. v Canada (Citizenship and Immigration)*, 2015 FC 999 at para 49; *Djubok v Canada (Citizenship and Immigration)*, 2014 FC 497 at para 20; *Gorzsas v Canada (Citizenship and Immigration)*, 2009 FC 458 at paras 38-40;).

[11] In any event, whether or not the Officer had to conduct a "cumulative" and/or "intersectional" risk analysis under section 97 of the *IRPA*, the Decision shows that the Officer addressed the Applicant's circumstances. I find that the Decision is reasonable and responsive in light of the factual and legal constraints in this matter (*Vavilov* at para 99, 101, 122, 128). This application for judicial review is therefore dismissed.

JUDGMENT in IMM-8088-23

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.

2. There is no question to certify.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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