Federal Court Cour fédérale

Date: 20241002

Docket: IMM-5862-23

Citation: 2024 FC 1549

Ottawa, Ontario, October 2, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Zeynab MAHMOUDIAMIRABADI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

I. <u>Overview</u>

[1] The Applicant Zeynab Mahmoudiamirabadi is a citizen of Iran who has been recognized as a Convention refugee in Germany. Her subsequent refugee claim in Canada was determined ineligible for referral to the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada because she already has been recognized as a Convention refugee in another country [Decision].

[2] Ms. Mahmoudiamirabadi seeks judicial review of the Decision. She argues that the Decision is unreasonable because it is silent about whether she can be sent or returned to Germany. There is no analysis or reasoning on this issue and, thus, the Decision lacks the requisite justification, says Ms. Mahmoudiamirabadi.

[3] The Respondent counters that eligibility determinations involve an expeditious, straight-forward process, with the explicit burden on applicants to prove that their claims are eligible to be referred to the RPD. I do not disagree.

[4] I have considered carefully the record before the Court, the parties' written and oral submissions, and the applicable case law, including the recent, expansive guidance of the Supreme Court of Canada to reviewing courts in applying the reasonableness standard. While I am sympathetic to Ms. Mahmoudiamirabadi's difficult personal situation, which is not disputed, I find that the Decision is not unreasonable. As I explain further below, this judicial review thus will be dismissed.

II. Analysis

[5] There is no dispute that the applicable review standard here is reasonableness. An administrative decision is reasonable if it exhibits, on a respectful but robust review, justification, transparency and intelligibility, with a logical chain of analysis and internally coherent reasons, in the context of the applicable factual and legal constraints. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 12-13, 97, 99, 100.

[6] I am not persuaded that Ms. Mahmoudiamirabadi has met her onus of showing that the Decision is unreasonable in two key respects – first, whether the officer considered both requirements of paragraph 101(1)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]; and second, whether the officer was required to make further inquiries about whether she could be sent or returned to Germany. In addition to addressing these issues, I also consider briefly a new issue raised by the Respondent at the hearing of this matter with reference to *Vavilov* at para 142.

[7] See Annex "A" below for relevant legislative provisions.

A. *The officer properly considered both requirements of paragraph 101(1)(d) of the IRPA*

[8] After receiving a claim for refugee protection, an officer must determine whether it is eligible to be referred to the RPD: subsection 100(1) of the *IRPA*. A refugee claimant is ineligible to have their claim sent to the RPD if they have been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country: paragraph 101(1)(d) of the *IRPA*. Claimants bear the burden of proving that a claim is eligible to be referred to the RPD and, further, they must answer truthfully all questions they are asked: subsection 100(1.1) of the *IRPA*.

[9] Ms. Mahmoudiamirabadi's evidence is that she fled an abusive, violent family relationship in Iran. Germany accepted her as Convention refugee. Two of her sisters, fleeing the same family relationship, resettled in Canada.

[10] Ms. Mahmoudiamirabadi avers that, left on her own, she endured years of mistreatment and harassment in Germany resulting in difficulties finding stable employment and living arrangements. As well, she states that she suffered significant mental health issues. According to Ms. Mahmoudiamirabadi, she received no assistance, even when she reported being suicidal. She continues to struggle with her mental health to this day.

[11] Ms. Mahmoudiamirabadi describes that desperation caused her to leave Germany for Canada where, without the assistance of a lawyer, she filed an application for asylum online. There is no dispute about her truthfulness in answering the questions the officer put to her in an interview conducted on the same date as the Decision was issued.

[12] Ms. Mahmoudiamirabadi argues that, apart from a reference to paragraph 101(1)(d) of the *IRPA* in the Decision, there is no evidence that the officer actually considered the second half of the provision (namely, whether she can be sent or returned to Germany). I disagree.

[13] Reproduced below are relevant portions of the officer's interview of Ms. Mahmoudiamirabadi, according to the officer's notes, to provide context for my reasons.

> Have you ever made a refugee claim in any country prior to now in Canada?
> Yes, made a ref claim in Germany.
>
> What was the outcome of that refugee claim?
> Positive outcome – I am a refugee of Germany.
>
> What is your immigration status in Germany?
> I am a refugee, I am not a citizen. I was given refugee documents from Germany.
>
> How did you acquire a travel document form [sic] Germany?
> Through having a positive outcome from my refugee claim.

> Have you ever been charged or convicted for a criminal offence in any country?
> No
>
> How did you acquire an eTA [electronic travel authorization] to come to Canada?
> I applied online. I filled out a form which asked for my passport number and entered my information. When I applied for my eTA, I selected permanent resident for my status. I selected passport refugee as the options where [sic] either passport citizen or passport refugee.

[14] The certified tribunal record [CTR] contains a copy of Ms. Mahmoudiamirabadi's "refugee passport" which states that it is a travel document having a passport number and that it expires in March 2025. The officer is presumed to have considered this document: *Hashem v Canada (Citizenship and Immigration)*, 2020 FC 41 at para 28.

[15] I emphasize that this is not a case about reweighing evidence, as Ms. Mahmoudiamirabadi's oral submissions suggest would occur by considering this evidence, but rather it is a probing review of the Decision with reference to the record and relevant jurisprudence to develop an understanding of the applicable legal and factual constraints that bear on the Decision, including the institutional context, as guided by *Vavilov* (at paras 90, 105).

[16] The above exchange between the officer and Ms. Mahmoudiamirabadi represents, in my view, a series of questions directed to both parts of paragraph 101(1)(d) of the *IRPA*, namely, whether she had been recognized as a Convention refugee in another country and whether she can be sent or return to Germany. As Ms. Mahmoudiamirabadi recognized in oral submissions, the two parts of this legislative provision are not hermetically sealed.

[17] Ms. Mahmoudiamirabadi also argued in oral submissions that it would not have taken much for the officer to signal awareness or application of the second part of the eligibility test. Implicit in this submission is that the officer did not do so.

[18] The ineligibility letter sent to Ms. Mahmoudiamirabadi by Immigration, Refugees and Citizenship Canada [IRCC] states that the reasons for the decision under subsection 100(1) of the *IRPA*, that her claim is ineligible to be referred to the RPD, are "101(1)(D) Recognized as CR by another country." Further, the Minister's Delegate Review (having the same date as the ineligibility letter) expressly notes that "Ms. Mahmoudiamirabadi has been recognized as a convention refugee by the country of Germany and can return to Germany. Therefore, Ms. Mahmoudiamirabadi has been determined to be ineligible to have her refugee claim referred to the Refugee Protection Division as per paragraph A 101(1)(d)."

[19] The Minister's Delegate Review was omitted from IRCC's response to the Court's request under rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, that was sent to the Court and the parties. The CTR subsequently sent to the Court and the parties contains a copy of the Minister's Delegate Review that was signed by Ms. Mahmoudiamirabadi.

[20] I note that the CTR was sent to the Court and the parties well before either party's deadline for a further memorandum of argument, although neither party availed themselves of this option. Their memoranda of argument, including the Applicant's Reply, seemingly do not take the Minister's Delegate Review into account. At the hearing, the Respondent argued that to

determine, per *Vavilov*, whether the Decision is reasonable or unreasonable, the Court can look at the whole of the record. I do not disagree. Although Ms. Mahmoudiamirabadi objected to other oral submissions of the Respondent in reply, she did not object to this submission relating to the rule 9 omission.

[21] Even leaving aside the Minister's Delegate Review, however, I have no doubt that the officer's questions about the documents on which Ms. Mahmoudiamirabadi travelled to Canada relate to the second part of the provision (i.e. paragraph 101(1)(d) of the *IRPA*), especially when considered against Ms. Mahmoudiamirabadi's travel document/passport. There is no evidence rebutting that the officer considered this document.

[22] I note that nothing in the record discloses that Ms. Mahmoudiamirabadi provided any evidence to contradict what the travel document shows on its face, that it is a type of passport (Ms. Mahmoudiamirabadi herself described it as a "passport refugee") expiring in March 2025 and on which, presumably, she can travel in the meantime, including returning to Germany.

[23] In oral submissions, Ms. Mahmoudiamirabadi seemingly objected to the Respondent's arguments regarding subsection 100(1.1) of the *IRPA*, arguing that they were being raised for the first time at the hearing before the Court. I disagree. Paragraph 8 of the Respondent's Memorandum of Argument refers specifically to this provision and the burden on applicants to prove their claims are eligible to be referred to the RPD. In my view, this is not bolstering but, rather, it is simply a legal constraint on the officer.

[24] Ms. Mahmoudiamirabadi argues, in writing and orally, that the officer provided reasoning on the first part of paragraph 101(1)(d) of the *IRPA* and treated it as conclusive or dispositive. In the above context, the Court is able to understand that it was determinative. In other words, the Decision is one that, in my view, permits the Court "to discern a reasoned explanation" as described in *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 [*Alexion*] at para 7, when considered in the context of the officer's notes and Ms. Mahmoudiamirabadi's refugee passport.

[25] As *Alexion* guides (at paras 14-16), the express reasons are but one place for the reviewing court to look when assessing the adequacy of reasons. The non-mention of something in the reasons does not point necessarily to a failure of justification, intelligibility and transparency, nor to a fundamental gap that warrants intervention. The administrative decision maker's reasons, as written, must be read holistically and contextually with regard to the record and the applicable administrative regime. Doing so may reveal that the decision maker made implicit findings.

[26] I find that the Decision is reflective of the interview and Ms. Mahmoudiamirabadi's reference to the passport refugee, both of which are part of the record (i.e. the factual constraints on the officer), and involves an implicit finding that Ms. Mahmoudiamirabadi can be sent or returned to Germany. The Minister's Delegate Review simply made an express finding of that which, in my view, is implicit in the Decision.

[27] Further, applicable jurisprudence guides that, while it may have been preferable for the officer to say more in the Decision, I find it was not necessary in the circumstances. *Vavilov* cautions reviewing courts (at para 91) to refrain from assessing an administrative decision against a standard of perfection. As this Court previously has held, "reasons do not have to be comprehensive or perfect or refer to all of the arguments, statutory provisions or other details that the reviewing judge would have preferred": *Mancilla Obregon v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 526 at para 15, citing *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15-16.

B. *The officer was not required to inquire further into whether the Applicant could be sent or returned to Germany*

[28] Ms. Mahmoudiamirabadi argues, on the one hand, that the officer was not required to undertake investigations about whether she could be sent or returned to Germany but, on the other hand, that the travel document/passport was not put to her and she was not provided with an opportunity to respond. I disagree with the latter and find the positions contradictory.

[29] As I already have observed, some of the questions the officer asked of Ms. Mahmoudiamirabadi in the interview were about the documents that enabled her to travel to Canada, including the passport refugee. Further, the interview was her opportunity to prove to the officer that the latter document would not permit her to return to Germany. To argue that the officer should have asked other or more questions of Ms. Mahmoudiamirabadi about whether the passport would permit her to be sent or returned to Germany is tantamount to suggesting, in my view, that the officer should have undertaken investigations of the sort she argued the officer was

not required to conduct. Again, subsection 100(1.1) of the *IRPA* puts the burden squarely on a refugee claimant in this regard, not the officer.

[30] Although decided in the context of the predecessor *Immigration Act*, *Jekula v Canada (Citizenship and Immigration)*, 1998 CanLII 9099 (FC) [*Jekula*] is still good law. As this Court previously has held, there is “no difference of substance in the language of paragraph 101(1)(d) of IRPA, ‘can be sent or returned to that country’, when compared with the relevant language in the predecessor paragraph 46.01(1)(a) of *Immigration Act*, ‘a country to which the person can be returned,’ which would justify departure from the analysis and interpretation provided in *Kaberuka* and *Jekula*[; …] current principles of statutory interpretation, applied to paragraph 101(1)(d), [do not] justify a departure from the interpretation provided in *Kaberuka* and *Jekula*”: *Farah v Canada (Citizenship and Immigration)*, 2017 FC 292 at paras 19-20.

[31] Ms. Mahmoudiamirabadi argues that the officer in *Jekula* turned their mind to the second part of the *IRPA* paragraph 101(1)(d), unlike the situation here. I cannot agree for the reasons above, even though the officer here did not say so explicitly in the Decision.

[32] *Jekula* holds (at para 39) that “a senior immigration officer may normally assume that the evidence establishing that a country has granted asylum to the claimant will also enable her re-enter that country[; unless] **presented with evidence** that, for some reason, the immigration authorities of the country of asylum will not readmit the claimant…” [Emphasis added.] Only then must further enquiries be made.

[33] Here, the officer questioned Ms. Mahmoudiamirabadi about her travel document/passport and was not provided with any evidence that she would not be readmitted to Germany. Contrary to Ms. Mahmoudiamirabadi's oral submissions, the officer was not required to make further enquiries.

[34] *Jekula* also finds (at para 44) that "the words 'can be returned' do not require the senior immigration officer to determine whether the claimant has a well-founded fear of persecution in the country that has already granted asylum."

C. *Improperly raised new issue*

[35] At the hearing, the Respondent raised a new issue that was not among its written submissions, namely, the teaching in *Vavilov* (at para 142) that when a particular outcome is inevitable, it serves no useful purpose to remit a matter for redetermination. Ms. Mahmoudiamirabadi objected and requested an opportunity to provide post-hearing submissions if the Court were to consider the issue. I agree with Ms. Mahmoudiamirabadi, however, that the issue was raised improperly at the hearing and, thus, I have not taken it into account in reaching the determination that the judicial review will be dismissed.

[36] While I understand that this outcome will be disappointing to Ms. Mahmoudiamirabadi, she may have other options available to her. As *Jekula* notes (at para 9), "the Act confers a broad discretion to admit persons whom the Minister is satisfied should be admitted 'owing to the existence of compassionate or humanitarian considerations.'"

III. Conclusion

[37] For the above reasons, this judicial review will be dismissed.

[38] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-5862-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"

Judge

<u>Annex "A": Relevant Provisions</u>

***Immigration and Refugee Protection Act*, SC 2001 c 27.**
***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27.**

Referral to Refugee Protection Division **100 (1)** An officer shall, after receipt of a claim referred to in subsection 99(3), determine whether the claim is eligible to be referred to the Refugee Protection Division and, if it is eligible, shall refer the claim in accordance with the rules of the Board.	**Examen de la recevabilité** **100** (1) L'agent statue sur la recevabilité de la demande et défère, conformément aux règles de la Commission, celle jugée recevable à la Section de la protection des réfugiés.
Burden of proof **100 (1.1)** The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them.	**Charge de la preuve** **100 (1.1)** La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées.
Ineligibility **101 (1)** A claim is ineligible to be referred to the Refugee Protection Division if […] **(d)** the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;	**Irrecevabilité** **101 (1)** La demande est irrecevable dans les cas suivants : […] **d)** reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Samuel Plett	FOR THE APPLICANT
Gregory George	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Desloges Carvajal Law Group Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT