Federal Court  Cour fédérale

Date: 20241011

Docket: IMM-12095-23

Citation: 2024 FC 1617

Ottawa, Ontario, October 11, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

GURPREET SINGH CLAIR

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application brought pursuant to s. 72(1) of *Immigration and Refugee Protection* Act, SC 2001, c. 27 [IRPA]. The Applicant, Gurpreet Singh Clair, seeks judicial review of a September 20, 2023 decision of an Immigration Officer made at Vancouver. It finds the Applicant's claim for refugee protection ineligible to be referred to the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada.

[2] The issue before this Court is the reasonableness of the impugned decision. The Applicant seeks an Order setting aside the Decision of the Officer and remitting the matter to a different immigration officer for reconsideration.

[3] For the reasons that follow, the application must be dismissed.

I. Facts

[4] The Applicant is a citizen of India. He is seeking refugee protection in Canada, claiming to fear for his life in India because of threats received in his country of nationality.

[5] The Applicant fled India in December 2015. The Applicant first arrived in Mexico. The Applicant submitted in his Basis of Claim [BOC] form that he entered the United States [U.S.] through Mexico in February 2016.

[6] On January 9, 2018, the Applicant submitted an application for asylum in the U.S. The Information Sharing Agreement between Canada and the U.S. confirmed the presence of an I-589 Application for Asylum made in the U.S.

[7] In June 2023, the Applicant crossed the border into Canada close to Surrey, British Columbia. He claims he left the United States because he was suffering from major depression (BOC Form, Narrative); he came to Canada for his mental health because his sister, mother and father are all in Canada. On August 27, 2023, the Applicant submitted a claim for refugee protection in this country. The asylum claim in the U.S. was still pending.

[8] The Applicant's claim in Canada was addressed at first by way of an eligibility interview on September 20, 2023. During that interview, the Applicant stated that he made a refugee claim in the U.S., and that he had a hearing scheduled in October 2023 to determine the status of his U.S. claim.

[9] The Officer issued a report to the Minister under subsection 44(1) of the IRPA, in which it was determined that the Applicant was inadmissible under subsection 44(1) and 20(1)(a). An exclusion order was also issued on September 20, 2023.

[10] The Minister's Delegate found the Applicant's claim for refugee protection ineligible to be referred to the RPD of the Immigration and Refugee Board of Canada because a claim for asylum had already been made in the U.S. The decision of the Minister's Delegate is the decision under review.

II. The Decision Under Review

[11] The Minister's Delegate Review found that the Applicant's refugee protection claim was not eligible for referral to the RPD as per subsection 101(1) of the IRPA.

[12] On September 20, 2023, Mr. Singh Clair was provided an explanation of next steps and he acknowledged that he understood the reasons given for determining his refugee claim to be ineligible, as he made a refugee claim in a country with which Canada has an information-sharing agreement.

[13] Thus, a removal order was issued against the Applicant and came into force pursuant to subsection 49(2) of the IRPA. The Minister's Delegate Review outlined the availability in law to seek judicial review on that decision of ineligibility by way of the Federal Court.

III. Arguments and Analysis

A. *Standard of Review and issues*

[14] The sole matter before the Court is the reasonableness of the Minister's Delegate's Decision, which found the Applicant's refugee protection claim ineligible.

[15] The applicable standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras 10, 25 [*Vavilov*]; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 7, 39–44 [*Mason*]). A reasonable decision 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" (*Vavilov*, at para 85; *Mason*, at para 8) and that is justified, transparent and intelligible (*Vavilov*, at para 99; *Mason*, at para 59). Both the outcome and the reasons for a decision must be reasonable (*Vavilov* at para 15). A decision may be unreasonable if the decision maker has fundamentally misunderstood or disregarded the evidence before him or her (*Vavilov*, at paras 125-26; *Mason*, at para 73). Importantly, it is up to the Applicant to demonstrate that an administrative decision is unreasonable (*Vavilov*, at para 100).

B. *Statutory Framework*

[16] Subsection 101(1) of the IRPA precludes several categories of claimants seeking refugee status in this country from accessing the RPD. Until the introduction of paragraph 101(1)(c.1) of the IRPA by the operation of the *Budget Implementation Act*, S.C. 2019, c.29, those categories included:

i. those who have already been conferred refugee protection under the IRPA (paragraph 101(1)(a));

ii. those whose claims for protection have already been rejected by the RPD (paragraph 101(1)(b));

iii. those whose prior claims have already been determined to be ineligible to be referred to the RPD, or were withdrawn or abandoned (paragraph 101(1)(c));

iv. those who have been recognized as Convention refugees by another country and who can be returned to that country (paragraph 101(1)(d));

v. those who have entered Canada from the United States through a land border port of entry, in application of the Safe Third Country Agreement between Canada and the United States (paragraph 101(1)(e)); and

vi. except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c) of the IRPA, those who have been determined to be inadmissible to Canada on grounds of security, violating human or international rights, serious criminality or organized criminality (paragraph 101(1)(f)).

(*Seklani v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 778 at para 10 [*Seklani*]; *Shahid v Canada (Citizenship and Immigration)*, 2021 FC 1335 at para 18 [*Shahid*]).

[17] Parliament introduced a new ineligibility provision under subsection 101(1)(c.1) of the IRPA that precludes refugee claimants who have made a claim for refugee protection in a country with which Canada has an information-sharing agreement from having their claim heard and adjudicated by the RPD of the Immigration and Refugee Board (*Seklani* at para 1).

[18] These countries with which Canada has an agreement or arrangement for the purpose of facilitating information sharing to assist in the administration and enforcement of immigration and citizenship laws include the United States, the United Kingdom, Australia and New Zealand. Together with Canada, they are known as the "Five Eyes" countries (*X (Re)*, 2014 FCA 249 at para 6).

[19] Paragraphs 101(1)(c) and 101(1)(c.1) of the IRPA reads as follows:

Ineligibility	**Irrecevabilité**
101 (1) A claim is ineligible to be referred to the Refugee Protection Division if	**101 (1)** La demande est irrecevable dans les cas suivants :
…	[…]
(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;	**c)** décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;
(c.1) the claimant has, before making a claim for refugee protection in Canada, made a claim for refugee protection to a country other than Canada, and the fact of its having been made has been confirmed in accordance with an agreement or arrangement entered into by Canada and that country for the purpose of facilitating information sharing to assist in the administration and enforcement of their	**c.1)** confirmation, en conformité avec un accord ou une entente conclus par le Canada et un autre pays permettant l'échange de renseignements pour l'administration et le contrôle d'application des lois de ces pays en matière de citoyenneté et d'immigration, d'une demande d'asile antérieure faite par la personne à cet autre pays avant sa demande d'asile faite au Canada;

> immigration and citizenship
> laws;

C. *The Minister's Delegate's Decision is Reasonable*

[20] As noted above, the Decision subject to judicial review by this Court is the one rendered by the Minister's Delegate, dated September 20, 2023, in which the Applicant's refugee protection claim was found to be ineligible under paragraph 101(1)(c.1). That is contrary to the assertion made by the Applicant who referred to the decision under review as having found his refugee claim being ineligible pursuant to paragraph 101(1)(c); as a matter of fact, he paraphrases the paragraph. It is paragraph 101(1)(c.1) which applies.

[21] The validity of paragraph 101(1)(c.1) is not challenged. Given the legislative regime, the outcome is inevitable. The Applicant must be found to be ineligible.

[22] The Applicant takes issue with the fact that the Officer placed undue reliance on the refugee determination outcomes from other countries without first establishing the equivalency of those procedures with Canada's standards. Moreover, the Applicant submits that failing to take into account the unique circumstances of the applicant departs from "the standard of comprehensive analysis that ensures all aspects of an applicant's narrative are acknowledged and factored into the final decision" (Applicant's Memorandum of Fact and Law at paras 5 and 6). No authority was submitted in support of these propositions. Nothing in the legislation applicable to the Applicant (paragraph 101(1)(c.1)) requires, or even suggests, that a Minister's Delegate

must perform an in-depth analysis of another country's refugee claims process or consider the Applicant's personal situation.

[23] All that is required is that a claim for refugee protection has been made in a country other than Canada with which Canada has an information sharing agreement. It is not disputed that Mr. Singh Clair made a claim for asylum in the U.S. On its face, the legislation requires that there be an arrangement or agreement between the two countries, which allows for information to be shared. That is all that is required. The nature of such arrangement or agreement is not disputed in this case. The legislation is clear about the conditions precedent for ineligibility and is completely silent about the extra steps that the Applicant claims must be performed. Indeed, to suggest that this is so would be to read in an obligation for a Minister's Delegate beyond the scope of their jurisdiction as framed in paragraph 101(1)(c.1) of the IRPA, and would be to frustrate the clear will of Parliament. If the legislation is valid, it must be enforced.

[24] Similarly, if Parliament had intended that the Minister's Delegate consider other factors, there would have been exceptions or limitations set out in the legislative provisions. For example, Parliament could have introduced exemptions similar to those that apply to paragraph 101(1)(e) and section 159.5 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR) (*Rivera Calambas v. Canada (Citizenship and Immigration)*, 2024 FC 840 at para 23). The Applicant has pointed to neither case law nor any principle of legislative interpretation to support his arguments.

[25] In fact, in *Shahid*, my colleague Justice Cecily Y. Strickland made the following comments, with which I agree, at paragraph 52:

> [52] I would first note that pursuant to s 101(1)(c.1), a finding that a claimant is ineligible to be referred to the RPD is dependent on only one factual determination to be made by the Minister's Delegate. If it has been confirmed by one of the other countries with whom Canada has entered into an information sharing agreement that the claimant has previously made a claim for refugee protection in that country, then the applicant must be found to be ineligible. There is no discretion. Accordingly, it is difficult to see how the Minister's Delegate Review could possibly give rise to a real or perceived lack of independence on the part of the officer later assessing a PRRA.

[26] Clearly, paragraph 101(1)(c.1) does not vest a discretion in the Minister's Delegate in the sense that they could decline to declare a claimant ineligible in spite of a finding that the claimant made a previous claim in another country (*Garces v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 798 at para 25 [*Garces*]). Once the facts have been determined, it follows that the refugee claim is ineligible. Essentially, paragraph 101(1)(c.1) of the IRPA is a mandatory provision and does not allow any room for interpretation or discretion by the Minister's Delegate (*Hamami v. Canada (Citizenship and Immigration)*, 2022 FC 222 at para 62; *Seklani* at para 6). In one case, *Garces* (*supra*), our Court considered that children who sought asylum in the U.S. without assistance of representatives may lack legal capacity to make such a claim. The issue in that case is that a claim was made for refugee protection to a country other than Canada, by someone who may not have the legal capacity to make such claim, not whether there exists a superseding discretion in the Decision Maker. The alleged lack of capacity should have been considered by the Minister's Delegate because the threshold issue to be determined is whether a claim has been made. A person who does not have the capacity cannot have made a claim. Here, the Applicant presents no evidence that he lacked legal capacity to

make his asylum claim in the U.S. Thus, in view of a lack of exception to the regime in place, subsection 101(1)(c.1) must be strictly interpreted.

[27] In effect, the provision denies jurisdiction to the RPD once the facts have been determined. The consequence of ineligibility flows from the facts. Those facts are simple: has the applicant made an asylum claim in the U.S., and has the fact that he has made a claim been confirmed in accordance with an arrangement between the two countries. Once the two conditions have been ascertained, the IRPA makes the Canadian claim for refugee protection ineligible to be pursued before the RPD.

[28] The Applicant submits at paragraph 8 of his Memorandum of Fact and Law:

> "Moving forward with a determination on the Applicant's eligibility before the conclusion of the Pre-removal Risk Assessment (PRRA) seems precipitous. The PRRA process is designed to be a safeguard, ensuring that individuals are not deported to places where they may face serious harm. By not waiting for the insights from this assessment, the Officer risks basing the decision on an incomplete understanding of the dangers associated with the Applicant's return."

The reference to a PRRA stems from a refugee protection claimant document which confirms that the Applicant is entitled to that recourse in accordance with section 112 of the IRPA. It appears that the Applicant is pleading with the Court to allow him to remain in Canada until a decision has been made on a PRRA application.

[29] The Applicant dedicated numerous paragraphs to his effort to convince the Court that the removal order should not be executed. There is not an insignificant problem with this: the matter is not before the Court. This effort ignores that the role of the Court on the judicial review is to

determine if the decision under review, that is that the refugee claim in Canada is ineligible to the referred to the RPD, was made in accordance with the rule of law (*Satkunathas v. Canada (Citizenship and Immigration)* [*Satkunathas*], 2023 FC 582 at para 23; *Vavilov* at paras 2, 82; *Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at para 27). Such as in this case, if a decision is reasonable and made in a procedurally fair manner, then the Court will not grant judicial review (*Satkunathas*, *supra*). There is simply not a PRRA decision before the Court. We do not even know if an application has been made. If a PRRA application is made, there are possibly remedies available in the case a removal order was to be made and executed in circumstances that warrant intervention.

IV. Conclusion

[30] For the reasons above, the application for judicial review is dismissed. I find the Minister's Delegate's Decision to be in compliance with the legislative regime. The Decision is transparent, justified and intelligible in light of the evidence submitted (*Mason* at para 8; *Vavilov* at para 99). The Applicant failed to discharge his burden of demonstrating that the Minister's Delegate Decision was unreasonable.

[31] The parties were canvassed and there is no question to be certified pursuant to s 74.

JUDGMENT in IMM-12095-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12095-23
STYLE OF CAUSE:	GURPREET SINGH CLAIR v THE MINISTER OF CITIZENSHIP & IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	SEPTEMBER 25, 2024
JUDGMENT AND REASONS:	ROY J.
DATED:	OCTOBER 11, 2024

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