

Federal Court



Cour fédérale

Date: 20241223

Docket: IMM-14590-23

Citation: 2024 FC 2094

Ottawa, Ontario, December 23, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

FAWAD AHMAD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Fawad Ahmad, has been living in Canada for approximately seven years. He applied to remain in Canada by filing an application for permanent residence based on humanitarian and compassionate grounds (“H & C Application”). An officer at Immigration, Refugees and Citizenship Canada refused his application (“the Officer”). Mr. Ahmad is challenging this decision on judicial review.

[2] Mr. Ahmad's arguments on judicial review relate to the merits of the decision. The parties agree, as do I, that I ought to review the Officer's decision on the reasonableness standard. I am allowing the judicial review because the Officer's reasons are not transparent or justified in relation to their assessment of Mr. Ahmad's establishment in Canada or his hardship in returning to Afghanistan.

II. Background Facts

[3] Mr. Ahmad is a citizen of Afghanistan. After graduating from law school in Afghanistan, Mr. Ahmad worked in the consular department of the Afghanistan Ministry of Foreign Affairs. In 2011, Mr. Ahmad was threatened by the Taliban for his work in the government. He was eventually able to leave Afghanistan and went to the United States in 2013. I understand that Mr. Ahmad had some sort of permanent status in the United States due to being sponsored by his then wife. In 2013, Mr. Ahmad was charged with the crime of domestic violence and ultimately convicted of disturbing the peace. He and his wife divorced and he no longer had permanent status in the United States.

[4] Mr. Ahmad entered Canada in 2017 and made a claim for refugee protection primarily based on his fear of the Taliban because of his work in the Afghanistan government. Ultimately, his persecution claim was not decided on the merits because he was excluded from protection for having committed a serious, non-political crime (*Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], section 98*).

[5] Mr. Ahmad then filed a Pre-Removal Risk Assessment (“PRRA”). Because Mr. Ahmad had been excluded on the basis of Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees* [Refugee Convention], the PRRA Officer was limited to only assessing his risk in Afghanistan under section 97 of IRPA (IRPA, section 113(d)). Mr. Ahmad’s PRRA was refused in August 2022. The PRRA Officer found that Mr. Ahmad’s work with the Afghanistan government in 2012 and threats he and his colleagues received at that time was too long ago and that his level of employment with the Afghanistan Ministry of Foreign Affairs was unclear and therefore he would not be of continued interest to the Taliban to risk facing section 97 harm. The PRRA Officer also found that “based on current country conditions, that those individuals perceived to be westernized may face an increased risk from the Taliban” but found this to be a “generalized risk” rather than a “personalized risk as described by section 97.”

[6] Mr. Ahmad’s H & C Application was based on his establishment in Canada and the hardship he would face if returned to Afghanistan. The Officer gave minimal weight to Mr. Ahmad’s establishment in Canada, moderate weight to the hardship he would face in Afghanistan, and significant negative weight to Mr. Ahmad’s 2013 criminal conviction in the United States. The Officer refused the application on October 31, 2023.

III. Analysis

[7] Foreign nationals applying for permanent residence in Canada can seek discretionary humanitarian and compassionate relief from requirements in IRPA. The Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration) (1970)*, 4 IAC 338 [*Chirwa*],

confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (*Kanhasamy* at para 21 citing *Chirwa* at p. 350).

[8] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” there is no limited set of factors that warrant relief (*Kanhasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanhasamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [*Baker*] at paras 74-75).

[9] On the two factors raised by the Applicant, establishment and hardship on return, I find the Officer relied on an irrelevant consideration, was unresponsive to the relevant evidence in the record or did not explain in a transparent way the reasons for their conclusion.

A. *Establishment*

[10] The Officer gave “minimal weight” to Mr. Ahmad’s establishment in Canada. The Officer found Mr. Ahmad had provided insufficient evidence to establish his financial management in Canada because he had not provided bank statements. I agree with Mr. Ahmad that, in the context of the evidence he provided, it is unclear why the Officer required bank statements. Mr. Ahmad has been consistently employed in Canada in low-wage jobs, like general

labour and delivery services. He has not relied on social assistance and has managed his finances in such a way that he is able to rent a place and maintain himself in Vancouver. He has also paid his taxes, the records of which he provided with his application. It would be unlikely in these circumstances that Mr. Ahmad would be able to save a significant amount, nor is he claiming to have savings.

[11] The Respondent argued that bank statements are required. There is no support for this position. It is not listed as part of the requirements in the application. The Respondent relies on a case from 2009, *Sagesse v Canada (Citizenship and Immigration)*, 2009 FC 89 [*Sagesse*], for the proposition that job letters are not sufficient as they only relate to employability and bank records are required for an H & C Application. I do not agree with this interpretation. In *Sagesse*, the applicant provided job letters from previous employment in the United States. This Court stated that the job letters from past employment in another country went to whether the individual was “employable” and not to their establishment in Canada. This statement does not mean that any job letter from employment in Canada is not relevant to establishment. Moreover, in *Sagesse*, the reference to bank statements is made as an example, among others, such as letters confirming employment in Canada and tax records, to support a particular individual’s degree of establishment in Canada.

[12] The Officer’s reasons do not explain how the absence of bank statements would be a relevant consideration or a basis to draw a negative inference on establishment in Mr. Ahmad’s circumstances. As establishment in Canada was one of the core grounds on which Mr. Ahmad was seeking relief in Canada, and part of the overall weighing exercise conducted by the Officer,

I find the lack of justification and transparency on this aspect, renders the decision as a whole to be unreasonable.

B. *Hardship on Return*

[13] The Officer does not explain how they reached their determination that Mr. Ahmad's hardship in returning to the adverse country conditions in Afghanistan should be given "moderate weight".

[14] The Officer sets out the various grounds on which Mr. Ahmad argued he would face hardship on return, and accepts this evidence. The Officer accepted that Mr. Ahmad was an employee of the Ministry of Foreign Affairs in Afghanistan. The Officer noted, relying on a United States Department of State report, that "the Taliban detained government officials, individuals alleged to be spying for the pre-August 15 [2021] government, and individuals alleged to have associations with the pre-August 15 government." The Officer further acknowledged Afghanistan was facing "serious humanitarian challenges." Lastly, the Officer referenced that Canada has imposed a temporary suspension of removals (TSR) to Afghanistan, which means that the Minister had determined that the conditions in Afghanistan "pose a generalized risk to the entire civilian population" (*Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], section 230(1)).

[15] I also note the PRRA decision was before the Officer. The PRRA Officer stated, "I accept based on current country conditions, that those individuals perceived to be westernized may face an increased risk from the Taliban." The PRRA Officer did not grant the PRRA on this

basis because they found this was generalized risk and therefore would not be captured as a section 97 harm. This risk could, however, certainly be considered in his H&C Application as part of the adverse country conditions Mr. Ahmad would face in Afghanistan.

[16] Mr. Ahmad does not take issue with the Officer's summary of the adverse country conditions. Mr. Ahmad argues that given the nature of the evidence the Officer accepted, it was incumbent to explain how they arrived at the conclusion that the hardship factor warranted "moderate weight". I agree that there is no explanation for this conclusion in the decision. The Officer stated the evidence of hardship that they accepted, which included: the targeting of former employees of the pre-2021 government, a severe humanitarian crisis, and generalized risk to the entire civilian population.

[17] In light of the serious consequences of the decision, there is a heightened obligation on an officer to provide responsive reasons that justify their decision to an applicant (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 133). The Officer did not grapple with the nature of this evidence and the serious consequences to the Applicant. The Officer summarized the evidence and then stated that they give the hardship factor "moderate weight" without explanation of any countervailing aspect. This is the totality of the analysis on this key issue. Ultimately, I do not find the Officer justified their conclusion in a transparent and intelligible way to Mr. Ahmad as is required. The application for judicial review is therefore allowed.

JUDGMENT in IMM-14590-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated October 31, 2023 is set aside and sent back to be redetermined by a different officer;
3. The Applicant will be provided an opportunity to update their application on redetermination; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-14590-23

STYLE OF CAUSE: FAWAD AHMAD v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 28, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: DECEMBER 23, 2024

APPEARANCES:

Robin D. Bajer FOR THE APPLICANT

Ely-Anna Hidalgo-Simpson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robin D. Bajer Law Office FOR THE APPLICANT
Barrister and Solicitor
Vancouver, BC

Attorney General of Canada FOR THE RESPONDENT
Vancouver, BC