Federal Court  Cour fédérale

Date: 20170831

Docket: IMM-569-17

Citation: 2017 FC 797

Ottawa, Ontario, August 31, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

AYMAN FARES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Ayman Fares, is a stateless descendant of Palestinian refugees who was born in Lebanon. He entered Canada from the United States in November 2009 and sought refugee protection upon his arrival. His refugee claim revolved around an alleged risk of persecution in Lebanon at the hands of Hezbollah. Hezbollah allegedly seeks him out because of

the assistance he provided to the Federal Bureau of Investigation [FBI] in the United States in the context of a Medicare fraud investigation. In May 2011, Mr. Fares' claim was rejected by the Refugee Protection Division [RPD]. The RPD found that Mr. Fares' story lacked credibility and that he had not discharged his burden of showing that he was a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Since then, the Canadian immigration authorities have repeatedly, and unanimously, rejected Mr. Fares' numerous attempts to obtain refugee status and protection as they were not persuaded that Mr. Fares faced threats from individuals tied to Hezbollah in Lebanon, in response to his cooperation with the FBI.

[2] Mr. Fares is now disputing a September 2016 decision [Decision] by a senior immigration officer [Officer] refusing Mr. Fares' second application for a Pre Removal Risk Assessment [PRRA]. In the Decision, the PRRA Officer concluded that, as other decision-makers and this Court have on several occasions between 2011 and 2016, Mr. Fares had not demonstrated the existence of a personal and objectively identifiable risk for him in Lebanon. In essence, the Officer found that the evidence offered by Mr. Fares was still insufficient and not convincing enough to establish a danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment at the hands of Hezbollah.

[3] In his application for judicial review, Mr. Fares is asking this Court to rescind the PRRA Decision and order another officer to re-examine his file. Mr. Fares claims that the PRRA Officer gave inappropriate weight to earlier findings made by the RPD; that the Officer's assessment of the new evidence was unreasonable; and that the Decision violates several

provisions of the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 [*Charter*] as well as Canada's obligations under the United Nations' Convention against Torture [UN Convention].

[4] For the reasons that follow, Mr. Fares' application for judicial review will be dismissed. Having examined the evidence available to the PRRA Officer and applicable law, I see nothing that allows me to set aside the Decision, nor can I identify any error in the Officer's analysis and reasons. The Officer considered the evidence, and the conclusions are justifiable based on the facts and the law and clearly fall within the range of possible, acceptable outcomes in the circumstances. Furthermore, I do not find that Mr. Fares' application for judicial review raises any overarching *Charter* or UN Convention issues. Mr. Fares' PRRA application was dismissed for one simple reason: it lacked sufficiently clear and convincing evidence to support his claims of risks. There are therefore no grounds to justify this Court's intervention.

II. Background

A. *The factual context*

[5] Since his arrival in Canada in 2009, Mr. Fares has made a series of unsuccessful attempts to have his status as a refugee or person in need of protection recognized by the Canadian immigration authorities.

[6] Mr. Fares' refugee claim was first rejected by the RPD in May 2011 and his application for leave and judicial review of the negative RPD decision was dismissed by this Court at the

leave stage in October 2011. In September 2012, Mr. Fares submitted a first PRRA application alleging that he would be facing risk from Hezbollah in Lebanon, due to the assistance he provided to the FBI in the United States between 2003 and 2008 in the context of a Medicare fraud investigation. He claimed that his collaboration with the FBI led to the arrest and imprisonment of his employers, who allegedly had ties to Hezbollah. Mr. Fares' first PRRA application was rejected by a senior immigration officer in April 2014, and his application for leave and judicial review of that decision was dismissed by this Court at the leave stage in November 2014.

[7] In April 2014, another senior immigration officer rejected Mr. Fares' application for permanent residence on humanitarian and compassionate [H&C] grounds. Mr. Fares' application for leave and judicial review of that decision was also dismissed by this Court in December 2014, again at the leave stage.

[8] In January 2015, the Canada Border Services Agency [CBSA] began to make arrangements for the removal of Mr. Fares from Canada, but the deportation was delayed due to difficulties in obtaining the necessary travel documents from Lebanon. In July 2016, Mr. Fares was informed by the CBSA that his removal would take place on August 24, 2016. In early August 2016, Mr. Fares submitted a request to defer his removal from Canada, which was refused by a CBSA officer a few days later. In support of the request to defer, Mr. Fares had submitted many of the documents found to have limited probative value by the PRRA Officer in the Decision now the subject of this judicial review. Mr. Fares' motion for a stay of his removal from Canada was dismissed by this Court on August 18, 2016. However, Mr. Fares was not

deported from Canada, as he was granted a temporary stay of removal to await the outcome of his second PRRA application filed in May 2016.

[9] In September 2016, the PRRA Officer denied Mr. Fares' second PRRA application in the Decision.

[10] In October 2016, the United Nations' Office of the High Commissioner for Human Rights recommended that Canada should not proceed with the removal of Mr. Fares until his complaint was decided by the UN authorities. Mr. Fares has remained in Canada since then.

B. *The Decision*

[11] In the Decision, the Officer considered and reviewed four documents submitted by Mr. Fares in support of his second PRRA application and which, in his view, provided new evidence of risks. These documents were: (1) a June 2016 letter from the FBI in Houston; (2) a police report relating to an attack suffered by Mr. Fares outside a bar in Montreal in January 2014; (3) another police report from Lebanon, dated August 2015, regarding damages to the vehicle of Mr. Fares' sister; and (4) an undated letter from his sister confirming Mr. Fares' story and referring to death threats received by the family. The Officer also analyzed the documentation on the country conditions prevailing in Lebanon.

[12] The Officer reviewed each of Mr. Fares' documents, but did not find them persuasive. The Officer concluded that they did not have a strong probative value and failed to demonstrate the risk alleged by Mr. Fares.

[13] First, with respect to the 2016 FBI letter, the PRRA Officer first noted that only a photocopy had been provided and that, even if it was addressed to the PRRA office, it was not received by the Canadian authorities and that it was rather apparently sent to Mr. Fares or his counsel. The PRRA Officer further observed that, while the letter referred generally to threats of serious bodily harm, it did not give any detail about the threats, nor did it allude to a relationship between Hezbollah agents and Mr. Fares. Given this, and the impossibility of assessing the quality of the original letter, the PRRA Officer determined that the FBI letter could not be given strong probative value.

[14] Second, turning to the police report indicating that Mr. Fares was attacked in Montreal, the PRRA Officer noted that the report simply stated that Mr. Fares had gone out to a bar and was attacked by a stranger, in an unknown location, for an unknown reason. The PRRA Officer concluded that this report failed to establish a link between the attack and Mr. Fares' alleged situation in the United States or Lebanon, or with Hezbollah.

[15] Third, in the same vein, the police report emanating from Lebanon stated that an individual damaged the vehicle of Mr. Fares' sister in Lebanon. However, the PRRA Officer noted that this report did not mention Mr. Fares at all, or that the incident was linked to a violent or extremist group of any kind.

[16] Finally, the letter from Mr. Fares' sister confirming his story provided no specific details, was undated, and was very general in nature. The PRRA Officer thus concluded that these documents did not demonstrate the risks allegedly faced by Mr. Fares in Lebanon.

[17] In the Decision, the PPRA Officer also considered the country conditions in Lebanon and determined that Mr. Fares had not proven that he would be exposed to risks any different than those faced by the general population in Lebanon. The PRRA Officer moreover found that even if there is discrimination against Palestinians in Lebanon, it does not amount to persecution, and that Mr. Fares had not offered evidence demonstrating a personalized risk for him.

[18] The PRRA Officer thus concluded that Mr. Fares had not demonstrated the existence of a personal and objectively identifiable risk for him in Lebanon, and that he had failed to establish a danger of torture, risk to life and of cruel and unusual treatment or punishment.

C. *The standard of review*

[19] It is well-recognized that PRRA applications involve questions of mixed facts and law and that the standard of review applicable in such cases is that of reasonableness (*Thamotharampillai v Canada (Citizenship and Immigration)*, 2016 FC 352 [*Thamotharampillai*] at para 18; *Abusaninah v Canada (Citizenship and Immigration)*, 2015 FC 234 at para 19; *Selduz v Canada (Citizenship and Immigration)*, 2009 FC 361 at para 9). The jurisprudence is clear that "[u]nless a question of procedural fairness arises, the standard of review for a PRRA officer's decision is reasonableness" (*Ikechi v Canada (Citizenship and Immigration)*, 2013 FC 361 at para 26). Since the IRPA is the enabling statute that PRRA officers are mandated to enforce, its interpretation and application thus fall within their core area of expertise. In such circumstances, a high degree of deference is owed to the Officer's factual findings and assessment of the evidence (*Thamotharampillai* at para 17; *Aboud v Canada (Citizenship and Immigration)*, 2014 FC 1019 at para 17).

[20] Since *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*], the Supreme Court of Canada has stated many times that "when an administrative tribunal interprets or applies its home statute, there is a presumption that the standard of review applicable to its decision is reasonableness" (*Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at para 32, citing *Alberta Teachers* at paras 39 and 41; *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at para 25; *Wilson v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47 at para 17; *Tervita Corp v Canada (Commissioner of Competition)*, 2015 SCC 3 at para 35).

[21] This presumption is not unchallengeable. It can be overruled, and the standard of correctness can be applied when confronted with one of the four factors set out by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 43-64 and recently reiterated in *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 [*Edmonton*] at paras 22-24 and *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at paras 46-48. Such is the case when a contextual analysis reveals a clear intent of Parliament not to protect the administrative tribunal's authority with respect to certain issues; when several courts have concurrent and non-exclusive jurisdiction on a point of law; when an issue raised is a general question of law that is of central importance to the legal system as a whole and outside the area of expertise of the specialized administrative tribunal; or when a constitutional question is at play. Since none of these scenarios exists in the case at bar, the presumption established by *Alberta Teachers* is therefore not rebutted.

[22] This reasonableness standard requires deference to the decision-maker as it is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton* at para 33). When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the decision-maker's findings should not be tampered with if the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). Under a reasonableness standard, as long as the process and outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and law, a reviewing court cannot substitute its own view of a preferable outcome, nor reweigh the evidence (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16-17; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61).

III. Analysis

A. *The PRRA Decision is reasonable*

[23] Mr. Fares argues that the PRRA Officer erred in attributing an inappropriate weight to the findings of the RPD, as well as unreasonably assessed and rejected the new evidence he offered on his risks of death if he were to return to Lebanon. Mr. Fares submits that, had the evidence been properly considered, the only logical and reasonable outcome for the PRRA Officer was to conclude that he faced a substantial risk in Lebanon.

[24] I disagree with Mr. Fares and instead conclude that the Officer's Decision fits well within the boundaries of reasonableness.

[25] A simple reading of the Decision suffices to convince me that the PRRA Officer did not ignore or fail to consider the new evidence submitted by Mr. Fares. Similarly, the PRRA Officer did not blindly follow the RPD factual findings, as Mr. Fares alleges. On the contrary, the Officer reviewed all the evidence in detail, found the new evidence insufficient and unconvincing, and concluded that Mr. Fares had not met his burden in order to obtain a positive PRRA decision. This is not a case where the administrative tribunal overlooked some contradictory evidence when making its finding of fact. It is instead a case where the reasons make it abundantly clear that the PRRA Officer carefully considered all the evidence adduced by Mr. Fares but simply did not find it persuasive.

[26] As is required for all courts and administrative decision-makers in civil cases, the PRRA Officer assessed the evidence and conducted his analysis in light of the balance of probabilities standard. The Officer was guided by the principles established in *FH v McDougall*, 2008 SCC 53 [*McDougall*], where the Supreme Court held that there is only one civil standard of proof in Canada. Speaking for a unanimous Court, Rothstein J. stated that the only legal rule in all cases is that "evidence must be scrutinized with care by the trial judge" and that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall* at paras 45-46). He concluded by saying that, in all civil cases, "the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred" (*McDougall* at para 49).

[27] Mr. Fares and his counsel contend that the PRRA Officer could not logically and rationally discard the 2016 FBI letter. I disagree with Mr. Fares' selective reading of the alleged evidence gleaned from this letter. Mr. Fares' submissions amount to an invitation to gerrymander the evidence before the PRRA Officer so that it fits with the contours of his unsubstantiated allegations regarding the FBI letter. This is an invitation I cannot accept. Instead, I find that the PRRA Officer had multiple possible reasons to question the FBI letter submitted by Mr. Fares and give it minimal weight.

[28] I acknowledge the fact that Mr. Fares helped the FBI in prosecuting a case of fraud involving his former employers, and I do not dispute that the FBI is a credible and well-recognized foreign organization. However, the issue before the PRRA Officer and this Court is not the reliability or credibility of the FBI as a law enforcement agency; the issue is whether it was reasonable for the PRRA Officer to find that the specific 2016 FBI letter obtained by Mr. Fares did not constitute sufficiently clear, convincing and cogent evidence supporting Mr. Fares' claims of risk. In my view, a cursory review of the document suffices to demonstrate that the 2016 FBI letter portrayed by Mr. Fares and his counsel as strong and solid evidence is in fact riddled with numerous defects raising serious concerns about it and justifying a reasonable decision-maker not to take it at face value. In addition, in many respects, the FBI letter failed to substantiate many elements of Mr. Fares' story.

[29] The PPRA Officer rightly noted that the FBI letter does not name any of the people who would have been prosecuted, any details about the threats that Mr. Fares claims to have received, or any ties to Hezbollah. Nowhere does it mention or even allude to Hezbollah, despite the fact

that it was the principal focus of Mr. Fares' claims in his two PRRAs, refugee claim, H&C application, and request for deferral to the CBSA. Mr. Fares also omitted to include any noteworthy proof to show when and how the letter was effectively received. Furthermore, only a photocopy was submitted, the letter was never received by the PRRA office where it was supposedly addressed, and no plausible explanation was offered as to why Mr. Fares could not provide the original. There are, of course, some unsupported and unsubstantiated statements made by counsel for Mr. Fares to the effect that the original was allegedly received by the Minister copied on the letter, but I find such self-serving affirmations unconvincing.

[30] Mr. Fares asserts in his affidavit that the authors of the 2016 FBI letter, a Perrye Turner and a Christine Beigning apparently acting as FBI agents, could be reached at a phone number and email address mentioned in his affidavit. However, these contact details come from information provided in a prior undated letter from a Matthew Taylor, who also presented himself as an FBI agent. It is striking to note that no phone number, email address or invitation to contact the two authors appear anywhere in the alleged official 2016 letter from the FBI. I further observe that, in the negative decisions rejecting his first PRRA and H&C applications, Mr. Fares had submitted the undated FBI document from Matthew Taylor. That initial, undated FBI letter was given little weight by the Canadian immigration authorities and was found to be insufficiently corroborative evidence of Mr. Fares' alleged risk in Lebanon. This prior document is similarly worded to the 2016 FBI letter in many respects: the three main references to the alleged threats to Mr. Fares' life if returned to Lebanon contained in the 2016 FBI letter are virtually identical to what was said in the previous undated document from Matthew Taylor, and contain no more specificity.

[31] I also underline that, apart from the self-serving statements made by both Mr. Fares and his counsel, there is no evidence supporting their allegations that the 2016 FBI letter had been approved by the "full hierarchy" of the FBI, that the letter had been vetted by lawyers from the US Department of Justice, or that there was communication between the FBI agents and Mr. Fares and his counsel. No detail and no dates are indeed provided regarding these elusive contacts between the FBI, Mr. Fares and his counsel. In the same vein, apart from the self-serving statements of Mr. Fares affirming that Hezbollah knows him, threatened him and tried to kill him, no evidence of these factual elements appear in the 2016 FBI letter itself.

[32] In the circumstances, and in view of all these questionable shortcomings corroding its contents and reliability, it was certainly open for the PRRA Officer to give limited probative value to the 2016 FBI letter and raise serious concerns about it. In fact, in my opinion, to have concluded otherwise would have been unreasonable. Considering all its defects and deficiencies, the 2016 FBI letter submitted by Mr. Fares falls well short of the content a true, official FBI letter should have reasonably featured in order to substantiate Mr. Fares' claims. In fact, far from being a reflection of what one would reasonably expect from a major law enforcement agency like the FBI, the first undated letter and its 2016 reincarnation both submitted by Mr. Fares look more like a mockery of what authentic FBI documents admitted into evidence would realistically be.

[33] What is also telling is that counsel for Mr. Fares went so far as stating, in his proposal of certified questions submitted after the hearing before this Court, that the Minister's office "intervened to stop the deportation after verifying the authenticity of the FBI letters" [emphasis

added]. This is, once again, a statement totally unsupported by any evidence, and which was flatly denied by counsel for the Minister in her reply to the questions for certification. In my opinion, such an unsubstantiated statement made by counsel at the eleventh hour can only contribute to fortify the legitimate concerns raised by the PRRA Officer with respect to the probative value of the 2016 FBI letter.

[34] It is well-established that it is up to the PRRA officers to assess and give weight to the evidence before them. Questions of weight and credibility to be given to the evidence in risk assessments are entirely within the discretion of the PRRA officers and this Court should not substitute its analysis for that of the officers. In this case, my review of the evidence before the Officer confirms that the conclusions reached on the FBI letter fall within the range of reasonableness.

[35] I pause to make one additional comment. Counsel for Mr. Fares advanced the novel proposition that the standard of proof applicable to a letter from an organization like the FBI should somehow be different, that documents emanating from the FBI should benefit from some sort of presumptive validity, and that an administrative decision-maker like the PRRA Officer should adopt a more relaxed standard of proof towards such documents. I do not agree. Counsel for Mr. Fares was unable to provide any case law in support of his proposition, and I am unaware of any precedent or legal principle that could lend credence to such an approach. The standard of proof on a balance of probabilities applies to all evidence and, in all cases, the applicants have to demonstrate that it is more likely than not that a given event occurred. The fact that a piece of evidence happens to be a letter from the FBI does not modify this standard.

[36] I would add that, in the circumstances, it would be an affront to the most elementary rules of evidence to consider the 2016 FBI letter under a more favourable light simply because it apparently emanates from the FBI, given the extent to which this FBI letter is plagued with numerous shortcomings and defects. Crippled as it is, the FBI letter certainly does not deserve to be put on the pedestal that counsel for Mr. Fares apparently sees for it.

[37] Mr. Fares also relied on a police report from January 2014, relating to an attack he faced leaving a bar in Montreal, to claim that his life would be at risk if he is deported to Lebanon. However, this report does not provide any details regarding the identity of the suspect, and does not link this event in any way to Hezbollah or Lebanon. A similar problem arises with his new evidence on the attack on his family in Lebanon: this second police report refers to damages caused to his sister's car, but contains no allusion to Mr. Fares himself or to a link to Hezbollah. Considering the contents of these documents, it was reasonable for the PRRA Officer to conclude that they offered limited probative evidence in support of Mr. Fares' claims of risks upon return to Lebanon.

[38] Again, under a reasonableness standard, it is not the role of the Court to reassess and reweigh the evidence. This Court's role is only to determine if the PRRA Officer's conclusions have the attributes of justification, transparency and intelligibility, and fall within the range of possible, acceptable outcomes. Further to my review of the Officer's reasons and the record, I detect nothing unreasonable in the Officer's factual findings.

[39] In his oral submissions before the Court, counsel for Mr. Fares referred to several cases relating to the treatment of the evidence by decision-makers in immigration matters. However, I am not persuaded that any of the cases cited is relevant to the situation of Mr. Fares and the particular set of facts in this case. For example, this is not a situation where the PRRA Officer discarded or omitted to consider the new evidence submitted, or found it inadmissible for technical reasons like in *Elezi v Canada (Citizenship and Immigration)*, 2007 FC 240. Nor is it a case where the PRRA Officer looked at the evidence in isolation, put too much emphasis on elements peripheral to Mr. Fares' claim, or approached the evidence with suspicion (*Gonzalez Perea v Canada (Citizenship and Immigration)*, 2008 FC 432). Neither is this a situation where the PRRA Officer was silent on evidence clearly pointing to an opposite conclusion and squarely contradicting some findings of fact, or where it can be inferred that the tribunal overlooked contradictory evidence when making its decision (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL)).

B. ***The PRRA Decision does not raise any Charter or UN Convention issues***

[40] As another ground of judicial review, Mr. Fares and his counsel contend that the Decision goes against overarching principles flowing from the *Charter* and Canada's international obligations under the UN Convention. Mr. Fares submits that, by rejecting the risk to his safety and life should he return to Lebanon, the PRRA Officer ignored both the *Charter* and Canada's obligations in international law.

[41] I disagree.

[42] First of all, counsel for Mr. Fares argues that a different, so-called "constitutional" standard of review should govern matters where the application of the *Charter* and UN Convention come into play. When asked if he had any cases in support of this novel argument, counsel for Mr. Fares, once again, could not cite any. In fact, there is no particular or "constitutional" standard of review calling for a less deferential approach on judicial reviews of administrative decisions raising *Charter* or UN Convention issues. The unsupported interpretation proposed by counsel for Mr. Fares flies in the face of the teachings of the Supreme Court and strays away from the consistent jurisprudence on judicial reviews and on the standard of review applicable in cases raising *Charter* issues.

[43] The Supreme Court has clearly stated that, when an issue involves consideration of whether a discretionary decision of an administrative decision-maker respects *Charter* values and principles, the reasonableness standard applies (*Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*] at paras 3-4; *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*] at paras 57-58; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 43). Furthermore, *Charter* or UN Convention issues do not fit within any of the four exceptions repeatedly identified by the Supreme Court since *Dunsmuir* as requiring a less deferential standard of correctness on judicial review (*Edmonton* at paras 22-24).

[44] I would add that it is now trite law that the removal of a person after a proper risk assessment under the PRRA process is not contrary to sections 7 and 12 of the *Charter* (*Atawnah v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144 [*Atawnah*]; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1). As for the UN Convention,

paragraph 97(1)(*a*) of the IRPA specifically refers to the notion of torture contained in Article 1 of the UN Convention and therefore integrates the principles contained in Article 3 of the Convention.

[45] In any event, I am not persuaded that the present case raises an issue of principle regarding the application of the *Charter* or UN Convention. As stated above, I am satisfied that the factual findings made by the PRRA Officer do not fall outside the range of possible, acceptable outcomes defensible in respect of the facts and law. Despite Mr. Fares' repeated attempts to bang the *Charter* and UN Convention drums and morph this case into something bigger, it remains a matter where Mr. Fares has simply failed to provide the sufficiently clear, convincing and cogent evidence needed to support his PRRA application and his claim of serious risk at the hands of Hezbollah. The determinative issue raised by this application for judicial review and the Decision is whether it was reasonable for the PRRA Officer to conclude as he did. I find that it was.

IV. Certified questions

[46] Mr. Fares asks the Court to certify three questions:

> A. Do the current standard of review of reasonableness at the Federal Court and the lack of attention to the substance of decisions regarding our international obligations respect the right to an effective legal recourse that is provided for in Article 24 of the *Charter*?
>
> B. Do the current legal recourses of the PRRA and judicial review by the Federal Court respect our international human rights obligations to provide an effective recourse under Article 2(3) of the International Covenant on Civil and Political Rights linked with the substantial rights of Articles 6 and 6 [*sic*] of this same convention in deportation matters?

C. Is the decision-maker obliged to respect the criteria of the second paragraph of Article 3 of the UN Convention against Torture in judging whether there would be a substantial risk of torture?

[47] For the reasons that follow, I do not find that any of the proposed questions meets the requirements for certification developed by the Federal Court of Appeal.

[48] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved". To be certified, "a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance" (*Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 [*Mudrak*] at paras 15-16; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 [*Zhang*] at para 9). As a corollary, the question must have been dealt with by the Court and must arise from the case (*Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 29).

[49] I decline to certify the first question as it is not dispositive of the appeal and I do not consider it of general importance. I agree with counsel for the Minister that no evidence has been provided by Mr. Fares demonstrating that the PRRA process was not an effective legal recourse in his case. In addition, the fact remains that Mr. Fares was twice unsuccessful in his PRRA applications (as well as in his refugee claim, H&C application and request for deferral of removal) because the proffered evidence was found to be insufficient and unconvincing. Therefore, this is not a situation where the effectiveness of the PRRA process is called into question. Mr. Fares' PRRA application was dismissed based on the low probative value of the evidence he submitted to the Officer. The first proposed question would thus not be dispositive

of the appeal. Moreover, I am not persuaded that it is a question of general importance. No case law supports the interpretation advanced by counsel for Mr. Fares and the Supreme Court has affirmed in *Loyola* and *Doré* that the reasonableness standard governs the determination of whether a discretionary decision of an administrative tribunal respects the *Charter*. It is also well established that the removal of a person after a proper risk assessment is not contrary to sections 7 and 12 of the *Charter* (*Atawnah*). I finally note that, in *Pozos Martinez v Canada (Citizenship and Immigration)*, 2010 FC 31 at paras 26-29, the Court denied a similar request for certification made by counsel for Mr. Fares.

[50] As for the second question, I find that it does not meet the test for certification either. For the reasons detailed in the consideration of the first question, the proposed question would not be dispositive of this appeal. The answer to the proposed question is also well-settled in this Court's jurisprudence.

[51] Turning to the third question, it would also not be determinative of the appeal as the evidence of risk provided by Mr. Fares was found to be insufficient and unconvincing in this case. In addition, I am not persuaded that this is a question of general importance, as the answer to the question is explicitly contained in the IRPA itself, at paragraph 97(1)(a). This provision, which the decision-makers are required to apply, already embodies the principles contained in Article 3 of the UN Convention.

V. Conclusion

[52] For all of these reasons, the PRRA Officer's Decision represents a reasonable outcome based on the law and the evidence. Under a standard of reasonableness, the Decision under judicial review must be intelligible, justified and transparent, as well as fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. In addition, Mr. Fares' application for judicial review does not trigger *Charter* or UN Convention issues. It was based on a lack of sufficiently clear, convincing and cogent evidence to satisfy the balance of probabilities test. Consequently, I must dismiss this application for judicial review.

[53] There are no questions of general importance to be certified.

JUDGMENT in IMM-569-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed without costs;

2. No serious question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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