Federal Court  Cour fédérale

Date: 20190607

Docket: IMM-4061-18

Citation: 2019 FC 792

Ottawa, Ontario, June 7, 2019

PRESENT: Madam Justice Roussel

BETWEEN:

AISHA THORNTON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Aisha Thornton, seeks judicial review of a Senior Immigration Officer's [Officer] decision dated June 28, 2018, dismissing her application for a pre-removal risk assessment [PRRA].

[2] The Applicant is a citizen of Pakistan. In 2006, she became a permanent resident of Canada after being sponsored by her first husband with whom she has a Canadian-born child.

[3] In November 11, 2008, the Applicant was charged with assault causing bodily harm against her son pursuant to subsection 267(b) of the *Criminal Code*, RSC 1985, c C-46. The Applicant pled guilty to the offence and was sentenced on March 30, 2010 to fifteen (15) months to be served in the community. After her conviction, the Applicant's son went to live with the Applicant's mother and brother in Pakistan.

[4] On May 4, 2015, the Applicant was found to be inadmissible as per paragraph 36(1)*(a)* of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and a deportation order was issued against her on January 6, 2016.

[5] On May 23, 2017, the Applicant was notified by the Canada Border Services Agency that she was entitled to apply for a PRRA. The Applicant submitted her PRRA application on July 7, 2017. In her submissions to the PRRA Officer, the Applicant alleged that as an unaccompanied woman without family support in Pakistan, she would be extremely vulnerable to be the target of sexual harassment, discrimination and violence. More specifically, the Applicant alleged that she would be at risk of violence from her brother and generally at risk as an unaccompanied woman in Pakistan. She also alleged that her mental health condition would render her vulnerable to gender-based violence in Pakistan.

[6] On June 28, 2018, the PRRA Officer rejected the application on the basis that the Applicant had not demonstrated a well-founded fear of persecution or a risk of torture, a risk to

her life or a risk of cruel and unusual treatment or punishment if returned to Pakistan under sections 96 and 97 of the IRPA.

[7] The Applicant seeks judicial review of the PRRA Officer's decision. She submits that the PRRA Officer conflated the tests under sections 96 and 97 of the IRPA by requiring that she show a personalized risk under section 96 of the IRPA. She also submits that the PRRA Officer's analysis of her evidence of personalized risk and of the documentary evidence is unreasonable.

II. Analysis

A. *Standard of review*

[8] The issue of whether the PRRA Officer conflated the tests under sections 96 and 97 of the IRPA is a legal issue reviewable on a correctness standard (*Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332 at para 15 [*Debnath*]; *Somasundaram v Canada (Citizenship and Immigration)*, 2014 FC 1166 at para 17; *Kaur v Canada (Citizenship and Immigration)*, 2014 FC 505 at para 34 [*Kaur*]; *Mahendran v Canada (Citizenship and Immigration)*, 2009 FC 1237 at para 10 [*Mahendran*].

[9] In contrast, the PRRA Officer's assessment of the evidence is reviewable on a standard of reasonableness (*Gamez Barrientos v Canada (Citizenship and Immigration)*, 2018 FC 1220 at para 14; *Guthrie v Canada (Citizenship and Immigration)*, 2018 FC 852 at para 5; *Debnath* at para 16; *Kaur* at para 35).

[10] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and the law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

B. *The PRRA Officer did not conflate the tests for sections 96 and 97 of the IRPA*

[11] The Applicant submits that the PRRA Officer erred by importing the legal requirements which are specific to section 97 of the IRPA into the definition of a Convention refugee at section 96 of the IRPA. To support her argument, she refers to a passage in the decision where the PRRA Officer found that the Applicant had failed to demonstrate that:

> … she faces a personalized, forward-looking risk of persecution, danger of torture, a risk to her life, or a risk of cruel and unusual treatment or punishment based on her cited risks should she return to Pakistan.
>
> Risk by definition is forward-looking and the PRRA process requires that the risks faced by the applicant be personalized.
>
> [My emphasis.]

[12] Relying on the decision of the Federal Court of Appeal in *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 at paragraphs 17 and 19, the Applicant contends that while a personalized risk must be established to succeed in a claim for protection under section 97 of the IRPA, this requirement does not apply to a claim for Convention refugee status. In the case at hand, her claim under section 96 of the IRPA was based on her membership in a particular social group, namely women without male protection in Pakistan. By requiring

personalized risk as part of the analysis under both sections 96 and 97 of the IRPA, the Officer erred in law.

[13] The Applicant's argument cannot succeed.

[14] In order to satisfy the definition of "Convention refugee" in section 96 of the IRPA, the Applicant had to demonstrate that she met all the components of this definition, including the existence of both a subjective and objective fear of persecution, that she was targeted for persecution in some way, either personally or collectively, and that her well-founded fear occurred, in this case, for reasons of membership in a particular social group. The Applicant was not required to demonstrate that she herself had been persecuted in the past or that she would be persecuted in the future given that persecution under section 96 of the IRPA can be established by examining the treatment of similarly situated individuals (*Debnath* at para 31; *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at para 13).

[15] Where the fear of persecution is based on gender-related crimes, the claim cannot be rejected simply because women face general oppression and the fear of persecution is not supported by an individualized set of facts (*Dezameau v Canada (Citizenship and Immigration)*, 2010 FC 559 at para 26 [*Dezameau*]). The evidence must nonetheless establish that there is a risk of harm that is sufficiently serious and whose occurrence is "more than a mere possibility" (*Dezameau* at para 29).

[16] In that sense, the notion of a *personalized* risk under section 96 of the IRPA can refer to the necessary nexus an applicant must establish between him or herself and persecution on a Convention ground (*Debnath* at para 31; *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at para 29). In other words, the Applicant "must be targeted for persecution in some way, either 'personally' or 'collectively' […]" (*Debnath* at para 31).

[17] The jurisprudence is clear that in the context of an allegation that the tests under sections 96 and 97 of the IRPA were conflated, the use of the words "personalized", "individualized" or similar terms does not necessarily mean that the different tests have been conflated (*Debnath* at para 32; *Kaur* at para 38; *Mahendran* at para 17; *Pillai v Canada (Citizenship and Immigration)*, 2008 FC 1312 at para 42). One must read the PRRA Officer's reasons as a whole and not simply draw attention to certain passages (*Kaur* at para 37).

[18] While I agree with the Applicant that the PRRA Officer's analysis could have been more clearly articulated, I am satisfied upon review of the decision in its entirety that the PRRA Officer understood the different tests to be applied under sections 96 and 97 of the IRPA.

[19] In the case at hand, the PRRA Officer referred to the distinct evidentiary burdens under sections 96 and 97 of the IRPA. Such a distinction between the different evidentiary burdens leads me to believe that the PRRA Officer understood the difference between the two legal tests. Additionally, the PRRA Officer did not require the Applicant to show past persecution for the purposes of section 96 of the IRPA. Rather, and as required to do so, the PRRA Officer looked at

the Applicant's evidence concerning "similarly-situated individuals" for the purposes of establishing a forward-looking risk of persecution.

[20] In analyzing the decision as a whole, it is important to contextualize the PRRA Officer's reasons. The PRRA Officer responded directly to the Applicant's three (3) arguments as outlined in her PRRA submissions.

[21] First, the PRRA Officer considered the Applicant's subjective fear of risks and discrimination as an unaccompanied woman in Pakistan and, after considering the objective documentary evidence, concluded that the Applicant, as an educated woman, did not fit the profile of "similarly-situated individuals" facing persecution in Pakistan. The PRRA Officer found that the Applicant had not provided evidence to corroborate that she would face forward-looking risks "based on her profile as a single woman."

[22] Second, the PRRA Officer conducted the same exercise regarding the Applicant's fear of gender-based violence and sexual harassment as an unaccompanied woman without family support in Pakistan. The Officer found that the Applicant had not provided evidence that she was without family support, noting that she has a sister who resides in Pakistan and that there was no evidence that her mother or sister who both reside in Pakistan had experienced gender-based discrimination or violence, or that the Applicant would be unable to obtain adequate protection should it be required.

[23] Third, the PRRA Officer also considered and rejected the Applicant's allegation that her mental health condition would increase her vulnerability to gender-based violence on the basis that the Applicant's last medical assessment dated back to December 2016. In the PRRA Officer's view, there was insufficient evidence demonstrating that the Applicant continued to require treatment or that she had attended sessions over the past eighteen (18) months. The PRRA Officer also found that the Applicant had not provided evidence that she would be denied or be unable to access the services available to women in Pakistan with medical conditions similar to hers.

[24] After addressing the issues that were raised by the Applicant in her submissions and reviewing the documentation submitted by the Applicant, the PRRA Officer ultimately concluded that the Applicant had not met either of the tests under sections 96 and 97 of the IRPA. I find that the Officer has not erred in doing so.

C. *The PRRA Officer's analysis of the Applicant's evidence of personalized risk was not unreasonable*

[25] The Applicant submits that while personalized risk was not required under section 96 of the IRPA, she did provide evidence of a personalized risk under section 97 of the IRPA. In particular, the Applicant alleged that she was at particular risk of gender-based violence in light of her brother's history of physical violence and verbal threats. As evidence of her brother's threats, the Applicant provided cell phone text messages, a Facebook conversation and a Gmail chat between herself and her brother.

[26] The Applicant contends that it was unreasonable for the PRRA Officer to require supporting documents to prove the veracity of her brother's statements. She contends that the messages should have been assessed in terms of the threat her brother represented to her. It was also unreasonable for the PRRA Officer to conclude that the messages were not reliable sources because the identity of the actual sender could not be confirmed. All messages indicate the full name of the Applicant's brother and there is no evidence to suggest that the messages were written by anyone else than her brother.

[27] Finally, the Applicant argues that the PRRA Officer ignored evidence in the file when finding that there was no information indicating when or whether the Applicant had resided in Pakistan in the past or whether she had experienced any incident while visiting or residing in Pakistan. To support her argument, the Applicant relies on her affidavit wherein she stated that she and her first husband lived in Pakistan after getting married and described several incidents of family violence, including an incident during her last visit to Pakistan in December 2012 when her mother tried to incite her brother to attack her.

[28] I find that the concerns raised by the Applicant are not fatal to the PRRA Officer's analysis of the Applicant's personalized risk under section 97 of the IRPA.

[29] The PRRA Officer reasonably noted that the alleged threats in the text messages from the Applicant's brother were not directed at the Applicant herself, but at the Applicant's spouse. Moreover, the messages do not reflect, as alleged by the Applicant, a desire to threaten her. On the contrary, they suggest that the Applicant's brother is concerned about his sister and that he is attempting to keep her out of harm's way.

[30] As for the Applicant's argument that the PRRA Officer ignored evidence in the file regarding incidents of violence when visiting her family, the PRRA Officer specifically engaged with the 2012 alleged incident of violence, noting the inconsistent dates used to refer to this incident and observing that the Applicant had not provided corroborative evidence about the event. The PRRA Officer also noted that the Applicant had not provided evidence of further incidents or threats since the last communication with her brother in 2015. It is in that context that the PRRA Officer concluded that the Applicant had provided insufficient evidence to support her allegation that she would be a victim of violence upon her return to Pakistan.

[31] Finally, while the PRRA Officer's statement regarding the Applicant's residency in Pakistan may not be entirely accurate, I do not consider it to be determinative of the decision.

[32] Given that PRRA Officers are presumed to have considered the evidence before them (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL)), the Applicant has not demonstrated to my satisfaction that the PRRA Officer ignored any evidence in this case. The Applicant is essentially asking the Court to reweigh the evidence, which is not the role of the Court on judicial review (*AB v Canada (Citizenship and Immigration)*, 2019 FC 165 at para 51).

D. *The PRRA Officer's analysis of the documentary evidence was not unreasonable*

[33] The Applicant argues that the PRRA Officer's analysis of the documentary evidence was selective and unreasonable.

[34] With respect to the analysis of the risks faced by unaccompanied women in Pakistan, the Applicant argues that educated women are also at risk in Pakistan.

[35] I disagree.

[36] In her PRRA submissions, the Applicant specifically referred to two (2) country condition documents: (1) United Kingdom: Home Office, Country Information and Guidance – Pakistan: Women fearing gender-based harm/violence, February 2016 [UK document]; and (2) United States Department of State, 2016 Country Reports on Human Rights Practices – Pakistan, 3 March 2017.

[37] In the decision, the PRRA Officer reviewed the Applicant's documents and observed that this evidence did not demonstrate that as an educated woman, the Applicant would face a risk of persecution in Pakistan. The PRRA Officer specifically referred to the UK document, which, under the heading "Social and economic rights" deals with "Single/unaccompanied women". Upon review of this section, it was reasonably open to the PRRA Officer to conclude that the risks for educated women living alone in urban areas in Pakistan differ from that of women who are less educated living in rural areas.

[38] The PRRA Officer also cited an Immigration and Refugee Board of Canada document entitled "Pakistan: Circumstances under which a woman has the legal right to get a divorce through the courts (judicial divorce) through her own initiative; circumstances under which single women can live alone" dated November 17, 2010. Under the heading "Whether single women can live alone", it is specifically stated that "for women to live alone and unmarried in

Pakistan, it will depend on which province and in what context they are living." Considering particular contexts, the report states that "the ability of women to act independently differs depending on their level of education." It is specifically stated that, "[i]n big cities educated women with jobs or some property income would not have much difficulty to live alone."

[39] In this case, the PRRA Officer considered the specific context of the Applicant, by noting that she is educated and that she was employed as a teacher abroad prior to her arrival in Canada. The PRRA Officer also noted that the Applicant's passport identifies her permanent residence in Pakistan as being in Lahore and that the Applicant's sister and mother also reside in Lahore.

[40] Considering the documentary evidence, the Applicant's level of education and urban background, I am not persuaded that the PRRA Officer's interpretation of the evidence was unreasonable. Furthermore, the Applicant has failed to demonstrate to my satisfaction that the PRRA Officer ignored relevant evidence. The fact that the Applicant can advance a different reasonable interpretation of the evidence does not in and of itself render the Officer's conclusions unreasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 17).

[41] Again, the Applicant is asking the Court to reweigh the evidence, which it will not do.

[42] The Applicant also submits that the PRRA Officer's analysis of state protection for victims of gender-based violence falls outside the bounds of reasonableness. Instead of assessing the operational adequacy of state protection, the PRRA Officer's decision is devoid of any

meaningful analysis of whether the Pakistani state is able to provide adequate protection to victims of gender-based violence.

[43] Given that the PRRA Officer reasonably found that the Applicant is not a Convention refugee under section 96 of the IRPA nor a person in need of protection under section 97 of the IRPA, the PRRA Officer was not required to conduct a state protection analysis.

III. Conclusion

[44] Upon review of the relevant jurisprudence and after examining the decision in its entirety, I am satisfied that the PRRA Officer did not conflate the tests under sections 96 and 97 of the IRPA. Furthermore, I am not persuaded that the PRRA Officer's assessment of the Applicant's personalized risk or analysis of the country condition evidence was unreasonable.

[45] Accordingly, the application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-4061-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The style of cause is amended to replace the "Minister of Immigration, Refugees and Citizenship" with the "Minister of Citizenship and Immigration"; and

3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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