

Federal Court



Cour fédérale

Date: 20190723

Docket: IMM-3314-18

Citation: 2019 FC 967

Ottawa, Ontario, July 23, 2019

PRESENT: Mr Justice James W. O'Reilly

BETWEEN:

CHAUDHRY MUHAMMAD AZEEM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Chaudhry Muhammad Azeem arrived in Canada from Pakistan in 2010 seeking refugee protection. His claim was dismissed. He subsequently applied for a pre-removal risk assessment (PRRA) which, in 2016, was also dismissed. He applied for a second PRRA, which was also unsuccessful. Mr Azeem was removed from Canada on November 6, 2018.

[2] Mr Azeem seeks judicial review of his second negative PRRA, notwithstanding that, given his removal from Canada, it is moot. He asks the Court to exercise its discretion to address his application for judicial review on the grounds that the outcome of his application could affect his ability to return to Canada, and because his case raises important issues of credibility and reasonable apprehension of bias that merit the Court's attention.

[3] I disagree with Mr Azeem's submissions. In my view, he has not satisfied the criteria for deciding a moot application. Accordingly, I will not exercise my discretion to hear Mr Azeem's application for judicial review.

[4] The sole issue is whether I should decide Mr Azeem's moot application.

II. The PRRA Decision

[5] The PRRA officer concluded that Mr Azeem relied on information that did not differ significantly from the evidence he had presented in his refugee claim and his first PRRA. Mr Azeem claimed that he had operated Western-style private schools in Pakistan, and that his doing so angered religious extremists. The Refugee Protection Division doubted Mr Azeem's account of events and found that he could find a safe internal refuge in Karachi.

[6] Mr Azeem updated his account of events before the PRRA officer. He alleged that in 2016 two men had asked his son about Mr Azeem's whereabouts. One of them shot and injured his son, but his son was able to escape. Mr Azeem's son was later struck by a car with no license

plates. Subsequently, his son was beaten and questioned about Mr Azeem's whereabouts. The police would not intervene.

[7] The officer found Mr Azeem's description of events was vague and uncorroborated.

III. Should the Court consider Mr Azeem's moot application?

[8] Mr Azeem submits that the Court should exercise its discretion to decide the merits of his application, principally for two reasons. First, an adversarial context still exists. If he were to succeed on his application for judicial review, he would stand a better chance of succeeding in any future request for an Authorization to Return to Canada. Second, it is often difficult to have a PRRA decision reviewed in the short period between the decision and removal. That means that some important issues, such as credibility findings and bias, often elude judicial intervention. Mr Azeem maintains that the interests of judicial economy would not be compromised by deciding a case that raises important, albeit moot, legal questions.

[9] Mr Azeem's submissions address two of the three factors that should be considered in deciding whether to deal with a moot application: an ongoing adversarial relationship, and judicial economy (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342). The third factor is whether the Court would, in effect, be embarking on a legislative, rather than a judicial, function.

[10] The Minister argues that, if I were to entertain and then grant Mr Azeem's application, I would, in essence, be reviewing and departing from Justice Zinn's prior decision finding that Mr

Azeem would not experience irreparable harm if removed from Canada (as in *Nalliah v Canada (Minister of Citizenship and Immigration)* 2005 FC 759). Further, says the Minister, to do so would be to violate the principle of judicial comity, expend judicial resources unwisely, and lead the Court in the direction of creating a new class of protected persons – those who are outside Canada and claim a risk of mistreatment (*Solis Perez v Canada (Citizenship and Immigration)*, 2008 FC 663, aff'd 2009 FCA 171).

[11] In the circumstances before me, I am not persuaded by the Minister's submission on this point. Mr Azeem is raising issues of credibility and bias. If I were satisfied that the PRRA officer's decision should be quashed on one or both of those grounds, sending the matter back for reconsideration would not conflict with Justice Zinn's finding that Mr Azeem would not face irreparable harm if he were removed from Canada.

[12] However, I am also not satisfied that I should decide Mr Azeem's moot application. In respect of Mr Azeem's submission that an adversarial context remains, I have two responses. First, even if the circumstances could be characterized as an adversarial context, it is not one that is connected to the PRRA decision that is under review. There remains no adversarial context in respect of the PRRA. Second, the potential impact on any future efforts on Mr Azeem's part to return to Canada is, at this point, entirely speculative.

[13] Finally, to Mr Azeem's contention that the serious legal issues evade judicial consideration when unsuccessful PRRA applicants are removed from Canada, I agree that these issues are often elusive of judicial review due to mootness. However, they do come before the

Court on a regular basis. When serious issues arise in respect of a PRRA application, the applicant can seek a stay of removal pending the determination of the underlying application for judicial review. The Court will order the stay and will entertain the application for judicial review if the applicant satisfies the applicable three-part test for a stay.

[14] Therefore, I am not persuaded that the Court should decide Mr Azeem's moot application.

IV. Conclusion and Disposition

[15] Mr Azeem's application for judicial review is moot and the circumstances do not justify it being decided. Therefore, I must dismiss this application for judicial review.

[16] Counsel for Mr Azeem submitted proposed questions for certification. However, I am not persuaded that those questions raise issues of general importance that would be dispositive of this application. The first question simply asks whether the Court has the discretion to hear an application for judicial review notwithstanding its mootness. The answer is clearly yes. The second question poses an issue regarding a PRRA officer's credibility findings. That question is moot and unsuitable for certification in this case.

JUDGMENT IN IMM-3314-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3314-18

STYLE OF CAUSE: CHAUDHRY MUHAMMAD AZEEM v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: JANUARY 8, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: JULY 23, 2019

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