

Federal Court



Cour fédérale

Date: 20210816

Docket: IMM-7711-19

Citation: 2021 FC 842

Ottawa, Ontario, August 16, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

FATIMAH FATIMAH

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Fatimah Fatimah, is a citizen of Indonesia. She applies pursuant to section 72 of the *Immigration and Refugee Protection Act* SC 2001, c 27 [IRPA] for review of a decision, dated November 18, 2019, rejecting her Pre-Removal Risk Assessment [PRRA].

[2] The PRRA Officer found Ms. Fatimah did not face a serious possibility of persecution if returned to Indonesia, nor was she a person in need of protection as described in sections 96 and 97 of the IRPA. The PRRA Officer further concluded that Ms. Fatimah had failed to rebut the presumption of state protection.

[3] For the reasons that follow, the Application is granted.

II. Background

[4] Ms. Fatimah is an Indonesian citizen. She arrived in Canada in 2006 and applied for permanent residency in 2009. While in Canada, she entered a common-law relationship and had a daughter in December 2016. She returned to Indonesia with her daughter for five months between May and November of 2017.

[5] In November 2018, Ms. Fatimah was convicted of assault with a weapon arising out of an incident involving her common-law partner, the relationship having broken down. She was sentenced to 18 months probation. In March 2019, she was determined to be inadmissible to Canada for serious criminality. Her application for permanent residence was denied in May 2019, and the PRRA was refused in November 2019.

III. Decision under Review

[6] Ms. Fatimah submitted she was at risk of gender-based violence and discrimination in Indonesia and that her profile as a single mother placed her at risk. She further submitted her daughter faced a risk of racial bullying, sexual abuse, and pollution in Indonesia.

[7] The PRRA Officer noted Ms. Fatimah's Humanitarian and Compassionate submissions, including those related to her establishment in Canada, but found these considerations fell outside the purview of a PRRA assessment, which is limited to a consideration of risk. The Officer also noted submissions relating to reported risks to Ms. Fatimah's young daughter if she were required to relocate to Indonesia. The Officer found the daughter, as a Canadian citizen, was not subject to removal and therefore declined to consider the impact of the PRRA decision on her.

[8] The Officer found there was insufficient evidence to show that Ms. Fatimah would not receive adequate state protection against the risk of gender-based violence in Indonesia. The Officer noted that Indonesia is an electoral democracy with established law enforcement agencies and a functioning judiciary. The Officer acknowledged the documentary evidence reflected police corruption, but noted that its presence does not equate to all Indonesian police being corrupt to the point of being unable to adequately protect Ms. Fatimah. The Officer also acknowledged the documentary evidence that gender-based violence continues to be a serious problem in Indonesia, but noted the government is making serious efforts to combat gender-

based violence. Moreover, the Officer noted Ms. Fatimah did not allege having experienced gender-based violence while in Indonesia.

[9] With respect to gender-based discrimination, the Officer acknowledged that there are human rights abuses in Indonesia and certain legal and cultural inequities for Indonesian women, especially for single divorced mothers. However, the Officer concluded the treatment of single divorced mothers did not amount to the treatment described in IRPA sections 96 and 97 and noted the Applicant experienced no such discrimination during her extended visit to Indonesia in 2017 with her young daughter.

IV. Preliminary Issue: Improper Respondent

[10] The Respondent submits that the style of cause improperly identifies the Respondent as the Minister of Public Safety and Emergency Preparedness. The proper Respondent in this matter is the Minister of Citizenship and Immigration (IRPA s 4(1); *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2)). The style of cause is amended accordingly (Rule 76, *Federal Courts Rules*, SOR/98-106).

V. Issues and Standard of Review

[11] The Application raises two issues:

- A. Did the PRRA Officer unreasonably conclude there was insufficient evidence to rebut the presumption of state protection? and

- B. Did the PRRA Officer unreasonably find the gender-based discrimination did not amount to treatment contemplated by IRPA sections 96 and 97?

[12] In written submissions, Ms. Fatimah raised a third issue - the Officer's treatment of her daughter's risks was unreasonable. In the course of oral submissions, Ms. Fatimah's counsel conceded that the Officer's treatment of this issue was reasonable. The argument was not pursued, and I have not addressed this issue.

[13] The parties submit, and I agree, the PRRA Officer's decision is reviewable on the reasonableness standard (*Ashkir v Canada (Citizenship and Immigration)*, 2020 FC 861 at paras 10-12; *Cervenakova v Canada (Citizenship and Immigration)*, 2021 FC 477 at paras 17-19). A reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

VI. Analysis

- A. *The PRRA Officer unreasonably concluded Ms. Fatimah had failed to rebut the presumption of state protection*

[14] In assessing the risk of gender-based violence, the Officer acknowledges that the documentary evidence demonstrates that many women become victims of violence in Indonesia, that one-third of women between the ages of 15 and 64 have experienced violence, and that domestic violence is the most common form of violence against women in Indonesia. The Officer cites documentary evidence detailing the significant underreporting and poor

documentation of gender-based violence as well as the light sentences often given to convicted sexual offenders. That same evidence then details state efforts to improve the monitoring of cases of sexual violence and provide counselling and support services to victims of violence and describes the limitations of these services, particularly in rural areas. The Officer also cites evidence that provides an overview of the internal security and police structure in Indonesia.

[15] Based on this evidence, the Officer concludes that gender-based violence is a serious problem in Indonesia, but found the presumption of state protection had not been rebutted. In reaching the state protection conclusion, the Officer finds “Indonesia is making serious efforts to combat the issue of gender-based violence...that Indonesia is making active efforts to improve the capacity and efficiency of its state protection apparatus.”

[16] It is well established in the jurisprudence that the adequacy of state protection cannot be assessed solely based on state efforts. Instead, a decision maker must consider the operational adequacy of the protection actually available.

[17] As noted above, the documentary evidence cited by the Officer does speak to the adequacy of state protection in the context of gender-based violence (frequency, the number of similarly situated individuals experiencing violence and the adequacy of reporting mechanisms, and the consequences imposed on perpetrators), yet this evidence is not addressed in the Officer’s analysis. Instead, the Officer points only to state efforts undertaken with the objective of improving state protection. This, in my view, undermines the intelligibility and justifiability of the Officer’s state protection finding, rendering it unreasonable.

B. *The Officer's conclusion that gender-based discrimination does not rise to the level of persecution is unreasonable*

[18] In her submissions to the Officer, Ms. Fatimah cites documentary evidence reporting that single and divorced women in Indonesia are discriminated against in accessing basic needs, including housing, employment, and credit.

[19] The Officer acknowledges “divorcees and widows are often affected by poverty and can face stigmatization” and found the “objective documentary evidence before me demonstrates that single divorced women can face societal discrimination in Indonesia.” The Officer then concludes the treatment experienced by single divorced women does not rise to the level of “treatment described in sections 96 and 97 of the IRPA.”

[20] A reasonable decision must be based on reasoning that is both rational and logical. A reviewing court must be able to discern an “internally coherent and rational chain of analysis” (*Vavilov* at para 85). In this instance, the Officer appears to rely on the recitation and summary of the documentary evidence to support the conclusion that discrimination does not rise to the level of persecution. While there will undoubtedly be circumstances where a simple recitation of the evidence will allow a reviewing court to discern the rationale underpinning a conclusion, this is not the case in this instance.

[21] The Officer has found that single divorced women face discrimination in multiple contexts within Indonesian society, discrimination that affects access to basic needs and services. Some explanation as to why this discrimination, individually or cumulatively, does not rise to the

level of persecution is required to assess the reasonableness of the conclusion reached. I acknowledge that the Officer does reference the absence of any “problems in Indonesia at the time of [Ms. Fatimah’s] extended visit.” However, this fact does not assist in understanding the overarching logic supporting the conclusion that discrimination in this instance does not rise to the level of persecution, a conclusion that is central to the issues that were before the Officer.

[22] In my view, the absence of an explanation or analysis supporting the Officer’s conclusion that discrimination does not rise to the level of persecution in this instance renders the Officer’s conclusion unreasonable.

VII. Conclusion

[23] The Application is granted. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-7711-19

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct Respondent;
2. The Application is granted and the decision set aside;
3. The matter is returned for redetermination by a different decision maker; and
4. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7711-19

STYLE OF CAUSE: FATIMAH FATIMAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JULY 14, 2021

JUDGMENT AND REASONS: GLEESON J.

DATED: AUGUST 16, 2021

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