Federal Court  Cour fédérale

Date: 20220512

Docket: IMM-3742-21

Citation: 2022 FC 704

Toronto, Ontario, May 12, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

ZAHEER AHMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of an immigration officer's (the Officer) decision to refuse his pre-removal risk assessment (PRRA) application. For the reasons that follow, I find the decision to be unreasonable and I would grant the application.

[2] The Applicant, Zaheer Ahmed, is a 60-year-old citizen of Pakistan. He is a Shia Muslim. He arrived in Canada in November 2002 and made a claim for refugee protection on the basis of

a fear of persecution on account of his religion. The Refugee Protection Division (RPD) refused the claim in February 2004, finding that the Applicant could access adequate state protection in Pakistan. The refusal was not challenged.

[3] The Applicant married his current spouse, Najima, in May 2005. A Canadian citizen, she sponsored him in Canada until he became a permanent resident in December 2008. The Applicant's current spouse has three adult sons from a previous marriage. The Applicant considers these three stepsons as his own children. The Applicant also has a sister, and four biological children from his previous marriage, all living in Pakistan. His former spouse is deceased.

[4] According to the Affidavit submitted in support of the Applicant's PRRA, in the summer of 2009, two of the Applicant's stepsons alleged that they were sexually assaulted by their paternal uncle in Canada. The Applicant, his wife and their sons gave statements to the police and the uncle was arrested and charged.

[5] However, before the trial, members of the uncle's influential family in Pakistan threatened to kill the Applicant's biological children in Pakistan, as well as his wife, who was in Pakistan at the time, if they testified in the trial. They did not attend the trial and later, the Applicant's wife recanted her allegations against the uncle and claimed they had been fabricated by the Applicant and that he had pressured her sons to lie.

[6] Charges were ultimately dropped against the uncle and the Applicant was charged and pleaded guilty to obstruction of justice and mischief. The Applicant claims that as a result of these circumstances, his family (through marriage) in Pakistan, which he claims has ties to organized crime, has threatened him, his wife, and his children in Pakistan.

[7] During his years in Canada, the Applicant committed a series of offences. In 2012, he was found to be inadmissible on the basis of serious criminality for receiving a conditional sentence of more than six months, pursuant to s 36(1)(a) of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) (the *Act*). A deportation order was issued in May 2014 and he lost his permanent resident status. For further details regarding the events leading to the deportation order, see *Ahmed v. Canada (Citizenship and Immigration)*, 2022 FC 618 at paras 2-9).

[8] The PRRA application, which forms the subject of this judicial review, was received in June 2014, and additional submissions were received in July 2014, December 2014, January 2016, May 2016, April 2018 and February 2020. In it, the Applicant claimed that he meets the definition of a person in need of protection pursuant to s 97(1)(b) of the *Act* on the basis of the risk to his life and of possible torture at the hands of the powerful family and their criminal organization in Pakistan, for which state protection would be inadequate.

I. PRRA Decision under review

[9] In December 2020, the PRRA Officer refused the Applicant's PRRA. In the reasons, the Officer identified the Applicant's fear of returning to Pakistan because of the threats he and his

family had faced from the powerful and influential family, which the Officer acknowledged, in addition to their being influential members of the Muslim League political party.

[10] The Officer noted the Applicant's failed refugee claim and that the determinative issue in the 2004 RPD decision had been state protection.

[11] Turning to the 2020 PRRA under review, the Officer found that the Applicant had not provided evidence of a nexus to any of the Convention grounds identified in s 96 of the *Act* and that the risks identified were described in s 97. The Officer found that insufficient evidence had been provided of the Applicant's personal circumstances to suggest he would be at risk. The Officer concluded in a similar vein with respect to objective evidence, stating: "I find the applicant has provided insufficient objective evidence that state protection in Pakistan has deteriorated to such a degree to challenge the state protection findings of the RPD in 2004".

[12] The Officer then cited two long excerpts, the first from the March 2006 US Department of State (US DOS) Report, and the second from the March 2020 US DOS Report, both detailing a series of challenges faced in Pakistan including discrimination, human rights violations, corruption, and extrajudicial killings. The 2020 excerpt cited a general lack of government accountability and a culture of impunity against government and non-government abuse. The excerpt further detailed that "violence, abuse, and social and religious intolerance by militant organizations and other nonstate actors, both local and foreign, contributed to a culture of lawlessness".

[13] The Officer then concluded the Decision with these final four paragraphs:

> I find is there insufficient objective evidence based on the country documentation to indicate there has been a complete breakdown in Pakistan that state protection would not be reasonably forthcoming. I further note the statements made by the applicant and the documentation on file with respect to what action police initiated when the spouse went to raise her concerns about her safety with the police, while visiting in Pakistan from approximately 2012-2012 also suggest state should be forthcoming should the need arise.
>
> On file is a police report written the Narowal, Pakistan police department dated October 28, 2012 which outlined the incident and it further stated an original of the report would be referred to the Officer in charge for further investigation. The actions taken by police would suggest state protection would be forthcoming.
>
> Finally, the applicant stated that he has returned to Pakistan following the death of his mother and insufficient was presented that the applicant faced any treatment that would rise to the level of 97 of IRPA.
>
> In light of the foregoing, I find the applicants face no more than a mere possibility of persecution as described in section 96 of the Immigration and Refugee Protection Act (IRPA). Similarly, I find the applicants would not likely be at risk of torture, or likely to face a risk to life, or a risk of cruel and unusual treatment or punishment as described in section 97 of IRPA if returned to Pakistan.
>
> [My emphasis].

II. Issues and Analysis

[14] The only issue in this judicial review is whether the Decision is reasonable (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). The Applicant argues that the Decision falls short of that standard, for (1) applying the wrong test for state protection; (2) failing to justify the conclusion that state protection was available and (3) failing to conduct an assessment of the Applicant's particular circumstances.

[15] The Officer begins the state protection analysis by noting that the Applicant had provided "insufficient objective evidence that state protection in Pakistan had deteriorated sufficiently to such a degree to challenge the state protection findings of the RPD in 2004". After then citing the 2006 and 2020 US DOS reports one after the other, and without commenting the content of either excerpt, the Officer concludes that there was "insufficient evidence based on the country documentation to indicate there has been a complete breakdown in Pakistan that state protection would be reasonably forthcoming". There are several problems with this approach.

[16] First, the Applicant was not challenging or appealing the RPD's 2004 finding, nor was he required to do so, or to lead evidence of any sort of deterioration: this was, after all, not an appeal of the 2004 findings of the RPD. Indeed, the PRRA application was based on new allegations of risk that were not before the RPD, namely, the dangers posed to the Applicant and his family in Pakistan by an influential family with ties to organized crime. Certainly, it was open for the Officer to consider how country conditions in Pakistan had changed since 2004, for better or worse, and the Officer was free to rely on the RPD's 2004 findings. However, such considerations and findings would only be appropriate to the extent that they are relevant to the risk assessment that the Officer was required to conduct in 2020, over fifteen years later.

[17] The Respondent counters that the 2006 and 2020 US DOS Report excerpts represented an implicit point made by the Officer that there was insufficient evidence to show the democratically elected government ruling Pakistan in 2020 provided state protection at a level lower then when General Musharraf was ruling Pakistan in 2004.

[18] I am not prepared to draw such an inference. More importantly, and even if I were, it is not clear to me in the absence of any transparent justification from the Officer, why one regime's supposed capacity to protect Shia Muslims from religious and political persecution has anything to do with a subsequent regime's ability to protect an individual from a risk to his life posed by an influential family with ties to organized crime. As such, and in light of the Officer's remark, it is not clear to me what evidentiary standard the Officer was expecting the Applicant to meet, or why the RPD's 2004 findings were influential to the Decision based on a completely different risk than had been before the RPD over fifteen years earlier.

[19] Second, the language of "complete breakdown" used by the Officer, read in context, is also problematic (see underlined extract of the Decision reproduced in paragraph 13 above). It suggests the Officer may have confused the Applicant's burden of proving that Pakistan was either unable or unwilling to provide him protection (see *Magonza v. Canada (Citizenship and Immigration)*, 2019 FC 14 at para 72 [*Magonza*]) with a requirement to prove that the state apparatus had completely broken down (see *Canada (Attorney General) v. Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 at 724-725). The Applicant was required to rebut the presumption of state protection to be sure, but this did not, as the Decision seems to imply, require him to demonstrate a complete breakdown in Pakistan.

[20] The Respondent counters that the Court should not place too much attention on the turn of phrase "complete breakdown", particularly considering the Officer's subsequent comments. The Respondent points to the Officer's remarks regarding the 2012 Pakistani police report to the effect that police responsiveness to the Applicant's wife's complaint "suggest state protection

would be forthcoming". The Respondent adds that the Applicant's family in Pakistan were clearly not so powerful that the Narowal police were unwilling to name several of them in a police report. The Respondent also highlights that there were inconsistencies between the police report and Affidavit evidence regarding the 2012 incidents as described by the Applicant's wife.

[21] While I agree that the Court should not focus on the language employed to the point of abstracting the actual reasons of the Officer, or in isolation without considering the decision as a whole, neither am I inclined to accept the additional justifications for the decision provided by the Respondent, which appeared nowhere in the Officer's reasons. Under *Vavilov*, the Court must be attentive to the justification that was given, not the one that could have been (*Vavilov* at para 86).

[22] Indeed, the Officer's actual analysis, which essentially consists of the four paragraphs cited at paragraph 13 of these Reasons, is not as transparent or justified as the Respondent submits. While conciseness can be a virtue in administrative decisions, the balance between brevity and justification surpasses the tipping point, where the reasoning underlying the decision is so short that it becomes unintelligible. Here, I find that the Officer failed to provide adequate justification to explain how the application was assessed according to the appropriate legal standard, namely the operational adequacy of state protection in Pakistan, rather than a "complete breakdown" of state protection. This test is now well known and the failure to apply it renders the decision unreasonable (*Magonza* at paras 73-75).

[23] In both errors outlined above – (i) the failure to justify the significance of the evidence cited in relation to the new allegations of risk, and (ii) the legal test employed – the Officer failed to engage with the central thrust of the Applicant's PRRA submissions. The Applicant had emphasized, relying on a multitude of evidence, the lack of available state protection from what he claims is a powerful, influential and violent family, connected to organized crime in Pakistan, where a culture of lawlessness and impunity prevails. Despite the detailed and precise PRRA submissions of the Applicant, which drew on numerous complementary sources, the Officer only addressed two of the country condition documents in the reasons (the two US DOS reports referenced above from 2006 and 2020), both of which actually support the Applicant's submissions in this regard.

[24] Ultimately, it may have been open to the Officer to explain why, in spite of the objective conditions, the state was nevertheless operationally adequate to provide protection to the Applicant. In other words, the Officer was free to disagree with counsel's comprehensive PRRA submissions and explain why state protection was considered to be adequate, but she was not free to ignore them entirely. The Officer's comment on the fact that a police report was taken may be helpful to supporting such a conclusion, but it would still need to be reconciled and examined alongside the objective country condition evidence that the Officer qualified, without explanation, as insufficient. Such a finding of insufficiency, to be upheld, must be explained (*Magonza* at para 35; *Sarker v. Canada (Citizenship and Immigration)*, 2020 FC 154 at para 11).

[25] Finally, while these errors in and of themselves warrant judicial review, I also agree with the Applicant that the Officer failed to conduct an assessment considering the Applicant's

particularized circumstances, which is required for a state protection analysis (*Lakatos v. Canada (Citizenship and Immigration*), 2018 FC 367 at para 23).

III. Conclusion

[26] For the various reasons outlined above, I find the decision lacked justification, and appears to have misapprehended the legal constraints bearing on the Decision. Accordingly, the matter will be remitted to a new Officer for redetermination.

JUDGMENT in file IMM-3742-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted.

2. The Applicant's PRRA application is remitted to a new officer for redetermination.

3. No question for certification was submitted and I agree that none arise.

4. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3742-21
STYLE OF CAUSE:	ZAHEER AHMED v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 9, 2022
JUDGMENT AND REASONS:	DINER J.
DATED:	MAY 12, 2022

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