Federal Court  Cour fédérale

Date: 20220609

Docket: IMM-6577-20

Citation: 2022 FC 866

Toronto, Ontario, June 9, 2022

PRESENT: Madam Justice Go

BETWEEN:

ZEYNEP YILDIRIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Zeynep Yildirim, seeks judicial review of a refused pre-removal risk assessment [PRRA] by an Officer of Immigration, Refugees and Citizenship Canada [Officer] under s. 96,s. 97(1), and s. 112(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*].

[2] The Applicant is a citizen of Turkey. She claims that she fears arbitrary arrest, detention and torture due to her Kurdish ethnicity, Alevi faith, and association with her Kurdish activist ex-husband Deniz Yildirim [Deniz], as well as honour killing from her ex-husband's family.

[3] In 2010, the Applicant married Deniz, who was targeted by police and arrested multiple times because of his activism in support of Kurdish-Alevi rights. That same year, the Applicant suffered assault at the hands of Turkish police during a detention and interrogation about Deniz's whereabouts.

[4] After Deniz was detained again in 2012, he and the Applicant decided to travel to Canada, where the Applicant's three sisters reside, and made their refugee claim together in November 2012.

[5] From the beginning of their marriage, the Applicant endured emotional, physical, sexual and financial abuse at the hands of Deniz and his family. Deniz continued to abuse the Applicant after they had arrived in Canada. In October 2013, the Applicant's application to separate her refugee claim from that of Deniz was approved. She then amended her Basis of Claim form to include her fear of honour killing at the hands of Deniz and his family in Turkey because she left the marriage. Their divorce was finalized in May 2014.

[6] In March 2017, the Refugee Protection Division [RPD] rejected the Applicant's claim, firstly because there was no evidence of recent threats to her life from Deniz or his family. Secondly, the panel was not persuaded that the Applicant has experienced persecution or serious

harm in Turkey nor that there was a serious possibility she would experience persecution or serious harm should she return to Turkey because of her ethnicity and faith.

[7] The Applicant made an H&C application in April 2017 and a PRRA application in July 2018, which were both refused in March 2019. She applied for leave and judicial review of the refusals. In April 2019, this Court stayed the Applicant's removal pending the outcome of the judicial review. Shortly thereafter, the Respondent consented to have both the H&C and the PRRA re-determined by another officer.

[8] In support of the redetermination of her PRRA, the Applicant filed an affidavit with several attachments, which she submitted was new evidence post-dating the RPD decision containing information capable of disproving findings of the RPD. The Applicant submitted new country condition evidence and argued that the situation for Kurdish-Alevis has worsened since her refugee claim was decided. The Applicant also submitted new personal evidence to demonstrate that she continued to face risks from Deniz's family.

[9] In a decision dated October 29, 2020, the Officer found that country condition evidence was insufficient to indicate a new risk for the Applicant and that there was insufficient new evidence to arrive at a conclusion different to the RPD [Decision].

[10] I grant the application as I find the Officer's treatment of new personal evidence unreasonable.

II. Issues and Standard of Review

[11] The Applicant argues that the Officer erred by: (1) ignoring and misapprehending evidence of similarly situated individuals that post-dated the Applicant's RPD decision; (2) ignoring evidence of the successful RPD claim of the Applicant's ex-husband; and (3) unreasonably treating the new personal evidence.

[12] The parties both submit that these issues are reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[13] 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 that constrain the decision maker" (*Vavilov*, at para 85). The onus is on the Applicant to demonstrate that the decision is unreasonable (*Vavilov*, at para 100). To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

III. Preliminary Issue

[14] The Respondent requests that the style of cause be modified to remove the Minister of Public Safety and Emergency Preparedness. I so order.

IV. Analysis

Did the Officer treat the evidence of new threats unreasonably?

[15] In my view, the determinative issue in this case is whether the Officer treated the new personal evidence unreasonably.

[16] The new personal evidence submitted by the Applicant and the Officer's findings with respect to such evidence are summarized here:

a) The Applicant submitted a screenshot of the death threat sent to her by her former brother-in-law via Facebook in July 2017. The Officer found that there was insufficient evidence to substantiate the origins of this message and, in the alternative, that there was insufficient evidence to establish whether the Applicant reported the threat to authorities or to Facebook.

b) The Applicant submitted a sworn statement from her sister alleging that in September 2017, the Applicant's former brother-in-law and his nephew, who is a police officer, forced their way into the Applicant's sister's home and assaulted their brother. The Applicant's sister witnessed the assault. The Officer found it unclear why the Applicant's former in-laws resumed threats against her after many years, and concluded that there was a scarcity of details on whether the assault was reported to the authorities or whether the Applicant's brother sought medical treatment.

c) The Applicant alleged that her sister continues to receive anonymous calls and believes they are from her ex-husband's family. The Officer observed a scarcity of information to elaborate on the nature, timings and frequencies of such calls, and concluded there was insufficient evidence to connect the calls to a forward looking risk for the Applicant.

[17] The Applicant disputes the Officer's treatment of (a) the Facebook message from her former brother-in-law and (b) her sister's sworn statement. The Respondent, on the other hand, argues that the Officer considered each piece of evidence and provided sound reasons for why it did not establish that the Applicant meets the requirements of s. 96 or s. 97 of the *IRPA*.

[18] I agree with the Applicant's argument that the Officer's treatment of the new personal evidence was unintelligible.

[19] As a starting point, I note that in response to the request from the Applicant's counsel for an oral hearing, the Officer stated in the reasons for the Decision:

> In this regard, I find that after having reviewed counsel's submissions, I have no issues with the documents or the credibility of the submissions, including the applicant's written testimony, accordingly I find a hearing is not warrant[ed].

[20] While the Officer may have made this statement in response to counsel's request for an oral hearing, the Decision made clear that the Officer had "no issues" with the documents or the credibility of the submissions, including the applicant's written testimony. Yet contrary to this statement, the Officer took issue with the former brother-in-law's Facebook message, finding there was "insufficient evidence to substantiate the origins of [the] message."

[21] The Applicant argues, and I agree, this finding was unreasonable as the screenshot of the message shows a date stamp and the full name of the Applicant's former brother-in-law. The Officer did not consider either of these aspects, nor the Applicant's affidavit explaining the receipt and retrieval of the Facebook message. Since the Decision indicated that the Officer had

"no issues" with the Applicant's written testimony, and since the said testimony explained the origins of the Facebook message, I find the Officer unreasonably concluded the evidence about the origins of the message was "insufficient" without saying what was insufficient about it.

[22] While the Respondent argues anyone could have created the Facebook account, that was not the basis of the Officer's rejection of the evidence. Moreover, if that were indeed the reason why the Officer rejected this evidence, that reason would have contradicted the Officer's own statement that they had "no issues" with the credibility of the documents submitted by the Applicant. Such a contradiction would still have rendered the Decision unintelligible.

[23] As to the Officer's alternative finding that there was insufficient evidence that the threatening message was reported to the authorities or to Facebook, I agree with the Applicant that the finding was both unreasonable and irrelevant.

[24] The Officer did not explain why the fact that Facebook has "reporting mechanisms for abusive matters including death threats" would be of any relevance in assessing the risks faced by the Applicant should she return to Turkey.

[25] More to the point, I agree with the Applicant that whether she reported the threatening message to Facebook does not change the fact that she received a death threat from her ex-husband's family after the RPD decision. The Facebook message was submitted by the Applicant to counter the RPD's finding that her ex-husband's family has not taken interest in her since

2014. The Officer relied on the RPD findings in their Decision, yet failed to take into account the very evidence that contradicted the RPD's findings. In so doing, the Officer clearly erred.

[26] The Respondent argues that the Officer's assessment was reasonable as the message was unclear on its face. The Respondent points out that, for instance, the message refers to the Applicant "divorcing our son" although it purports to be from the Applicant's brother-in-law. Once again, I reject the Respondent's argument as the Decision made no mention about the "content" of message being unclear as the reason for rejecting the evidence. Instead, it referred to insufficient evidence about its "origins."

[27] The error as noted above, in my view, tainted the Decision to such an extent that I cannot conclude the Officer would have reached the same conclusion regardless of the error, given the indication that the Officer may have held veiled credibility concerns which were not put to the Applicant. As such, I need not address whether it was reasonable for the Officer to consider the Applicant's lack of action to report the incident to the authorities as an alternative basis for rejecting her PRRA.

[28] Turning now to the sworn statement by the Applicant's sister, the Officer acknowledged the information found in the statement regarding the alleged assault by the former brother-in-law but ultimately concluded there was "a scarcity of details" to indicate whether the assault was reported to the authorities or whether the Applicant's brother sought medical treatment.

[29] I find the Officer's findings missed the mark. As the Applicant points out, and I agree, the statement was submitted to demonstrate that Applicant's ex-husband's family has an ongoing interest in harming her which, if accepted, could have overcome the opposite conclusion of the RPD. Whether or not the Applicant's family sought state protection following this incident does not change the evidence of an ongoing interest in causing her serious harm, particularly given the Officer insisted that they had "no issues" with credibility of the evidence.

[30] The Respondent argues that it is reasonable for an officer to refer to the absence of corroboration, according to *Arsu v Canada (Citizenship and Immigration)*, 2020 FC 617 [*Arsu*], at para 37. The Respondent also cites *Haji v Canada (Citizenship and Immigration)*, 2018 FC 474 [*Haji*] at paras 19-32, in which the Officer reasonably "found the wife's affidavit to have little probative value — without considering credibility — because of lack of detail, lack of corroboration, and her interest in the PRRA" (at para 22). The Respondent argues that the Applicant has not discharged the burden of proof, which simply means that she has not provided sufficient evidence to support the proposition advanced on a balance of probabilities.

[31] I reject the Respondent's submission for three reasons.

[32] First, the sister's sworn statement about the incident in September 2017 – and other incidents of harassment – was quite detailed. Specifically about the September 2017 attack, the statement described the date and time of the event, who came to their house, what the former brother-in-law said and did, and how their family members responded to the assault. *Haji* can be

distinguished as there was much more detail contained in the sworn statement by the Applicant's sister in this case.

[33] Second, as I found in *Darville v Canada (Minister of Citizenship and Immigration)*, 2022 FC 476 [*Darville*], an Officer erred by faulting the applicant for not submitting medical documents to collaborate his statement that he was injured after being chased by a gang, when there was no information that the applicant required medical treatment due to the injury. As I noted in *Darville*:

> [20] The Applicant points out that the Officer made no specific finding of credibility, but "seems committed to making the case one of sufficiency" rather than implausibility or credibility. The Applicant submits that the Officer must be aware that they cannot make a credibility finding without putting questions to the Applicant, and thus demanded corroborative evidence instead of directly challenging the veracity of the Applicant's evidence. The Applicant points to *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 [*Senadheerage*], in which Justice Grammond summarized the case law on when a decision maker can require corroborative evidence:
>
> > [36] To summarize, a decision-maker can only require corroborative evidence if:
> >
> > 1. The decision-maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant's credibility, implausibility of the applicant's testimony or the fact that a large portion of the claim is based on hearsay;
> > 2. The evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it.
>
> [21] While *Senadheerage* concerned a refugee decision, the case has been followed in the PRRA context as well: *Nadarajah v Canada (Citizenship and Immigration)*, 2022 FC 171 at paras 13, 16.

[22] In *Onyekweli-Ugeh v Canada (Citizenship and Immigration)*, 2021 FC 1138, I looked to Justice Norris' analysis in *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1207 [*Ahmed*] for guidance in distinguishing between "sufficiency" and credibility at para 31:

> [31] ...whether the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application for protection. If they would not, then the PRRA application failed, not because of any sort of credibility finding, but simply because of the insufficiency of the evidence. On the other hand, if the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application and, despite this, the application was rejected, this suggests that the decision maker had doubts about the veracity of the evidence. ...

…

[25] Instead of addressing whether these statements, if accepted, would justify the granting of the Applicant's PRRA, the Officer stated that the Applicant "failed to provide objective documentary evidence in support of his statements. For example, I note photographs of the house, invoices/receipts for renovations and repairs, or police reports have not been brought forward."

[26] I agree with the Applicant that it is not clear why the Officer wanted to see pictures of the home, when he had provided several statements, both sworn and unsworn, from himself and family members stating that the house had been taken over by the Gang. With respect to the repair bills that the Officer noted were lacking, the Applicant submits, which I accept, that nowhere in the evidence did he advise that he had done any repairs -- rather, he had submitted that the house was in an unlivable state.

[27] By suggesting that the Applicant failed to provide "objective" documentary evidence, it would appear that the Officer was doubting the veracity of the Applicant's claim, as opposed to making a finding of sufficiency of evidence, in the face of the evidence that was put before him.

[28] *Senadheerage* confirms that, in a case such as this, the Officer should have set out an independent reason for requiring corroboration, and provided the Applicant an opportunity to submit the evidence that the Officer assessed to be missing. That the Officer failed to do so made the Decision unreasonable.

> [29] The Officer committed a similar error when he stated that the Applicant had not provided medical documents to corroborate his claim that he injured his back falling down a hill after being chased by the Gang, even though there was no information about whether the Applicant required medical attention as a result of the fall.

[34] Unlike *Arsu*, no adverse credibility finding was made by the RPD in this case. On the contrary, in addition to the positive credibility finding by the RPD, the Officer also made a favourable credibility finding about the documentary evidence provided by the Applicant. Notwithstanding such a positive finding, the Officer went on to reject the evidence due to a lack of corroboration without stating why, contrary to *Senadheerage.*

[35] My third reason for rejecting the Respondent's argument is that there was evidence before the Officer that one of the aggressors was a police officer. In addition, there was evidence in the sister's sworn statement that she had previously called the police about the harassment they were subject to, but was advised that because "no one has died or got injured" the police could not intervene. The Officer made no reference to such evidence before concluding there was "a scarcity of details to indicate whether or not such assault was subsequently reported to the authorities." The Officer's failure to refer to evidence that could have addressed the Officer's concerns rendered the Decision unreasonable.

V. Conclusion

[36] The application for judicial review is allowed and the matter is referred back for redetermination by a different decision maker.

[37] The style of cause is amended to remove the Minister of Public Safety and Emergency Preparedness.

[38] There is no question for certification.

JUDGMENT in IMM-6577-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is referred back for redetermination by a different decision maker.
3. The style of cause is amended to remove the Minister of Public Safety and Emergency Preparedness.
4. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6577-20
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