Federal Court  Cour fédérale

Date: 20220713

Dockets: IMM-1982-21
IMM-2439-21

Citation: 2022 FC 1032

Ottawa, Ontario, July 13, 2022

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

SELVIN EDGARDO PAZ MEJIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Selvin Edgardo Paz Mejia, applies for judicial review for two decisions by Immigration, Refugees and Citizenship Canada ("IRCC").

[2] The first (Court File # T-1982-21) is a decision by a Senior Immigration Officer rejecting the Applicant's Pre-Removal Risk Assessment ("PRRA") application on December 21, 2020 ("PRRA Decision"). The second (Court File # T-2439-21) is a decision by the same Senior Immigration Officer refusing the Applicant's application for a permanent residence ("PR") from within Canada based on humanitarian and compassionate ("H&C") grounds on March 30, 2021 ("H&C Decision"). On April 26, 2022, Justice Gascon ordered that both files be heard consecutively on July 5, 2022.

[3] Both files are based on the same facts and were made by the same decision-maker on September 29 and October 19, 2020. Most of the Applicant's arguments for the unreasonableness of each Decision overlap. Therefore, I will address both Decisions in the foregoing reasons.

II. Background

[4] The Applicant, Selvin Edgardo Paz Mejia, was born in San Pedro Sula, in the Republic of Honduras ("Honduras") on October 3, 1983.

[5] In May 2015, the Applicant opened an internet café in San Pedro Sula. Four months later, in September 2015, the Maras 18 – a notorious local criminal group – visited the Applicant's café, threatened him with guns and told him that he would have to make weekly payments in order to maintain his business open and his family safe. The Applicant complied, however he filed a police complaint two months later, on November 18, 2015. When they became aware of the police complaint, the Maras 18 once again threatened to kill him and his family.

[6] The Maras 18 responded with the same threats after the Applicant made a second police complaint on January 22, 2016. After his third police complaint of April 21, 2016, the Maras 18 hit him and destroyed some of his computers, and the Applicant had to get stitches at the hospital. Following this third altercation, the Applicant filed his fourth police complaint and decided to leave Honduras because he felt unsafe there. He went into hiding for a few months until he could gather enough money to leave on August 19, 2016. In September 2016, his aunt made a complaint with the National Human Rights Commission of Honduras.

[7] On October 15, 2016, the Applicant entered Canada through the United States and made a refugee claim in December. In his narrative for his refugee claim, the Applicant alleges that he fears for his life from the Maras 18. Before the Refugee Protection Division ("RPD") hearing, the Applicant amended his Basis of Claim ("BOC") in order to add information provided by his aunt, that two men had approached her to ask for information regarding the Applicant and told her that they would kill him. The Applicant also filed a letter from a neighbour stating that the Maras 18 were still looking for him.

[8] On February 28, 2017, the RPD refused his refugee claim based on credibility issues. The Applicant appealed to the Refugee Appeal Division ("RAD"), which overturned the RPD's credibility finding but maintained the RPD's decision. The RAD found that the Applicant is not a Convention refugee because the Maras 18's acts are not of the nature of persecution but of criminality, which is not a nexus for the purposes of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"). The RAD also found that the Applicant is not a person in need of protection under section 97 of the IRPA because "the evidence is overwhelming that

the risk of extortion is generally faced everywhere in Honduras by a substantial proportion of the population, specifically, business owners." On March 14, 2018, his application for leave for the judicial review of the RAD's decision (IMM-5216-17) was dismissed.

[9] On November 5, 2018, the Applicant was scheduled by Canada Border Services Agency ("CBSA") for an interview on November 22, 2018. On December 6, 2018, the Applicant filed a PRRA. In addition to his refugee claim, the Applicant submitted additional documents, including a police report of a September 2018 Maras 18 attack on the Applicant's cousin. The Applicant made additional submissions on January 18 and 22, 2019, including a police report of a September 2018 Maras 18 attack on another of the Applicant's cousins.

[10] On January 18, 2019, the initial PRRA application was refused. On October 28, 2019, the Applicant filed an application for leave and for judicial review before this Court (IMM-6479-19). The same day, the Applicant made an application for PR from within Canada based on H&C grounds. Three days later, the Applicant also made a request for IRCC to reopen and reconsider the refused PRRA application.

[11] On November 6, 2019, Justice Diner issued an order staying the removal in the IMM-6479-19 file for judicial review of the initial PRRA application. On February 18, 2020, the application for judicial review of the initial PRRA decision was discontinued following a settlement between the parties. On May 22, 2020, and again on July 30, 2020, counsel for the Applicant sent additional submissions to IRCC for the PRRA redetermination. The July 30, 2020 email requested that a different officer make a new determination since, only eight (8) days after

the notice of discontinuance of the judicial review before this Court, a determination was made before receiving updated submissions, in contravention of the terms of the settlement agreement.

[12] On July 12, 2020, the Applicant was charged under the following sections of the *Criminal Code*: (1) 320.13(1) dangerous operation, (2) 320.14(1)(a) operation while impaired, (3) 264.1(1)(a) uttering threats-cause death of bodily harm, and (4) 320.15(1) failure or refusal to comply with demand. No further information was filed by the Applicant regarding the charges.

[13] On September 29, 2020, counsel for the Applicant filed further additional submissions for the H&C Application, including an affidavit by the Applicant, a sworn statement by two second cousins of the Applicant's, an expert affidavit from Elizabeth Kennedy, and the Applicant's open work permit in Canada.

[14] Counsel for the Applicant requested that both the PRRA and H&C Applications be considered by the same officer, relying on the same record of evidence. That is what occurred.

[15] On December 21, 2020, the PRRA Application was refused. On March 16, 2021, counsel for the Applicant filed additional submissions for the H&C Application, including articles and reports on the current state of protection by Honduran authorities.

[16] On March 30, 2021, the H&C Application was refused by the same Officer who refused the PRRA Application ("Officer"). The H&C Decision includes the reasons for the refusal, written on January 4, 2021, as well as an addendum with the reasons for the March 30, 2021

decision to maintain the refusal after a reconsideration of the H&C Application with the Applicant's additional submissions made on March 16, 2021 (together, "H&C Decision"). The Applicant applied for leave and judicial review before this Court on April 13, 2021 (the Applicant initially made two separate applications for both decisions but on June 24, 2021. Justice Furlanetto ordered that IMM-2439-21 and IMM-2440-21 be consolidated into a single IMM-2439-21 file).On April 26, 2022, Justice Gascon ordered that I hear both files consecutively.

III. Issues

[17] The issues are:

A. Is the Officer's PRRA decision reasonable?

B. Is the Officer's H&C decision reasonable?

IV. Standard of Review

[18] The applicable standard of review is reasonableness.

[19] As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], at paragraph 23, "where a court reviews the merits of an administrative decision … the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness." I see no reason in this case to deviate from this general presumption. As such, the standard of review in this case is that of reasonableness.

[20] In conducting reasonableness review, a court is to begin with the principle of judicial restraint and respect for the distinct role of administrative decision-makers (*Vavilov* at para 13). When conducting reasonableness review, the Court does not conduct a *de novo* analysis or attempt to decide the issue itself (*Vavilov* at para 83). Rather, it starts with the reasons of the administrative decision-maker and assesses whether the decision is reasonable in outcome and process, considered in relation to the factual and legal constraints that bear on the decision (*Vavilov* at paras 81, 83, 87, 99). A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the administrative setting, the record before the decision-maker, and the submissions of the parties (*Vavilov* at paras 81, 85, 91, 94-96, 99, 127-128).

V. Analysis

A. *Analysis of the PRRA Decision*

(1) Test for State Protection

[21] The Applicant submits that the Officer applied the incorrect legal test for the analysis of the availability of state protection. The Applicant argues that the Officer focused on the "efforts" made by the Honduran government and authorities in fighting gang crime and violence (the type of threat the Applicant would face in Honduras) instead of analyzing the "adequacy of that protection at the operational level" (in the Applicant's words).

[22] In addition, the Applicant submits that the Officer erred by focusing their analysis on the availability of investigative and complaint processes and police protection for citizens under threat from gangs in Honduras. In doing so thereby failing to appreciate the Applicant's submissions that, in his circumstances, using these processes and official protections led the Maras 18 to consider him as a perceived informant, threatening him even more violently and attacking his family. The Applicant relies on paragraphs 33 and 35 of *Ademi v Canada (MCI),* 2021 FC 366, but distinguishes his situation with that of Mr. Ademi. The distinction being that in the Applicant's case, the Officer's error is even more apparent and important. The Applicant argues it is more apparent and important considering that the police complaints were the reason for the Maras 18 to intensify their threats and led to the Applicant adding another risk profile to their claim that of a perceived informant.

[23] Furthermore, the Applicant submits that the Officer made a reviewable error by failing to appreciate the Applicant's submissions and by ignoring evidence that contradicts their finding that state protection is available in Honduras, which is the most central element of the PRRA Application and of the Officer's PRRA Decision. The Applicant argued that this is discerned by the fact that the objective documentation submitted by the Applicant includes a more recent (2019) version of the Freedom House's *Freedom in the World Report: Honduras* quoted (2017 and 2018) by the Officer. The Applicant asserted that the Officer is "cherry-picking" information from the objective documentation and relies solely on the excerpts that support their conclusion that state protection is available in Honduras.

[24] In a PRRA, the onus is on the Applicant to demonstrate that, on a balance of probabilities, he would more likely than not be personally subjected to a danger of torture or a risk to life or cruel and unusual treatment or punishment (IRPA, sections 96, 97, 112; *Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1; see also *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at paras 49-52).

[25] I agree with the Applicant that "the test for state protection requires an assessment of the adequacy of the protection at an operational level, not whether the state is making efforts to protect its citizen" (*Paul v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 687, referring to *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 38). However, I agree with the Respondent that the Applicant bore the burden to demonstrate that this protection was inadequate or not available to him, and that the Officer reasonably found that the Applicant failed to do so, relying on a reasonable analysis of documentary evidence.

[26] Contrary to the Applicant's argument, I do not find the Officer only considered efforts made by the state to the exclusion of whether there is adequacy of the protection from an operational level. Although I agree with the Applicant that synonyms of the word "efforts" were often used by the Officer and that their analysis could have included language that is more tailored to the "operational" "adequacy" of state protection. However, in reading the PRRA Decision as a whole, it is clear that the Officer analyzed the objective and personal documentary evidence regarding state protection with the operational adequacy of state protection in mind. As further explained below, this reasoning can be followed without a decisive flaw in rationality or

logic. Neither do I find that the Officer ignored any evidence filed by the Applicant. I am not satisfied that the Applicant showed a shortcoming in the Officer's analysis of state protection that would be "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[27] The Officer reviewed the objective country condition documents extensively and found that crime and gang violence are still an issue in Honduras. As well, the Officer stated: "I am also mindful that impunity and corruption continues to prevalent, and I recognize that the judiciary and law enforcement are far from perfect in Honduras." The Officer does not cherry-pick only the "efforts made" by the state but does a thorough evaluation of the risks the Applicant would face today if he returned to Honduras. The Officer found that the state was committed to making police reforms and that "the Special Commission for Purging and Transformation of the National Police has been successful in continuing to remove thousands of corrupt police officials." From this, the Officer inferred that there is an ongoing commitment regarding corruption and found that "the above noted documentary research supports that the government of Honduras has made continuous efforts to combat violence including the arrests of Maras leaders and the dismantling of criminal organizations."

[28] In considering the argument that the Officer erred in referring to the 2017 and 2018 annuals of the Freedom House report instead of the submitted 2019 version, I reviewed and compared the three annuals of this report. All three years' reports are remarkably similar and Honduras received the same rating in 2018 and 2019 The only relevant difference is that the 2019 report mentions removal of corrupt police, officials, and politicians, and that the Mission to

Support the Fight against Corruption and Impunity in Honduras (“MACCIH”) and Fiscal Unit against Impunity and Corruption (“UFECIC”) show some success. It is notable that the Maras 18 is not even mentioned in these reports. I do not see a reviewable error by the Officer in not mentioning the 2019 report given it provides no information that would have been more probative for the operational level other than showing more arrests of corrupt officers and government corruption.

[29] In making this finding on state protection, the Officer concluded that, though the Applicant provided proof that he engaged the authorities by filing complaints to the police, he did not provide evidence regarding the absence of actions by the authorities following the filing of these complaints. The Officer reviewed the evidence and found that the Applicant’s statement that he did not feel protected by the Honduran authorities was insufficient evidence, as was the objective evidence regarding his assumption that Maras 18 members were aware he had denounced them through the police. The Officer noted that different authorities and entities accepted his and his aunt’s denunciations regarding his issues with the Maras 18, and even forwarded his aunt’s to a higher level. The Officer found this to show that public matters (here, complaints about the Maras 18) would be escalated by the authorities.

[30] The insufficiency of the evidence was evident in that the Applicant did not provide evidence of what happened to the then four-year-old complaint. A detailed review of the Certified Tribunal Record (“CTR”) shows that the Applicant’s and his aunt’s filed police reports were accepted and considered by the police. For example, the CTR includes a submitted certification in which the Deputy Police Commissioner of the Metropolitan Preventive Unit No 5

in San Pedro Sula details that the Applicant came in on June 18, 2016 and reported what happened to him. However, the certification includes no follow up as to what occurred to the complaint, and the Applicant did not submit any other evidence to that effect. The CTR also includes a case transfer on November 30, 2018 of a denunciation report by the Applicant's cousin, Dunia Mejia, stating that "unknown men are demanding her to pay a sum of money, saying that if she does not pay the 'rent' they will kill her family." This means that the denunciation was considered and found to properly be transferred to be resolved by the Fuerza Nacional Antiextorsion-Counter Extortion National Force.

[31] Once again, there is no evidence of what occurred after this report. The last example is a report by the National Police General Division Preventive Police National Division in which an Officer for Attention to Citizens certified that on September 15, 2018 Dunia Mejia reported being threatened by men with firearms who are extorting her, having had to move multiple times, that the Applicant also had problems with them and had left the country, and that she recounted stories from the neighbours that men they believe to be Maras 18 are looking for him. This last point is, of course, vague hearsay, but the Police Officer included all of these details in his report. Here again, there is no evidence of what occurred after it was reported to the police.

[32] The evidence the Applicant relies on to counter the Officer's finding is that there is a sworn declaration from Maira Morales, another aunt of the Applicant, that says "My nephew and I went on different occasions to the police and asked them to take our personal reference of identification but they told us that it was no use in taking that information since, the bosses of the

superior authorities ignore it and it was like wasting time. Because the police constantly reviewed denunciations every day." He argued that there was sufficient evidence.

[33] Contrary to the Applicant's argument, and in conformity with the Officer's findings, I find this evidence shows, as the other evidence does, that the police did file those reports and take complaints. Thus, it was reasonable for the Officer to find that the police did take the reports and that there is no evidence filed of any response or follow up. Thus it was reasonable for the Officer to find insufficient evidence to demonstrate an absence of actions by the authorities in addressing the Applicant's complaints, or to support the Applicant's statement that he did not feel protected by the Honduran authorities, or his assumption that Maras 18 members were aware he had denounced them through the police.

[34] Throughout the PRRA Decision, I see a careful analysis of the documentary evidence regarding state protection, as well as a detailed look at the evidence provided by the Applicant. From this analysis, it was reasonable for the Officer to find that the evidence to be insufficient to show that the Applicant would be at risk in Honduras today.

(2) The Applicant's Profile as a Returnee or Deportee

[35] The Applicant submits that the Officer erred in not considering his risk profile as an informant (or perceived informant), which profile is recognized by the UNHCR Guidelines. The Applicant states that this profile was clearly set out in his PRRA submissions and that it is the reason for the intensification of the Maras 18's threats and violent interactions with his family in their search for him. Referring to *Vavilov* at paragraph 128, the Applicant submits that the failure

to consider this risk profile is a reviewable error because the Officer failed to consider, or to "meaningfully grapple with", a central issue for his PRRA Application.

[36] Furthermore, the Applicant submits that, although the Officer did address the Applicant's submissions that he as at risk as a deportee, the Officer unreasonably dismissed his evidence and submissions on this topic. The Applicant argued that, in stating that the Applicant had not submitted sufficient objective evidence to demonstrate that deportees are more at risk than the general population, the Officer ignored the expert affidavit filed with the September 2020 supplementary submissions that specifically addressed this topic.

[37] The Officer found:

> Accordingly, I note the applicant has failed to demonstrate that he exhausted all means in place to obtain protection from the Honduran authorities and that on a balance of probabilities he could not avail himself of state protection in the event he required it.
>
> Counsel submits that the applicant would be at risk in Honduras as a returnee. I note counsel also submits that the applicant's combined profile as a deportee and as a previously targeted individual by the Maras increases his risk. I note I have addressed the availability of state protection above pertaining to extortion and the Maras. I acknowledge that there have been reports of some deportees becoming victims of violence in Honduras. However I note that many individuals are returned to Honduras and there is insufficient evidence before me that a significant percentage of them are targeted with violence as defined by section 97 due to being deported from other countries. I do not find the information before me objectively demonstrates that deportees are more likely to become victims of crime or violence compared to the general public of Honduras. While counsel has provided an affidavit from Ms. Kennedy highlighting information on US deportees, I find there is insufficient evidence that, on a balance of probabilities, the applicant will personally be targeted as a returnee.

[38] Here too, the Applicant's argument must fail. The Officer once again reasonably found that there was insufficient evidence that he would be personally targeted as a returnee. This determination was made after a review of the evidence, including an acknowledgement of some victims being returned from the USA but not evidence related to being deported from other countries. This expert evidence is referred to in a paragraph addressing the risks that the Applicant would face as a returnee. I also disagree with the Applicant that the Officer disregarded the expert evidence regarding the risks faced as a deportee. Rather, the Officer dismissed this objective evidence because there was "insufficient evidence that, on a balance of probabilities, the applicant would be personally targeted as a returnee." The objective evidence was that the Applicant would not be subjected any more that then the general public and the Officer reasonably found there was insufficient evidence to show that the Applicant would be personally targeted as a returnee from Canada.

B. *Analysis of the H&C Decision*

(1) The Objective Documentation

[39] The Applicant presented the same argument as with the PRRA, that the Officer ignored, unreasonably dismissed or discounted, or misapprehended personal and objective evidence submitted by the Applicant on the availability of redress for the Applicant in the form of state protection in Honduras. The H&C and PRRA Decisions include nearly identical analyses of these similar subjects. For the reasons explained above in my analysis of the PRRA Decision, I find that the Officer did not cherry pick, ignore, or misapprehend evidence regarding the availability for the Applicant for redress in the form of state protection in Honduras.

(2) The September 2020 Supplementary Submissions

[40] The Applicant argued that the Officer ignored the September 2020 supplementary submissions because it was not listed or mentioned, as opposed to every other submission. The Applicant submits this shows the unreasonableness of the decision because these September 2020 submissions were crucial in that they included new evidence and submissions regarding the Applicant's risk profile as a deportee.

[41] I disagree with the Applicant that the Officer ignored the expert evidence regarding the risk faced as a deportee in his H&C analysis. As noted above, the Officer's analysis of this expert evidence is explicitly referred to in a paragraph of the PRRA Decision addressing the risks that the Applicant would face as a returnee. As the Respondent submits in a comparison with *Canada (AG) v Clegg*, 2008 FCA 189, it can be inferred from the record and the reasons for the H&C Decision that this expert evidence was considered and thus the failure to refer to this expert evidence is not an error. Though not mentioned in the H&C Decision, the expert report prepared for another matter (as explained above) is of limited additional value to the Officer's finding regarding the availability of state redress. Considering the expert report's limited probative value and the volume of the Applicant's submissions, it is not an error to not explicitly analyze or mention the report in the H and C when the same officer doing the decisions did in the PRRA.

(3) The Applicant's Past Interactions with the Honduran Police

[42] The Applicant submits that the Officer erred by focusing their analysis on the availability of investigative and complaint processes, and police protection, for citizens under threat from gangs in Honduras. In doing so, they submit that they thereby failed to appreciate the Applicant's submissions that, in his circumstances, using these processes and official protections multiple times did not prevent the Maras 18 from making more violent extortions, and even led the Maras 18 to consider him as an informant, threaten him even more violently and attack his family.

[43] As explained above in my analysis of the PRRA Decision, I find no merit in this argument.

VI. Conclusion

[44] I find the PRRA and H&C Decisions to be within the spectrum of reasonability. I dismiss both applications for judicial review.

[45] The parties did not present a certified question and none arose.

JUDGMENT IN IMM-1982-21 AND IMM-2439-21

THIS COURT'S JUDGMENT is that:

1. Both applications for judicial review are dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-1982-21 AND IMM-2439-21
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