

Federal Court



Cour fédérale

Date: 20220713

Docket: IMM-1079-21

Citation: 2022 FC 1034

Ottawa, Ontario, July 13, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

TAMANA WAHEDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] A pre-removal risk assessment [PRRA] decision that assesses an applicant's risk on returning with reference to the wrong country is unreasonable. That is what the officer did in this case. Accordingly, the application will be allowed, and it is not necessary to address the many other grounds raised in this application.

[2] The Applicant, Tamana Wahedi, is a citizen of Afghanistan. The Applicant and her father fled Afghanistan and made refugee claims in Germany. Their claims were accepted on a temporary basis. The Applicant's status was subject to review every three years, while her father's was subject to review every year.

[3] In January 2019, the Applicant's father took her to Canada, ostensibly to visit her sister. The Applicant and her father were issued visitor visas.

[4] After staying in Canada for six months, the Applicant's father told her that they were going to apply for refugee status in Canada. The Applicant and her father made refugee claims in November 2019. They were asked to provide evidence of their lack of status in Germany. The German consulate informed them that the father's status had expired, but the Applicant still had temporary status in Germany until November 14, 2020. The Applicant was unable to make a refugee claim because she had already been recognized as a refugee in Germany.

[5] The Applicant applied for a PRRA in January 2020. On December 29, 2020, the officer issued a negative decision.

[6] The PRRA decision begins by stating that the Applicant is a "citizen of Afghanistan and has Convention refugee status in Germany." After detailing the Applicant's immigration history to Canada, the officer writes:

As the applicant was accepted as a Convention Refugee in Germany, the principle of non-refoulement [sic] applies. The applicant believes she may have lost her status in Germany, nevertheless Germany is the only country of reference.

[7] The Applicant made submissions as to her risk if returned to Germany, and the officer considered them. The officer concluded that the Applicant had not demonstrated “that she has more than a mere possibility of persecution” or that “she will be personally subject to a danger of torture; or a risk of life, or of cruel and unseal treatment or punishment” in Germany.

[8] While the decision may have been unassailable had it been rendered before the Applicant’s status in Germany expired, the decision under review was made more than 6 weeks after her status in Germany expired according to the record before the officer.

[9] In the record is an email to the Applicant’s former counsel from someone in the Legal and Consular Section, Consulate General of the Federal Republic of Germany in Toronto dated November 11, 2019 with the subject line “Validation of Mr. and Ms. Wahedi temporary status in Germany.” It reads, in relevant part:

Tamana Wahedi:

According to the German Residence Section Act, Section 51 the residence title of Ms. Tamana Wahedi has not yet expired. She is still in possession of a valid travel document for refugees issued by German authority which expires on Nov, 14th 2020.

Section 51

Termination of lawful residence; continued validity of restrictions

(7) If a person entitled to asylum or a foreigner whom the Federal Office for Migration and Refugees has incontestably granted refugee status leaves the federal territory, the residence title shall not expire as long as he possesses a valid travel document for refugees issued by a German authority. The foreigner shall have no entitlement to the renewed issuance of a residence title on the basis of his recognition as a person entitled to asylum or by virtue of having been incontestably granted refugee status by the Federal Office of Migration and Refugees if he has left the federal territory

and the competence for issuing a travel document has passed to another state.

[emphasis added]

[10] The Applicant had left Germany and was in Canada. Her temporary status in Germany did not expire so long as she held a valid travel document. As the email indicates, her travel document expired November 14, 2020. Being in Canada on November 14, 2020, the Applicant's temporary status in Germany expired that day.

[11] The Respondent submits that the Applicant's immigration status is a new issue that was not properly raised before the officer and so cannot be raised before this Court. The Respondent submits that the onus was on the Applicant to demonstrate her immigration status to the officer.

[12] Somewhat perversely, the Respondent also points to new evidence submitted by the Applicant that was not before the officer, the admissibility of which the Respondent challenged. I agree that this new evidence is not admissible. The Respondent submits that this new evidence suggests that the Applicant's status may not have expired as she remained in Canada, in part, to care for her father, which is a ground for extension of status. This was not before the officer and is not properly before this Court (see *Henri v Canada (Attorney General)*, 2016 FCA 38 at paras 39–41).

[13] I do not accept the Respondent's submission that this is a new issue.

[14] The evidence before the officer was that the Applicant's status in Germany would expire on November 14, 2020. Contrary to the Respondent's submission, this was made clear in the Applicant's PRRA submissions. While the Applicant's submissions did not extensively discuss this issue, they do state in clear terms that this was when her status would expire. At the time she made her submissions, her status in Germany was not a major issue; it had not yet expired. However, the Applicant's PRRA submissions contain extensive materials on conditions in Afghanistan, which suggests that her expectation was that if the decision were not released by November 14, 2020, these submissions would become relevant and would be considered by the officer. To the extent that the Applicant's status is a "new" issue, it is so only because of the delay in rendering the decision.

[15] This application is allowed. Given the passage of time and changed circumstances, the Applicant shall have the right to file further submissions before her PRRA application is redetermined.

[16] No question was proposed for certification.

JUDGMENT IN IMM-1079-21

THIS COURT'S JUDGMENT is that this application is allowed, the PRRA decision is set aside, the Applicant's PRRA application is to be determined by a different officer, the Applicant is at liberty to file further submissions before it is, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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