Federal Court  Cour fédérale

Date: 20221212

Docket: IMM-3477-21

Citation: 2022 FC 1708

Toronto, Ontario, December 12, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

OMAR FAYEZ MOH'D ALDHAIRAT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant applied for judicial review of a decision made by the Refugee Protection Division (the "RPD") dated April 12, 2021, under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The applicant asked the Court to set aside the decision as unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 563.

[3] For the reasons below, the application is dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of the Hashemite Kingdom of Jordan. He entered into a business partnership with his former brother-in-law. They purchased two trucks, one after the other. The brother-in-law provided the financial capital, while the applicant served as driver of one truck, and later the second, from Jordan to Syria, Iraq and other nearby nations. Their business did not continue after the civil war in Syria closed its borders.

[5] After the business stopped, the applicant claims that his former brother-in-law wanted full repayment of the money (150,000 Jordanian dinar) he advanced to purchase the trucks. The applicant was unable to pay. He claimed to the RPD that his former brother-in-law threatened to kill him if he did not pay the money. He claimed that they were from two different tribes and that his tribe was smaller and less powerful. In addition, his former brother-in-law is a police officer in Jordan. In November 2015, facing the threat to his life from the brother-in-law as the alleged agent of harm, the applicant left Jordan for the United States. He worked there for several years.

[6] The applicant eventually left the United States for Canada. In November 2019, he filed a claim for refugee protection in Canada.

II. The Decision under Review

[7] The RPD heard the claim for *IRPA* protection on April 12, 2021. The applicant testified. At the end of the hearing, the RPD delivered oral reasons concluding that the applicant was not a Convention refugee under *IRPA* section 96 nor a person in need of protection under subsection 97(1).

[8] The RPD held that the applicant's circumstances did not establish a nexus to the protection of the Convention. After hearing his evidence, the RPD was not persuaded that he faced a serious possibility of persecution on Convention grounds in Jordan. The RPD also held that the applicant did not allege that he faced a danger of torture in Jordan.

[9] The RPD found a number of concerns about the credibility of the applicant:

- There was no documentary evidence as to how the sum of 150,000 Jordanian dinar was calculated.
- There was no evidence of any ongoing dispute between the applicant and his former brother-in-law.
- There was no objective evidence of an ongoing and subsisting threat to the applicant.

[10] The RPD noted that when asked why he went to the United States, the applicant declared that he was doing so to earn money to support his family. He did not suggest that he left fearing for his life. The RPD found that he remained in the United States for 4.5 years working without permission and largely without legal status. He did nothing to regularize his status or seek protection in the United States while he was there, claiming that he did not do so due to President

Donald Trump's hostility to Muslim people. The RPD did not find the applicant's explanation to be reasonable because he had lived for 14 months in the United States prior to the start of the Trump administration.

[11] The RPD found that the applicant did not face a threat from his former brother-in-law when he left Jordan in 2015. According to the applicant's oral evidence, he left Jordan for economic reasons. The RPD also found that he did not face such a threat at the time of its decision.

[12] In addition, even if there were a threat to his life, the RPD held that the applicant failed to rebut the presumption of state protection in Jordan. The RPD referred to country reports from Amnesty International, Human Rights Watch and the United States Department of State. The RPD noted that the applicant never made a complaint to police, explaining that his brother-in-law was a police officer himself. However, the only independent evidence before the RPD of that employment was a statement from the applicant's lawyer, which did not refer clearly to how the lawyer knew of that employment. The applicant said he had a photograph of his brother-in-law in uniform but it was not in the record.

[13] The RPD also found that the applicant could not refute the presumption of adequate state protection without approaching the police in Jordan, unless the objective country condition evidence suggested that it would be unreasonable for him to do so. The RPD found that the objective country documentation did not establish that it would be unreasonable for him to make a complaint against his brother-in-law in Jordan.

[14] The RPD found that the existence of adequate effective state protection was dispositive of the applicant's claim under *IRPA* subsection 97(1). The RPD rejected the applicant's claim that he feared the practice of tribal law in Jordan. It found that tribal law was an alternative to civil courts to resolve family disputes involving questions of honour, not an exclusive substitute for courts. The RPD found that the evidence was clear that the applicant had access to legal counsel. There was no evidence to persuade the RPD that he could not have recourse to the civil courts and protection from police in Jordan in response to the alleged threat from the agent of harm.

[15] The RPD therefore rejected the applicant's claim for protection under the *IRPA*.

III. Analysis

A. *Standard of Review*

[16] The parties agree that reasonableness is the applicable standard of review. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61. The Supreme Court's decision in *Vavilov* emphasized the creation of a "culture of justification" in administrative decision-making: at paras 2 and 14. A decision must

not only be justifiable; where reasons are required, the decision must actually be justified, by way of reasons, by the decision maker: *Vavilov*, at para 86; *Canada Post*, at para 28.

B. ***Adequacy of the RPD's Reasons***

[17] The applicant's written submissions argued that the RPD provided "scant reasons" and made "sweeping, and generalized conclusions", without any specific analysis or consideration of the supporting evidence to support its findings against the applicant's claim. At the hearing in this Court, the applicant characterized the alleged inadequacy of the reasons as a breach of the duty of procedural fairness owed to the applicant. The applicant submitted, for the first time, that the RPD's decision appeared "premeditated" and did not consider all of the country condition evidence available to the RPD.

[18] The respondent submitted that inadequacy of reasons was not a standalone basis for judicial review and that, in any event, the RPD's reasons contained a logical chain of reasoning that led to its negative findings.

[19] Since *Vavilov*, the Federal Court of Appeal has held that a reviewing court must be able to discern a "reasoned explanation" for key aspects of an administrative decision: *Alexion Pharmaceuticals Inc. v Canada (Attorney General)*, 2021 FCA 157, at paras 7 and 70. The Federal Court of Appeal stated in *Alexion Pharmaceuticals* that a reasoned explanation has two components:

> • *Adequacy*. The reviewing court must be able to discern an "internally coherent and rational chain of analysis" that the "reviewing court must be able to trace" and must be able to

> understand. Here, an administrator falls short when there is a "fundamental gap" in reasoning, a "fail[ure] to reveal a rational chain of analysis" or it is "[im]possible to understand the decision maker's reasoning on a critical point" such that there isn't really any reasoning at all: *Vavilov* at paras. 103-104.
>
> • *Logic, coherence and rationality*. The reasoning given must be "rational and logical" without "fatal flaws in its overarching logic": *Vavilov* at para. 102. Here, the reasoning given by an administrator falls short when it "fail[s] to reveal a rational chain of analysis", has a "flawed basis", "is based on an unreasonable chain of analysis" or "an irrational chain of analysis", or contains "clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise": *Vavilov* at paras. 96 and 103-104.
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> *Alexion Pharmaceuticals,* at para 12.

[20] Reasoned explanations are adequate when the parties are assured that their main concerns have been heard, the decision maker has shown that it was actually alert and sensitive to the matter before it and the reviewing court can assess, meaningfully, whether the decision maker met minimum standards of legality: *Canada (Justice) v D.V.*, 2022 FCA 181, at para 17 (citing *Vavilov* at paras. 127-128 and *Vancouver International Airport Authority v Public Service Alliance of Canada,* 2010 FCA 158, [2011] 4 F.C.R. 425 at para 16). The decision maker's reasons must be responsive to the central arguments made by the applicant, in that they must grapple with the central issues raised by the applicant and provide meaningful justification: see also *Canada Post*, at para 60 (citing *Vavilov* at para. 127); *Canada (Attorney General) v. Public Service Alliance of Canada*, 2022 FCA 204, at paras 10, 12, 17, 20. A reasoned explanation for a decision may be found expressly, be implied or be implicit in a decision, and in some circumstances may be found outside the reasons themselves: *Canada (Citizenship and Immigration) v Mason,* 2021 FCA 156, at paras 31 and 38; *Alexion Pharmaceuticals*, at para 16.

[21] In the present case, the RPD's oral reasons meet the requirements described in *Alexion Pharmaceuticals* and *D.V.* in that they provided a discernible and adequate reasoned explanation for its conclusions. While the reasons were concise, they contained factual findings made on the basis of the documentary evidence and hearing testimony from the applicant. Having read the transcript of the hearing, I find it clear from the RPD's reasons that the member listened to the applicant's testimony and considered it in the context of his claims for protection and the documents available in the record. The reasons contained conclusions about the applicant's claims under section 96 and subsection 97(1), and about state protection in Jordan.

[22] While the RPD's reasons are not detailed on some issues, that was the nature of this case on the evidence. The RPD focused on what mattered: whether the applicant had proven a nexus to the Convention under section 96 or a threat to him under subsection 97(1). Finding neither, the RPD assessed whether the applicant had rebutted the presumption of state protection in Jordan. He had not.

[23] In my view, the RPD adequately justified its decision having regard to the record before it. There is no basis for this Court to disturb the RPD's conclusions on grounds of inadequate reasons in this case.

[24] The applicant raised a concern about procedural fairness, arguing for the first time at the hearing that the RPD's decision was "premeditated." The respondent objected to the applicant's submissions about a breach of procedural fairness, as the issue had not been raised prior to the hearing. The respondent noted that there was no evidence to support the allegation. This

argument appears to concern bias or reasonable apprehension of bias. The respondent objected to this argument and noted that there was no evidence to support it. I agree that if this argument related to bias (or reasonable apprehension of bias), it should have been raised in writing well before the hearing in this Court: see *Canadian National Railway Company v Canada (Transportation Agency)*, 2021 FCA 173, at para 68; *Taseko Mines Limited v Canada (Environment)*, 2019 FCA 320, at para 47. In any event, the argument cannot be sustained, as the applicant did not support it with evidence: see *Gulia v Canada (Attorney General)*, 2021 FCA 106, at para 17; *Younis v Canada (Immigration, Refugees and Citizenship)*, 2021 FCA 49, at paras 35-37.

C. ***The applicant's claim under section 96 of the IRPA***

[25] The applicant submitted that the RPD erred by failing to assess his claim under *IRPA* section 96. In this Court, the applicant argued that he belonged to a particular social group in Jordan, namely, vulnerable Jordanians who are susceptible to the traditional and vicious tribal practices of self-help justice and honour killings based on revenge. While the applicant recognized that his counsel had "allegedly conceded" the panel's exclusion of his claim from section 96, he submitted it was "immaterial" and his section 96 claim should have been assessed in any event.

[26] In my view, the RPD did not make a reviewable error as alleged. The RPD did not ignore the applicant's section 96 claim. It expressly concluded that after "considering the record, [applicant]'s oral evidence, and Counsel's submissions", it was not satisfied that the applicant faced a serious possibility of persecution on Convention grounds. The RPD stated further that

"[a]fter hearing the [applicant]'s evidence, [it was] not persuaded that the [applicant] faces a serious possibility of persecution on Convention grounds in Jordan. He is not a Convention refugee accordingly." The applicant has not shown that this conclusion was unreasonable because it ignored or failed to account for any material evidence: *Vavilov*, at paras 125-126.

[27] There was a related point that arose at the hearing in this Court. The parties addressed whether the applicant's counsel at the hearing (not counsel on this application) conceded that the applicant had no claim under section 96.

[28] The RPD did raise the application of section 96 at the outset of the hearing. The RPD member stated that his review of the file suggested that there was no nexus to the protection of the Convention and asked the applicant's counsel whether he suggested otherwise. Counsel's answer was: "no, actually I – he and this claim should be reviewed under section 97." The RPD member then addressed the applicant directly and told him that he saw no serious probability of persecution that invited the protection of the Convention and that "your counsel has the same view. So… we won't be looking at that today."

[29] Later, towards the end of the hearing, the applicant's counsel advised that the applicant claimed protection under section 97. Counsel only made submissions about section 97. In those submissions, counsel stated: "… as we stated earlier, that this case should be viewed under section 97".

[30] It is not necessary to determine whether the applicant's counsel formally conceded that he had no claim under section 96. The RPD addressed the matter on the merits, and reached a conclusion under section 96. The applicant's submissions did not demonstrate that, in light of the RPD's findings that there was no reasonable threat to the applicant in 2015 and 2021, nor any dispute with his brother-in-law, the RPD committed a reviewable error by failing to identify grounds for a Convention claim or identify a risk to the applicant in the country condition evidence that the applicant did not raise himself or through counsel.

[31] Accordingly, the applicant's submissions concerning his section 96 claim cannot be sustained.

D. ***The applicant's claim under subsection 97(1) of the IRPA***

[32] The applicant submitted that the RPD failed to properly consider the evidence that supported his section 97 claim, particularly country condition evidence concerning tribal honour killings in the National Documentation Package ("NDP") for Jordan. The applicant set out excerpts from the NDP in his written submissions, which raised issues concerning whether Jordan accommodated customary law that permits tribunal justice to displace civil law. The applicant argued that he would be subject to revenge killing by his former brother-in-law that would be permitted under tribal law and that the state or the civil courts in Jordan would not protect him.

[33] I am unable to accept the applicant's submissions. The RPD made factual findings that the applicant's former brother-in-law did not threaten him and that he left Jordan in 2015 for

economic reasons. It also found that he did not face a threat at the time of its decision in 2021. While the applicant submitted that the RPD erroneously arrived at these conclusions and should have believed his undisputed evidence that the threat occurred (citing *Maldonado v Canada (Minister of Employment & Immigration)* (1979), [1980] 2 FCR 302 (CA)), I agree with the respondent that the applicant's position concerning a threat was inconsistent with his testimony that he left Jordan for economic reasons -- to make money in the United States to support his family following the termination of the trucking business. In my view, it was open to the RPD to conclude that the threat to the applicant did not exist either in 2015 or 2021. It makes no difference to re-label the threat as "economic" owing to the applicant's need to support his family, as the applicant did in answer to a question posed at the hearing in this Court.

[34] The applicant relied on *Asu*, in which this Court found that in light of the evidence of the applicant's injuries and the documentary evidence regarding torture, the RPD committed a reviewable error by failing to conduct a section 97 analysis, "notwithstanding that it found the applicant's story not credible": *Asu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1693, at paras 11-12.

[35] I do not believe that similar reasoning applies in the present case. In *Asu*, the applicant adduced evidence of physical injuries consistent with torture and country condition evidence that Anglophone Cameroonians like Mr Asu were persecuted and imprisoned and that torture was not uncommon. The RPD did not assess the section 97 claim at all: *Asu*, at paras 7, 9, 10-12. In the present case, the RPD found no existing or past threat to the applicant and assessed the claim under section 97. In addition, if the threat from the applicant's brother-in-law did not exist, and

there was no ongoing dispute between them, then there is no factual basis for the applicant's claim that he would be subject to revenge killing, or harsh tribal justice, from which he would not be protected. As such, any perceived error by the RPD in failing to consider the specific country condition evidence now identified by the applicant under section 97 is immaterial to the outcome of this judicial review application.

[36] In any event, the RPD did consider the practice of tribal law and found that it was an alternative to the civil courts and not an exclusive substitute. The RPD referred to three country reports from Amnesty International, Human Rights Watch, and the United States Department of State. The RPD found that the applicant had not rebutted the presumption of adequate state protection. The applicant's written submissions, which contained the excerpts he relied upon from the country condition evidence, have not persuaded me otherwise.

[37] The applicant also challenged the RPD's findings concerning the reports on the basis that it failed to cite and clearly refer to particular passages in them, forcing the applicant to wonder what was the evidentiary basis for the RPD's analysis. The applicant submitted that the RPD was selective and ignored or misapplied the evidence on record on the existence of the tribal justice system in Jordan. I do not agree. The RPD's assessment was sufficient in this case on the issue of whether the applicant had rebutted the presumption of state protection. The passage excerpted in the applicant's written submissions do not show a reviewable error in the assessment of the evidence: *Vavilov*, at paras 125-126.

E. ***Improper Credibility Findings***

[38] The applicant challenged the RPD's credibility findings, on the premise that the RPD essentially just disagreed with the applicant's account of his problems and persecution by his brother-in-law. He argued that the panel's negative credibility assessment was unreasonable and based on implausibility alone. He claimed there was no evidence to contradict his testimony that there was a threat to him. He maintained that his testimony on oath was sufficient evidence and he did not have to provide objective evidence to show the continuing persecution.

[39] The respondent submitted that the RPD provided cogent reasons why it found the applicant to lack credibility, rebutting the presumption in *Maldonado.* The Federal Court of Appeal in *Maldonado* stated that "[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness": at p. 305.

[40] Although the applicant did not refer to specific cases, the Court has held that it is an error to make a credibility finding based on the absence of corroborative evidence alone: *Ndjavera v Canada (Citizenship and Immigration),* 2013 FC 452, at para 6. However, if there is a valid reason to question the applicant's credibility, the RPD may draw a negative inference from a failure to provide corroborative evidence that would reasonably be expected: *Ndjavera,* at para 7. See also *Lawani v Canada (Citizenship and Immigration),* 2018 FC 924, at para 25.

[41] The applicant had the onus to prove his claims for *IRPA* protection under section 96 and subsection 97(1). Insufficient evidence is a valid basis to reject such a claim: see e.g., *Sallai v Canada (Citizenship and Immigration),* 2019 FC 446, at paras 56-57.

[42] In *Barros Barros v Canada (Citizenship and Immigration),* 2022 FC 9, Justice Kane stated:

> Relying on the presumption of truthfulness of a sworn statement does not avoid the need to provide sufficient evidence to support the key elements of a claim for protection. The RPD did not need to doubt the truthfulness of Mr. Barros' testimony to conclude that this testimony was insufficient to establish his claim that he continued to be pursued by Los Urabeños. As noted in *Magonza v Canada (Citizenship and Immigration),* 2019 FC 14 at para 34, "[d]eciding whether the evidence is sufficient is a practical judgment made on a case-by-case basis." In addition, evidence may be found insufficient if it has little probative value, is uncorroborated, or lacks detail (*Ferguson v Canada (Citizenship and Immigration),* 2008 FC 1067 at paras 26–28; *Azzam v Canada (Citizenship and Immigration),* 2019 FC 549 at para 33).

[43] In this case, the RPD did not make an implausibility finding, either explicitly or implicitly. The RPD's reasons did expressly state that the member had concerns about the applicant's credibility, and referred to the absence of evidence on a number of points. However, this is not a case in which the RPD made a negative credibility finding solely on the absence of corroborative evidence of the applicant's claim. In addition to finding insufficient evidence on several points, the RPD also found that on his own evidence, the applicant left Jordan for the United States for economic reasons – to make money to support his family. That conclusion is supported by the transcript of the applicant's testimony**,** which led the RPD directly to the conclusion that the threat to the applicant did not exist. In addition, the RPD did not accept the

applicant's explanation for why he did not seek protection in the United States based on when he arrived in that country.

[44] The RPD's reasons therefore identified two concerns about the applicant's credibility, which were grounded (respectively) in his own testimony and objectively ascertainable facts. Those valid credibility concerns were sufficient to rebut the presumption in *Maldonado*. The RPD's other findings concerned the absence of additional evidence to establish a threat that could have supported a claim for *IRPA* protection.

[45] The applicant has not demonstrated that the RPD made a reviewable error in its analysis on the grounds alleged.

IV. Conclusion

[46] The application is therefore dismissed. Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-3477-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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