Federal Court  Cour fédérale

Date: 20231016

Docket: IMM-7431-22

Citation: 2023 FC 1371

Ottawa, Ontario, October 16, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHAVON MCPHEE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Shavon Mcphee, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") of Immigration, Refugees and Citizenship Canada dated June 21, 2022, denying the Applicant's Pre-Removal Risk Assessment ("PRRA") application pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Officer found that the Applicant provided insufficient evidence of a personalized, forward-looking risk facing him upon return to the Bahamas.

[3] The Applicant submits that the Officer made veiled credibility findings in order to circumvent the requirement to hold an oral hearing for matters relating to credibility, and that the Officer unreasonably granted little weight to the supporting letters provided in the Applicant's PRRA application.

[4] For the reasons that follow, I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 45-year-old citizen of the Bahamas. His spouse is a Canadian citizen. Their son was born in Canada in 2020.

[6] In July 2002, while residing in Florida, United States of America ("US"), the Applicant was convicted and sentenced for one count of conspiracy to engage in trafficking, to wit cocaine and marijuana. He served his prison sentence in Florida from 2002 to 2015, at which point he was deported from the US to the Bahamas.

[7] On April 18, 2016, the Applicant arrived in Canada on a temporary resident permit that was valid for six months. He claims that he left the Bahamas in order to escape the One Order Gang ("OOG"), who are allegedly seeking to kill him and have already killed his son and brother. The Applicant alleges that the OOG want to kill him because they believe that he is an informant for the United States government, due to the time he served in prison in Florida.

[8] The Applicant alleges that after he left the Bahamas for Canada in 2016, members of the OOG shot at his mother's home. He claims that he used an alias upon arrival in Canada because he was afraid of being identified by those associated with the OOG in Canada.

[9] Following the expiry of his six-month temporary resident permit, the Applicant remained in Canada without attempting to regularize his status. On November 8, 2023, the Canada Border Services Agency issued a removal order for the Applicant. The Applicant submitted his PRRA application on November 27, 2021.

[10] In April 2023, the Applicant filed a motion for a stay of his removal to the Bahamas pending the disposition of this application for judicial review of the negative PRRA decision. This Court granted a stay of his removal in an Order dated April 21, 2023.

B. *Decision under Review*

[11] In a decision dated June 21, 2022, the Officer refused the Applicant's PRRA application on the grounds that he provided insufficient evidence to demonstrate a nexus with a Convention ground or a personalized, forward-looking risk in the Bahamas.

[12] In support of his PRRA application, the Applicant provided several letters from individuals stating that they have known the Applicant throughout his life in the Bahamas, obituaries for the Applicant's son and brother, and references to country documentation regarding the situation of ongoing gang violence in the Bahamas.

[13] The Officer first found that the support letters provided by the Applicant, which are not sworn or accompanied by identity documents, do not explain how the individuals know about the connection between the Applicant's incarceration and the killings of his son and brother, do not include the police report allegedly filed by the Applicant's mother after members of the OOG shot at her home, and generally fail to provide sufficient detail about the Applicant's stated risk.

[14] Regarding the obituaries of the Applicant's son and brother, the Officer accepted that the two were killed, but found that the documents failed to establish a connection between their deaths and the OOG.

[15] With regards to the country conditions in the Bahamas, the Officer noted that the referenced country documents highlight the country's ongoing gang violence and excessive use of force by the police. On the basis of this documentation and the Officer's own independent research of publicly available documents, the Officer accepted that the Bahamas has an ongoing issue with criminal activity and gang violence, but ultimately found that the country condition documents also indicate that the state has effective control over security forces, an independent judiciary, and a democratically elected government. The Officer found that the Applicant has a

duty to seek state protection before seeking international protection and that he has provided no evidence of making such efforts in the Bahamas.

[16] The Officer further found that the Applicant provided limited evidence regarding current threats or ongoing risk such that he would face a personalized, forward-looking risk to his safety upon return to the Bahamas. With little information to suggest that his son and brother were killed by the OOG or that a current threat to the Applicant's life exists, the Officer ultimately found that he does not face a risk to life in the Bahamas at the hands of the OOG.

III. Issue and Standard of Review

[17] The application raises the sole issue of whether the Officer's decision is reasonable.

[18] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree. This is also consistent with this Court's review of PRRA determinations: *Lai v Canada (Minister of Citizenship and Immigration) (F.C.)*, 2007 FC 361 at para 55 and *Figurado v Canada (Solicitor General) (F.C.)*, 2005 FC 347.

[19] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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).

Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[20] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

IV. Analysis

[21] The Applicant submits that the Officer's decision is unreasonable on two grounds: 1) that the Officer unreasonably made veiled credibility findings such that an oral hearing ought to have been held; and 2) that the Officer unreasonably assessed the evidence provided in support of the Applicant's application. In my view, the Applicant has not raised a reviewable error in the Officer's decision, which bears the hallmarks of reasonableness as per *Vavilov*.

[22] Firstly, the Applicant submits that the Officer's decision revealed credibility findings regarding central aspects of his claim, which requires that an oral hearing be held, as per section 113(b) of the *IRPA* and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The Applicant submits that the Officer made a veiled credibility finding in finding that the obituaries of the Applicant's son and brother do not contain sufficient

information to connect their deaths to the OOG, and that this finding demonstrates the Officer's concerns about the credibility of the central claim that the OOG killed the Applicant's son and brother, citing this Court's decision in *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 at paragraphs 33-36.

[23] The Applicant submits that if the Officer had credibility concerns regarding this aspect of the Applicant's claim, then section 167 of the *IRPR* would be engaged, which stipulates that an oral hearing must be held if there is evidence raising a credibility issue, the evidence is central to the decision, and whether, if accepted, the evidence would justify allowing the application. The Applicant submits that these conditions are met in this case and the Officer therefore ought to have held an oral hearing on the basis of the credibility concerns. The Applicant submits that the Officer rendered a veiled credibility finding in an effort to avoid holding an oral hearing, citing *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 and *Uddin v Canada (Citizenship and Immigration)*, 2011 FC 1289.

[24] Secondly, the Applicant submits that the Officer failed to properly assess the supporting letters and unreasonably dismissed them on the basis that they were provided by family members, who are inherently biased towards a positive outcome for the Applicant. The Applicant notes that the Officer once again draws a veiled credibility finding from the supporting letters, rather than raise the issue of credibility directly.

[25] The Respondent maintains that the Officer's decision is reasonable in both respects. The Respondent submits that the Officer did not make the Applicant's credibility an issue in the

PRRA assessment and therefore, the conditions to be met for an oral hearing under section 167 of the *IRPR* are not made out. The Respondent submits that the Applicant's subjective belief that the OOG murdered his brother and son and are not targeting him is not reflected in the objective evidence, and his affidavit does not indicate the source of this belief. The Officer is not in a role to speculate about the intentions of the alleged agents of persecution, absent evidence demonstrating this intention. The Respondent submits that any information regarding the source of the applicant's allegations is reasonably found to be vague and unsupported.

[26] The Respondent contends that the Officer's findings are transparently and intelligibly based on the insufficiency of evidence and not on credibility. The Respondent further submits that the presumption of truth attracted by an applicant's sworn evidence does not also create a presumption of sufficiency or satisfactory evidence, and that the Officer is open to find that the evidence that is provided is insufficient to warrant a positive PRRA determination.

[27] The Respondent submits that the remainder of the Applicant's submissions amount to a request that this Court reweigh the evidence that was before the Officer, which is not this Court's role on reasonableness review. The Respondent contends that the Officer's findings are responsive to the limited evidence, which contains little detail regarding the Applicant's stated risk and provides a reasonable basis for a negative PRRA decision.

[28] I disagree with the Applicant's allegation that the Officer made veiled credibility findings by disbelieving his statement that the OOG killed his brother and his son, and by finding that their obituaries do not contain information connecting their deaths to the OOG. In my view, the

Applicant's submission on this point is a mischaracterization of the Officer's reasons, which do not take issue with the credibility of the Applicant's claims or evidence but, rather, the sufficiency of this evidence to corroborate the Applicant's allegation that he faces an ongoing, forward-looking risk in the Bahamas. The Officer states:

> Also provided are obituaries for the applicant's son and brother, and the death registration for the applicant's son. I accept that the applicant's son and brother were killed in the Bahamas, in 2015 and 2011 respectively. However, I do not find that a connection between their deaths and the One Order gang has been demonstrated, on a balance of probabilities, by the supporting documents. I remind that a risk under section 97 of the IRPA must be personalized and forward looking. The applicant's submissions, while dated in the last year, do not provide sufficient detail regarding a current threat for the applicant in the Bahamas, whether in relation to the One Order gang, or otherwise. As such I find that there is insufficient evidence before me which establishes the applicant's stated risk in the Bahamas.
>
> [Emphasis added]

[29] The Officer's reasons clearly do not state that there are concerns regarding the credibility of the Applicant's claim that his brother and son were killed—the Officer accepts this to be true. The Officer's finding, rather, is that the obituaries provided in support of the Applicant's PRRA application only demonstrate their deaths and not that the OOG was connected to their deaths.

[30] The Applicant bears the onus to provide sufficient evidence to demonstrate a forward-facing risk as alleged and it was open to the Officer to find that this evidence, though believed, is insufficient to ground a positive PRRA application. The sufficiency of evidence does not become a matter of credibility merely because the Applicant provides an affidavit. The presumption of truthfulness attracted by a sworn affidavit does not necessitate that the

information provided in this affidavit, and by the accompanying evidence, is sufficient to ground a positive PRRA determination. It is open to the Officer to find the Applicant's evidence insufficient if it has little probative value, is uncorroborated, or lacks detail, and the Applicant "cannot rely on the presumption of truthfulness of a sworn statement without providing sufficient evidence to support the key elements of a claim" (*Lin v Canada (Citizenship and Immigration)*, 2022 FC 341 at paras 28-29, citing *Barros Barros v Canada (Citizenship and Immigration)*, 2022 FC 9 at para 50 and *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 34).

[31] I further agree with the Respondent that the Officer reasonably found that the Applicant failed to provide sufficient evidence to support his claims, and that these findings are justified, intelligible, and transparent (*Vavilov* at para 100). The Applicant submits that the Officer granted improper weight to the supporting letters and the Court should intervene on this basis. However, this is not a valid basis for judicial review as is not this Court's role to reweigh or reassess the evidence that was before the decision-maker (*Vavilov* at para 125).

[32] In any event, the Officer's decision reveals a cogent analysis of the sufficiency of the Applicant's evidence. The Officer reasonably found that the letters are unsworn, unaccompanied by identity documents, only speak of a risk to the Applicant in vague and substantiated terms, do not provide reasons or bases for their belief that the Applicant continues to be at risk, mention a police report filed by the Applicant's mother but do not provide said report, and do not provide bases for the belief that the OOG was responsible for the deaths of the Applicant's son and brother. While the fact that the Applicant's family members wrote the supporting letters would have alone been an insufficient ground upon which to dismiss them, this constitutes one brief

sentence in the Officer's reasons and is accompanied by various other reasonable and transparent grounds upon which to find that these letters are insufficient to warrant a positive PRRA determination. Reviewed as a whole, the Officer's assessment of the Applicant's evidence is reasonable.

V. Conclusion

[33] This application for judicial review is dismissed. The Officer's decision is justified, intelligible, and transparent (*Vavilov* at para 100). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7431-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7431-22
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