Federal Court  Cour fédérale

Date: 20240305

Docket: IMM-6079-23

Citation: 2024 FC 366

Ottawa, Ontario, March 5, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

DUKSUNG KIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by an immigration officer (the "Officer"). The Decision denied the Applicant's pre-removal risk assessment ("PRRA") application under section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act").

II. Background

[2] Ms. Duksung Kim (the "Applicant") is a 44-year-old Korean woman.

[3] The Applicant is a citizen of North Korea by birth. Her father is a professor and her mother is a physician. Both of her parents continue to reside in North Korea. The Applicant served as a commanding officer in the North Korean military until 2005, at which point she was discharged from service.

[4] In December 2007, the Applicant fled North Korea. After spending some time in China, she entered South Korea in December 2009, at which point she was detained in solitary confinement for investigation by South Korea's National Intelligence Service (the "NIS"). The detention lasted for a period of six months. After her release from detention, the Applicant was placed in a settlement program at a centre for North Korean refugees for a further three months. The Applicant was subsequently released, but was the subject of further monitoring by the South Korean authorities. She eventually became a South Korean citizen.

[5] The Applicant entered Canada in March 2012 with a fraudulent passport, using a false name and date of birth. She concealed her South Korean identity and successfully claimed refugee protection. Her misrepresentations were eventually uncovered and she was found inadmissible. Her refugee protection ended in November 2021 and she was issued a removal order.

[6] The Applicant submitted a PRRA application pursuant to section 112 of the Act. In her submissions before the Officer, the Applicant highlighted her prolonged period of detention in solitary confinement for investigation, as well as the subsequent monitoring to which she was subjected after her release. She also argued that she was at risk of abduction in South Korea by North Korean authorities because of her former high-ranking position in the North Korean military and because of her parents' status and position in North Korea.

III. The Decision

[7] The Officer accepted the Applicant's claim that she was detained for six months in solitary confinement, that she was subjected to monitoring upon her release, and that she served as a high-ranking officer in the North Korean military. The Officer concluded that the determinative issue was whether there was a forward-facing risk of persecution or harm under sections 96 and 97 of the Act. The Officer concluded that there was no evidence of such a risk.

[8] The Officer examined the country evidence regarding the South Korean authorities' treatment of North Korean defectors and refugees. The Officer concluded that the Applicant's detention was part of a time-limited security screening process that all North Korean defectors underwent in order to assess if they are genuine defectors or North Korean spies. Since the Applicant has already completed that process, there are no grounds to believe that she would be treated in such a way if returned to South Korea.

[9] The Officer acknowledged the prolonged period of detention that the Applicant underwent. However, the Officer observed that while the permitted period of detention under South Korea's

screening process is now limited to 90 days, the limit when the Applicant first defected was 180 days.

[10] The Officer also examined the country evidence regarding the monitoring and surveillance to which the Applicant was subjected. As with the solitary detention, the Officer found that the surveillance was a time-limited measure that could go on for up to five years. The Officer also determined that the purpose of the monitoring was not only to confirm that the defectors are not spies, but also to ensure the defectors' safety as they integrate into South Korean society. Therefore, the monitoring was not necessarily a form a persecution or harm, bur could also be considered a benefit.

[11] The Officer held that the Applicant has not provided any evidence to show that she was harmed by the South Korean authorities' monitoring. They concluded that, since the Applicant has been living in Canada for well over a decade, she is unlikely to be subject to surveillance upon her return. The Officer also rejected the Applicant's claim that her former position in the North Korean military placed her in a unique position with higher risk, finding that such a claim was not supported by any objective evidence.

[12] Further, the Officer was not satisfied that the Applicant would lack support or face discrimination if returned to South Korea. They noted specifically that there were a myriad of benefits available to North Korean defectors, including settlement benefits, housing subsidies, employment support, access to pension payments and medical care, and funding for education. More generally, the Officer also noted that the South Korean authorities took steps to support the

integration of North Korean defectors into South Korean society, including access to resettlement services and an official certificate attesting to the individual's defection to South Korea.

[13] As well, the Officer considered the Applicant's claim that she faces a risk of abduction by North Korea if she is returned to South Korea. Upon examination of the evidence, the Officer concluded that the risk of abduction was against Chinese-Koreans, Japanese citizens, and fishermen – groups to which the Applicant has no relation.

[14] On a related point, the Officer also examined the Applicant's allegation that there is no state protection for North Korean defectors in South Korea. The Officer noted that there is a presumption of state protection and concluded that the Applicant did not offer sufficient evidence to overcome that presumption. The Officer also found that South Korean law provided a number of measures specifically established to ensure the personal protection of North Korean defectors.

[15] Finally, the Officer noted that the Applicant had visited South Korea as late as 2016 without issue. The Officer consistently relied on this fact throughout the Decision and cited it specifically in relation to their findings that there is no forward-facing risk of detention, surveillance, or abduction should the Applicant return to South Korea.

[16] The Officer concluded that there was no forward-facing risk of persecution or harm under sections 96 and 97 of the Act.

[17] The Applicant argues that the Decision is unreasonable because (1) the Officer misapprehended the evidence regarding the Applicant's alleged visit to South Korea in 2016; (2) the Officer's finding that the Applicant visited South Korea in 2016 was based on undisclosed extrinsic evidence; and (3) the Officer failed to consider the Applicant's background as a former commanding officer, along with her parents' positions in North Korea, as a unique source of risk.

IV. Issues

[18] Did the Officer misapprehend the evidence in finding that the Applicant visited South Korea in 2016?

[19] In the alternative, did the Officer breach their duty of procedural fairness by not disclosing extrinsic evidence regarding that Applicant's alleged visit to South Korea in 2016?

[20] Did the Officer unreasonably disregard the background of the Applicant and her parents as a unique source of risk?

V. Analysis

[21] The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

A. *Misapprehension of the Evidence*

[22] The Applicant argues that the Officer erred in finding that the Applicant visited South Korea as late as 2016. She states that the Officer misapprehended the evidence, specifically her affidavit, in which she claims that she never returned to South Korea since entering Canada.

[23] However, it was the RPD that found that the Applicant had visited South Korea in 2016. The RPD's finding was based on fingerprint exchange information from South Korea, which showed that the Applicant exited South Korea in February 2016 for the Philippines. It was clear from the Officer's decision that the RPD decision was being relied upon.

[24] The Applicant's position suggests that the RPD's findings cannot be relied on by the Officer. In *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] at paragraph 13, the Federal Court of Appeal held that the RPD's findings must be respected by a PRRA officer, absent new evidence to the contrary. While the Court's comments in *Raza* were made in relation to findings by the RPD that pertain to the merits of a claim for refugee protection, I find that the Court's comments are equally applicable here. To conclude otherwise would increase the "obvious risk of wasteful and potentially abusive relitigation" that both *Raza* and the legislative scheme of the *IRPA* attempt to limit (*Raza* at para 12).

[25] It was reasonable of the Officer to rely on the RPD's findings of fact, and it was open to the Officer to conclude from those findings that the Applicant did in fact visit South Korea in 2016, contrary to her testimony. The Officer did not misapprehend the evidence.

B. *Failure to Disclose Extrinsic Evidence*

[26] The Applicant submits that the Officer also breached their duty of procedural fairness by relying on extrinsic evidence that was not disclosed. However, the RPD's decision and its findings are not extrinsic evidence. They are part of the record before the Officer, and one that the Officer must respect (*Raza* at para 13). Moreover, the question on an allegation of procedural unfairness due to lack of disclosure is whether the Applicant was aware of the evidence (*Adewole v Canada (Citizenship and Immigration)*, 2014 FC 112 at para 28). It would be untenable for the Applicant to argue that she was not aware of the RPD's finding that she returned to South Korea in 2016, when that was part of the reason why her refugee protection was terminated and subsequently why she finds herself before the Officer.

[27] The Officer did not breach the duty of procedural fairness.

C. *Disregard of the Applicant's Personal Risk Profile*

[28] The Applicant claims that the Officer disregarded unique aspects of her risk profile, namely her military rank prior to defection and the status of her parents in North Korea. The Applicant states that the Officer's failure to consider these factors amounts to a reviewable error.

[29] I do not agree. The Officer did consider whether the Applicant faced unique risks and concluded that the Applicant's only submission in that regard was that she was a commander with the North Korean military. The Officer's decision indicates that this claim was not sufficient to establish a unique risk.

[30] Moreover, the Applicant's sole submission before the Officer with respect to her parents was that they are high-ranked individuals in North Korea and that "[i]f their daughter who used to be a commander return to North Korea and criticize South Korea, it would be [an] effective propaganda to support the North's dictatorship". The Applicant's submission was based on mere speculation and it was not necessary for the Officer to engage with it absent objective evidence in support of the alleged risk.

[31] The Applicant's argument also suggests that once she raised factors that are unique to her and that could potentially raise her personal risk, the onus reversed onto the Officer to disprove the alleged increase in risk. However, it is well-established that the onus is on the Applicant to satisfy the Officer that her PRRA application should be granted.

[32] The Officer did not disregard the Applicant's personal risk profile.

[33] The application is dismissed.

JUDGMENT in IMM-6079-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Ali Esnaashari	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Esna Law Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT