Federal Court  Cour fédérale

Date: 20240320

Docket: IMM-12607-22

Citation: 2024 FC 444

Ottawa, Ontario, March 20, 2024

PRESENT: Madam Justice McDonald

BETWEEN:

FERENC FEHER

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] On this judicial review application, the Applicant seeks review of the pre-removal risk assessment [PRRA] finding of October 24, 2022 that he would not be "subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Hungary."

[2] The Applicant is of Roma ethnicity and a citizen of Hungary. He arrived in Canada in June 2011 and filed a claim for refugee protection.

[3] In December 2012, the Refugee Protection Division [RPD] refused the Applicant's claim for refugee protection on the grounds of credibility.

I. Issues and standard of review

[4] The Applicant challenges reasonableness of the PRRA decision by raising the following issues:

A. Did the Officer impose an unreasonable evidentiary standard?

B. Did the Officer properly consider the Applicant's evidence?

[5] In reviewing the PRRA decision on a reasonableness standard, the Court asks "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

II. Analysis

A. *Did the Officer impose an unreasonable evidentiary standard?*

[6] In the decision, the PRRA Officer wrote the following regarding the previous RPD decision:

> While I acknowledge that the applicant has many fears of returning to Hungary, I find that the applicant continues to rely on the same allegations and experiences that was previously put forward and assessed by the RPD. The applicant continues to put forth that he fears discrimination in areas of health care, protection and employment on account of his Roma ethnicity. However, I find that the applicant has not provided sufficient new evidence to overcome the findings of the RPD.

[7] The Applicant argues that the Officer imposed an evidentiary burden upon him that does not appear in the legislation or case law when the Officer required the Applicant to "overcome" the RPD's findings.

[8] The RPD concluded that the Applicant was not credible due to omissions from his Personal Information Form [PIF] on the central issue of his claim and the failure to provide reasonable explanations for the inconsistencies between his testimony and the PIF.

[9] As noted in *Raza v Canada (Citizenship and Immigration*), 2007 FCA 385 [*Raza*] at paragraph 12:

> A PRRA application by a failed refugee claimant is not an appeal or reconsideration of the decision of the RPD to reject a claim for refugee protection. Nevertheless, it may require consideration of some or all of the same factual and legal issues as a claim for refugee protection. In such cases there is an obvious risk of wasteful and potentially abusive relitigation. The IRPA mitigates that risk by limiting the evidence that may be presented to the PRRA officer.

[10] Further in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*], the court explained the different functions of the RAD and the PRRA at paragraphs 42 and 47

> The fact that the RAD is a quasi-judicial administrative tribunal, as opposed to the PRRA officer, who is an employee of the Minister, acting within his or her employer's discretion, must obviously be taken into consideration. The same applies to the fact that the RAD has an appellate function and has the authority to set aside the RPD's decision and substitute that which should have been made, while the PRRA officer must show deference and does not sit in appeal of the RPD's decision and his or her only mission is to assess any new pre-removal risk. These distinctions are not determinative of the admissibility of new evidence, however, and I note that the trial Judge did not specify how the distinctive role and status of the RAD and the PRRA officer should affect the criteria for admitting evidence or how it would allow for the negation of the presumption to which I referred above.
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> As for the fourth implicit criterion identified by this Court in *Raza*, namely, the materiality of the evidence, there may be a need for some adaptations to be made. In the context of a PRRA, the requirement that new evidence be of such significance that it would have allowed the RPD to reach a different conclusion can be explained to the extent that the PRRA officer must show deference to a negative decision by the RPD and may only depart from that principle on the basis of different circumstances or a new risk. The RAD, on the other hand, has a much broader mandate and may intervene to correct any error of fact, of law, or of mixed fact and law. As a result, it may be that although the new evidence is not determinative in and of itself, it may have an impact on the RAD's overall assessment of the RPD's decision.

[11] In keeping with *Singh*, the PRRA Officer was bound to show deference to the RPD decision. In this case, the Applicant's claim for refugee protection before the RPD was on the same grounds as relied upon in support of his PRRA, which is his experience of persecution as a Roma in Hungary.

[12] While I acknowledge that the Applicant filed affidavits from family members and the country condition evidence has been updated since the RPD decision in 2012, the Applicant did not file any evidence to show that the circumstances that are personal to him in Hungary have changed in the intervening years. Therefore, in my view, it was appropriate for the PRRA Officer to defer to the findings of the RPD.

[13] The PRRA Officer notes that the new country condition evidence "[does] not establish a direct link to the applicant's personal circumstances." The Applicant asserts that, in doing so, the PRRA Officer applied the wrong test for considering his risk claim as the Applicant does not need to show that he has been individually targeted but that there is a serious possibility and a well-founded fear of persecution.

[14] I do not read this as the PRRA Officer imposing a new evidentiary burden on the Applicant. Rather, the PRRA Officer was emphasizing that the burden is on the Applicant to offer evidence in support of his risk claim.

[15] Here, the PRRA Officer noted that the Applicant was relying upon the same personal evidence that was considered and refused by the RPD in the context of his refugee protection claim. The PRRA Officer considered if the new country condition evidence was "of such significance that it would have allowed the RPD to reach a different conclusion." However, after considering the evidence, the PRRA Officer was not persuaded that the Applicant was personally at risk of persecution and concluded that there was insufficient evidence to overcome the RPD's findings.

B. *Did the Officer properly consider the Applicant's evidence?*

[16] The Applicant did not offer any new evidence in support of the forward-facing risks he might face in Hungary. The Applicant did file evidence of other family members who have received refugee protection and he argues that this evidence of "similarly situated" individuals should have been persuasive for the PRRA Officer.

[17] This evidence consists of letters of support from immediate family members who have been recognized as Convention refugees. The Applicant's following family members were all found to be Convention refugees in 2014 and 2015: three sisters, mother, three nephews, brother-in-law and his four children, another brother-in-law, the Applicant's former common-law partner and her son, the Applicant's son.

[18] The PRRA Officer correctly notes that risk assessments are inherently personal and based upon the Applicant's own evidence. Although the evidence of family members can be relevant, to the extent that it is not a personal experience of the Applicant, it was reasonable for the Officer to weigh the evidence accordingly.

[19] The evidence of the experiences of his family members included that of his sister who was "raped by a group of skinhead men" and became pregnant. His mother explained she had been beaten up many times and had her clothes ripped off of her while waiting at a bus stop. His other sister explained how she and her partner were beaten up several times.

[20] In response to this evidence the PRRA Officer found the following:

> … While I accept that Ms. Feher's unfavourable experiences in Hungary as a Roma granted her protection in Canada, her decision alone is not indicative that the applicant himself would face more than a mere possibility of discrimination amounting to persecution for the same reasons. As such, I find that [the Applicant's sister's] letter carries little weight in establishing the risks alleged in this application. Furthermore, I find that the letter does not overcome the negative findings of the RPD concerning the applicant's risks in Hungary.
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> … Overall, I find that [the Applicant's other sister's] letter is in and of itself insufficient to overcome the findings of the RPD and to establish that the applicant's risks are the same or similar to that of Ms. Kalaynos. In addition, the extent of evidence supporting this argument is limited to the statements contained in this letter. As such, I find that this letter carries little weight in establishing a risk alleged by the applicant under this present application.
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> … I have been provided with insufficient evidence to establish or demonstrate that there are similarities between Ms. Borbala's situation and reasons for protected person status and the applicant's alleged risks. While I have taken into consideration the information presented within [the Applicant's mother's] support letter, I find that it is in and of itself insufficient to establish a forward looking risk that is personal to the applicant. As such, I accord this letter limited probative value.

[21] With respect to the consideration of the country condition evidence, as noted by this Court in *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 [*Balogh*] at paragraph 19:

> Moreover, while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a

> mere possibility of persecution upon return (*Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056, at paras 67-70 [*Csonka*]; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, at para 22 [*Ahmad*]. Both subjective fear and objective fear are components in respect of a valid claim for refugee status (*Csonka*, at para 3). The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Prophète v Canada (Citizenship & Immigration)*, 2008 FC 331, at para 17; *Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, at para 28; *Ahmad*, at para 22).

[22] Here, the Officer was not satisfied that the Applicant established a link between the country condition evidence and his specific circumstances. In response to the issues raised by the Applicant regarding the social services and support systems in Hungary, the PRRA Officer said:

> Therefore, if on return the applicant were to face situations that impede his basic fundamental rights such as housing, while it may not be perfect, there are measures in place to assist him that he would be able to access. Based on the applicant's past history in Hungary, I have little objective evidence before me to suggest that the applicant faced obstacles or discrimination with access to housing in Hungary. Furthermore, in regards to the applicant's fear of becoming homeless on his return to Hungary, I note that a possibility of homelessness in and of itself does not amount to persecution. Given the lack of personalised evidence on this matter, I find that there [is] insufficient evidence to corroborate that the applicant himself would face a risk based on homelessness in Hungary.

[23] The Applicant has not established any error in the PRRA Officer's findings.

[24] I find the PRRA Officer's decision to be based on a justified, transparent and intelligible assessment of the evidence, rendering it reasonable (*Vavilov* at paras 129–132).

III. Conclusion

[25] The Application for judicial review is dismissed. Neither party has proposed a question for certification, and none arises.

JUDGMENT IN IMM-12607-22

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is dismissed.

2. No question is certified.

"Ann Marie McDonald"
JudgeJudge

FEDERAL COURT

SOLICITORS OF RECORD

:	IMM-12607-22
STYLE OF CAUSE:	FEHER V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 19, 2024
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	MARCH 20, 2024

APPEARANCES:

Menal Al Fekih	FOR THE APPLICANT
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell LLP Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT