Federal Court  Cour fédérale

Date: 20240717

Docket: IMM-4176-23

Citation: 2024 FC 1119

Ottawa, Ontario, July 17, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

GHULAM SAMAD NOORY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ghulam Samad Noory, is a citizen of Afghanistan. He fled his home country approximately 24 years ago after being detained and tortured by the Taliban. He eventually ended up in the United States, where he worked as a driver and a cook for almost ten years at the Afghan Embassy in Washington, DC.

[2] Mr. Noory came to Canada in 2018 and made a claim for refugee protection. He was not permitted to proceed with his claim before the Refugee Protection Division because he was found to be inadmissible for being a member of the Mujaheddin resistance in Afghanistan from 1980 until 1992. He then filed an application for a Pre-Removal Risk Assessment ("PRRA") claiming that he was primarily at risk from the Taliban because of his previous work educating girls in Afghanistan and his work for the former Afghan government at an embassy in the United States.

[3] Mr. Noory's PRRA was refused. He challenges this refusal on judicial review. Mr. Noory argues that the decision is unreasonable because the Officer fails to address the relevant evidence in the record that contradicts their findings, makes other findings that are irrelevant and/or unsupported by the record, and misapplies the standard of proof required.

[4] I agree with Mr. Noory that the Officer's review of the evidence related to his risk as a former employee of the former Afghan government is unreasonable and that the matter needs to be redetermined on that basis. Mr. Noory also argues that the Officer erred in making veiled credibility findings while not holding an oral hearing. I find it unnecessary to address Mr. Noory's argument on the oral hearing requirement given that I have found the matter needs to be redetermined in any case because of the Officer's unreasonable assessment of the evidence.

II. Analysis

[5] Due to Mr. Noory's inadmissibility under paragraph 34(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for "engaging in or instigating the subversion by

force of any government", the Officer was limited to only considering his risk on the basis of section 97 of IRPA, and not section 96 (see s 112(3)(a) of IRPA). The Officer had to consider on a balance of probabilities whether Mr. Noory would personally be subject to a danger of torture, a risk of life, or a risk of cruel and unusual treatment or punishment in Afghanistan.

[6] The Officer rejected the application because they found Mr. Noory had not established that he was of interest to the Taliban. The Officer concluded that the risk to Mr. Noory was generalized and not personalized. But Mr. Noory was not relying on generalized country conditions: Mr. Noory had established that he worked for the former government at an embassy in the United States for many years, and that he had been previously detained and tortured by the Taliban. At the time the Officer considered the application, the Officer also recognized that the Taliban had regained power in Afghanistan and was in control of the country.

[7] The Officer's key concern was that Mr. Noory had not shown that the Taliban would target him if he returned. The Officer noted that Mr. Noory was not personally named by the Taliban in a meeting in his village denouncing those who worked with foreign governments. The Officer further noted that the village elders who had been present in the meeting with the Taliban did not explain in their letter "how [they]… can be certain that the applicant's life would be at risk." The Officer also noted that Mr. Noory was not named in the objective country reports about the Taliban targeting former government employees, nor was he able to demonstrate that he was on "a list of wanted individuals by the Taliban."

[8] In my view, the Officer was not applying the appropriate standard to the question before them. The decision is replete with examples of the Officer requiring that the Applicant provide evidence that he is a named target of the Taliban. This is not the requirement and leaves me with little confidence that the Officer applied the section 97 test reasonably. Certainty is not required; a person does not need to be named in the objective country reports, or be personally named as a target in a meeting in their village, or be able to produce a wanted list on which they are listed. The test is on a balance of probabilities in relation to a danger and risk of particular harms, not certainty that these feared harms will befall them.

[9] Further, Mr. Noory provided objective evidence of the Taliban targeting former employees of the former government, including individuals who worked as drivers as Mr. Noory had. The Officer does not grapple with this evidence except for discounting its relevance because Mr. Noory is not named in an objective country report and because he did not work as a diplomat or in a central position in the military, police, or investigative units. There were a number of references in the objective evidence to the Taliban targeting former employees of the former government and though one reference mentions positions that are particularly targeted, it is unreasonable for the Officer to not at least grapple with the numerous other references that also capture the Applicant's circumstances.

[10] There was also evidence from a number of sources that the Taliban's promise of amnesty for former government employees was not being followed. Yet, the Officer finds without explanation that it is their view that amnesty would be applied to the Applicant's circumstances. While it is for the decision-maker to review and weigh the evidence in reaching their

conclusions, these conclusions must be explained and justified in relation to the record before them (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 125-126). I cannot follow the Officer's conclusion on this central aspect of Mr. Noory's risk claim, and this too renders the decision unreasonable.

[11] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-4176-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated February 20, 2023 is set aside and sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4176-23
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