Federal Court Cour fédérale

Date: 20240807

Docket: IMM-10240-23

Citation: 2024 FC 1235

Toronto, Ontario, August 7, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

JORGE LUIS VELAZQUEZ JIMENEZ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant is a citizen of Cuba. He seeks judicial review of a decision rejecting his Pre-Removal Risk Assessment [PRRA] application. The application was refused because a PRRA officer [the Officer] concluded that the Applicant had presented insufficient corroborative evidence to substantiate his allegations of risk. The Officer accepted that the Applicant had taken part in a political protest, and acknowledged that Cuba engages in widespread acts of political

persecution. However, the Officer ultimately concluded that the Applicant failed to sufficiently establish how his situation renders him at greater risk than the general population.

[2] This application for judicial review will be granted, as I have concluded that: i) the Officer's conclusions are simply incompatible with the sworn and unchallenged evidence of the Applicant; and ii) the Officer misunderstood the applicable tests in considering claims for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act* [IRPA].

II. BACKGROUND

A. *Facts*

[3] As noted, the Applicant is a citizen of Cuba. He arrived in Canada via the United States, and because of his time spent in the U.S., he was not entitled to have his refugee claim referred to the Immigration and Refugee Board. As such, the PRRA decision under review is the only assessment of risk that he has received.

[4] The Applicant alleges a risk of persecution, or a personalized risk of torture, risk to life, or risk of cruel and unusual punishment, based on his participation in national protests that occurred in Cuba on July 11, 2021 [the July 11 Protests].

[5] During these protests, Mr. Jimenez was apprehended by the police and unlawfully detained for three days. He was held in inhumane conditions, and interrogated and beaten. The

police accused the Applicant of being a counter-revolutionary and a traitor. The Applicant was released because of his uncle's military contacts and upon payment of bribes.

[6] The Applicant alleges that after he was released, the police continued to harass and interrogate him. The Applicant additionally alleges that a family friend, Angel Jesus Veliz Marcano, was arrested and sentenced to six years in prison for his participation in the July 11 Protests.

[7] As a result, the Applicant's parents sold their house and spent their savings to help him escape Cuba. He traveled through a number of countries, including the US, before arriving in Canada on September 26, 2022. As noted, he is not eligible to claim refugee protection, and therefore submitted a PRRA application on December 12, 2022.

B. *Negative PRRA Decision*

[8] The Applicant's PRRA application was refused in a letter dated June 27, 2023. The Officer determined that the Applicant faced neither a serious possibility of persecution with a nexus to a Convention ground, pursuant to s.96 of the IRPA; nor a personalized risk of torture, to his life, or of cruel and unusual treatment or punishment, pursuant to s.97 of the IRPA.

[9] The Officer determined that there was insufficient evidence to corroborate the Applicant's allegations of risk. The Officer noted that the Applicant provided photographs of his injuries, but did not provide medical documentation that would demonstrate they occurred because of his assault in July 2021. The Officer further noted that the photos were not date stamped, and that the Applicant had not submitted any photos of him participating in the July 11

Protests. The Officer also noted that the Applicant did not provide evidence that he had been detained. Finally, the Officer concluded that the Applicant did not provide sufficient evidence to establish his political opinion or political involvement in Cuba: the only evidence Mr. Jimenez tendered to that effect were his sworn testimony and letters of support from neighbours and his mother.

[10] The Officer accepted that the Applicant "may have participated in the protest on July 11, 2021" but found the Applicant had not provided sufficient evidence to corroborate his assertion that he continues to be subject to persecution by Cuban authorities.

[11] Having found that there was little evidence to demonstrate a forward-looking risk, the Officer turned to an assessment of the general country conditions evidence and similarly concluded that it did not establish a personalized risk of harm in respect of the Applicant.

[12] The Officer accepted that conditions in Cuba are "not ideal with respect to human rights abuses." However, the Officer concluded that while some members of society appear to be at more risk than others, the Applicant failed to establish how his situation renders him at greater risk than the general population. The Officer stated, "the fact that the documentary evidence shows generalized human rights violations or risk to a segment of the population in Cuba does not sufficiently demonstrate, on a balance of probabilities, that the applicant would be subjected personally to such harms."

III. ISSUES

[13] This matter raises the following issues:

A. Did the Officer unreasonably assess the evidentiary record?

B. Did the Officer unreasonably consider the s.96 and s.97 legal tests?

IV. STANDARD OF REVIEW

[14] The Applicant makes no submission as to the appropriate standard of review, while the Respondents submit that the Decision should be assessed on a reasonableness standard. I agree.

[15] A reasonable decision displays justification, transparency and intelligibility, with a focus on both the decision and the reasons for it: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]. To do so, a decision must be based on an "internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" (*Vavilov* at para 85).

[16] The stakes associated with PRRA proceedings are profound, as they may directly implicate the life, liberty, and security of those seeking protection. *Vavilov* is clear that, in this context, the reasons provided in support of a decision – the justification for that decision – must reflect those stakes: *Vavilov* at para 133.

V. ANALYSIS

A. *The Officer Erred in Considering the Evidence*

[17] At the outset of my analysis, I would note that the PRRA officer did not, at least directly, question any of the factual claims provided by the Applicant. As mentioned above, those claims – which form the evidentiary basis for the Applicant's application – included the following:

i) the Applicant attended the July 11 Protest at which he was "severely beaten" with batons over his head, face, and body;

ii) he was arrested and detained at an unofficial detention centre, where he was held and deprived of food, water, or the possibility of using a bathroom;

iii) the Applicant faced multiple interrogations, at which he was accused of being a counter-revolutionary, an instigator, and traitor;

iv) his release was only secured through family connections and the payment of a bribe;

v) following his release, the Applicant was marked as a counter-revolutionary – he was repeatedly detained, interrogated, threatened, intimidated, slapped and hit; and

vi) he was thereafter deprived of government services normally available to Cuban citizens.

[18] The Officer need not have accepted these sworn factual claims, but if there was doubt as to their credibility, a hearing was likely required: see *Ali v. Canada (Citizenship and Immigration)*, 2024 FC 1032 at para 17; section 113 of the IRPA; and section 167 of the *Immigration and Refugee Protection Regulations*. In the absence of a hearing, and in the absence of any clear credibility findings, the Officer was obliged to consider the Applicant's risk on the basis of the facts as presented: *Pelushi v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1365 at paras 3-5.

[19] This leads to the Officer's first error. In some situations, claimed facts may be insufficient to establish, on a balance of probabilities, broader questions of risk. For example, an uncontested account of a person's past experience of detention may be insufficient to establish a future risk of persecution. Depending on the facts, this may be an entirely reasonable determination because an inference must be drawn between the uncontested fact (i.e., the past detention) and the broader question (i.e., the future risk of persecution). What is *not* generally reasonable, however, is for an Officer to find an uncontested factual claim to be insufficient to establish that very fact. This is precisely what the Officer did in this case.

[20] For instance, the Officer questioned the photographs submitted by the Applicant as proof of the injuries that he said were sustained at the hands of the Cuban authorities, despite raising no concerns that the photos were fraudulent or doctored. The Officer also stated that the Applicant had not provided any evidence of his unlawful detention, despite Mr. Jimenez's sworn testimony to the contrary – which, absent contradictory evidence, attracts a presumption of truthfulness. As noted, the Applicant had also provided several corroborative letters on this point. The Officer similarly found that the Applicant had not established that he continued to be subject to persecution, despite the Applicant's sworn testimony explicitly outlining the persecutory treatment he experienced from the time that he was released from detention until he left Cuba. Finally, the Officer determined that the Applicant had not established his political opinion or involvement in Cuba when, as noted, the Applicant plainly stated in his affidavit that he was opposed to the Cuban regime, and has participated in a political protest that resulted in his arrest and mistreatment.

[21] Another way to characterize this error is that the Officer arrived at their determination by disregarding, misapprehending, or mischaracterizing evidence in the record that ran contrary to the Officer's conclusions. This is a clear violation of the principle articulated in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1999] 1 FC 52 at paras 15-17. The result is that the Officer's decision lacks intelligibility, transparency, and justification and is therefore unreasonable.

B. *Errors in Assessing Generalized risk and Persecution*

[22] The PRRA decision contains two distinct errors in respect of sections 96 and 97 of the IRPA. The first relates to the Officer's finding that the Applicant faced no more than a generalized risk of harm, no different from large swaths of the Cuban population. Respectfully, this finding provides another example of the Officer's disregard of the evidentiary record, which was replete with examples of the authorities' specific, repeated, and individualized targeting of the Applicant following his detention. In addition to the Applicant's own sworn statement, the letters from his mother and neighbours confirmed the essential details of the Applicant's story.

[23] The documentary evidence further suggests that July 11 protesters in Cuba, particularly those who were specifically identified by the authorities, face far greater risks than the general population. The US DOS Report, which the Officer cited, detailed the specific and elevated risks faced by July 11 Protestors, including cruel and degrading treatment in prison; summary trials; prison sentences up to 30 years; and extended pre-trial detention.

[24] Other country conditions evidence before the Officer demonstrated that July 11 Protestors have been subject to beatings, humiliation, arbitrary detention, being held incommunicado, sexual assault, and ill-treatment that "in some cases amount to torture".

[25] Rather than considering how this evidence may relate specifically to the Applicant, the Officer referred to it for the purpose of establishing that human rights abuses are widespread in Cuba and to support the conclusion that the Applicant failed to sufficiently establish how his situation renders him at greater risk than the general population.

[26] The only conclusions one can draw from the finding that the Applicant faced only a generalized risk, are that the Officer misunderstood the term "generalized" in the s.97 context, or that this finding was made in disregard of the evidentiary record.

[27] The second error is not evidentiary but conceptual. In the Officer's analysis, little distinction is made between the assessments of risk under sections 96 and 97 of the IRPA. In rejecting the application, the Officer appears to have found globally that the Applicant had failed to establish that he faces a greater risk than the general population. As an evidentiary finding, I have already concluded that this was unreasonable. However, it also suggests that the Officer unreasonably conflated the sections 96 and 97 analyses.

[28] Unlike section 96 of the IRPA, paragraph 97(1)(b)(ii) explicitly limits protection to those who face risks that are "not faced generally by other individuals in or from that country." The Respondent points out, citing *Pillai v Canada (Citizenship and Immigration*), 2008 FC 1312, that claimants under both s.96 and 97 must make out a personalized fear of mistreatment. As such,

referring to the need to establish a personalized risk does not suggest an improper conflating of the s.96 and s.97 legal tests.

[29] In this case, however, I find that the Officer erred by applying the generalized risk analysis under paragraph 97(1)(b)(ii) to the section 96 assessment. It has long been established that while refugee claimants must establish a well-founded fear of persecution, they need not show that they are more at risk than others in their country or other members of their group: *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 at para 20, citing *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250, 1990 CanLII 7978 (FCA) at paras 17-19.

[30] Put somewhat differently, if a claimant establishes that they have a well-founded fear of persecution on a Convention ground, the fact that many other individuals may face a similar risk is not a relevant consideration. In this case, the Officer found, without distinguishing between sections 96 and 97 that the Applicant "failed to sufficiently establish how his situation renders him at greater risk than the general population." This finding makes it unclear as to whether the Officer properly understood the distinction between the generalized risk *exception* found at paragraph 97(1)(b)(ii) and the personalized risk *requirement* under section 96. For this reason as well, I find the Officer's decision to be unreasonable.

VI. CONCLUSION

[31] For the above reasons, this application for judicial review will be granted. No question of general importance was proposed and I agree none exists.

JUDGMENT in IMM-10240-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The matter is remitted to a new decision-maker for redetermination.

3. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10240-23
STYLE OF CAUSE:	JORGE LUIS VELAZQUEZ JIMENEZ v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	JULY 4, 2024
JUDGMENT AND REASONS:	GRANT J.
DATED:	AUGUST 7, 2024

APPEARANCES:

Milan Tomasevic	FOR THE APPLICANT
Antonietta Raviele	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Milan Tomasevic Barrister and Solicitor Mississauga, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT