Federal Court  Cour fédérale

Date: 20250106

Dockets: IMM-5356-23
IMM-6917-23

Citation: 2025 FC 30

Ottawa, Ontario, January 6, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

GODFREY MUNYARADZI CHIZENGWE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Godfrey Munyaradzi Chizengwe, seeks judicial review of a decision of a Senior Immigration Officer (the "Officer") dated March 16, 2023 refusing his application for a Pre-Removal Risk Assessment ("PRRA") pursuant to sections 96 and 97 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 ("*IRPA*"). The Applicant also seeks judicial review of a decision dated May 5, 2023, in which the Officer declined to reconsider the refusal.

[2] For the reasons that follow, I find that the refusal decision and negative reconsideration decision are reasonable. This application for judicial review is dismissed.

II. **Facts**

[3] The Applicant is a citizen of Zimbabwe. During the 2002 presidential elections in Zimbabwe, the Applicant's mother exposed corruption and vote rigging to the press. She was targeted by the military police and was eventually granted asylum abroad.

[4] For several years, the military police searched for the Applicant's mother. Authorities regularly "ransack[ed]" the Applicant's grandparents' farm and "beat [the Applicant], [his] grandmother, and the farm hands," forcing the Applicant to flee the country.

[5] Years later, the Applicant and his mother returned to Zimbabwe to attend a funeral. The military police attempted to detain the Applicant and his mother. However, the two escaped and once again left the country.

[6] Shortly afterwards, the Applicant learned that the authorities in Zimbabwe had been informed of his location. He then travelled to the United States.

[7] The Applicant visited Canada on several occasions, with his last recorded entry taking place in 2017. In 2018, the Applicant submitted a claim for refugee protection in Canada.

[8] In 2021, the Applicant was convicted of impaired driving contrary to paragraph 320.14(1)(a) of the *Criminal Code*, RSC 1985, c C-46. Pursuant to paragraph 36(1)(a) of the *IRPA*, the Applicant's refugee claim was terminated and he was issued a removal order.

[9] The Applicant submitted a PRRA application in June 2022, indicating that he would be relying on his counsel's submissions to provide evidence for his allegations of risk.

[10] The Applicant requested three extensions to submit his materials, with a final requested deadline of March 12, 2023. However, no submissions were brought by this date.

[11] On March 16, 2023, the Officer rendered the refusal decision. As "no further submissions [had] been received" by "the date of [the] assessment," the Officer found that "[they could] only base [their] decision on" the Applicant's statements in his PRRA application and "publicly available documents related to country conditions in Zimbabwe." The Officer refused the Applicant's PRRA because "the [A]pplicant ha[d] not provided evidence…of his stated risk" and "country conditions indicate no more than a generalized risk for the [A]pplicant."

[12] On April 4, 2023, the Applicant requested reconsideration of the refusal. He advanced three grounds of risk: "as the son of a person who was perceived to have threatened the ruling government in Zimbabwe," "as a bi-sexual man," and "as someone who has been found HIV positive." The Applicant explained that he missed his requested deadline due to a mental health

crisis and that he "[was] now providing a detailed affidavit (with extensive supporting documentation)" about his risk. Once again, no evidence was brought before the Officer.

[13] On May 5, 2023, the Officer declined to reconsider the refusal decision. Noting the absence of submissions from the Applicant, the Officer once again based their decision on the Applicant's statements and country condition evidence. The Officer found that there was no new evidence of risk to the Applicant as the son of a person who was perceived to have threatened the government of Zimbabwe and insufficient evidence of risk on the basis of sexual orientation and his HIV diagnosis. As a result, the Applicant's reconsideration request was refused.

[14] The Applicant now seeks judicial review of the refusal decision dated March 16, 2023 and the negative reconsideration decision dated May 5, 2023.

III. **Issues and Standard of Review**

[15] The two issues in this application are whether the refusal decision and negative reconsideration decision are reasonable.

[16] The Applicant submits 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.

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). 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 decision that is reasonable as a whole 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).

[18] 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**

A. *The Refusal Decision is Reasonable*

[19] The Applicant submits that the refusal decision is unreasonable. Relying on *Gorgulu v Canada (Citizenship and Immigration)*, 2023 FC 23 ("*Gorgulu*"), the Applicant asserts that the Officer's failure to contact him prior to rendering a decision on his PRRA application constituted an unreasonable exercise of discretion given his clear intention to provide submissions, the seriousness of his allegations of risk, and the Officer's awareness that the PRRA would be the first and only time his risk would be assessed prior to removal.

[20] The Respondent characterizes the Applicant's submissions as an issue of procedural fairness. The Respondent submits that the Applicant's procedural rights were not breached, as "there is no obligation to ask a PRRA applicant if they wish to make any further submissions, and the [A]pplicant bears the burden of supplying all documentation to support his…claim" (*Toney v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 904 at para 84 ("Toney").

[21] With respect, the Applicant's submissions are meritless.

[22] *Gorgulu* is distinguishable from the present proceeding. The applicant in *Gorgulu* submitted evidence for his PRRA application. Although the record was missing a translation certificate, it included both "the original Turkish documents" and "three English documents submitted at the same time as the Turkish documents," along with evidence "suggest[ing] that the applicant…was aware of the requirement to provide English translations" (*Gorgulu* at paras 51, 52). Based on these facts, the Court determined that "a reasonable decision maker would conclude that the absence of a certification…was likely due to an oversight" or "mistake" and "would have alerted the applicant" of this issue prior to rendering a decision (*Gorgulu* at paras 51, 52). In contrast, the Applicant in this proceeding brought no evidence of his allegations of risk. This is not a case where the Officer was provided a near-complete record with a single obvious, technical flaw. Here, in the Applicant's own words, there was "[an] absence of any documentation corroborating the Applicant's claim." Consequently, I do not find that the Officer failed to "provid[e] the [A]pplicant with an opportunity to rectify" an "oversight" (*Gorgulu* at para 57). In this case, there was little evidence to suggest that "an oversight" had occurred at all (*Gorgulu* at para 57).

[23] The Applicant's submission that the Officer ought to have contacted him due to his clear intention to provide submissions is not supported by the jurisprudence. As conceded by the Applicant, the onus to bring evidence of risk in a PRRA application falls on the Applicant, not the Minister (*Gnanaseharan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 872 at para 22; *Palaguru v Canada (Citizenship and Immigration)*, 2009 FC 371 at para 22; *Toney* at para 84). This onus cannot be reversed by a mere expression of intent on the part of applicants to bring submissions at a later date, particularly when, as in this case, a decision was rendered after the Applicant's requested deadline had passed.

[24] The Applicant maintains that the severity of his alleged risk and the fact that the PRRA was his first risk assessment renders his situation "unique," such that "the Officer's failure to request evidence means that no substantive risk assessment…has ever been done." I disagree. What makes the Applicant's circumstances unique is that he brought no submissions to support his claims. This, rather than the Officer's exercise of discretion, is why "no substantive risk assessment…has ever been done." However, the Applicant's inaction does not constitute a reviewable error on the Officer's part. I cannot find the refusal decision to be unreasonable on this basis.

[25] I also cannot agree that the refusal decision contradicts the objectives of the *IRPA*. Subsection 3(2) of the *IRPA* states that "the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted" and that decision makers must "grant…fair consideration to those who come to Canada claiming persecution" (*IRPA*, ss 3(2)(a), 3(2)(c)) The refusal decision accords with these objectives, as the Officer duly considered material that could potentially assist the Applicant even in the absence of submissions from the

Applicant himself. The Officer also accommodated the Applicant's extension requests, granting the Applicant eight months to bring submissions when just one month is typically provided. In my view, the Officer abided by the spirit of the *IRPA* and rendered a decision whose "consequences are justified in light of the facts and law" (*Vavilov* at para 135).

B. *The Negative Reconsideration Decision is Reasonable*

[26] The Applicant submits that the Officer erred by refusing his request for reconsideration. The Applicant asserts that the Officer's risk assessment was unintelligible and "the Officer's reading of the country condition evidence" was "selective to the point of completely changing [the evidence]'s substance."

[27] The Respondent submits that the Officer made no reviewable error. Highlighting the absence of new evidence on the reconsideration request, the Respondent asserts that the record simply did not substantiate the Applicant's allegations of risk.

[28] I agree with the Respondent.

[29] The Officer did not err in their assessment of the Applicant's risk as the son of a political dissident. As no new evidence had been provided, the Officer was effectively requested to reconsider their decision based on the same record as the initial refusal. I therefore find no error in the Officer's determination that the Applicant's risk had been "thoroughly considered."

[30] I similarly find no reviewable error in the Officer's treatment of the country condition evidence. Although the Officer omitted some passages that would have lent support to the Applicant's allegations, I do not find that this warrants disturbing the reconsideration decision as a whole. The Officer did not exclusively reference material that supported their findings. In fact, the Officer directly acknowledged evidence that was helpful to the Applicant, including the fact that "a positive HIV/AIDS diagnosis" may "place some persons at risk" in Zimbabwe. I therefore do not find that the Officer "deliberate[ly] misquot[ed]…the country documentation" or that the "decision has been reverse engineered," as the Applicant contends.

[31] In my view, the Officer's decision turned on the absence of personalized risk. For instance, the Officer found that, although the country condition evidence "does speak to the nature of the treatment of bisexual and gay persons in Zimbabwe, [it] does not speak specifically to the situation of the [A]pplicant" [emphasis added]. The Officer also stated, "the [A]pplicant has not demonstrated that he meets the profiles of persons who are more likely to face difficulties or risks" [emphasis added]. The Officer's overall conclusion was that "the [A]pplicant would face no more than a mere possibility of persecution under any of the Convention grounds" and that "there is little evidence…to conclude that the [A]pplicant would personally face…risk of torture, a rick [*sic*] to life, or a risk of cruel and unusual treatment or punishment" in Zimbabwe [emphasis added]. The Officer reasonably found that the Applicant's evidence of personalized risk was lacking. Given the absence of submissions from the Applicant, it would have been difficult for the Officer to conclude otherwise.

[32] Although I recognize the severe consequences of this matter on the Applicant and am sympathetic to his circumstances, I find no legal basis for disturbing the refusal decision or

negative reconsideration decision. Both the refusal decision and the negative reconsideration decision are reasonable in light of the limited evidentiary record before the Officer.

V. **Costs**

[33] The Applicant seeks costs for the negative reconsideration decision, asserting that the Officer demonstrated an "egregious" and "deliberate intention to mislead" by "cherry pick[ing]" material from the country condition evidence.

[34] Costs will not be awarded. As previously noted, I do not find that the Officer intentionally misrepresented the country condition evidence or engaged in conduct that merits censure or rebuke (*Uppal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1133 at para 8; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1643 at para 45).

VI. **Conclusion**

[35] This application for judicial review is dismissed. The Officer's decision is justified in light of the evidence and accords with the purpose and statutory framework of the *IRPA* (*Vavilov* at paras 126, 108). Costs are not awarded. No questions for certification were raised, and I agree that none rise.

JUDGMENT in IMM-5356-23 and IMM-6917-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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