

Federal Court



Cour fédérale

Date: 20250203

Docket: IMM-598-23

Citation: 2025 FC 213

Calgary, Alberta, February 3, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

AHMAD SOHAIL

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ahmad Sohail, applied for a Pre-Removal Risk Assessment (“PRRA”) where he asked to remain in Canada because he was at risk if returned to Afghanistan, his country of citizenship. An officer at Immigration, Refugees and Citizenship Canada [IRCC] rejected his application.

[2] Mr. Sohail makes two challenges to the PRRA refusal on judicial review. First, that the Officer failed to consider the best interests of his Canadian children. As I explained to Applicant's counsel at the hearing, this argument has no merit. Mr. Sohail had not explained how the best interests of his Canadian children would be relevant to the task facing a PRRA officer in determining whether he faces risk in Afghanistan under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] The remaining issue concerns the claim that the Officer made a veiled credibility finding and therefore an oral hearing ought to have been held.

[4] I disagree that the Officer made a relevant veiled credibility finding. Based on the limited submissions and evidence before the Officer, I find that the decision was transparent, justified, and intelligible. I dismiss the application for judicial review.

II. Procedural History and Basis for PRRA Claim

[5] Mr. Sohail immigrated to Canada in 2014 on the basis of a successful spousal sponsorship application. In 2018 he was convicted of a serious criminal offence for which he served a custodial sentence from May or June 2022 until February 17, 2023. This conviction led to a criminal inadmissibility finding and the loss of his permanent residence status.

[6] Mr. Sohail filed his PRRA application on December 8, 2021. His counsel made a short follow-up submission on December 10, 2021. Mr. Sohail's PRRA claim is based on his fear that he would be at risk from the Taliban because he would be perceived to be a supporter of the

former government in Afghanistan as his business had contracts with foreign governments and international organizations.

[7] The PRRA was initially refused in a decision dated June 20, 2022 and an interview with Canada Border Services Agency had been scheduled to deliver the refusal. However, the interview was then cancelled because the PRRA application was re-opened. IRCC notified Mr. Sohail that due to a publication error on the IRCC website, his PRRA would be re-opened in order to receive further submissions and evidence.

[8] On August 19, 2022, Mr. Sohail's counsel provided the Officer with three photographs, further country condition evidence, a personal statement, and submissions. Mr. Sohail's counsel also noted that he would be filing further specific documents, relating to Mr. Sohail's business in Afghanistan, and his family's refugee claims in Germany. No extension of time request was made and no further documents were provided.

[9] On January 4, 2023, Mr. Sohail was notified that his PRRA was refused. The PRRA refusal consisted of two parts: the initial refusal dated June 2022 and an addendum dated September 2022 that considered the further evidence and submissions that had been filed in response to the IRCC notification letter.

III. Preliminary Matter: Irrelevant Issues

[10] Mr. Sohail raised a number of issues that are not appropriately before me and seeks remedies that this Court can not grant. Mr. Sohail asks, relying on section 25 of *IRPA*, that this

Court grant humanitarian relief. Mr. Sohail also asks that I find the balance of convenience weighs in his favour, taking into account the short-term best interests of his children, and that I order that any future removal be stayed.

[11] As I explained to Mr. Sohail's counsel at the judicial review hearing, the only application that is before me is a judicial review of the refusal of the PRRA. There is no removal scheduled and no motion before me to stay Mr. Sohail's removal. Further, the new evidence being filed (the admissibility of which I will address later) relating to the best interests of Mr. Sohail's children is not relevant to the task before me which is to review the refusal of the PRRA decision – where the decision-maker was tasked with assessing Mr. Sohail's risk under sections 96 and 97 of *IRPA*.

[12] In oral submissions, Mr. Sohail's counsel generally referenced the deficiencies in the deferral and stay of removal process, calling it a “rubber-stamping” process, and stated that this judicial review was the last opportunity for Mr. Sohail to obtain effective relief. This argument was not made out in the written submissions, nor was it supported by any evidence. Moreover, counsel did not address any of the relevant jurisprudence about the nature of the deferral process and requirement of enforcement officers to consider new risk claims since the last risk assessment (see for example: *Peter v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 51 at para 7; and *Atawnah v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144 at para 22). In these circumstances, I find it is unnecessary, and in fact ill-advised, for me to comment further on cursorily-raised submissions on the adequacy of the deferral of removal process.

[13] In oral submissions, Mr. Sohail's counsel also raised a number of other issues not argued in the written materials. For example, counsel raised that Mr. Sohail would face risk because of the nature of his criminal conviction in Canada. As I pointed out to counsel, this issue was not raised as a basis for Mr. Sohail's risk in the PRRA submissions, nor was it argued in the written materials on judicial review.

[14] In addition, Mr. Sohail's counsel argued that the Officer failed to consider the new submissions and evidence filed in August 2022 and that, in any event, the Officer was *functus officio* to do so. I do not accept Mr. Sohail's counsel's assertion that there was "no consideration" of the August 2022 evidence and submissions. The Officer re-opened the PRRA application and gave Mr. Sohail the opportunity to provide further submissions and evidence, which he did. The evidence and submissions were considered in detailed reasons provided in the Officer's addendum, dated September 2022. I also cannot understand the *functus officio* argument that was being made in this context. Mr. Sohail's counsel acknowledged it had not been previously raised and it was only a "peripheral point". There was no explanation for not making these submissions in advance and this issue was not further pursued by counsel.

IV. Preliminary Issues: New Evidence

[15] Mr. Sohail filed a number of documents on judicial review that were not before the Officer. These documents included: an affidavit from his wife, letters of support from family members and friends, photos of himself and his kids. I am not admitting these documents. I agree with the Respondent that it is not appropriate for me to consider this new evidence in reviewing the Officer's decision on judicial review because it was not before the Officer and does not fit

within any of the exceptions for admission of new evidence (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

V. Analysis

[16] Mr. Sohail argues that the Officer made veiled credibility findings and therefore should have held a hearing. The Minister argues that the Officer did not make a credibility finding and instead found that Mr. Sohail had not met his onus of providing sufficient evidence to make out a claim under section 96 or 97 of *IRPA*.

[17] In general, when PRRA officers are making negative credibility findings about key issues, they must hold an oral hearing. Paragraph 113(b) of *IRPA* provides that PRRA officers may hold a hearing and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 sets out the circumstances where a hearing is required to be held thereby codifying principles of common law procedural fairness (*Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207 [*Ahmed*] at para 27). Essentially, an oral hearing is generally required where “there is a credibility issue regarding evidence that is central to the decision and which, if accepted, would justify allowing the application” (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 1439 at para 41). In other words, applicants must be afforded the right to be able to respond to credibility concerns that are determinative of their claim.

[18] Justice Norris suggests the following approach to determining whether an insufficiency of evidence finding is effectively a credibility finding, writing: “if the factual propositions the

evidence is tendered to establish, assuming them to be true, would likely justify granting the application and, despite this, the application was rejected, this suggests the decision maker had doubts about the veracity of the evidence” (*Ahmed* at para 31).

[19] I do not accept that the Officer made a negative credibility finding that was determinative of Mr. Sohail’s PRRA claim. The Officer accepted that Mr. Sohail “likely had some contact and interactions with foreign governments and organizations when he was in Afghanistan.” The Officer’s key concern was the lack of information, or any detail, about the “level of contact and interactions the applicant had with the foreign governments and organizations”. Based on this limited information, the Officer concluded that “it is unclear whether the applicant conducted work that he would personally come to the attention of the Taliban or continue to be of interest to the Taliban.”

[20] The Officer’s decision does not turn on the veracity of Mr. Sohail’s written statement, nor the lack of corroborative evidence. Rather, the determinative issue for the Officer is the lack of sufficient information provided to establish the foundation for Mr. Sohail’s risk claim. I find that, based on the limited information and evidence before the Officer, this conclusion was open to the Officer to make.

[21] Reviewing the decision as a whole, and the limited information and evidence in the record, the Officer’s decision was reasonable. Accordingly, I dismiss the application for judicial review. Neither party raised a question for certification and I agree none arises.

JUDGMENT IN IMM-598-23

THIS COURT’S JUDGMENT is that

1. The style of cause is amended with immediate effect to name the Respondent, The Minister of Citizenship and Immigration Canada;
2. The application for judicial review is dismissed; and
3. No serious question of general importance is certified.

“Lobat Sadrehashemi”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-598-23

STYLE OF CAUSE: AHMAD SOHAIL v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 23, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: FEBRUARY 3, 2025

APPEARANCES:

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