

Federal Court



Cour fédérale

Date: 20250618

Docket: IMM-9492-24

Citation: 2025 FC 1103

Toronto, Ontario, June 18, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

SIRUS LOTFI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of an Officer's decision to reject his application for a Pre-Removal Risk Assessment [PRRA]

[2] As I indicated at the close of the hearing into this matter, this application is allowed. My reasons follow.

II. BACKGROUND

A. *Facts*

[3] Mr. Lotfi is a citizen of Iran. He entered Canada in November 2022 on a fraudulently obtained passport and made a claim for refugee protection. He did not have any other identity documents with him at the time, so he was arrested and detained by the Canadian Border Services Agency [CBSA].

[4] While in detention, Immigration, Refugees and Citizenship Canada [IRCC] learned that in April 2009, the Applicant was convicted in England with Intent to do Grievous Bodily Harm contrary to section 18 of the *United Kingdom Offences Against the Person Act*. The Canadian equivalent of this offence is Aggravated Assault, contrary to Section 268(1) of the *Criminal Code of Canada*.

[5] As a result of this conviction, Mr. Lotfi was referred for an admissibility hearing before the Immigration Division [ID] of the Immigration and Refugee Board [IRB]. The ID found that the Applicant was inadmissible to Canada on grounds of serious criminality, pursuant to paragraph 36(1)(b) of the *Immigration and Refugee Protection Act* [IRPA] and issued a deportation order against him in April 2023.

[6] As a result of this inadmissibility finding, the Applicant became ineligible to have his claim for refugee protection heard by the Refugee Protection Division of the IRB. His claim was therefore terminated and, while still detained in July 2023, he applied for a PRRA. Mr. Lotfi was released from detention in August 2023.

[7] In a detailed affidavit in support of his PRRA application, Mr. Lotfi alleged that he would be at risk in Iran on four distinct grounds: a) his bisexuality; b) his Kurdish ethnicity; c) his conversion from Islam to Christianity; and d) his identity as a Westerner, and the imputed political opinion associated with this identity.

[8] In the affidavit, the Applicant also set out the difficult circumstances of his life. In brief, the Applicant had essentially no relationship with his mother in Iran, and moved to Germany as a young adolescent, where his father placed him in a boarding school. It seems the Applicant's family stopped paying tuition fees for this school, and he was subsequently placed in a Christian orphanage where he lived until he turned 18. Over the course of these years, the Applicant grew disconnected with his Islamic background and gravitated towards Christianity. At one point while at the orphanage, he tattooed a cross on his shoulder. The Applicant also explained how he explored his sexual orientation while in the orphanage, though this was not easy to do. At 20, the Applicant learned that his father had committed suicide. This led to a period of serious drug addiction, and in 2007 the Applicant was removed to Iran.

[9] The Applicant had a difficult time adjusting to life back in Iran. Eventually, he learned of a park where gay men met to have sex. He began frequenting the park and having encounters with men, despite the obvious dangers that this posed. Eventually, however, the Applicant decided to leave Iran and went to the United Kingdom.

[10] In his affidavit, the Applicant explained the altercation that led to his criminal conviction, which resulted in the death of one individual and the injury of two others. He claims that he acted in self-defence, but contrary to the advice of his lawyer, he plead guilty and was sentenced

to a ten-year sentence, of which he served five years. While in prison, the Applicant stated that he received mental health treatment for the first time, that he disavowed drugs, and formally converted to Christianity.

[11] In addition to his affidavit, counsel for the Applicant provided a package of country conditions documents, and a selection of transcripts from Mr. Lotfi's detention review hearings. In his testimony before the ID, Mr. Lotfi described many of the details of his life, including his fear of return to Iran owing to the factors mentioned at paragraph 7, above.

B. *Decision under Review*

[12] An Officer refused the Applicant's PRRA in March 2024. In the decision, the Officer enumerated each of the grounds raised by the Applicant, but for each, concluded that Mr. Lotfi had not provided sufficient evidence to establish the basis for his claim for protection. The Officer used essentially identical language for each finding:

- I note, however, that little supporting documentary evidence has been submitted to indicate that the applicant is a bisexual individual... In the absence of supporting documentary evidence I do not find that the applicant's PRRA materials demonstrate that the applicant is bi-sexual.
- I note, however, that little supporting documentary evidence, such as copies of identity documents, or documentation from any of the applicant's family members, friends or acquaintances has been submitted that indicates that the applicant is of Kurdish ethnicity.
- However, little documentary evidence, such as documentation from the pastor who baptized the applicant, or documentation from any churches indicating that the applicant has practiced and/or is practicing the Christian faith...

- I note however, the little documentary evidence, such as documentation from any of the applicant's family members, friends or acquaintances, has been submitted to indicate that the applicant holds views that disagree with the lack of freedom and subjugation of women in Iran.

[13] Having concluded that the Applicant failed to adequately establish any of the above grounds, the Officer refused his application.

III. ISSUES and STANDARD OF REVIEW

[14] The Applicant raises three concerns with the decision under review:

- 1) The Officer unreasonably ignored evidence contained in the ID transcripts that were submitted with the Applicant's PRRA application.
- 2) The Officer erred in making veiled credibility findings and in failing to conduct an oral hearing.
- 3) The Officer unreasonably expected the Applicant to produce corroborative evidence that was not available to him.

[15] The Applicant submits that the reasonableness standard "applies to the issues identified in this Application." However, in other parts of his materials, the Applicant describes the Officer's decision not to conduct a hearing as a breach of procedural fairness. The Respondent argues that the standard of review applicable to each issue raised in this case is reasonableness.

[16] The question of whether the Officer made veiled credibility findings and erred in failing to conduct a hearing is somewhat more complicated. In several decisions of this Court, the standard of review on this issue was found to be reasonableness. This is primarily because the decision as to when a hearing is required is governed by s.113(b) of the IRPA and s.167 of

the *Immigration and Refugee Protection Regulations* [IRPR]. As a result, decisions about PRRA hearings are an exercise in statutory interpretation of the decision-maker's "home statute," which attracts deference: see *Ikeji v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1422, at para 20 (and the decisions cited therein); *Ruszo v Canada (Citizenship and Immigration)*, 2017 FC 788 at para 16; *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447 at paras 11–21.

[17] However, other judges of this Court have taken a different approach to the question, finding that decisions related to PRRA hearings continue to implicate fairness concerns and should remain "outside the standard of review analysis, even where aspects of the applicable procedure are dictated by statute": *Iwekaeze v Canada (Citizenship and Immigration)*, 2022 FC 814 at para 9; see also *Allushi v Canada (Citizenship and Immigration)*, 2020 FC 722 at para 17, and *FGH v Canada (Citizenship and Immigration)*, 2020 FC 54 at para 17.

[18] Similar to another cohort of cases, I have found that I need not weigh in on this matter, let alone attempt to resolve it, because I have concluded that the Officer's decision cannot be sustained, irrespective of the standard of review: see for example *Johnfiah v Canada (Citizenship and Immigration)*, 2024 FC 1091 [*Johnfiah*].

IV. ANALYSIS

[19] I have concluded that the determinative issue in this matter relates to the Officer's findings on the sufficiency of the evidence in the record. As such, I need not consider the other two issues raised by the Applicant. However, my focus on a sole issue should not be taken as

either an endorsement or rejection of the Applicant's other arguments. This said, as this matter will be reconsidered, I would encourage the next decision-maker to both: i) consider the probative value of the Applicant's testimony before the ID; and ii) actively consider what corroborative evidence can reasonably be expected of the Applicant, given his particular circumstances.

A. *Sufficiency of evidence, veiled credibility findings and PRRA hearings*

[20] PRRA matters are typically decided on the basis of the written record before the officer. However, in certain circumstances – those related to an applicant's credibility on an important point – a hearing may be required. As noted above, the determination as to when an officer is required to conduct a hearing is governed by s.113(b) of the IRPA and s.167 of the IRPR.

[21] For ease of reference, the factors which may require a hearing under s.167 of the IRPR are as follows:

- (a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;
- (b) whether the evidence is central to the decision with respect to the application for protection; and
- (c) whether the evidence, if accepted, would justify allowing the application for protection.

[22] This Court has heard numerous cases, over many years, involving allegations that PRRA officers have erred in failing to properly apply the above factors. Typically, these cases arise where officers make findings related to the perceived insufficiency of the evidence in the record (which would not require a hearing) as opposed to a finding on the credibility of this evidence

(which would often require a hearing). As the long history of these cases demonstrate, there can be a fine line between the sufficiency of evidence and the credibility of that same evidence.

[23] In *Ahmed v Canada (Citizenship and Immigration)*, 2018 FC 1207, my colleague Justice Norris provided what, in my view, is a helpful framework for considering this issue (at para 31):

One useful test in the present context is for the reviewing court to ask whether the factual propositions the evidence is tendered to establish, assuming them to be true, would likely justify granting the application for protection. If they would not, then the PRRA application failed, not because of any sort of credibility finding, but simply because of the insufficiency of the evidence. On the other hand, 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 that the decision maker had doubts about the veracity of the evidence.

[Emphasis added.]

[24] In applying this approach to the present case, it is patently clear that the Officer's conclusions were based on a negative assessment of the credibility of the Applicant's affidavit. The Respondent disputes that this is the case, arguing – particularly in the hearing of this matter – that the Applicant's affidavit was not particularly detailed, and that the absence of any corroborating evidence justified the Officer's finding of insufficiency.

[25] I respectfully disagree with this position. On the core details related to the Applicant's risk factors, the affidavit was detailed and comprehensive. This was particularly the case with respect to the Applicant's sexual orientation. The affidavit contained many details, from the Applicant's first homosexual encounters, to subsequent relationships, to his time spent in Tehran, frequenting a park where gay men would meet. Moreover, the documentary evidence before the

Officer clearly raised concerns with respect to the Applicant's safety, assuming the risk factors he raised in his affidavit were true.

[26] This being the case, there was simply no doubt that the facts set out in the Applicant's affidavit, *if believed*, would have justified granting the application. In this sense, this case is indistinguishable from *Johnfiah*, which also related to a PRRA application based on fears arising from the applicant's bisexuality, that was documented in a detailed and sworn statement. See also, in this regard: *Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 737 at paras 62-71 [*Chekroun*]; *Musa v Canada (Citizenship and Immigration)*, 2025 FC 367 at para 16; and *Olusola v Canada (Citizenship and Immigration)*, 2023 FC 1191 at paras 5-9.

[27] Without going into further detail, I believe that Justice Sadrehashemi's reasoning in *Johnfiah* on the interplay between affidavit evidence and further corroborative evidence also finds application in this case: *Johnfiah* at para 12, citing *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paras 23–36, and see also *Chekroun* at paras 62-71; and *Liban v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1252.

[28] Beyond this, there is the well-established principle that when an individual in refugee protection proceedings swears to the truth of their testimony, that testimony is presumed to be true unless there is a valid reason to doubt its truthfulness: *Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA) at para 5 [*Maldonado*]. In oral submissions, counsel for the Respondent seemed to suggest that the *Maldonado* principle arose from the refugee determination context and does not necessarily apply with the same force in the PRRA context. I see no basis for this proposition, at least in situations like the present, where the

PRRA decision was the Applicant's first risk assessment. In these circumstances, there is little to distinguish the PRRA process from a first level refugee determination process, in which *Maldonado* clearly applies. Moreover, this Court has frequently evaluated PRRA decisions for their adherence to the *Maldonado* principle, particularly in relation to sworn statements: see *Magyar-Turo v Canada (Citizenship and Immigration)*, 2024 FC 1860 at paras 13-15; *Medina Cerrato v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1231 at para 16; *Linadi v Canada (Citizenship and Immigration)*, 2022 FC 1341 at paras 33-34.

[29] Applying this jurisprudence to this case, I find that the Officer's conclusion that the Applicant had not established facts that he had categorically and unambiguously sworn to be true violated the *Maldonado* principle, and amounted to a veiled credibility finding.

V. CONCLUSION

[30] As a result of the above, I will grant this application for judicial review. The parties did not propose a question of general importance, and I agree that none arises.

JUDGMENT in IMM-9492-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.
3. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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