

Federal Court



Cour fédérale

**Date: 20150116**

**Docket: IMM-3952-13**

**Citation: 2015 FC 59**

**Ottawa, Ontario, January 16, 2015**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**VAN HOI NGUYEN  
THI BICH THUY PHAM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**UPON** application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision made on February 28, 2013 by a Pre-Removal Risk Assessment Officer (the PRRA Officer), wherein the PRRA Officer rejected the Applicants' application for protection pursuant to section 112 of the Act;

**AND UPON** considering the written and oral submissions of the parties and reviewing the Certified Tribunal Record;

**AND UPON** considering that the Applicants are husband (Mr. Nguyen) and wife (Ms. Pham), that they are citizens of Vietnam and that they left that country in 1999 for the United States where they spent five years before entering Canada in December 2004 and claiming refugee protection under sections 96 and 97 of the Act;

**AND UPON** considering that the Applicants' refugee protection claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board of Canada in 2006 and that the Applicants subsequently submitted a Pre-Removal Risk Assessment (PRRA) application alleging risks related to Mr. Nguyen being denounced for being a "reactionary element", being under house arrest and not allowed to leave Vietnam and being caught when trying to leave the country (the First PPRA);

**AND UPON** considering that the First PPRA was denied in June 2009 and that the Applicants made a second PPRA application on November 25, 2011 alleging this time fear of cruel and unusual treatment or punishment due to the deliberate and discriminatory withholding of psychiatric treatment for Ms. Pham, who suffers from major depression, as well as fear of persecution due to their membership in a particular social group, namely the mentally ill, who are punished and isolated in Vietnam and thereby suffer discrimination and severe harm in the form of state induced psychiatric deterioration;

**AND UPON** considering that the PPRA Officer, in a decision released on February 28, 2013, denied the Applicants' second PPRA application on the ground that the Applicants had

failed to provide sufficient objective evidence establishing (1) that Ms. Pham would be detained or face persecution as a result of her mental health issues, (2) that she would be denied access to mental health treatment available in that country, or (3) that they would be detained in re-education camps as a result of their status as deportees from Canada;

**AND UPON** considering that the issue raised by this judicial review application is whether the PRRA Officer committed a reviewable error as contemplated by subsection 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7 in dismissing the Applicants' second PPRA application;

**AND UPON** determining that the Applicants' judicial review application should be dismissed for the following reasons:

[1] In support of their second PRRA application, the Applicants submitted the First PRRA materials as well as evidence related to Ms. Pham's mental health issues which was considered new evidence that arose after the rejection of the First PRRA, namely (1) a "letter of opinion" from Mr. Tom Pham, the Intake and Case Management Team Leader at Hong Fook Mental Health Association in Toronto (the Mental Health Association); (2) a letter from Dr. Lo, a Psychiatric Consultant at the Mental Health Association and Ms. Pham's psychiatrist; (3) a referral letter from the Applicants' physician regarding Ms. Pham; and (4) support letters from two mental health workers at the Mental Health Association (collectively the Supporting Letters).

[2] The PRRA Officer first found that no changes had occurred between the First PRRA decision in 2009 and the re-examination of the risk in the second PRRA application. Thus, the PRRA Officer found that only the new risk related to Ms Pham's mental health issues should be assessed. In this regard, the PRRA Officer found that the evidence supporting the allegation that Ms. Pham would not have access to care and medication was insufficient, in the sense that the statements made in the Supporting Letters were not supported by the objective evidence available. As for the allegation that the Applicants would be sent to re-education camps, the PRRA Officer found that the Applicants had not provided objective evidence of this risk and that, equally, this allegation was not supported by the objective evidence available.

[3] The Applicants claim that the PRRA Officer's decision is unreasonable as the PRRA Officer (1) omitted to properly consider Mr. Pham's letter of opinion on the conditions in Vietnam for mentally ill persons held in re-education camps after being deported; (2) failed to explain why he found this letter was lacking objectivity; and (3) based his conclusion on outdated country documentation.

[4] Issues relating to the treatment of the evidence made by a PRRA officer are reviewable on a standard of reasonableness as such issues are fact-driven and attract deference (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190 [*Dunsmuir*]; *Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 872, 256 FTR 53, at para 16; *Chekroun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 737, 436 FTR 1, at para 39; *Yousef v Canada (Minister of Citizenship and Immigration)*, 2006 FC 864, 296 FTR 182 at para 19).

[5] PRRA officers benefit from a presumption that they have considered all the evidence before them (*Sokol v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1257, at para 28; *Townsend v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 371, 231 FTR 116, at para 26; *Morales v Canada (Minister of Citizenship and Immigration)*, 2012 FC 164, at para 33; *Sidhu v Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 741 (T.D.) (QL) at para. 15). Therefore, the Court must only intervene when there is a failure to mention or analyze important evidence or when an erroneous finding of fact was made without regard to the evidence before a PRRA officer (*Bains v Canada (Minister of Employment and Immigration)* (1993), 63 FTR 312, [1993] FCJ No. 497 (QL); *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No. 1425, at paras 16-17).

[6] As a result, the Applicants' argument that the PRRA Officer disregarded the evidence from Mr Pham cannot stand as they failed to rebut the above presumption. The PRRA Officer made reference to, and even quoted from, the Supporting Letters, including Mr. Pham's letter of opinion, which came from people in the Applicants' environment who are well aware of the conditions Ms. Pham is facing in Canada and, in their opinion, those she could possibly face in Vietnam. This shows that the PRRA Officer considered all the evidence in his analysis and in reaching his decision.

[7] The Applicants' argument that the PRRA Officer failed to explain why he found Mr. Pham's letter of opinion was lacking objectivity must also be dismissed. The PRRA Officer explained, after reviewing Mr Pham's letter, that he did not consider it to be sufficiently objective, which is why he relied more heavily on other documentary evidence, such as human

rights reports, deemed by him to be more objective. This finding, in my view, was reasonably open to the PRRA Officer to make given that the Supporting Letters, including Mr. Pham's letter of opinion, were written by people close to the Applicants and could reasonably be considered as not sufficiently objective. In particular, Mr. Pham's letter regarding the conditions in Vietnam were his first-hand observations of what he saw in that country as well as what was reported to him by people in or from Vietnam. Again, it was reasonably open to the PRRA Officer to consider this particular letter to be less objective than information found in the human rights reports available.

[8] As it was explained in *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, at para 24, the determination of whether the evidence meets the legal burden will depend on the weight given to that evidence by the PRRA Officer. *Ferguson*, above, also states, at paragraph 33:

The weight the trier of fact gives evidence tendered in a proceeding is not a science. Persons may weigh evidence differently but there is a reasonable range of weight within which the assessment of the evidence's weight should fall. Deference must be given to PRRA officers in their assessment of the probative value of evidence before them. If it falls within the range of reasonableness, it should not be disturbed.

[9] In this case, the PRRA Officer undoubtedly weighed the evidence before him but decided that the Supporting Letters should not be given as much weight as the country documentary evidence regarding the situation in Vietnam. This is mainly because he found that the Supporting Letters were not supported by the objective evidence. In my view, this finding falls within the range of reasonableness and will therefore not be disturbed.

[10] Finally, the Applicants contend that the PRRA Officer's decision was based on objective country documentation from 2006 and that he should have relied on more recent documentation. In his reasons, however, the PRRA Officer also makes reference to documentation from 2011, 2012, and 2013 and there is no reason to believe that his conclusions do not stem from an evaluation of the totality of the evidence. Although the PRRA Officer noted areas in need of improvement in the publicly available documentation he considered, he nevertheless concluded that the documentation did not demonstrate that an individual, similarly situated to Ms. Pham, would be refused medical treatment.

[11] In their written submissions to this Court, the Applicants relied on "publicly available country documentation" from an organisation called Cittadinanza. Although this documentation states that only a small part of Vietnam is covered by mental health services because of scarce resources, it also indicates that this is the case "in most low income countries". I find this information to be insufficient to trigger protection pursuant to subsection 113(c) and 97(1)(b)(ii) of the Act which require the risk faced by a protection seeker not to be one of generalized nature. Furthermore, subsection 97(1)(b)(iv) explicitly specified that that this risk ought not to be caused by the inability of the country to provide adequate health or medical care. I therefore find this documentation to be of little help to the Applicants.

[12] For these reasons, I find that the PRRA Officer's decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and the law. As a result, the Applicants' application for judicial review is dismissed.

[13] No question of general importance has been proposed by the parties and none will be certified.



**ORDER**

**THIS COURT ORDERS**

1. The application for judicial review is dismissed.
2. No question is certified.

"René LeBlanc"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3952-13

**STYLE OF CAUSE:** VAN HOI NGUYEN, THI BICH THUY PHAM v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 3, 2014

**ORDER AND REASONS:** LEBLANC J.

**DATED:** JANUARY 15, 2015

**APPEARANCES:**

Maureen Silcoff FOR THE APPLICANTS

Charles Jubenville FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

D. Clifford Luyt FOR THE APPLICANTS  
Barrister & Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario