Federal Court Cour fédérale

Date: 20190228

Docket: IMM-4098-18

Citation: 2019 FC 244

Montréal, Quebec, February 28, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

CHRISTOPHER BLIDEE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Christopher Blidee, seeks judicial review of a Senior Immigration Officer's [Officer] decision dated July 4, 2018, dismissing his application for a pre-removal risk assessment [PRRA].

[2] The Applicant is a citizen of Liberia. He is married and has three (3) children. His wife and children are citizens of the United States and currently reside with the Applicant in Canada.

[3] In October 1993, the Applicant was granted asylum in the United States as a minor dependent of his mother. The Applicant moved to the United States in February 1994.

[4] In 2004, the Applicant was convicted of fraud and identity theft, resulting in a loss of status in the United States and his deportation to Liberia on March 12, 2012. After being detained by the Liberian authorities upon his arrival and securing his release through the payment of bribes, the Applicant made arrangements to leave Liberia.

[5] On March 31, 2012, the Applicant arrived in Canada and claimed refugee protection. He was found to be inadmissible to Canada on grounds of serious criminality pursuant to paragraph 36(1)(*b*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and a deportation order was issued against him on June 5, 2012.

[6] On March 15, 2018, the Applicant was notified that he was eligible for a PRRA. The Applicant filed his PRRA application on March 27, 2018 in which he alleges that when the American authorities removed him to Liberia in 2012, they told the Liberian authorities that he “was an undocumented immigrant arrested for drunk driving”. He was then detained in a dark cell and was told that he would be transferred to a prison facility where deportees were held. He spoke to one of the officers in charge and offered him a bribe in exchange for his release. After paying the sum of $100 US, the Applicant was released and told to come back the following day

for fingerprinting and processing. When the Applicant returned the following day, he was again detained. The Liberian officers wanted more money and told him that failure to cooperate would lead to indefinite detention and that he would be subjected to the worst conditions imaginable. Feeling that his life was threatened, he paid them the sum of $200 US, promised to return the next day for his passport and was released from detention. When the Liberian officers called a family friend to find out the Applicant's whereabouts, they were told that the Applicant had left the country. Their response to the family friend was that the "[Applicant] better never come back".

[7] In his PRRA application, the Applicant indicates that he fears harsher treatment if returned to Liberia and being targeted by the same government officials who previously targeted and threatened him. He also states that he fears for his mental health and physical safety if he is detained again due to harsh conditions in detention. He further claims to fear returning to Liberia on the basis that he has not been to this country since the age of fifteen (15) and has no known living relatives in the country. Finally, the Applicant alleges traumatic past persecution and the risk of re-traumatization if he is returned to Liberia.

[8] On July 4, 2018, the Officer refused the application on the basis that the Applicant had not discharged his burden of demonstrating that he has a well-founded fear of persecution in Liberia, or that he would face, on a balance of probabilities, a risk of torture, a risk to life, or a risk of cruel and unusual treatment or punishment if removed to Liberia, as per sections 96 and 97 of the IRPA.

[9] The Applicant seeks judicial review of the Officer's decision. He submits that the Officer made a veiled credibility finding and as a result, should have held an oral hearing pursuant to subsection 113(b) of the IRPA. The Applicant also submits that the Officer erred in its cruel and unusual punishment and state protection analyses.

[10] The Applicant agrees that the determinative issue in this application is whether the Officer erred by failing to hold an oral hearing pursuant to subsection 113(b) of the IRPA. As such, the Court's reasons will be limited to this issue.

II. Analysis

[11] The standard of review applicable to a decision to grant or not to grant an oral hearing in the context of a PRRA application has been mixed. In some cases, the Court applies a correctness standard because the matter is viewed as one of procedural fairness, while in others, the reasonableness standard is applied on the basis that the appropriateness of holding an oral hearing in light of the particular context of a file calls for discretion and involves the application of the statutory framework to the particular facts of the case (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 12 [*Huang*]; *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at paras 10-13). Regardless of the standard of review to be applied by this Court, I am satisfied that there is no error on either basis which would justify the intervention of this Court.

[12] Pursuant to subsection 113(b) of the IRPA, an oral hearing may be held if the Minister is of the opinion, on the basis of prescribed factors, that such a hearing is required. The prescribed

cumulative factors are set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. An oral hearing will generally be required if there is a serious credibility issue regarding evidence that is central to the decision and which, if accepted, would justify allowing the application (*Huang* at para 34). Thus, the Court must determine whether a credibility finding was made explicitly or implicitly and, if so, whether it was central to the decision (*Ibrahim v Canada (Citizenship and Immigration),* 2014 FC 837 at para 16).

[13] The parties acknowledge that no explicit credibility findings were made by the Officer and that the Court must look beyond the words used in the reasons to determine whether veiled credibility findings were made. The Applicant contends the Officer's decision to reject his application is not based on the insufficiency of evidence but rather on a veiled credibility finding.

[14] In particular, the Applicant argues that the 2016 U.S. Department of State Human Rights Report for Liberia submitted in support of the application clearly established that arbitrary imprisonment, combined with possibly life threatening conditions exist in Liberia. He also argues that his personal affidavit not only sets out the fact that he was detained by the Liberian authorities upon his arrival in Liberia but that he was also threatened not to return to Liberia and that his failure to cooperate would lead to indefinite detention. He contends that this uncontradicted evidence on its own constitutes a serious ground justifying a well-founded fear of cruel and unusual punishment and that it is difficult to imagine what other evidence the Officer expected from the Applicant, beyond his own testimony, which is presumed to be true. Finally, the Applicant submits that he never had the opportunity to have his fears heard in the context of

an oral hearing in Canada and that, since the credibility findings were central to the decision, the Officer was obligated to conduct an oral hearing.

[15] After reviewing the Officer's reasons as well as the record, I am unpersuaded by the Applicant's argument.

[16] I accept, as the Applicant contends, that a conclusion of insufficient evidence may actually amount to a veiled credibility finding and that it is sometimes difficult to distinguish a finding of insufficient evidence from a veiled credibility finding. However, it is important to mention as stated in *Huang* at paragraph 43, that the presumption of truth or reliability of statements made by refugee claimants, as discussed in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) (QL) and relied upon by the Applicant, cannot be equated with a presumption of sufficiency. Indeed, even if evidence is presumed credible and reliable, the affidavit evidence of a claimant seeking protection cannot be presumed to be sufficient, in and of itself, to establish the facts on a balance of probabilities. This determination rests with the trier of fact – in this case, the Officer (*Huang* at para 43).

[17] The Officer considered the Applicant's description of the conditions he encountered while detained in 2012 and found that it did not meet the threshold of torture, risk to life or cruel and unusual treatment or punishment. The Officer noted that while the Applicant described feelings of fear and panic, he did not provide any details or corroborating evidence of harm, or threat to his life and safety. The Officer also found there was insufficient evidence demonstrating that the Applicant would face the risk of being targeted and threatened again in similar or worse

circumstances were he to return to Liberia. The Officer considered both the 2016 and 2017 U.S. Department of State Human Rights Reports for Liberia and determined that they do not support the Applicant's assertion that he faced a *personalized* risk in Liberia as a failed asylum seeker, or deported person. Finally, the Officer found that the Applicant had failed to demonstrate how the absence of family in Liberia and the risks outlined in his psychological evaluation report related to a risk under sections 96 and 97 of the IRPA.

[18] In my view, the Officer's statements regarding the insufficiency of evidence do not call into question the Applicant's credibility nor has the Applicant identified any language in the decision to suggest otherwise. The Applicant had the onus of demonstrating, on a balance of probabilities, that he faced a personalized, forward-looking risk and is a person in need of protection, as per section 97 of the IRPA. On the basis of the record adduced by the Applicant, it was open to the Officer to find that the Applicant had failed to adduce sufficient persuasive evidence to support his allegations of risks.

[19] As no explicit or veiled credibility findings were made, the Officer did not commit a reviewable error, on either standard of review, by failing to grant the Applicant an oral hearing. Moreover, while the Applicant may disagree with the Officer's assessment of the evidence, it is not the role of this Court to reweigh the evidence before the Officer and to draw a different conclusion.

[20] For all of these reasons, the application for judicial review is dismissed.

[21] No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-4098-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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