Federal Court  Cour fédérale

Date: 20080229

Docket: IMM-3388-07

Citation: 2008 FC 273

Montréal, Quebec, February 29, 2008

Present: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

RONY ALEXIS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") further to a decision of an immigration officer dated June 14, 2007, rejecting the applicant's application for a Pre-Removal Risk Assessment ("PRRA").

FACTS

[2] The applicant is a citizen of Haiti. He was a member of the PNH (Haitian national police) from 1999 until he resigned on November 3, 2005, a little more than two months after his arrival in Canada. In 2003, he had been promoted to the position of investigator in the anti-gang unit of the PNH.

[3] The applicant arrived in Canada on July 27, 2005, and claimed refugee protection on September 8, 2005. The RPD rejected the claim because the applicant was excluded under paragraphs 1F(*a*) and 1F(*c*) of the *Convention Relating to the Status of Refugees* ("Convention"). The applicant brought an application for judicial review of the RPD decision, which was dismissed by this Court.

[4] The applicant's mother, Decelia Charles Milien, came to Canada at the same time as he did. The RPD recognized her as a person in need of protection under subsection 97(1) of the Act, as she had been subject to mistreatment by persons who were looking for her son.

[5] The applicant invoked his right to apply for a PRRA under section 112 of the Act, alleging that he had received threats by telephone in December 2004 following an investigation into the escape of prisoners. The persons who threatened him held him responsible for the imprisonment of their leader. He filed a complaint with the police on December 27, 2004.

[6] In January 2005, because of the threats made against him, the applicant left his home to move in with his mother. On February 9, 2005, three armed men barged into her house and allegedly confined and brutalized her.

[7] In April 2005, as he was taking a minibus to the anti-gang unit's police station, he was allegedly shot and wounded, such that he needed two operations to recover from the incident. The armed men fled.

[8] After being released from hospital, he continued to receive threats of death, kidnapping and arson, as did his mother, brother and sister.

[9] The applicant and his mother came to Canada to attend his brother's wedding and subsequently claimed refugee protection.

[10] In his reasons, the officer considered the applicant's individualized risk and concluded that the applicant would not be subject to a risk to his life or to cruel and unusual treatment if he returned to Haiti. The officer determined that there was a lack of probative evidence that the applicant was personally targeted by the gang members because of his work in the anti-gang unit.

STANDARD OF REVIEW

[11] In *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 540, 2005 FC 437, at paragraph 19, Mr. Justice Richard Mosley conducted a pragmatic and functional analysis and determined that, in the context of the judicial review of a PRRA application, the standard of review applicable to questions of fact is patent unreasonableness; to questions of mixed fact and law, reasonableness *simpliciter*; and to questions of law, correctness.

ANALYSIS

Language preference of the PRRA officer

[12] The applicant submits that it was unfair to assign the consideration of his application to an officer who was more familiar with English.

[13] This argument has no basis. Being more familiar with one language does not mean a lack of knowledge of another language. I note on reading the reasons for decision that, in rendering his decision, the PRRA officer properly summarized the facts alleged by the applicant and analyzed the situation in the country in question as well as the individualized risk to the applicant.

[14] I did not find any indication whatsoever to the effect that the PRRA officer did not understand the nature of the case or the evidence he had to analyze.

The applicant's mother

[15] The applicant argues that the PRRA officer failed to consider the fact that the applicant's mother had been recognized by the RPD as a person in need of protection under subsection 97(1) of the Act. He submits that if the RPD reached the conclusion that his mother would face a danger of torture, a risk to her life or a risk of cruel and unusual treatment, he would also face the same risks, because his application was based on the same facts.

[16] I cannot agree with this argument. Although the PRRA officer may refer to the decision of the RPD and it is open to him to take into consideration the mother's situation, he is not bound by the RPD's decision. In cases of such claims, it is trite law that a panel is not bound to grant any status to a claimant simply because this status was granted to another person whose claim was based on the same facts. In a recent case, *Aoutlev v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 183, 2007 FC 111, Mr. Justice Shore concluded as follows:

> [26] This Court's case law has established in a large number of decisions that a decision-maker is not bound by the result in another claim, even if the claim

> involves a relative, because refugee status is determined on a case-by-case basis, and because it is possible that the other decision was incorrect. *Bakary v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111, [2006] F.C.J. No. 1418 (QL) (Pinard J.); *Rahmatizadeh v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 578 (QL) (Marc Nadon J.).)

[17] The same reasoning applies in this case. Risk is assessed on a case-by-case basis, and as Shore J. stated, it is always possible that the other decision was incorrect.

Assessment of credibility

[18] The applicant submits that the officer had to grant him an interview, because the issue of credibility had not been considered by the RPD.

[19] The issue of determining whether the officer should have granted a hearing under paragraph 113(*b*) of the Act must be settled by applying the factors set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("Regulations"). A hearing is held only when the three factors listed in section 167 are present. Under paragraph (*a*), there must be 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.

[20] In this case, I note that no evidence considered by the officer challenged the applicant's credibility. Rather, the officer concluded that there was insufficient probative evidence to conclude that the applicant was personally targeted because of an investigation he had allegedly conducted against the head of a criminal gang.

[21] The situation here is similar to the one in *Kaba c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2006] A.C.F. no. 1420, 2006 CF 1113, where Mr. Justice Yvon Pinard wrote the following at paragraph 29:

> [TRANSLATION]
> In these circumstances, the applicant's allegation that the officer erred in not granting her a hearing because of the doubts about her credibility is erroneous. Even if the officer made findings of credibility, her decision is based primarily on the insufficiency of the evidence submitted by the applicant to discharge her onus of establishing that she and/or her daughter personally incurred any risks of return such as those covered in sections 96 and 97 of the Act should they return to Guinea.

[22] See also *Selliah v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1134, 2004 FC 872, at paragraph 27; *Iboude v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1595, 2005 FC 1316, at paragraph 14.

[23] Because the officer's decision essentially concerned the lack of probative evidence that the applicant was personally targeted, the officer did not make any error in not granting an interview to the applicant.

Case law concerning PNH officers

[24] The applicant submits that the officer should have considered the recent case law of this Court regarding exclusion, particularly with regard to members of the PNH, and more specifically the decisions in *Merceron v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 392, 2007 FC 265, and *Plaisir v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 391, 2007 FC 264.

[25] With respect, I cannot agree with this argument. It was not open to the officer to reassess the RPD's conclusions. This Court dismissed the application for judicial review of the RPD decision. In *Isomi v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1753, 2006 FC 1394, Mr. Justice Simon Noël stated the following:

> [17] In addition, the decision to adopt the same conclusions as the RPD seems to be warranted by the fact that the application for leave and for judicial review of the RPD's decision was dismissed by this Court, given the failure to file the record. I concluded in the following excerpt from *Jacques v. Canada*, *supra*, at paragraph 22, that a PRRA decision is not an appeal of a decision of the IRB:
>
> > As the respondent argues, a PRRA officer does not sit on appeal or in judicial review and is therefore entitled to trust the IRB's findings in the absence of new evidence.
>
> [18] In concluding on this point, the PRRA officer did not make any error in adopting the conclusion of the IRB to the effect that the applicant is a person excluded from Canada under subparagraphs 1(F)(a) and (c) of the Convention. [Emphasis added]

Consideration of the evidence

[26] The applicant submits that the officer erred in dismissing or cavalierly ignoring decisive and vital evidence.

[27] First of all, I note that the officer attached considerable importance to the medical evidence and did not contest that the applicant had nevertheless been the victim of a shooting. However, he refused to acknowledge a link between the injuries and the allegation to the effect that the applicant was being targeted by gang members. The applicant had submitted two police reports to substantiate the risks alleged, namely, that he was being threatened by a gang.

[28] Although the reports corroborated the applicant's allegation that he was being targeted, the officer attached little probative value to those reports. In the officer's opinion, these reports were

merely statements made by the applicant and his mother and therefore were of little significance. Thus, the officer did take the evidence submitted by the applicant into account. The weighing of the evidence lies within the purview of the officer conducting the assessment and does not normally give rise to judicial review. Therefore, I must dismiss this submission made by the applicant, which essentially concerns the weight the officer attached to the evidence.

Temporary suspension of removals

[29] Finally, the applicant submits that the fact that Haiti was subject to a temporary suspension of removals must be considered by the officer and mentioned in his reasons for decision, in spite of exclusion under paragraphs 1F(a) and (c) of the Convention.

[30] Under subsection 230(1) of the Regulations, The Minister may impose a stay on removal orders with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population. This measure was applied to persons to be removed to Haiti. However, under paragraph 230(3)(*e*) of the Regulations, such a stay does not apply to a person referred to in section F of Article 1 of the Refugee Convention. Therefore, the applicant cannot take advantage of the temporary suspension in effect.

[31] The issue raised by the applicant is whether, in spite of the preceding, the fact that a suspension of removals is in effect must be taken into consideration in the PRRA application decision. In *Isomi, supra*, Noël J. answered this question in the affirmative:

> [31] Having said this, and as mentioned previously, I would add that in the case of a moratorium, as a minimum, the PRRA officer must refer to the stay of removal orders in force by commenting on it and by distinguishing the specific facts of the case being studied. If there are facts related to torture or persecution, they must be considered in the analysis. The objective of such an analysis is not to circumvent the Regulations, but rather to ensure there is no risk of torture or

> persecution to the person in question stemming from the grounds on which the moratorium is based.

[32] In this case, although the officer considered the situation in the country in question, he was silent on the moratorium. Therefore, a reading of the reasons does not reveal whether the officer analysed the facts in light of the moratorium. If removed, does the applicant face a risk in the nature of persecution or cruel and unusual treatment stemming from the grounds on which the moratorium is based? The officer therefore made an error warranting intervention by this Court.

[33] For these reasons, I am of the opinion that the application for judicial review must be allowed in part and that the PRRA application must be referred back to another officer for a reconsideration of the facts in light of the moratorium.

JUDGMENT

THE COURT ORDERS that the application for judicial review be allowed in part. The PRRA application will be referred back to another officer for a reconsideration of the facts in light of the moratorium.

"Danièle Tremblay-Lamer"
Judge

Certified true translation
Michael Palles

RELEVANT STATUTORY PROVISIONS

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

…

(3) Refugee protection may not result from an application for protection if the person

…

(*c*) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

113. Consideration of an application for protection shall be as follows:

…

(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

***Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27**

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

…

(3) L'asile ne peut être conféré au demandeur dans les cas suivants :

…

c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

113. Il est disposé de la demande comme il suit :

…

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

***Immigration and Refugee Protection Regulations*, SOR/2002-227**

167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:

(*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;

***Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227**

167. Pour l'application de l'alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui

(*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.

concerne la crédibilité du demandeur;

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

230. (1) The Minister may impose a stay on removal orders with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population as a result of

230. (1) Le ministre peut imposer un sursis aux mesures de renvoi vers un pays ou un lieu donné si la situation dans ce pays ou ce lieu expose l'ensemble de la population civile à un risque généralisé qui découle :

(*a*) an armed conflict within the country or place;

(*b*) an environmental disaster resulting in a substantial temporary disruption of living conditions; or

(*c*) any situation that is temporary and generalized.

a) soit de l'existence d'un conflit armé dans le pays ou le lieu;

b) soit d'un désastre environnemental qui entraîne la perturbation importante et momentanée des conditions de vie;

c) soit d'une circonstance temporaire et généralisée.

…

…

(3) The stay does not apply to a person who

…

(*e*) is a person referred to in section F of Article 1 of the Refugee Convention;

(3) Le paragraphe (1) ne s'applique pas dans les cas suivants :

…

e) il est visé à la section F de l'article premier de la Convention sur les réfugiés;

FEDERAL COURT

SOLICITORS OF RECORD

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