Date: 20080911

Docket: IMM-419-08

Citation: 2008 FC 1015

Ottawa, Ontario, September 11, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MONOARA BEGUM

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] [41] In my view, the immigration officer could adopt the factual conclusions in her PRRA decision to the analysis she was making in the H & C application. However, it was important that she apply those facts to the test of unusual and undeserved or disproportionate hardship, a lower threshold than the test of risk to life or cruel and unusual punishment which was relevant to the PRRA decision.

(As stated by Chief Justice Allan Lutfy of the Federal Court in *Liyanage v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1045, 141 A.C.W.S. (3d) 118.)

II. Legal proceeding

[2] This is an application for judicial review of a decision by a pre-removal risk assessment officer (PRRA), dated December 14, 2007, dismissing the application for permanent residence based on humanitarian and compassionate considerations (HC) with a risk of return component.

III. Facts

[3] The applicant, Ms. Monoara Begum, a citizen of Bangladesh, entered Canada on December 3, 2001.

[4] On March 14, 2003, the Refugee Protection Division (RPD) refused Ms. Begum's claim for refugee protection on the basis that her testimony was riddled with contradictions.

[5] On July 15, 2003, this Court dismissed the application for leave and judicial review of the RPD's negative decision.

[6] Ms. Begum alleges that she was the victim of a vendetta to sully her reputation by one Mr. Montu, with whom she lived in Canada. Specifically, she says that the individual in question took compromising photographs of her and showed them to her family, which subsequently cut off all contact with her.

[7] She submits that if she had to return to Bangladesh, she would face persecution by family members because of her tarnished reputation and the fact that she is divorced.

IV. Issues

[8] (1) Based on all the evidence before the PRRA officer, does the decision contain a reviewable error of fact or law?

(2) Did the PRRA officer apply an improper test to the applicant's HC application?

V. Analysis

Applicable law

[9] Under subsection 11(1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (IRPA), a person who wishes to immigrate to Canada must file an application for permanent residence from outside Canada:

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act. (Emphasis added.)	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi. (La Cour souligne.)

[10] Subsection 25(1) of the IRPA provides, however, that the Minister has the power to facilitate the admission of a person to Canada or to exempt a person from any applicable criteria or

obligation set out in the IRPA, if the Minister is satisfied that such an exemption or facilitation should be granted on the basis of humanitarian and compassionate considerations (HC):

> **25.** (1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations. (Emphasis added.)
>
> **25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient. (La Cour souligne.)

[11] However, the Minister's power to grant an exemption based on humanitarian and compassionate considerations is highly discretionary and is meant to be an exceptional remedy, as Mr. Justice Yves de Montigny pointed out in *Serda v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 356:

> [20] One of the cornerstones of the *Immigration and Refugee Protection Act* is the requirement that persons who wish to live permanently in Canada must, prior to their arrival in Canada, submit their application outside Canada and qualify for, and

> obtain, a permanent resident visa. Section 25 of the Act gives to the Minister the flexibility to approve deserving cases for processing within Canada. This is clearly meant to be an exceptional remedy, as is made clear by the wording of that provision . . . (Emphasis added.)

[12] Accordingly, Ms. Begum has the onus of proving that the hardships she would encounter if she had to apply for permanent residence outside the country would be disproportionate, unusual or undeserved. This test has been adopted in this Court's jurisprudence:

> [26] An applicant has a high threshold to meet when requesting an exemption from the application of subsection 11(1) of Act. The applicant has the burden of presenting the facts on which his request is based in order to demonstrate that he would encounter disproportionate, unusual or undeserved hardship if he had to apply from outside Canada . . .

(*Barzegaran v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 681, [2002] F.C.J. No. 867 (QL); also, *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 F.C. 358 at paragraph 23; *Choudhary v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 412, [2008] F.C.J. No. 583 (QL) at paragraph 31; *Lee* v. *Canada (Minister of Citizenship and Immigration)*, 2008 FC 368, [2008] F.C.J. No. 470 (QL) at paragraph 18.)

[13] The Manual IP5 " Immigrant Applications in Canada made on Compassionate or Humanitarian Grounds", published by Citizenship and Immigration Canada, defines the words "unusual, undeserved or excessive" in this context:

6.7 Unusual and undeserved hardship	**6.7. Difficulté inhabituelle et injustifiée**
Unusual and undeserved hardship is:	On appelle difficulté inhabituelle et injustifiée:
• the hardship (of having to apply for a permanent resident visa from outside of Canada) that the applicant would face should be, in most cases, unusual, in other words, a hardship not anticipated by the Act or Regulations; and	• la difficulté (de devoir demander un visa de résident permanent hors du Canada) à laquelle le demandeur s'exposerait serait, dans la plupart des cas, inhabituelle ou, en d'autres termes, une difficulté non prévue à la Loi ou à son Règlement; et
• the hardship (of having to apply for a permanent resident visa from outside Canada) that the applicant would face should be, in most cases, the result of circumstances beyond the person's control.	• la difficulté (de devoir demander un visa de résident permanent hors du Canada) à laquelle le demandeur s'exposerait serait, dans la pluparts des cas, le résultat de circonstances échappant au contrôle de cette personne.

(Also *Legault* and *Serda*, above.)

The standard of review for HC applications

[14] It has been recognized since *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paragraph 61, that the appropriate standard of review for HC applications was reasonableness *simpliciter*. However, this standard was recently merged with the patently unreasonable standard to become one standard, that of reasonableness. (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190.)

[15] For purposes of a judicial review of a decision on an HC application, in light of the tests established in *Dunsmuir*, above, the appropriate standard of review for mixed questions of fact and law or general facts is reasonableness. For questions of law only, the appropriate standard of review is correctness (*Choudhary*, above). In all cases, the Court should show considerable deference to the decision of the PRRA officer who reviewed the HC application.

(*Kaurv v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 897, [2008] F.C.J. No. 1113 (QL) at paragraph 12; also, *Blair v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 800, [2008] F.C.J. No. 997 (QL) at paragraphs 11-12; *Lee v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 368, [2008] F.C.J. No. 470 (QL) at paragraph 21.)

The decision is reasonable

[16] The RPD issued a lengthy decision following a thorough review of the evidence submitted by Ms. Begum.

[17] In her application, Ms. Begum asserts three reasons that she says represent the unusual, undeserved or excessive hardships she would encounter if she had to return to Bangladesh to apply for permanent residence:

(a) She fears her ex-spouse;

(b) She fears Bangladesh society in general, given her status as a divorced woman and given certain rumours that she says are circulating about her in her country of origin;

(c) She alleges that it would be impossible to receive adequate treatment for her mental health problems.

Fear of her ex-spouse

[18] Ms. Begum contends that she fears her ex-spouse's violence if she had to return to Bangladesh.

[19] However, this fear was examined by the RPD, which found that Ms. Begum had not credibly demonstrated this fear (Certified tribunal record at pp. 282-290).

[20] This Court itself dismissed the application for leave and judicial review of this decision (Certified tribunal record at p. 277).

[21] Given these facts and in the absence of fresh evidence demonstrating the applicant's fear, the PRRA officer was fully justified in rejecting this allegation and not acting on it. An HC application is not an appeal of the RPD's decision (*Potikha v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 136, [2008] F.C.J. No. 167 (QL) at paragraph 50). Accordingly, the PRRA officer's decision was reasonable.

Fear of Bangladesh society because she is divorced

[22] Ms. Begum also claims that she fears Bangladesh society in general because she is now divorced and because false rumours about her were circulated in her country by one Mr. Montu who distributed compromising photos of her to her family.

[23] Ms. Begum only filed one series of affidavits to corroborate her allegations about Mr. Montu's actions, and the RPD considered those affidavits to be of little probative value.

[24] In fact, the three affidavits appear to have been drafted by Ms. Begum's friends, thus casting doubt on their impartiality.

[25] Furthermore, two of the three affidavits were signed on the same day before the same officer, and their contents are identical, word for word (Certified tribunal record at pp. 209-212).

[26] The two deponents in question gave no details about Mr. Montu's actions that sullied Ms. Begum's reputation. The deponents stated that "Mr. Abdur Rahman Montu committed punishable offence by intoxicating rumor of the character against Ms. Monowara Begum."

[27] The deponents never stated that Mr. Montu displayed in Bangladesh photos of Ms. Begum in bed, as she contends (Certified tribunal record, p. 171, at paragraph 7; Applicant's record at p. 13, paragraph 18).

[28] Moreover, the third affidavit, which is not sworn, deals more with disagreements between Mr. Montu and Ms. Begum about finances than with what he did to damage her reputation (Certified tribunal record at pp. 201-202).

[29] In fact, in the last paragraph of his affidavit, the deponent states that he learned from his son Awlad Hossain (one of the two other deponents) that Mr. Montu “spread various scandals relating to character assassination of Monoara Begum”. The deponent does not have personal knowledge of the facts, and the affidavit does not contain any further details regarding the alleged scandal.

[30] In the absence of further evidence corroborating Ms. Begum’s allegations, it was completely reasonable for the PRRA officer to find that the evidence about her fear was insufficient.

[31] As for the allegations about her status as a divorced woman and the risk that she would face based on that fact if she had to return to Bangladesh, the PRRA officer clearly noted this and examined the documentary evidence on this point.

[32] He concluded that violence towards divorced women in Bangladesh was real, although not systematic. He found that the violence varied based on the women’s education and social class and that the situation in cities differed significantly from that in the countryside.

[33] The PRRA officer found that Ms. Begum had lived in Dacca for several months and in Montréal for several years where she developed new responses to defend her rights.

[34] Last, he determined that the documentary evidence referred to discrimination that, although clearly unfortunate, could not be characterized as persecution.

Medical care available in Bangladesh

[35] Last, Ms. Begum claimed that her health condition required care that she would be unable to find if she had to leave for Bangladesh.

[36] The PRRA officer reviewed the evidence on this point. Relying, in particular, on a decision by the European Court of Human Rights, he determined that the care required by Ms. Begum, although not perfect, was nonetheless available.

[37] Based on the evidence before the PRRA officer, this finding was reasonable. It is not for this Court to substitute its opinion for that of the PRRA officer on questions of fact.

[38] In short, the PRRA officer concluded that the grounds relied on by Ms. Begum did not constitute unusual, undeserved or excessive hardships that she would be subjected to if she had to return to Bangladesh. Therefore, using the discretion explicitly granted to him under subsection 25(1) of the IRPA, he dismissed the application. This decision was reasonable and, accordingly, is immune from the intervention of this Court.

Allegations presumed true in absence of corroborating evidence

[39] Ms. Begum submits that, regardless of the probative value of the affidavits she filed, her allegations should be accepted as true, in the absence of evidence to the contrary.

[40] Ms. Begum has the burden of proving the allegations in support of her application (*Owuwu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 F.C.R. 635 at paragraph 8). In this case, Ms. Begum did not provide any other evidence to support her allegation that she feared her family in Bangladesh.

[41] The evidence adduced by Ms. Begum was insufficient. Her failure to adequately prove her allegations could undoubtedly have caused the PRRA officer to reject them.

Applicant unable to work in Bangladesh

[42] Ms. Begum contends that the PRRA officer failed to consider the documentary evidence concerning violence towards women who work as domestics in Bangladesh.

[43] To put things in context, the PRRA officer wrote the following in his reasons:

> [TRANSLATION]
>
> . . . it also indicates that, in terms of the economy, women's labour is less expensive and that there are job opportunities for many women, especially as domestics or labourers . . .

(Certified tribunal record at p. 6.)

[44] The PRRA officer merely suggested that Ms. Begum could find work as a domestic or a labourer. He did not choose for Ms. Begum nor did he force her to find work as a domestic.

[45] The PRRA officer did not have to discuss the situation for domestics in Bangladesh more directly since Ms. Begum had never worked as one in the past, and there was no evidence that she would have such a job if she returned to her country.

[46] As for the allegations concerning the hardships Ms. Begum would encounter in finding work in Bangladesh owing to both the prevailing discrimination and her fragile mental health, the PRRA officer determined that Bangladesh was capable of providing her with medical care.

[47] The PRRA officer also found that Ms. Begum had developed new skills (she now speaks English) and that the six years she spent in Montréal would be an asset in her search for work in Dacca. The PRRA officer also determined that these factors would partially shield Ms. Begum from the prevailing discrimination.

General risk of persecution

[48] Ms. Begum submits in her record that the documentary evidence establishes that women in Bangladesh are victims of discrimination that, cumulatively, is similar to persecution.

[49] The PRRA officer found that Ms. Begum has some skills that would shield her, in part, from the prevailing discrimination.

[50] In her record, Ms. Begum relies only on general documentary evidence without linking it directly to herself. This evidence was insufficient to demonstrate to the PRRA officer that Ms. Begum would be personally at risk should she return to her country (*Kaba v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 647, 160 A.C.W.S. (3d) 524 at paragraph 46).

Improper test for assessing HC application

[51] Ms. Begum submits that the PRRA officer used an improper test to assess her HC application.

[52] However, there is no merit to this argument. The decision in this case was clearly based on the non-existence of unusual, undeserved or excessive hardships for Ms. Begum if she had to return to her country to apply for permanent residence in the usual way (Certified tribunal record at pp. 7-9).

[53] The PRRA officer was entitled to rely on the facts reviewed on the PRRA application, provided that the jurisprudential test for HC applications was applied to those facts (*Liyanage*, above).

[54] As shown in *Liyanage*, the PRRA officer conducted this analysis and correctly applied the test on his review of the HC application.

VII. Conclusion

[55] Ms. Begum did not meet her burden of demonstrating that she would face unusual, undeserved or excessive hardships if she had to return to Bangladesh to submit her application for permanent residence, as set out in subsection 11(1) of the IRPA. The officer rendered a decision that was supported by all the evidence that had been submitted to him and applied the appropriate tests in arriving at his conclusion.

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

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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