Federal Court		Cour fédérale

Date: 20081202

Docket: IMM-1752-08

Citation: 2008 FC 1333

Toronto, Ontario, December 2, 2008

PRESENT: The Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

ARIEL ARENAS PAREJA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant is seeking under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), the judicial review of a decision of a pre-removal risk assessment officer (PRRA officer), dated January 25, 2008, refusing his pre-removal risk assessment application.

II. The facts

[2] The applicant, a Mexican citizen, married and the father of two children, first arrived in Canada on June 11, 1990, entering with visitor's status valid for a period of one month, which he did not seek to extend.

[3] On September 12, 1990, he applied for refugee protection based on a fear of persecution related to his activities as an investigator of Mexican drug trafficking. The Immigration and Refugee Board (IRB) dismissed his decision based on his lack of credibility. The applicant left Canada on August 28, 1991, en route to Mexico.

[4] The applicant returned on May 17, 2007, and was authorized to stay in Canada until June 20, 2007, as a temporary resident.

[5] On July 16, 2007, he filed a refugee claim then deemed ineligible under paragraph 101(1)(*b*) of the Act, given the IRB's previous refusal of his refugee claim.

[6] The removal order in effect, the applicant was summoned on July 23, 2007, by the Canada Border Services Agency to make arrangements for his departure. On that occasion, he was informed of the option of filing a PRRA application, which he did.

[7] On January 25, 2008, the PRRA officer determined that the applicant would not be at risk if he were to return to Mexico and accordingly refused his PRRA application.

[8] His removal from Canada was scheduled for May 30, 2008. However, on May 27, 2008, this Court stayed the removal order so that the applicant would be able to challenge the merits of the allegations made in refusing the PRRA in this proceeding.

III. Reasons of the decision

[9] The PRRA officer determined in her decision that the applicant had not satisfied his burden to establish the merits of his allegations, and specifically had not established that he was personally targeted by drug traffickers or by corrupt police officers.

[10] The PRRA officer also determined that even if it were admitted that the applicant's fear was founded, the applicant had failed to establish that the Mexican authorities were unable or unwilling to protect him.

IV. Issue

[11] Did the PRRA officer make an unreasonable error in determining that **[**TRANSLATION] "the applicant did not establish that there was any more than a mere possibility that he would be persecuted in Mexico or that there are substantial grounds to believe the applicant would be personally subjected to a danger of torture or to risk of cruel and unusual punishment in his country"?

V. Analysis

Standard of review

[12] The pre-removal risk assessment of the PRRA officer rests essentially on an assessment of the facts to which this Court must afford great deference. Accordingly, the standard of

"unreasonableness" applies to the PRRA officer's findings of fact, and indeed the applicant does not dispute the appropriate standard (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[13] This Court will therefore not intervene on questions of fact unless the PRRA officer's determination is unreasonable; but, for the reasons that follow, this is not the case here.

Merits of the impugned decision

(i) Did the PRRA officer consider the prevailing situation in Mexico in regard to state protection?

[14] The applicant alleges that the PRRA officer disregarded the dangerous situation prevailing for him in Mexico.

[15] A review of the record and the reasons of the decision establishes that the PRRA officer carried out a complete and detailed analysis of the applicant's evidence as well as recent documentary evidence on the current situation in determining that the application should be dismissed. We need not necessarily disregard this analysis and find it unreasonable because the applicant does not agree with the result and would have preferred a different result or another finding. To the contrary, as a decision-maker, the PRRA officer — not the applicant or this Court — must determine what weight to assign to the documentary evidence filed in support of the PRRA application (*Bashir v. Canada (Minister of Citizenship and Immigration),* 2006 FC 783, paragraph 35; *Singh v. Canada (Minister of Citizenship and Immigration),* [1996] F.C.J. No. 1329 (T.D.) (QL), paragraph 3).

[16] After this exercise, the PRRA officer determined that [TRANSLATION] "the Mexican government is active against drug trafficking and corruption connected to organized crime. The reference documents identify an existing scheme for intervention and protection, accessible to the applicant. Further, government agencies can support individuals and guide them through their endeavours."

[17] Therefore, after a complete and detailed analysis of the evidence submitted by the applicant, as well as the recent documentary evidence on the currently prevailing situation in Mexico, the PRRA officer was satisfied that not only did protection exist but that it was also available to the applicant.

[18] While the applicant appears to want to put the general protection offered by the state of Mexico on trial, bear in mind that state protection need not be perfect; it is sufficient for it to be adequate and we cannot require that a state protect its citizens all the time (*Canada (Minister of Employment and Immigration) v. Villafranca* (1993), 18 Imm. L.R. (2d) 130 (F.C.A.)).

[19] The analysis of risk and state protection is essentially a question of fact within the jurisdiction and expertise of the PRRA officer and not of this Court or the arguments of the applicant. The PRRA officer's findings are apparently not what the applicant was seeking; but they are justified in regard to the facts and the law. In short, they are reasonable findings which do not justify the intervention of this Court.

(ii) The PRRA officer did not have to hold a hearing

[20] The applicant alleges that the PRRA officer should have held a hearing. He points out that since his refugee claim in July 2007 was deemed ineligible by the IRB, he never had the opportunity to be heard on the risks raised and accordingly the PRRA officer should have given him a hearing.

[21] This argument is not entirely accurate since the applicant was heard by the IRB on his refugee claim in 1990 at which time he alleged similar risks for claiming refugee status, in fact dismissed based on a lack of credibility.

[22] But in this case, the applicant admits it, the PRRA officer never put his credibility at issue. The officer simply analyzed the written submissions of the applicant and his counsel as well as the various pieces of documentary evidence received. The PRRA officer also considered in her decision that [TRANSLATION] "the new evidence rule does not apply in this case, since the applicant was not heard before the IRB after the new law came into force on June 28, 2002." This statement indicates that the PRRA officer did not limit her analysis to the new evidence from after the first IRB decision, and that the applicant was therefore not limited in the documentary evidence that he could submit in support of his submissions.

[23] The PRRA officer, for her part, analyzed and weighed all of the documentary evidence that the applicant deemed useful to submit to her in support of his submissions. If the PRRA officer did not consider the documentary evidence filed only in Spanish this was because, as the officer stated in her decision, even though the applicant had more than ample time, he chose to disregard her request to provide her with the translation of this evidence in one of the two Canadian official languages. The applicant has the burden of proof in a PRRA application. He must therefore place before the PRRA officer all of the evidence supporting his arguments and necessary to a decision. If

as in this case the evidence is insufficient, the applicant must bear the consequences and the PRRA officer has no obligation to advise him of this (*Lupsa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 311), although in this case he had been advised of this shortcoming in his evidence.

[24] The applicant is not entitled to an oral hearing before the PRRA officer simply because his second refugee claim had not been heard by the IRB, since his credibility was not at issue before the PRRA officer. Far from alleging that the applicant was not credible, the PRRA officer determined applicant had not satisfied his burden of proof in regard to establishing a personalized risk. The PRRA officer did not have the obligation to hold an interview in the matter under review.

[25] The right to a hearing before the PRRA officer may exist when credibility is a key factor in the officer's decision. This is not the case here and indeed the applicant admits it. The process provided in the Act and the Regulations provides that the PRRA application must be determined on the basis of the documentary evidence and written submissions, a process recognized as being consistent with the fundamental principles of justice (*Sylla v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 475 at paragraph 4, 135 A.C.W.S. (3d) 472).

[26] The applicant would have not gained anything from a hearing since he had ample opportunity to make his arguments and to submit all of the documentary evidence and written submissions deemed necessary to support his claims. The PRRA officer did not determine in her decision that the applicant lacked credibility, but rather that he had not satisfied his burden of proof establishing a personalized risk. This finding is perfectly justified and possible in terms of the

evidence offered in this matter and the law. In short, it is once again a reasonable finding that does not justify the intervention of this Court.

[27] The PRRA officer went further in his analysis by appreciating the documentary evidence relevant to the applicant's allegations and the availability of state protection. The determinations made by the PRRA officer on this point are determinative and sufficient for the refusal of the applicant's PRRA application.

(iii)"serious issue to be tried" test

[28] The applicant argues that the fact that a judge of this Court stayed the removal order amounts to an acknowledgement at the very least of the seriousness of the applicant's submissions, if not their merits.

[29] This argument does not hold water because when the application to stay was made the state of the record differed from the record that has developed since that time, such that the judge who stayed the removal could not have had the same vision and comprehension as the judge sitting on review to whom a more complete picture was presented.

[30] The applicant's burden before a judge on a stay application bears on determining whether the three-prong test is met, not on conclusively determining whether the decision-maker, in this case the PRRA officer, made an unreasonable error, but rather on observing whether an error could have been made that could justify an intervention. In other words, at this stage it is a matter of carrying out a preliminary and interim assessment of the merits of the application for judicial review based on an incomplete record; this, in an urgent context where the applicant's *prima facie* right, the

notion of irreparable prejudice and balance of convenience come into play, and where neither of the parties has the time to effectively prepare to present the judge on the application to stay with anything more than a sketch of the dispute between them.

[31] The stay does not add value to the merits of an applicant's arguments and does not discharge the applicant from convincing the Court today how and why the PRRA decision is unreasonable. Asking the Court to substitute its opinion to that of the decision-maker on the PRRA as the applicant is suggesting would amount to requesting it to interfere with the jurisdiction of the person to whom the Act confers the responsibility for assessing, weighing and deciding. That is not the role of the Court.

(iv) Canadian Charter of Rights and Freedoms (Charter) and international law

[32] It is not enough for the applicant to raise the Charter and Canada's international obligations to contest the PRRA decision and oppose his removal. He must also establish how the PRRA decision breaches the Charter and Canada's obligations.

[33] In this matter, the PRRA officer determined that the applicant [TRANSLATION] "did not establish that there was any more than a mere possibility that he would be persecuted in Mexico or that there are substantial grounds to believe the applicant would be personally subjected to a danger of torture or to risk of cruel and unusual punishment in his country." To determine as such, the PRRA officer carried out a complete and detailed analysis of the evidence submitted by the applicant, as well as the recent documentary evidence on the currently prevailing situation in Mexico. The applicant did not establish any error in this determination by the PRRA officer. It

therefore follows that the respondent's argument to the effect that the decision under review breaches sections 7 and 12 of the Charter is not serious and is not worthy of consideration.

VI. Conclusion

[34] For all of these reasons, the Court determines that the PRRA decision contemplated by this proceeding is fully justified in regard to the facts and the law. Accordingly, it is a reasonable decision which does not justify the intervention of this Court, resulting in the dismissal of the application.

[35] As the parties did not properly propose any question for certification, no question will be certified.

JUDGMENT

FOR THES REASONS, THE COURT:

DISMISSES the application for judicial review.

"Maurice E. Lagacé"

Deputy Judge

Certified true translation

Kelley Harvey, BA, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1752-08
STYLE OF CAUSE:	ARIEL ARENAS PAREJA v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 5, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	LAGACÉ D.J.
DATE OF REASONS:	December 2, 2008

APPEARANCES:

Stewart Itsvanffy	FOR THE APPLICANT
Lisa Maziade	FOR THE RESPONDENT

SOLICITORS OF RECORD :

Stewart Itsvanffy Montréal, Quebec	FOR THE APPLICANT
John H. Sims, QC Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT