Federal Court  Cour fédérale

Date: 20090817

Docket: IMM-5523-08

Citation: 2009 FC 833

OTTAWA, Ontario, August 17, 2009

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

SADIA SHIFA MOUSA FAIZ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27 (IRPA) of a decision of a Pre-removal Risk Assessment (PRRA) Officer wherein the officer determined that the applicant would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to her country of nationality, the Sudan.

[2] The applicant, Mrs. Sadia Shifa Mousa Faiz, is a 56-year-old Sudanese national from Kassala, Sudan. She is Muslim and a member of the Beja ethnic group. She has no education whatsoever and is illiterate. She suffers from diabetes and coronary disease.

[3] She fears persecution, torture, cruel treatment and death in Sudan following her family's disappearance (husband, son, daughter and adopted daughter), according to her. She claims that her son is involved with the Beja Congress, opposition to the regime in Sudan, and by virtue of his involvement all of the family members are suspects.

[4] On March 14, 2006, the applicant's refugee claim was, however, rejected by the Refugee Protection Division (RPD) as she did not establish with credible and trustworthy evidence the essential elements of her story. It was found that her answers were vague which caused the RPD to find on a balance of probabilities the applicant's son was not involved in politics and that her family had not disappeared on that or any other account. The RPD also found there was no support in reliable documentary evidence that members of the Beja Congress are being persecuted along with their families. The applicant's request for leave to judicially review the RPD's decision was denied by the Federal Court on June 1, 2006.

[5] The applicant submitted a PRRA application on December 7, 2006. She is now seeking judicial review of this negative decision.

[6] The officer refused the applicant's PRRA application on September 29, 2008. She determined that the four letters provided by the neighbours do not explain how they had knowledge of the son's political activities, there are no details of the son's political activities, or why the family was considered missing. She determines that the letters lack objective evidence to conclude the only reason the family disappeared was due to the son's political activities and finds that the authors are not necessarily objective and have a vested interest in the request for protection.

[7] The officer also gives minimal weight to the article written by the Sudan Organization Against Torture because “it does not rebut the findings of the RPD specifically that the applicant’s son was not in the [Beja Congress] and that the family disappeared on that account”. She found there is insufficient evidence that the son was a leading member of the Beja Congress or that the family members of Beja Congress activists would be at risk. The officer refused to consider the other article submitted by the applicant because it predates the RPD decision and would have been available for the RPD.

[8] Finally, the officer acknowledges that the Sudanese government “continues to have a poor human rights record which includes a reduction of citizens’ rights to change their government, extrajudicial and other unlawful killings by government forces and inhumane treatment or punishment by security forces” but determines that insufficient evidence has been provided to show that the applicant’s personal circumstances warrant protection under ss. 96 or 97 of IRPA.

[9] Did the officer make an unreasonable decision or more precisely:

a. Did the officer err in law in her treatment of the evidence, basing her decision on erroneous findings of fact that she made in an unreasonable or perverse manner, ignoring or misunderstanding the evidence, and/or failing to follow the appropriate procedures?

b. Did the officer err in law by misunderstanding the requirements of paragraph 97(1)(b) and thus failing to specifically consider whether a return to Sudan would expose the applicant to a substantial risk or cruel and unusual treatment?

[10] The applicant submits that the officer erred in law by failing to consider objective documentation regarding human rights conditions in Sudan, to determine whether Mrs. Faiz would face more than a mere possibility of persecution in Sudan on the basis of her profile as an elderly Beja woman – even apart from her son's disputed political activities – and whether she faces a substantial risk of torture, risk to life, or cruel and unusual treatment in Sudan.

[11] The respondent however notes that the applicant identified the same risk as that alleged in her refugee claim – that her family members, including her son and husband, were taken by Sudanese security forces after these forces attended at the family home and seized certain unidentified documents. The respondent claims that the major error in the applicant's submissions in the present application is that the applicant did not identify a risk on the basis of her profile as an elderly Beja woman. The respondent notes that the onus is on an applicant to frame the issues within a PRRA application and therefore it was reasonable for the officer to refuse Mrs. Faiz's application.

[12] The operational manual used by PRRA officers in order to assess PRRA applications clearly indicates that:

> 10.2. Identifying the issues
> Identifying the issues is of prime importance in analysis and decision making. The research performed is centred on the issues identified in the case. PRRA decisions depend upon the research conducted if the decision is to be informed and accurate. The interdependency of the decision analysis steps becomes quite evident. Care should be taken to progress in logical manner through these steps, affording them equal importance.

> (Citizenship and Immigration Canada, PP 3 Pre-removal Risk Assessment (PRRA) Operational Manual, (Ottawa: Distribution Services, 2008)

[13] Moreover it notes that:

> 10.3. Conducting research
> The PRRA officer will undertake research independent of the issues identified in the application. The research sources consulted by the PRRA officer will vary with each individual case. […] How much research is enough? One of the implicit assumptions about PRRA is that the PRRA officer will become, over time and through experience, very knowledgeable on many countries. The knowledge accumulated should, in a straightforward case, enable officers to make judgements without the need for extensive additional research. If the officer has addressed all the issues identified or presented, the research should be complete. The gravity of the decision being made and its impact on the individual, to their life and future and that of their family, should be taken into consideration when the officer answers the question: "How much is enough?"

[14] In her PRRA application, the applicant stated:

> My terrible fear of returning to Sudan arises from the fact that apparently I as well am implicated for obvious reasons. I have heard of numerous other instances where security people seize a particular member of the family with the result that all of the family members were suspect and treated accordingly by the Sudanese authorities. I am suffering from serious heart ailment and I very much fear that I would not be able to survive the savage treatment by which the Sudanese authorities handle suspects.
> (Applicant's Record, p. 31)

[15] I believe that the PRRA officer did not err in assessing the applicant's risk. Defining the alleged risk is the job of the applicant and she bears that onus. It is then within the defined risk that the officer "has not only the right but the duty to examine the most recent sources of information in conducting the risk assessment; the PRRA officer cannot be limited to the material filed by the applicant" (*Hassaballa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, para. 33).

[16] Although the Federal Court of Appeal has found that the phrase “not caused by the inability of that country to provide adequate health care or medical care” in subparagraph 97(1)(b)(iv) of the IRPA excludes from protection persons whose claims are based on evidence that their native country is unable to provide adequate medical care because it chooses in good faith, for legitimate, political financial priority reasons, not to provide such care to its nationals; if it can be proven that there is an illegitimate reason for denying the care, such as prosecutorial reasons, that may suffice to avoid the operation of the exclusion (*Covarrubias v. Canada (Minister of Citizenship and Immigration)*, 2006 F.C.A. 365).

[17] Regrettably, the applicant did not identify in her PRRA application a risk on the basis of her profile as an elderly Beja woman or on the basis of her health condition. While the applicant has identified these risks before our Court we cannot, based on the evidence before the PRRA officer, find that her decision was unreasonable. In that regard, this Court has held:

> 6 In its case law, this Court has clearly established that, on judicial review, the Court may only examine the evidence that was adduced before the initial decision-maker (Lemiecha (Litigation Guardian) v. Canada (Minister of Citizenship and Immigration) (1993), 72 F.T.R. 49 at paragraph 4; Wood v. Canada (A.G.) (2001), 199 F.T.R. 133 at paragraph 34; Han v. Canada (Minister of Citizenship and Immigration), 2006 FC 432 at paragraph 11). In Gallardo v. Canada (Minister of Citizenship and Immigration), 2003 FCT 45 at paragraphs 8 and 9, a case concerning a claim for refugee protection based on humanitarian and compassionate considerations, Mr. Justice Kelen wrote:
>
> The Court cannot consider this information in making its decision. It is trite law that judicial review of a decision should proceed only on the basis of the evidence before the decision-maker.
>
> The Court cannot weigh new evidence and substitute its decision for that of the immigration officer. The Court does not decide H&C

> applications. The Court judicially reviews such decisions to ensure they are made in accordance with the law.
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> *(Isomi v. Canada (Minister of Citizenship and Immigration)*, 2006 F.C. 1394)

[18] The applicant contends that the officer erred in her treatment of the sworn evidence. The applicant argues that the officer was obliged to consider the evidence for what it did say, not what it did not say. She argues that the officer failed to distinguish between letters and duly notarized sworn declarations, referring to all of them simply as letters from neighbours and friends and giving them "minimal weight" as a group.

[19] The respondent however notes that the officer found that there was no objective evidence from the neighbours' statements that connects the story of the applicant's family with her allegation of risk due to the son's alleged political activities. As this point is not established, the respondent claims it was open to the officer to give the evidence little weight.

[20] The PRRA officer explained in her decision that she gave little weight to the four letters provided by the applicant as "they do not explain how they had knowledge of the son's political activities, there are no details of the son's political activities or why the neighbours considered the family "missing". The letters lack objective evidence to conclude the only reason the family disappeared was due to the son's political activities". With regard to the other evidence provided, she concluded that the article written by Sudan Organization Against Torture provided "insufficient objective evidence that family related to [Beja Congress] members would face treatment amounting to persecution under 96 or a risk under section 97 of IRPA" and found that the article "The Other

Crisis in Sudan" would have been available for the RPD's consideration as it predates the latter's decision.

[21] As this Court has found that "it was within the purview of the officer to consider the evidence and weigh its probative value, […] I can find nothing wrong with the officer's decision to conclude that the document in question was of little probative value" (*Hassabala*, above, para. 27).

[22] For the above reasons, this judicial review application will be dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No question or general importance was submitted for certification.

"Louis S. Tannenbaum"

Deputy Judge

AUTHORITIES CONSULTED BY THE COURT

1. *Canada v. Hennelly*, (1999), 244 N.R. 399 (F.C.A.)
2. *Wang v. M.C.I.*, [2001] 3 F.C. 682
3. *Bains v. MEI*, [1990] FCJ 457
4. *Hassaballa v. M.C.I.*, 2007 F.C. 489
5. *Jessamy v. M.C.I.*, 2009 F.C. 20
6. *Cepeda Gutierrez v. M.C.I.*, [2998] F.C.J. No. 1425 (T.D.)
7. *Ahortor v. M.C.I.*, [1993]F.C.J. No. 705 (T.D.)
8. *Toth v. M.C.I.*, [2002] F.C.J. No. 1518 (T.D.)
9. *Atefi v. M.C.I.*, [1994] F.C.J. No. 1979 (T.D.)
10. *Lai v. M.E.I.*, (1989), 8 Imm. L.R. (1d) 245 (F.C.A.)
11. *Bagri v. M.C.I.*, [1999] F.C.J. No. 784 (T.D.)
12. *Maldonado v Canada (MEI)*, [1980] 2 F.C. 302 (C.A.)
13. *Resulaj v. M.C.I.*, [2004] F.C.J. No. 1389
14. *Attakora v. M.E.I.*, (1989) 99 N.R. 168 (C.A.)
15. *Owusu-Ansah v. M.E.I.*, [1989] 8 Imm. L.R. (2d) 106 (C.A.)
16. *Horvath v. M.C.I.*, [1999] F.C.J. No. 1532
17. *Owusu v. M.C.I.*, 2004 FCA 38
18. *Selliah v. M.C.I.*, 2004 FC 872
19. *Zakoyan v. M.C.I.*, 2008 FC 217
20. *R.J.R. MacDOnald Inc. v. Canada (A.G.)*, [1994] 1 S.C.R. 311
21. *Atwal v. M.C.I.*, 2004 FCA 427
22. *Melo v. Canada (M.C.I.)*, (2000) 188 F.T.R. 39

23. *Dugonitsch v. Canada (M.E.I.),* [1992] F.C.J. No. 320l

24. *Blum v. Canada (M.C.I.),* (1994) 90 F.T.R. 54

25. *Gnanaseharan v. M.C.I.*, 2004 FC 872

26. *Covarrubias v. Canada (M.C.I.),* 2006 FCA 365

27. *Isomi v.Canada (M.C.I.),* 2006 FC 1394

FEDERAL COURT

SOLICITORS OF RECORD

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