Federal Court  Cour fédérale

Date: 20120605

Docket: IMM-7980-11

Citation: 2012 FC 688

Ottawa, Ontario, June 5, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

PORTICA JOHN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] [33] The weight the trier of fact gives evidence tendered in a proceeding is not a science. Persons may weigh evidence differently but there is a reasonable range of weight within which the assessment of the evidence's weight should fall. Deference must be given to PRRA officers in their assessment of the probative value of evidence before them. If it falls within the range of reasonableness, it should not be disturbed. In my view the weight given counsel's statement in this matter falls within that range.

[34] It is also my view that there is nothing in the officer's decision under review which would indicate that any part of it was based on the Applicant's credibility. The officer neither believes nor disbelieves that the Applicant is lesbian – he is unconvinced. He states that there is insufficient objective evidence to establish that

> she is lesbian. In short, he found that there was some evidence – the statement of counsel – but that it was insufficient to prove, on the balance of probabilities, that Ms. Ferguson was lesbian. In my view, that determination does not bring into question the Applicant's credibility. [Emphasis added]

(*Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067).

[2] This Court is not convinced that the Applicant's credibility was an issue. In fact, the proof submitted by the Applicant to the officer was simply not probative.

II. Judicial Procedure

[3] This is an application for judicial review under subsection 72(1) of *the Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision, dated September 9, 2011, dismissing the Applicant's application for a Pre-Removal Risk Assessment [PRRA].

III. Background

[4] The Applicant, Mrs. Portica John, is a citizen of St. Lucia.

[5] The Applicant arrived in Canada on December 12, 2007 and claimed refugee protection on January 27, 2009. She alleged that she had been sexually assaulted by her step-father. Her claim was rejected by the Refugee Protection Division [RPD] on September 10, 2010 as it was determined that the Applicant was not credible in regard to her sexual abuse.

[6] The Applicant sought leave and judicial review of that RPD decision. This Court dismissed her leave on January 5, 2011.

[7] The Applicant submitted a PRRA application based on two grounds. The first one, the same as claimed before the RPD, is the domestic violence and the physical abuse suffered from her step-father in St. Lucia. The new claim is based on her sexual orientation. She has realized since her RPD hearing that she is bisexual and is now involved in a romantic relationship with a woman.

III. Decision under Review

[8] The officer concluded that the Applicant had not demonstrated her sexual orientation on a balance of probabilities nor had she demonstrated that her step-father was threatening her and that she faced a personalized risk upon return.

[9] The officer found that the affidavit of the Applicant's partner lacks specific details on the relationship. The officer also accorded the photographs submitted little probative value as they did not establish the Applicant's sexual orientation.

V. Issue

[10] Did the PRRA officer err in determining that the Applicant was not a Convention refugee nor a person in need of protection?

VI. Relative Legislative Provisions

[11] The following legislative provisions of the *IRPA*, are relevant:

Consideration of application	**Examen de la demande**
113. Consideration of an application for protection shall be as follows:	**113.** Il est disposé de la demande comme il suit :

(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

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

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

(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de

committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

[12] The following legislative provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*], are relevant:

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:	**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*) 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;	*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 concerne la crédibilité du demandeur;
(*b*) whether the evidence is central to the decision with respect to the application for protection; and	*b*) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(*c*) whether the evidence, if accepted, would justify allowing the application for protection.	*c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

VII. Position of the Parties

[13] The Applicant submits that her partner's affidavit provides sufficient details in respect of the time-frame in which their relationship developed contrary to the officer's determination. The

Applicant continues that the officer made a negative credibility finding in respect of the Applicant's bisexuality claim. Although the officer never did use the term credibility, the Applicant claims he had it in mind. The Applicant submits the officer should have held a hearing to assess the Applicant's credibility. She then argues that the documentary evidence was not appropriately assessed by the officer due to his credibility finding.

[14] In response, the Respondent submits that the officer did not question the Applicant's credibility. Rather, the officer found the Applicant's evidence was insufficient. Therefore, the Applicant did not meet the requirements for an oral hearing.

VIII. Analysis

[15] The standard of review that applies to a PRRA officer's decision with respect to his assessment of the evidence is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[16] This Court must determine whether the officer's decision is based on the Applicant's credibility or whether there was insufficient evidence to support the Applicant's claims (*Andrade v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1074).

[17] In *Ferguson*, above, this Court made the following statement with respect to the weight that should be given by an officer to the evidence:

> [26] If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight

> or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not.
>
> [27] Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case. [Emphasis added].

[18] In the present case, the Applicant submitted an affidavit from her partner. It was reasonable for the officer to conclude there was a lack of details. The part of the affidavit relating to the Applicant's risk from her step-father was also found to be hearsay. The officer then gave little probative value to the photographs submitted by the Applicant as they appeared to be taken in the "course of a day and a night" (PRRA Decision) and were undated. Finally, the officer found that the Applicant's allegation that she had been informed by her friends and her family that her step-father is currently threatening to kill her lacked corroborative evidence.

[19] In these findings, the officer clearly weighed the evidence and, consequently, did not call into question the Applicant's credibility. Therefore, subsection 167(1)(*a*) of the *Regulations* does not apply.

IX. Conclusion

[20] Though the Applicant may wish this Court to reassess the evidence, it is important to note that it is not the role of this Court to simply substitute its opinion for that of the officer. Thus, this Court's intervention is not warranted.

[21] For all of the reasons above, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that Applicant's application for judicial review be dismissed. No question of general importance for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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