



Date: 20130418

Docket: IMM-7116-12

Citation: 2013 FC 398

Calgary, Alberta, April 18, 2012

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

Wael Masoud Khalifa Dawoud

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the April 19, 2012 decision of a Senior Immigration Officer [the PRRA officer or officer] of the Backlog Removal Office of Citizenship and Immigration Canada in Niagara Falls, Ontario, refusing the applicant's pre-removal risk assessment [PRRA] application.

[2] The applicant is a citizen of Libya of Amazigh (or Berber) ethnicity who alleged fear of persecution in Libya at the hands of the regime of the country's former leader, Colonel Moammar Gaddafi. The PRRA officer rejected the applicant's claim in light of the uprising in

Libya in 2011 as part of the Arab Spring and the fact that Gaddafi had been killed and his regime was no longer in power. The officer reasoned that given the “high profile and media interest generated by the situation in Libya,” it was reasonable to expect that the applicant was aware of the changes that had occurred in that country. As the applicant had submitted no evidence regarding any risks that he would now face in the new climate in Libya, the officer rejected his PRRA.

[3] In the present application, the applicant asserts that he had a right to “[be] informed of the PRRA officer’s inclinations to reach conclusions based on recent developments” in Libya, following the fall of the Gaddafi regime, and that the officer’s failure to disclose the articles upon which he relied violated the applicant’s rights to procedural fairness.

[4] A claim of a violation of procedural fairness is one to be determined by the Court; no deference to the officer is appropriate (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43; *Vasanthakumar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 74 at para 6 [*Vasanthakumar*]).

[5] In my view, the key question when considering whether there was a violation of procedural fairness is whether the applicant was “deprived of a meaningful opportunity to fully and fairly present [his] case as to risk” (*Al Mansuri v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 22 at para 52). In arguing that he was, the applicant relies upon the statement of the Federal Court of Appeal in *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461, 147 FTR 307 that:

[W]ith respect to documents relied upon from public sources in relation to general country conditions which became available and accessible after the filing of an applicant's submissions, fairness requires disclosure by the [PRRA] Officer where they are novel and significant and where they evidence changes in the general country conditions that may affect the decision.

[Emphasis added.]

[6] Thus, I must consider whether the information relied on by the officer should be considered to be “novel and significant [... and to] evidence changes in the general country conditions that may affect the decision”. There is no doubt that the fall of the Gaddafi regime was a significant event that directly impacted upon the PRRA decision in the applicant's case. The only issue is whether it can properly be considered to be “novel” at the time the decision was rendered in April of 2012.

[7] Some context is necessary to understand the applicant's claim. The applicant filed his PRRA materials on June 13, 2011, and qualified his risk as one from the Gaddafi regime. He noted that the Libyans of Amazigh ethnicity were at the forefront of the uprising against the regime, thereby putting the uprising at issue in his submissions. Gaddafi was killed on October 20, 2011. The decision was rendered almost exactly six months later, on April 19, 2012. There is no doubt that the officer's conclusion that the applicant must have been aware of the fall of the regime is reasonable, given the applicant's background, the fact he had family members in Libya and the wide-spread media coverage of the overthrow of the regime.

[8] In the decision, the officer relied on the impugned articles for two points only: first, to highlight the date of the overthrow of the regime, and second, to underscore that the Amazigh

had been particularly targeted by the Gaddafi regime. The latter point was not a new one; indeed, it was raised by the applicant in his PRAA submissions. And, as noted, the applicant cannot credibly claim that he was taken by surprise by the consideration the officer gave to the fall of the regime when the essence of his PRAA claim centered on the risk posed by that regime.

[9] I find the present case to be comparable to the decision of Justice Mactavish in *Vasanthakumar*, where she found that the decisions cited to her relying upon the so-called “Mancia exception” (noted above) could be distinguished as they were rendered during a time of significant turmoil and changing conditions in Sri Lanka (from late 2008 through early 2009) and the events in question were no longer novel when the PRRA (in her case) was decided almost two years later.

[10] In the present case, while the elapsed timeframe between the events and the decision was undoubtedly shorter, the significant event was more decisive in that the leader that was the source of the applicant’s claimed fear (Gaddafi) was killed six months prior to a decision being rendered in his PRRA decision. Bearing in mind that it is the burden of the applicant to establish that he will be at risk if returned to his home country, as well as the notoriety of the fall of Gaddafi, and the fact that the applicant was represented by counsel, I cannot conclude that the applicant was “denied a meaningful opportunity to fully and fairly present his case” in the present circumstances. I thus conclude that there was no violation of procedural fairness.

[11] For the preceding reasons, this application is dismissed. No question for certification was proposed and none is appropriate given the fact-specific nature of my decision.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified under section 74 of the *Immigration and Refugee Protection Act*, SC 2001, c 27;
3. There is no order as to costs.

"Mary J.L. Gleason"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT:** GLEASON J.

DATED: April 18, 2013

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