Federal Court  Cour fédérale

Date: 20160304

Docket: IMM-3266-15

Citation: 2016 FC 278

Ottawa, Ontario, March 4, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

HETTY SUTHERLAND
CORNEISHA SUTHERLAND
CORNEICE SUTHERLAND
and MICHAEL SUTHERLAND

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] challenging an Immigration officer's [the Officer] decision refusing the Applicants' Pre-Removal Risk Assessment [PRRA]. The Applicants are seeking to have the decision set aside and sent back for redetermination by a different officer.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Applicants are citizens of both Grenada and Saint-Vincent and the Grenadines [Saint-Vincent]. The Principal Applicant, Hetty Sutherland, and her three dependent children, Corneisha, Corneice and Michael all allegedly fear abuse at the hands of the Principal Applicant's former domestic partner and the minor Applicants' father, Cornelius Hector, who resides in Saint-Vincent.

[4] The Principal Applicant and her two daughters, Corneisha and Corneice, arrived in Canada from Grenada in July 2009 on a visitor's visa and requested refugee protection in November 2009. Their claim was refused in December 2010. Soon after, the Principal Applicant's son, Michael, arrived in Canada and independently applied for refugee protection, which was denied in November 2011. The Applicants' respective applications for leave and for judicial review to the Federal Court were denied.

[5] The Applicants first PRRA was refused in October 2013. However, Citizenship and Immigration Canada consented to have the application re-determined by another officer in January 2015. Updated submissions were provided by the Principal Applicant in March 2015 and a decision was made on May 28, 2015 denying their PRRA application. This second PRRA refusal is the subject of this judicial review.

II. Impugned Decision

[6] The Officer determined that the Principle Applicant would not face more than a mere possibility of persecution, or probable grounds of irreparable harm upon return to either Saint-Vincent or Grenada, the latter being where the Principal Applicant had been residing since 2004 prior to her arrival in Canada. The Officer also rejected the minor Applicants' claims as they rested on those of their mother, in addition to finding little indication that the children would rely on their father or that he would harm them upon their return.

[7] After reviewing various letters submitted by the Principal Applicant, the Officer found that the cumulative effect of the discrepancies found in these letters lessened their probative value. As a result, the Officer found there was insufficient evidence to establish Mr. Hector's on-going pursuit of the Principal Applicant since 2013.

[8] The Officer further found that while it is possible that the Principal Applicant may encounter gender-based discrimination and violence in the future if she returned to either Saint-Vincent or Grenada, she would have recourse to adequate state protection in Grenada to protect her from serious harm despite reported shortcomings.

III. Issues

[9] The following issues arise in this application:

1. Did the Officer err by failing to explain his departure from the previous PRRA decision?

2. Did the Officer err by making veiled credibility findings?

3. Did the Officer err by ignoring or misconstruing evidence?

IV. Standard of Review

[10] The question of the proper interpretation of the requirement for new evidence in section 113 of the Act is a question of law to be determined on a standard of correctness: *Dhrumu v (Minister of Citizenship and Immigration)*, 2011 FC 172 at paragraph 20. Otherwise the standard of reasonableness applies to the PRRA Officer's factual determinations.

V. Analysis

A. *Did the Officer err by failing to explain his departure from the previous PRRA decision?*

[11] The Applicants submit that although the Officer is entitled to depart from a previous conclusion, based on Justice Phelan's reasons in *Siddiqui v Canada (Minister of Immigration and Citizenship)*, 2007 FC 6 [*Siddiqui*], the Applicants, as a matter of fairness have a right to an explanation of why a particular officer, reviewing the same documentation on the same issue, could reach a different conclusion. To similar effect, the Applicants also rely upon the decisions in *Burton v Canada (Minister of Citizenship and Immigration)*, 2014 FC 910 [*Burton*] and *Mendoza v Canada (Minister of Citizenship and Immigration)*, 2015 FC 251 [*Mendoza*].

[12] The Respondent submits that the decisions cited by the Applicants are highly distinguishable in that the previous PRRA decision was not analyzed in the same fashion as the PRRA under review, nor was it based on the same evidentiary record, as well as being set aside on consent. Moreover, the second PRRA Officer's findings were consistent with the previous PRRA application determination, as the Officer found it possible that the Principle Applicant may encounter gender-based discrimination and violence, but would have recourse to adequate state protection in Grenada.

[13] In this matter, the Applicants have filed extensive additional evidence on the issue of risk. In my view, this demonstrates that they were not prepared to rely upon the previous PRRA determination of risk and felt that it had to be supplemented. By introducing new risk evidence, the PRRA Officer had no alternative but to consider all the evidence together to make a fresh determination.

[14] In any event, the cases cited by the Applicants are highly distinguishable. In *Siddiqui*, the facts in the two PRRAs were identical. In *Burton*, there was a specific direction from the Court, where as in this matter there was a reconsideration made on consent with no agreement or understanding that the PRRA should not be conducted as a *de novo* application. In *Mendoza*, the Refugee Protection Division reached a different result from that of another panel regarding a claim by a family member under identical circumstances, again not resembling the circumstances of this matter.

[15] I find no reviewable error in the PRRA Officer conducting a form of *de novo* evidence analysis based on all the evidence before him, including the Applicants' new evidence.

B. *Did the Officer err by making veiled credibility findings?*

[16] The Applicants submit that the Officer's insufficient evidence findings are veiled credibility findings due to the use of word such as "vague" and "contradictory." In addition, when an Officer states that there was "insufficient objective evidence" to support an assertion, the Officer is indicating that he disbelieves the Applicants, which can only be remedied through submitting corroborating objective evidence (*Liban v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1252, para 14).

[17] I find that the Officer analyzed the evidence from the perspective of its probative value in support of Ms. Sutherland's circumstances and evidence. Her evidence was significantly dated since she had left Grenada in July 2009. In the case of the supplementary corroborating evidence, the Officer examined each element of proof, and while according it some probative value, described limitations that reduced the assigned weight.

[18] I find no reviewable error in the Officer's analysis and conclusion that there was insufficient evidence to support a finding of long-term continuous death threats or harassment of Ms. Sutherland from her former conjugal partner in the intervening six years spent in Canada. These were not findings of credibility, but rather an assessment of the probative value of the weight of the evidence of the corroborating witnesses on a forward looking basis, which the Officer found were insufficient to establish the alleged risk.

C. *Did the Officer err by ignoring or misconstruing evidence?*

[19] The Applicants submit that the Officer ignored relevant evidence in the assessment of state protection by failing to consider Ms. Sutherland's specific situation and her perpetrator's profile as a marijuana grower and seller with easy access to Grenada. For example, the Applicants submit that the Officer ignored or misconstrued the letter from Officer Gerald Prince of the Grenada Police Force, which contradicted the Officer's conclusion in stating that there are no penalties for men who engage in domestic violence and in turn, there is no adequate protection for women who are victims of such violence.

[20] The reasons demonstrate that the Officer specifically considered letters from the police officers and acknowledged reports that those involved in the trade of narcotics commonly enter and exit Grenada. However, the Officer concluded that very little suggested that Ms. Sutherland's ex-spouse intends to evade Grenadian officials in order to harm her. I find that the Officer reviewed all the evidence, including the additional submissions made by the Principal Applicant prior to concluding that the Applicants could return to Grenada.

[21] I conclude that the Applicants' complaint, in effect, is that they do not agree with the Officer's risk assessment and are asking the Court to reweigh the evidence. This is not the Court's task. Rather it is to assess any reviewable unreasonable errors, or alternatively consider the quality of the reasons in terms of the justification, intelligibility and transparency of the decision based on the facts and law.

VI. Conclusion

[22] The Officer's decision and reasons meet the requirements of justification, transparency and intelligibility and fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[23] Accordingly the application is dismissed. No questions were certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified for appeal.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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