

Federal Court



Cour fédérale

Date: 20161031

Docket: IMM-36-16

Citation: 2016 FC 1210

Toronto, Ontario, October 31, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SAIED ROSHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Roshan, is a citizen of Iran. He arrived in Canada in May 2012 and made a claim for refugee protection. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] of Canada denied his claim in November 2013. Mr. Roshan was not eligible to appeal to the Refugee Appeal Division [RAD] and his application for leave and for judicial review of the RPD decision was denied by this Court.

[1] Mr. Roshan submitted an application for a Pre-Removal Risk Assessment [PRRA] in March 2015. In support of his application, he placed new evidence before the PRRA Officer [Officer]: (1) affirming that he was at risk in Iran as a result of his participation in anti-government protests in 2009, contrary to the RPD's finding; and (2) supporting a *sur-place* risk. The Officer did admit some, but not all of Mr. Roshan's proposed new evidence, rejecting documentary evidence that predated the RPD hearing. The PRRA application was refused in November 2015.

[2] Mr. Roshan now argues that in rendering a negative decision the Officer erred by: (1) according no weight to new evidence that corroborated his narrative before the RPD; (2) finding that he would not be at risk in Iran as an Atheist; and (3) relying on extrinsic evidence that was not disclosed in dismissing the risk arising from his on-line activity in Canada.

[3] Mr. Roshan asks that this Court set aside the decision and return the matter for redetermination by a different Officer.

[4] The application raises a number of issues, but the sole issue I need to address is whether the PRRA Officer misconstrued his role in addressing Mr. Roshan's new evidence corroborating his narrative before the RPD.

[5] I am of the opinion that the Officer committed a reviewable error and the intervention of this Court is warranted. The application will be granted for the reasons that follow.

II. Standard of Review

[6] The issue raised in respect of the role of the PRRA Officer and the assessment of Mr. Roshan's new evidence raises questions of mixed fact and law to which a reasonableness standard of review applies (*Singh v Canada (Minister of Citizenship and Immigration)*, 2014 FC 11 at para 20).

III. Analysis

A. *Did the PRRA Officer misconstrue his role when addressing new evidence corroborating Mr. Roshan's narrative before the RPD?*

[7] Before the RPD, Mr. Roshan submitted that he feared returning to Iran because of his participation in demonstrations following the 2009 Iranian Presidential elections. He claimed the authorities were aware of his identity placing him at risk. The RPD found that the determinative issues were credibility, failure to claim elsewhere, and subjective fear.

[8] The RPD noted that Mr. Roshan spent almost three years in Cyprus after fleeing Iran. Mr. Roshan testified that he filed a refugee claim in Cyprus, but he was unable to produce a copy of the claim. He testified that Cypriot immigration authorities told him he would be called, but he was never contacted and was never given the opportunity to speak with Cypriot officials in respect of his claim. On the basis of this evidence, the RPD found insufficient credible evidence to establish Mr. Roshan had filed a refugee claim in Cyprus. The RPD then stated:

It is absurd to suggest that the claimant travelled to Cyprus, a signatory to the *United Nations Convention and Protocol Relating to the Status of Refugees*, fearing persecution in Iran, and not pursue a refugee claim. There is no reason to believe that Cyprus

does not abide by its obligations. It is ludicrous that the claimant remained in Cyprus for approximately three years, at times under threat of deportation according to his PIF narrative and testimony, and did not pursue a refugee claim, in light of his alleged fear of returning to Iran. I find that the claimant's failure to claim or pursue his claim in Cyprus undermines his credibility and reflects a lack of subjective fear.

[9] In advancing his PRRA application, Mr. Roshan submitted new documentary evidence that outlined how refugee claimants in Cyprus, particularly those of a Muslim background, are not afforded the rights and procedures provided for in Cypriot law. This evidence was admitted by the Officer but given no weight.

[10] Specifically, the new evidence provided that: (1) asylum seekers in Cyprus are often denied rights and procedures provided for in Cypriot law, (2) printed documentation setting out minimum rights is often not provided when an application for asylum is made, (3) asylum claimants are often turned away being told to return at a later date and not provided any documentation, and (4) valid resident permits are not provided. This evidence appeared to corroborate Mr. Roshan's testimony before the RPD relating to his experiences in making a claim for protection, testimony that the RPD concluded to be both absurd and ludicrous. He argues that the Officer failed to appreciate that the new evidence could provide a basis to revisit a prior negative credibility finding.

[11] The respondent argues that the Officer did not err in giving no weight to the documentary evidence. The respondent submits that while the country conditions evidence "appears much better" than that which was before the RPD, the evidence does not demonstrate a change in the handling of asylum seekers or a change in country conditions. I am not convinced.

[12] It is well-established that a PRRA is not an appeal of a prior refugee determination and that a PRRA Officer must respect a prior negative determination by the RPD. However, it is equally well-established that where a PRRA Officer admits new evidence and that evidence may have affected the outcome of the RPD hearing had it been presented to the RPD, the PRRA Officer may reconsider the same factual or legal issues considered by the RPD (*Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at paras 12 and 13 [*Raza*]).

[13] In this case, the PRRA Officer admitted some of the proposed new evidence. That evidence was corroborative of Mr. Roshan's evidence before the RPD as it related to his experience in attempting to claim refugee protection in Cyprus. The evidence is arguably contradictory of the RPD's negative credibility finding and lack of subjective fear finding. The Officer, however, did not undertake an analysis of that evidence after finding it was admissible. Rather, the Officer assigned it no weight on the basis that the RPD had previously concluded that Mr. Roshan lacked subjective fear, had failed to pursue a claim in Cyprus and was not being returned to Cyprus.

[14] This conclusion, in my view, reflects a belief that despite the new and potentially contradictory evidence, the Officer was bound by the RPD's previous findings. This is contrary to the PRRA Officer's role as set out in *Raza*.

[15] I recognize the evidence in question relates to conditions in Cyprus, not Iran. However, the evidence was not placed before the Officer to demonstrate a risk in Cyprus but rather to address the RPD's adverse credibility finding and support Mr. Roshan's allegations of risk in

Iran. Having admitted the evidence, the Officer had an obligation to consider the materiality of that evidence – could it have impacted on the outcome before the RPD (*Hausleitner v Canada (Minister of Citizenship and Immigration)*, 2005 FC 641 at para 36 [*Hausleitner*]). In assigning no weight to the evidence, the Officer did not consider the question of materiality in the context of Mr. Roshan’s overall alleged risks.

[16] It may well have been open to the Officer, after having considered the evidence, to conclude it did not impact upon the overall risk assessment as was the case in *Hausleitner*. However, I am unable to conclude that this would necessarily have been the case. For this reason the application is granted.

IV. Conclusion

[17] The application is granted. The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted, the decision of the PRRA Officer is set aside and the matter is remitted for redetermination by a different Officer.

No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-36-16

STYLE OF CAUSE: SAIED ROSHAN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 7, 2016

**REASONS T AND
JUDGMENT:** GLEESON J.

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