

Federal Court



Cour fédérale

Date: 20170119

Docket: IMM-2684-16

Citation: 2017 FC 68

Toronto, Ontario, January 19, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

DWAYNE JOHNSON

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Dwayne Johnson, the applicant, is a former permanent resident of Canada who faces removal to Jamaica as a result of being found inadmissible for serious criminality under subsection 36(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, [IRPA].

[2] Mr. Johnson applied for a Pre-Removal Risk Assessment [PRRA] on the basis that he fears he will be perceived as a gang member and deportee from Canada. His PRRA application was refused and it is that decision which is before the Court for judicial review. Mr. Johnson submits that the PRRA Officer did not properly address his profile as a perceived gang member in assessing the IRPA section 97 risk factors and also failed to consider country specific documentary evidence related to his profile.

[3] The application raises two issues:

- A. Did the Officer fail to consider the risks of actual or perceived gang membership?
- B. Was the Officer's state protection analysis unreasonable?

[4] Having considered the written and oral submissions of the parties, I am of the opinion that the Officer's decision is reasonable. The application is dismissed for the reasons that follow.

II. Standard of Review

[5] A PRRA officer's assessment of risk, including assessment of whether the presumption of state protection has been rebutted is reviewed on a reasonableness standard (*Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 at para 18 and *Hoo v Canada (Citizenship and Immigration)*, 2016 FC 283 at para 8). Where an officer's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law, the Court will not interfere with the outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47).

III. Analysis

A. *Did the Officer fail to consider the risks of actual or perceived gang membership?*

[6] Mr. Johnson argues that he will be perceived as a gang member upon return to Jamaica because he was arrested and charged as part of a police operation in 2010 targeting a Jamaican organized crime group. His identity and the details of his indictment, along with other individuals charged in that police operation, were published in a Canadian – Caribbean newspaper and website. Counsel also submitted that tattoo markings on Mr. Johnson were used on occasions by the gang. He argues that this places him at risk of reprisals from gang members in Jamaica and the Jamaican police. He further submits that the Officer failed to properly consider his profile. I disagree.

[7] In the PRRA decision, the Officer noted counsel's submissions setting out Mr. Johnson's fear and acknowledged the documentary evidence on the subject of gangs in Jamaica. However, the only information before the Officer of any gang connection in regard to Mr. Johnson was found in the counsel's submissions, in the content of a newspaper report indicating that criminal organization charges were laid against the applicant as a result of the 2010 police operation and in the Canadian Border Services Agency's Section 44 Narrative Report. Mr. Johnson did not place an affidavit before the PRRA Officer highlighting his feared risks nor was he ever convicted of the criminal organization charges.

[8] The examination of a claim under subsection 97(1) of the IRPA necessitates an individualized inquiry, which is to be conducted on the basis of the evidence adduced by a

claimant “in the context of a present or prospective risk” [Emphasis in original] (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 99 at para 15 cited in *Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31 at para 7). In this case, the sole evidence of risk was the identifying information in the newspaper which, counsel submitted had been widely circulated and read. There was no affidavit evidence advanced by Mr. Johnson, no evidence establishing the notoriety of a news article published in 2010 and no evidence linking tattoo markings to gang membership.

[9] Mr. Johnson relies on the decision of this Court in *Burton v Canada (Minister of Citizenship and Immigration)*, 2013 FC 549. Unlike this case, Mr. Burton established that he had plead guilty to the charge of participating in a criminal organization; that he had cooperated with the police and prosecutors to testify against another individual; that he had received death threats in his community for cooperating with the police; that he was identified in news reports as testifying for the prosecution; and that many of the gang members who knew of his testimony had been deported to Jamaica.

[10] In this case, an individualized inquiry identifies Mr. Johnson as a person who was charged as part of a police operation in 2010 with criminal organization offences but not convicted on these charges. General country condition documentation alone will not normally establish a personalized risk. Faced with limited evidence to establish the alleged profile I can find no fault with the Officer’s conclusion that counsel’s submissions on risk were speculative in nature.

[11] The Officer also concluded that the alleged risks relating to deportees in Jamaica are speculative. This finding was reasonably available to the Officer. The alleged risk arising out of Jamaica's policy of questioning all deportees on return to Jamaica was related to his profile as an actual or perceived gang member, a profile that was not established.

B. *Was the Officer's state protection analysis unreasonable?*

[12] In considering the issue of state protection, the Officer acknowledged Jamaica's high crime rate and the serious social and judicial problems linked to that crime rate. However, the Officer concluded that Jamaica is capable of protecting its citizens.

[13] Mr. Johnson argues that this analysis fails to consider state protection in the context of actual or perceived gang members and deportees. I am not convinced.

[14] As noted above, the Officer had limited evidence of profile and found that there was insufficient evidence to conclude that Mr. Johnson was or would be perceived as a former gang member. In this context, the Officer reasonably concluded that issues relating to serious crime in Jamaica reflect general country conditions impacting upon all residents. With respect to the adequacy of state protection for deportees, the Officer's conclusion was also reasonable. The societal discrimination disclosed in the documentary evidence spoke to possible economic disadvantages. It was reasonably open for the Officer to conclude that evidence of societal discrimination did not establish the absence of adequate state protection for deportees.

IV. Conclusion

[15] I am of the opinion that the Officer's reasons, although brief, justify the decision in a transparent and intelligible manner. The outcome is defensible in light of the facts and applicable law (*Dunsmuir* at para 47).

[16] The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2684-16

STYLE OF CAUSE: DWAYNE JOHNSON v THE MINISTER OF
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