Federal Court Cour fédérale

Date: 20170322

Docket: IMM-3604-16

Citation: 2017 FC 300

Ottawa, Ontario, March 22, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

BENSON KUZEEKO HENGOMBE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Benson Kuzeeko Hengombe, is a 45 year old citizen of Namibia who entered Canada on December 13, 2010, and two days later made a claim for refugee protection. His refugee claim was rejected, however, by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] in a decision dated January 15, 2013. After the RPD's decision, the Applicant applied for a pre-removal risk assessment [PRRA], but a Senior Immigration Officer rejected the PRRA application in a decision dated May 24, 2016. The

Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*] for judicial review of the Officer's decision rejecting his PRRA application.

I. The Applicant's PRRA Submissions

[2] The Applicant's PRRA application included 13 documents which were not before the RPD: four online articles which pre-dated the RPD decision; an IRB document which pre-dated the RPD decision; five online articles which post-dated the RPD decision; two country report documents which post-dated the RPD decision; and an email from the Applicant's sister, dated February 22, 2016. In his submissions to the PRRA Officer dated March 6, 2016, the Applicant claimed he was a person in need of protection under subsection 97(1) of the *IRPA*, repeating the claim he had made before the RPD that he was instrumental in the arrest and conviction of two drug traffickers, an event which ultimately resulted in threats against him and the death of two fellow police officers. The Applicant relied on his sister's email to argue that he faced new risks if returned to Namibia. According to his sister, unknown individuals as well as the police were visiting her house looking for the Applicant and these unknown individuals had threatened to murder the Applicant upon his return to Namibia. The Applicant's sister warned him not to return to Namibia.

[3] The Applicant pointed the PRRA Officer to the Federal Court of Appeal's decision in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, 289 DLR (4th) 675 [*Raza*], and also to cases from this Court for the proposition that new evidence relating to old risks should be considered (i.e., *Kirindage De Silva v Canada (Citizenship and Immigration)*, 2007 FC 841, 159

ACWS (3d) 562; and *James v Canada (Citizenship and Immigration)*, 2010 FC 318, [2010] FCJ No 368). Based on these authorities, the Applicant submitted that the new evidence should be accepted because it established the nature of the Applicant's ongoing risk if he were to return to Namibia. The Applicant further submitted that the email from his sister provided an objective basis for his risk, and that he would not receive state protection if returned to Namibia because of the corruption of Namibian police as revealed in the various articles that were not before the RPD.

II. The PRRA Officer's Decision

[4] The Officer reviewed the Applicant's PRRA application, the submitted documentary evidence, as well as some U.S. Department of State human rights reports concerning Namibia, and concluded that:

> …I do not find that the applicant would face more than a mere possibility of risk under any of the Convention grounds as set out in Section 96 of the Immigration and Refugee Protection Act (IRPA). Further, I do not find that the applicant would face, on a balance of probabilities, a risk of torture, a risk to life or a risk of cruel and unusual punishment as described in Section 97(1) (a) or (b) of IRPA if he were to return to Namibia. I find that the applicant is neither a Convention Refugee nor a person in need of protection.

[5] The Officer noted that the risks identified by the Applicant in his PRRA application and submissions were essentially the same as those heard and assessed by the RPD. The Officer found that the Applicant had "simply re-stated his case" without addressing or rebutting the RPD's determination that he lacked credibility. The Officer referenced *Escalona Perez v Canada*

(Minister of Citizenship and Immigration), 2006 FC 1379, 153 ACWS (3d) 421, where this Court stated:

> [5] …The purpose of the PRRA is not to reargue the facts that were before the RPD. The decision of the RPD is to be considered as final with respect to the issue of protection under s. 96 or s. 97, subject only to the possibility that new evidence demonstrates that the applicant would be exposed to a new, different or additional risk that could not have been contemplated at the time of the RPD decision…

[6] The Officer then reviewed the documents submitted by the Applicant. The Officer noted that five of the documents pre-dated the RPD hearing. The Officer did not consider this evidence because it would have been available to be presented to the RPD panel and the Applicant provided no explanation as to why these documents were not presented.

[7] With respect to the email from the Applicant's sister, the Officer stated:

> I have read and considered this E mail however I have afforded it little weight. I note, the contents of the E mail including the incidents cited lack any details surrounding timelines and thus any historical context. The applicant's sister does not provide dates and number of times she was bombarded with visits from unknown figures. She does not provide a date of when they patrolled the applicant's house and waited in front of the house and the number of times they did this. She does not provide a date when she was threatened with a gun and when she went to the police. She does not indicate how she knows the people who visited were drug dealers or how she knows that the police are looking for the applicant. I also find this piece of evidence does not overcome the credibility issues the RPD member had.

[8] The Officer also reviewed those articles which post-dated the RPD hearing as well as country reports about conditions in Namibia. The Officer found that this evidence did not overcome the credibility issues the RPD had and, consequently, concluded that:

> Upon review of all the evidence before me I find that the applicant has not provided sufficient objective evidence to address the material findings of the RPD.
>
> The applicant has not provided material evidence to overcome the RPD's finding of fact, raised a new risk nor provided evidence to support that there have been changes in country conditions in Namibia since the panel's finding which bring him within the meaning of Section 96 and/or 97.

[9] The Officer considered the Applicant's request that an oral hearing be conducted and noted the prescribed factors to hold a hearing set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, as amended. The Officer found though, that since these factors were not met, an oral hearing was not warranted.

III. Issues

[10] The Applicant raises one issue: that is, whether the PRRA Officer erred by determining that the evidence presented by the Applicant was not new pursuant to paragraph 113(a) of the *IRPA*. In my view, however, this issue can be addressed by assessing whether the PRRA Officer's decision was reasonable.

IV. The Parties' Submissions

[11] The Applicant contends that the Officer erred in holding that the documentary evidence submitted with the PRRA application was not "new" pursuant to paragraph 113(a) of the *IRPA*. According to the Applicant, the evidence submitted to the Officer meets the requirements of paragraph 113(a) since it is new, credible, material, and relevant. The Applicant says that these documents establish the ongoing risk to his life if he returns to Namibia. The Applicant submits

that the email from his sister confirms that drug traffickers are targeting him, and emphasizes that this email was sent after the RPD hearing and decision. The documentary evidence about the corrupt Namibian police force post-dates the RPD hearing and, in the Applicant's view, rebuts the RPD's finding on adequate state protection and credibility.

[12] The Respondent says a PRRA officer cannot depart from the RPD's findings unless there is new evidence which either rebuts the RPD's findings or establishes a significant change in country conditions. According to the Respondent, materiality is relevant in this case because the evidence submitted with the PRRA application would not have changed the outcome of the RPD decision. The Respondent refers to *Raza*, where the Federal Court of Appeal stated that a PRRA officer may properly reject the evidence sought to be presented in support of a PRRA application "if it cannot prove that the relevant facts as of the date of the PRRA application are materially different from the facts as found by the RPD" (at para 17). The Respondent argues that the Officer was justified in finding that the Applicant's evidence was not new evidence in accordance with *Raza* and paragraph 113(a) of the *IRPA* because it related to previous determinations of risk made by the RPD.

[13] In the Respondent's view, the Officer reasonably rejected the documents that pre-date the RPD hearing because they would have been available at the time of the hearing, and it was reasonable for the Officer to afford the email from the Applicant's sister little weight because it was vague, not materially different from the facts before the RPD, and did not overcome the RPD's credibility concerns. The Respondent says the Officer reasonably rejected the other

articles and country condition reports because they did not establish a new risk or risk development and did not rebut the RPD's concerns about the credibility of the Applicant's claim.

V. Analysis

[14] It is well established that, absent any question of procedural fairness, the standard of review by which to assess a PRRA officer's decision is reasonableness (*Jainul Shaikh v Canada (Citizenship and Immigration)*, 2012 FC 1318 at para 16, [2012] FCJ No 1429; also see: *Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at para 8, [2016] FCJ No 1128; *Shilongo v Canada (Citizenship and Immigration)*, 2015 FC 86 at para 21, 474 FTR 121; *Chen v Canada (Citizenship and Immigration)*, 2015 FC 565 at para 11, 480 FTR 62; *Aboud v Canada (Citizenship and Immigration)*, 2014 FC 1019 at para 17, [2014] FCJ No 1059).

[15] Since a PRRA officer's assessment of any new evidence under paragraph 113(a) of the *IRPA* is essentially a question of mixed fact and law, the officer's decision attracts deference (see: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]). Accordingly, this Court may only intervene if a PRRA officer's decision is not justified, transparent and intelligible, or if the decision is not within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

[16] The Applicant's position is premised on an assumption that the PRRA Officer did not accept any of the evidence because it did not meet the requirements of paragraph 113(a) of the *IRPA*. This assumption, however, is misplaced because it is clear upon review of the Officer's decision that only five of the 13 documents submitted were rejected on the basis they pre-dated

the RPD hearing and the Applicant failed to explain why these five documents were not submitted to the RPD. The Officer accepted the eight other documents, including the email from the Applicant's sister, as evidence and reviewed them accordingly. The Officer reviewed the remaining documents which post-dated the RPD hearing and, in my view, reasonably concluded that none of them rebutted the credibility concerns raised by the RPD.

[17] The RPD had dismissed the Applicant's claim because it did not believe that the Applicant was involved in a police drug raid against two drug traffickers. The RPD based its decision on several negative credibility findings, the lack of evidence that the two drug traffickers were arrested and convicted, and the implausibility that the police provided no assistance to the threats faced by the Applicant. The Applicant simply did not provide any evidence that addressed the concerns of the RPD. The evidence submitted by the Applicant with the PRRA application would not have changed the outcome of the RPD decision because the risk was the same and country conditions had not materially changed since the time of the RPD hearing. The only evidence which might possibly have corroborated the Applicant's narrative was the email from his sister. However, the Officer afforded this email little weight because it did not include any specific details and determined that it did not overcome the RPD's credibility findings. In my view, this determination was transparent and not unreasonable.

VI. Conclusion

[18] The PRRA Officer's decision in this case was reasonable and defensible in respect of the facts and law, and within the range of acceptable outcomes. This application for judicial review is, therefore, dismissed.

[19] No serious question of general importance is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and, no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3604-16
STYLE OF CAUSE:	BENSON KUZEEKO HENGOMBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 27, 2017
JUDGMENT AND REASONS:	BOSWELL J.
DATED:	MARCH 22, 2017

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