Federal Court  Cour fédérale

Date: 20180220

Docket: IMM-2958-17

Citation: 2018 FC 193

Ottawa, Ontario, February 20, 2018

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

TAMLYN STUURMAN
STEVE STUURMAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Tamlyn Stuurman and her husband, Steve Stuurman, are citizens of South Africa who, shortly after their arrival in Canada on August 15, 2015, sought refugee protection. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected their claims for Canada's protection in a decision dated December 7, 2015, finding that the Applicants could relocate to a viable internal flight alternative [IFA] in Johannesburg. The Applicants' appeal to the Refugee Appeal Division [RAD] of the IRB was dismissed on March 22, 2016, and

this Court denied leave for judicial review of the RAD's decision on July 29, 2016. In April 2017, the Applicants applied for a pre-removal risk assessment [PRRA], but a Senior Immigration Officer [the Officer] rejected their PRRA application in a decision dated May 18, 2017. The Applicants have 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.

I. The PRRA Officer's Decision

[2] In their PRRA application, the Applicants relied upon the allegations stated in their Basis of Claim [BOC] forms submitted to the RPD, namely, that they had been targeted and feared being attacked by members of the Americans gang due to Mr. Stuurman's work with youth through his church to dissuade them from becoming gang members, and that Ms. Stuurman feared gender-based violence and further sexual assaults. In addition, the Applicants stated they were vulnerable because each of them was of mixed race and were unable to obtain effective state protection. The Applicants provided a number of news articles which post-dated the RPD's decision to support their claims.

[3] In rejecting the Applicants' application, the PRRA Officer considered current country conditions evidence pertaining to gender-based violence and women's rights, and acknowledged that while violence against women is a significant problem in South Africa, the risk of harm feared by Ms. Stuurman was "a generalized fear of criminality that is indiscriminate or random such that it would be faced generally by all South African women." In the Officer's view, Ms. Stuurman "provided insufficient evidence to demonstrate that she would be specifically targeted compared to any other woman in South Africa." With respect to the Applicants' statement that

they are vulnerable to attacks because of their mixed race and are unable to obtain effective state protection, the Officer noted that the Applicants had not brought this risk allegation forward at the time of their hearing before the RPD and it was not mentioned in their BOC forms. The Officer thus found that, other than this statement, the Applicants "presented little objective evidence to show that they were attacked because of their race while living in South Africa. In the absence of any objective evidence, I find the statement alone to be insufficient to establish his [*sic*] statement of risk."

[4] The Officer then considered country conditions evidence to determine whether there had been a significant change since the RPD decision. The Officer referenced and quoted from various third party sources, and concluded that while crime and violence are serious problems in South Africa, these undesirable general country conditions "apply to all residents and are not unique to these applicants." The Officer concluded by finding that: the Applicants had provided "little evidence to support their claim that they would be sought out by gangs in South Africa as a result of their work with youth in the church"; the harm feared by Ms. Stuurman was "a generalized fear of criminality that is indiscriminate or random such that it would be faced generally by all South African women"; and that the Applicants had provided "little evidence to support their claim that they will be attacked as a result of their race." The Officer further concluded by stating that the Applicants had not demonstrated "a serious possibility of persecution" in the IFA area, that they would be subjected, on a balance of probabilities, to a danger of torture, a risk to life, a risk of cruel and unusual treatment, or that it would be unreasonable or unduly harsh to relocate. The Officer thus found that the Applicants had not

satisfied the requirement to provide "'clear and convincing' evidence of the state's unwillingness or inability to provide protection."

II. Analysis

[5] This application for judicial review raises one primary issue: was the PRRA Officer's decision reasonable?

[6] 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 that of reasonableness (see, e.g.: *Paul v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 687 at para 12, 282 ACWS (3d) 146; *Khatibi v Canada (Citizenship and Immigration)*, 2016 FC 1147 at para 11, 273 ACWS (3d) 156; *Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at para 8, 272 ACWS (3d) 822; *Chen v Canada (Citizenship and Immigration)*, 2015 FC 565 at para 11, 254 ACWS (3d) 901; *Shilongo v Canada (Citizenship and Immigration)*, 2015 FC 86 at para 21, 474 FTR 121; *Shaikh v Canada (Citizenship and Immigration)*, 2012 FC 1318 at para 16, 223 ACWS (3d) 1020).

[7] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine

whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 S.C.R. 708 [*Newfoundland Nurses*].

[8] Additionally, provided "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; nor is it "the function of the reviewing court to reweigh the evidence": *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339. The decision under review must be considered as "an organic whole" and the Court should not embark upon "a line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd.*, 2013 SCC 34 at para 54, [2013] 2 SCR 458).

[9] The Applicants maintain that the Officer's decision is not reasonable because the Officer: (1) failed to consider whether Ms. Stuurman's claim has a nexus to a Convention ground pursuant to section 96 of the *IRPA*; (2) erred in assessing the Applicants' risk due to their mixed race; and (3) erred in assessing whether the Applicants have an IFA in Johannesburg. According to the Applicants, a finding of a generalized risk does not prohibit a finding of persecution based on a ground under section 96 of the *IRPA*, in this case gender, and the Officer's finding that all women in South Africa face a risk of gender-based violence suggests that no IFA exists in South Africa with respect to this type of risk. The Applicants point out that the Officer erroneously found that reference to risk based on their mixed-race profile did not appear in their BOC forms, when in fact it was raised several times in these forms, and that the Officer therefore made an

unreasonable finding without regard for the evidence. The Applicants note that they had provided evidence that the risk of racial violence had worsened since the time of the RPD's decision due to deteriorating social conditions, and they claim that the Officer failed to consider this evidence as well as evidence as to the reach of the Americans gang.

[10] The Respondent defends the Officer's decision, arguing that the Applicants have provided no evidence either to show that a risk exists now which did not exist at the time of their RPD hearing, or to rebut the IFA. The Respondent maintains that a PRRA application cannot be allowed to become a second refugee hearing. In the Respondent's view, the Officer explicitly applied the test under section 96 of the *IRPA*, which is whether there would be a serious possibility of persecution; and even if the Officer had not done so, the Respondent says the availability of an IFA is dispositive of the issue. According to the Respondent, even if the Applicants are correct that their mixed-race or minority status was referenced in their BOC forms, this does not constitute "new" evidence to be considered on a PRRA application because paragraph 113(a) of the *IRPA* limits evidence to new risk developments arising from the time of the RPD hearing to the date of the PRRA decision. The Officer was under no obligation, the Respondent says, to refer to all country conditions evidence in determining that an IFA was available and, further, the Officer was required to respect the RPD's findings unless there had been a material change of circumstances. The Respondent states that the Officer's findings and conclusion that there had been no material change in circumstances were reasonable.

[11] Although the reasons for the Officer's decision are somewhat convoluted, they are, in my view, nevertheless sufficient to enable the Court to understand why the Officer made the

decision he or she did, and to determine whether the conclusion is within the range of acceptable outcomes. The Officer did not, as the Applicant contends, fail to consider whether Ms. Stuurman's claim has a nexus to a Convention ground pursuant to section 96 of the *IRPA*. On the contrary, the Officer had section 96 as well as section 97 of the *IRPA* in mind in the penultimate paragraph of the reasons:

> I find that the applicants have not demonstrated that they face more than a mere possibility of persecution on any Convention ground, as per section 96 of IRPA and that, on a balance of probabilities, the applicants are unlikely to face risk as defined in section 97 of IRPA. The applicants are not persons in need of protection.

[12] The Applicants correctly point out that they did refer to their mixed-race or minority status in their BOC forms. In this regard, the Officer stated:

> …the applicant's narrative … states "They are also vulnerable to attacks because of their race, and they are unable to obtain effective state protection". I note that the applicants did not bring this risk allegation forward at the time of their hearing. I also note that it was not mentioned in their BOC. Other than this statement the applicants have presented little evidence to show that they were attacked because of their race while living in South Africa. In the absence of any objective evidence, I find the statement alone to be insufficient to establish his [*sic*] statement of risk.

[13] This misstatement does not, in my view, render the Officer's decision unreasonable when reviewed as an organic whole. In this regard, I agree with the Respondent that, even though the Applicants' mixed-race or minority status was referenced in their BOC forms, this does not constitute "new" evidence to be considered on a PRRA application because paragraph 113(a) of the *IRPA* limits evidence to new risk developments arising from the time of the RPD hearing to the date of the PRRA decision. In any event, it was the Applicants' burden to establish that conditions in South Africa have changed such that they would be persecuted based on their race.

The Officer did consider each of the Applicants' full profile, including Ms. Stuurman's profile as a mixed-race woman who has experienced sexual assault, and it was not unreasonable for the Officer to find that the Applicants had provided little evidence to support their claim that they would be attacked as a result of their mixed-race or minority status.

[14] As to the Applicants' claim that the Officer failed to consider the news articles post-dating the RPD's decision, their arguments in this regard are not persuasive. It is well-established that administrative decision-makers, including PRRA officers, do not have to reference every piece of evidence in their decisions. In *Newfoundland Nurses*, Justice Abella stated that: "A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). Similarly, in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35, Justice Evans stated that "the reasons given by administrative agencies are not to be read hypercritically by a court…, nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it" (para 16). The Officer in this case explicitly referenced and accepted as new evidence the seven news articles submitted by the Applicants with their PRRA application. Moreover, it cannot be said that the Officer ignored these articles entirely; they raised issues addressed in the current country conditions evidence referred to by the Officer in the reasons for the decision.

III. Conclusion

[15] 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.

[16] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-2958-17

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-2958-17
STYLE OF CAUSE:	TAMLYN STUURMAN, STEVE STUURMAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 29, 2018
JUDGMENT AND REASONS:	BOSWELL J.
DATED:	FEBRUARY 20, 2018

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