

Federal Court



Cour fédérale

Date: 20190226

Docket: IMM-2706-18

Citation: 2019 FC 234

Ottawa, Ontario, February 26, 2019

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

RICHARD ALBERT FFRENCH

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision [the Decision], dated June 12, 2018, of a Canada Border Services Agency removals officer [the CBSA Officer or Officer], refusing the Applicant's request for a deferral of his removal to Jamaica.

[2] As explained in more detail below, this application is dismissed, as I have considered the Applicant's arguments, applying the applicable standard of review, and have found no basis for a conclusion that the Decision is unreasonable.

II. **Background**

[3] The Applicant, Richard Albert Ffrench, is a citizen of Jamaica. He first came to Canada in 1998, under a work permit issued under the farm worker's program, and subsequently became a permanent resident in Canada in 2001. He is married and has eight children, including three children with his current spouse. However, he was found criminally inadmissible in 2015, resulting in the loss of his permanent residence status.

[4] On February 2, 2016, a Senior Immigration Officer [the PRRA Officer] denied Mr. Ffrench's application for a Pre-Removal Risk Assessment [PRRA]. The PRRA Officer assessed Mr. Ffrench's allegation that he was at risk from an individual known as Jason, a drug dealer who had been deported from Canada to Jamaica and who had made several threats against Mr. Ffrench's life. The PRRA Officer concluded that Mr. Ffrench had not rebutted the presumption of the availability of state protection in Jamaica. Mr. Ffrench did not seek judicial review of that decision.

[5] In 2017, Mr. Ffrench was charged with further criminal offences in Canada. The Crown agreed to stay the charges pending Mr. Ffrench's removal from Canada.

[6] On June 6, 2018, seven days before his scheduled removal on June 13, 2018, Mr. Ffrench requested an urgent deferral of his removal. The basis of his request was to allow for a second PRRA to be performed to assess new evidence of risk in Jamaica and/or to allow an application on humanitarian and compassionate [H&C] grounds to be processed. In his deferral request, Mr. Ffrench relied on new evidence of threats by Jason as well as Jamaica's inability to provide state protection. As H&C grounds, he cited the best interests of his Canadian-born children and his spouse. The CBSA Officer's Decision not to grant the deferral request is the subject of this application for judicial review. On June 12, 2018, the Court granted Mr. Ffrench a stay of removal, pending the decision in this application.

III. **Decision under Review**

[7] In refusing Mr. Ffrench's deferral request, the CBSA Officer found that Mr. Ffrench had not established sufficient grounds to warrant a deferral of his removal based either on risk or on H&C considerations.

[8] The CBSA Officer noted that Mr. Ffrench had raised the same risk allegation as in his first PRRA application, which was refused and was not appealed. The Officer found that Mr. Ffrench had presented insufficient compelling and objective evidence of new risk or evidence that was not previously assessed. The Officer noted the new evidence of continuing threats by Jason but found that it paralleled the risk previously assessed by the PRRA Officer and was provided by personal sources, who may have an interest in Mr. Ffrench's immigration matters. The CBSA Officer therefore gave it little weight as objective evidence.

[9] The CBSA Officer observed that the country conditions in Jamaica and the issue of state protection had been addressed by the PRRA Officer. The CBSA Officer then referred to reviewing the country condition documents submitted but found they were general in nature and did not specifically address Mr. Ffrench's situation. The Officer was also not satisfied that the country condition documents clearly established that country conditions had significantly altered since the PRRA decision so as to warrant a deferral for a further risk assessment.

[10] The Officer found that the evidence related to Mr. Ffrench's family situation was insufficient to establish that his pending removal from Canada would result in permanent or irreparable hardship to his family. Nor was there evidence that an H&C application for landing was in process or that a decision on such an application would be imminent. Lastly, the Officer noted that Mr. Ffrench remained criminally inadmissible to Canada and that he had outstanding criminal charges.

[11] In conclusion, the CBSA Officer found that a deferral of Mr. Ffrench's removal was not appropriate in the circumstances of this case.

IV. **Issues and Standard of Review**

[12] The Applicant identifies the following issues for the Court's consideration:

- A. Did the Officer err by failing to consider new evidence that removal would cause the Applicant serious personal harm?

- B. Did the Officer err by unreasonably disregarding evidence from the Applicant's family members and new country conditions in Jamaica?
- C. Did the Officer fail to consider the best interests of the Applicant's children, taking into account the risk to his personal safety upon returning to Jamaica?

[13] The standard of review applicable to these issues is reasonableness.

[14] The Respondent also raises a further issue, which is whether the Court should decline to grant the Applicant's application for judicial review on the basis that, because of his criminal and immigration history, he comes to the Court without clean hands.

V. **Analysis**

A. *The Officer's Analysis of Evidence Related to Risk*

[15] The arguments advanced by Mr. Ffrench in connection with the first two issues identified above are best addressed together, so as to consider the relationship between the new evidence of risk and the new country condition evidence. Mr. Ffrench submits that the CBSA Officer erred in assessing the new evidence of risk, principally by assigning little weight to that evidence on the basis that it came from family members. The Respondent argues that the Officer's treatment of this evidence was reasonable but also points out that, even if it was not, that evidence does not relate to the determinative finding in the PRRA decision that Mr. Ffrench had not rebutted the presumption of the availability of state protection. I agree that the availability of state protection was clearly the determinative finding in the PRRA decision and will therefore consider first the

relationship between the new evidence submitted to the CBSA Officer, related to personal risk and country conditions, and the state protection finding.

[16] The new evidence of personal risk was provided in the form of affidavits, declarations and letters from Mr. Ffrench, his wife, his sister-in-law, his mother, and his mother-in-law, referring to on-going threats from Jason, including incidents that post-dated the PRRA decision. As identified by the CBSA Officer, this evidence relates to the same risk factor that was assessed in the PRRA. The Respondent also notes there is no evidence that any effort was made to approach the police in Jamaica as a result of incidents that post-dated the PRRA decision. The finding by the PRRA Officer that Mr. Ffrench had not rebutted the availability of state protection turned on the absence of such efforts and the applicable country condition evidence. Therefore, in the absence of any new evidence of efforts to approach the police, the question for the Court to consider is whether the CBSA Officer reasonably considered whether there was sufficient evidence of a change in the country conditions that would warrant a further PRRA.

[17] The Decision states that the CBSA Officer was not satisfied that the country documents clearly established that the country conditions in Jamaica had significantly altered since the time of the decision in the PRRA, so as to warrant a deferral for a further risk assessment. In his submissions in support of the deferral request, Mr. Ffrench's counsel draws the Officer's attention to two documents. The first is a newspaper article published in Jamaica on April 29, 2018, which refers to four bodies having been discovered in Jamaica, with speculation that the killings related to a drug deal. The second document is a report published by the United States Department of State entitled Jamaica 2016 Crime & Safety Report [the DOS Report]. Mr.

Ffrench's counsel quoted an excerpt from this document related to the prevalence of gang-related criminal activity and the challenges of the police in achieving arrests and convictions in homicides, leading to civilians' fearing that the authorities cannot protect them from organized criminal elements.

[18] The CBSA Officer does not expressly analyse either of these documents. However, the Officer is presumed to have considered all the evidence submitted, even if not expressly mentioned, subject to the Applicant's ability to rebut that presumption in the event that the evidence is sufficiently inconsistent with the Officer's conclusions (see *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 (Fed TD) [*Cepeda-Gutierrez*]). The PRRA decision noted the generalized crime in Jamaica, including gang crime related to the drug trade, but concluded after a review of the country condition evidence that there had not been a breakdown of the state apparatus in Jamaica and that the Applicant had not rebutted the presumption that state protection was available. The DOS Report is dated April 26, 2016, less than three months after the PRRA decision, and I do not regard its content to be inconsistent with the PRAA Officer's conclusions so as to support an argument that this document was overlooked by the CBSA Officer.

[19] I reach the same conclusion with respect to the newspaper article related to the four deaths. Mr. Ffrench deposes that the deceased individuals are friends of his, two of whom are from his hometown, and that, to his belief, they were targeted by Jason. However, he offers no support for this belief, nor is it supported by that the article itself. Again, applying the *Cepeda-Gutierrez* analysis, there is no basis for a conclusion that this article was overlooked by the

Officer in finding that the new country condition documents do not establish that conditions in Jamaica have significantly altered since the PRRA decision.

[20] While no other country condition documents are referenced by Mr. Ffrench in the deferral request, I note that the evidence before the Officer does include other documentation post-dating the PRRA decision, including documentation submitted in support of Mr. Ffrench's H&C application. This includes the 2017 version of the DOS Report, which again refers to challenges of the police in achieving arrests and convictions in homicides, as well as other documentation identifying a rise in Jamaica's homicide rate. However, as with the country condition evidence expressly referenced by Mr. Ffrench in his deferral request, I do not find this evidence inconsistent with the Officer's conclusion so as to invoke the *Cepeda-Gutierrez* principle.

[21] I find no basis to conclude that the CBSA Officer's consideration of the state protection issue is outside the range of acceptable outcomes so as to be unreasonable. As it was in the PRRA decision, state protection is determinative, and it is therefore unnecessary for me to consider Mr. Ffrench's arguments surrounding the CBSA Officer's treatment of the evidence, from his family members, of ongoing threats.

B. The Officer's Analysis of the Best Interests of the Applicant's Children

[22] Mr. Ffrench argues that the Officer failed to consider the best interests of his children, including the three younger children. He notes in particular social science evidence submitted to the Officer, in the form of a report by the United States Department of Health and Human

Services, suggesting that a father's involvement during the early years of childhood is crucial for the healthy development of the child. However, the Officer expressly acknowledges in the Decision that fathers in general play a significant role in their children's lives. It therefore cannot be concluded that the Officer overlooked this evidence. The fact that the Officer did not agree with the submission that the interests of Mr. Ffrench's children warranted a deferral of his removal, pending assessment of his H&C application, does not make the Decision unreasonable.

[23] Mr. Ffrench also argues that the Officer failed to consider the effect upon his children's interests resulting from the dangers in Jamaica. He argues that the threats against him make it too dangerous for his family to visit him in Jamaica and that, if he was killed, this would have a significant and permanent adverse effect upon his children. I note that this argument was not advanced in the written submissions in support of Mr. Ffrench's deferral request. The Officer considered the risks associated with the threats against Mr. Ffrench in the context in which they were advanced in the deferral submissions, related to Mr. Ffrench's wish to have the benefit of another PRRA. I have found no reviewable error arising from the Officer's treatment of that evidence, turning on the presumption of the availability of state protection, and I find no reviewable error associated with the Officer not having analysed that risk a second time in connection with H&C considerations.

[24] Having found no basis for a conclusion that the Decision is unreasonable, this application for judicial review must be dismissed. It is therefore unnecessary for me to consider the Respondent's argument that the Applicant comes to the Court without clean hands. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-2706-18

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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JUDGMENT AND REASONS SOUTHCOTT, J.

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