Federal Court  Cour fédérale

Date: 20200213

Dockets: IMM-2519-19
IMM-2517-19

Citation: 2020 FC 246

Ottawa, Ontario, February 13, 2020

PRESENT: The Honourable Madam Justice Heneghan

Docket: IMM-2519-19

BETWEEN:

ADIAM MICHAEL ABRAHAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2517-19

AND BETWEEN:

ADIAM MICHAEL ABRAHAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Adiam Michael Abraham (the "Applicant") seeks judicial review, in two applications, of decisions made by an Immigration Officer (the "Officer").

[2] In cause number IMM-2519-19, the Applicant seeks judicial review of a decision dated March 15, 2019, refusing her Pre-Removal Risk Assessment ("PRRA") application. The Officer found that she would not be at risk if returned to her country of nationality or habitual residence.

[3] In cause number IMM-2517-19, the Applicant seeks judicial review of a decision dated March 26, 2019, denying her application for permanent residence made on humanitarian and compassionate ("H&C") grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the "Act"). The Officer found that there were not sufficient factors to warrant relief.

[4] The following details are taken from the Certified Tribunal Record (the "CTR") and the affidavits filed by the Applicant in support of her applications for judicial review. Affidavits in support of both applications were sworn by Samira Remtulla on May 21, 2019.

[5] The Applicant arrived in Canada, with her husband, on February 26, 2016. They applied for refugee protection on April 5, 2016.

[6] The Applicant gave birth to a son in Canada on May 12, 2016.

[7] The Minister of Citizenship and Immigration (the "Respondent") intervened in the Applicant's refugee claim before the Immigration and Refugee Board, Refugee Protection Division (the "RPD"), and submitted evidence that the passport used by the Applicant to enter Canada belonged to a Swedish citizen.

[8] Canada Border Services Agency's Integrated Customs Enforcement System linked the Applicant to the passport with the name "Ariam Mehari Weldesilasie" because an individual using this passport entered Canada immediately before the entry of the Applicant's husband.

[9] The Respondent disclosed an email from Interpol Ottawa that recognized the passport in the name "Ariam Mehari Weldesilasie" as a genuine Swedish passport belonging to a Swedish citizen born in Eritrea, and a copy of that passport. The email also stated that no one with the Applicant's name and birthdate is recorded in Sweden's population, migration, or criminal registers.

[10] The RPD rejected the Applicant's claim for refugee protection, finding there was no credible basis to her claims, based on the "high value information from Interpol" indicating the Applicant had Swedish citizenship.

[11] The Applicant subsequently applied for leave and judicial review of the RPD's decision. This application was dismissed because the application for leave was not perfected.

[12] The Applicant then applied for a PRRA and for permanent residency on H&C grounds, on February 27, 2018 and March 20, 2018, respectively. The citizenship of the Applicant was determinative in the refusal of both applications. In both decisions, the Officer found the Applicant was a Swedish citizen, citing the RPD's findings, the "high value information" from Interpol, and "biometric data" matching the Applicant to the genuine Swedish passport.

[13] In her affidavits filed in support of her PRRA application and her application for permanent residency, the Applicant deposed that she entered Canada on a false passport provided to her by a smuggler. She further deposed that she is a citizen only of Eritrea and is not a citizen of Sweden and has no rights to return.

[14] In her submissions in the within two applications for judicial review, the Applicant argues that the Officer unreasonably relied on the "high value information" from the Respondent and failed to consider all of the evidence when he determined her identity as a Swedish citizen.

[15] The Applicant submits the Officer breached her procedural fairness rights by not conducting an oral hearing for her PRRA application, pursuant to paragraph 113(b) of the Act and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"). Further, she argues the Officer erred in refusing to admit new evidence in support of her PRRA application.

[16] The Applicant also argues that the best interests of the child in her application for permanent residency on H&C grounds were unreasonably assessed since those interests were limited to consideration of removal to Sweden, not Eritrea.

[17] The Respondent submits that the decisions of the Officer were reasonable and made with regard to all evidence.

[18] The Respondent also argues that the decision of the Officer not to call an oral hearing for the Applicant's PRRA application is an issue of statutory interpretation, not procedural fairness, and was reasonable.

[19] Questions of procedural fairness, including a breach of natural justice, are reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R 339.

[20] The Officer's refusal of the application for permanent residency on humanitarian and compassionate grounds is reviewable on the standard of reasonableness; see the decision in *Kisana* v. *Canada (Minister of Citizenship and Immigration)*, [2010] 1 F.C.R. 360 (F.C.A.).

[21] The applicable standard of review for a PRRA application is reasonableness; see the decision in *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385.

[22] The post-hearing decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 does not change the applicable standard of review in these cases.

[23] In *Vavilov*, *supra*, the Supreme Court of Canada confirmed the content of the standard of reasonableness, as set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[24] According to the decision in *Dunsmuir*, *supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[25] Upon considering all of the arguments made by the parties in respect of the negative PRRA decision, I am satisfied that no breach of procedural fairness resulted from the lack of an oral hearing. Subsection 113(b) of the Act provides as follows:

Consideration of application	**Examen de la demande**
113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit:
…	…
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required	**b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
…	…

[26] Section 167 of the Regulations provides as follows:

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[27] There is no credibility issue identified relative to the Applicant in her PRRA application. Accordingly, there was no need for the Officer to convene an oral hearing and there was no breach of procedural fairness.

[28] The problem, in my opinion, with the PRRA decision is the Officer's reliance upon the findings of the RPD about the Applicant's identity as a Swedish national.

[29] This finding is not reasonable, in my opinion. The RPD characterized this evidence as "high value information" but there is no indication in the CTR that biometric testing was conducted.

[30] The Officer's identify finding is not reasonable within the meaning of the standard set out in *Dunsmuir, supra*.

[31] This finding was also relied upon in the negative H&C decision and renders that decision unreasonable as well.

[32] It is not necessary for me to address the other arguments raised by the Applicant.

[33] In the result, the applications for judicial review are allowed, the decisions of the Officer are set aside and both matters are remitted to a different Officer for redetermination.

[34] There is no question for certification arising in either of the within applications for judicial review.

JUDGMENT in IMM-2519-19 and IMM-2517-19

THIS COURT'S JUDGMENT is that the application for judicial review in cause number IMM-2519-19 is allowed, the decision is set aside and the matter remitted to a different officer for redetermination.

There is no question for certification arising.

THIS COURT'S JUDGMENT is that the application for judicial review in cause number IMM-2517-19 is allowed, the decision is set aside and the matter remitted to a different officer for redetermination.

There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2519-19 IMM-2517-19
STYLE OF CAUSE:	ADIAM MICHAEL ABRAHAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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