Date : 20060405

Docket : IMM-4826-05

Citation: 2006 FC 431

BETWEEN:

URSULA MARIANA BARBOSA PONCE

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT

PINARD, J.

[1] This is an application for judicial review of a July 20, 2005 decision by Hélène Dostie, pre-removal risk assessment officer (the officer), dismissing the applicant's claim.

[2] Ursula Mariana Barbosa Ponce (the applicant) is a 29 year old single mother from Mexico. She came to Canada with her daughter in 2000 as a tourist. She overstayed her visitor's visa and filed a refugee claim on April 22, 2002. She stated that she was afraid of her daughter's father, Raul Chavez, a police officer, who had allegedly physically and sexually assaulted her.

[3] The Refugee Protection Division (RPD) rejected the applicant's refugee claim on November 27, 2003 on the grounds that she lacked credibility and had other options than to leave Mexico. Her pre-removal risk assessment (PRRA) resulted in a dismissal on February 22, 2005 and no application for judicial review was filed. However, on June 21, the applicant's mother, Enedina Barboza saw her refugee claimed allowed by the RPD. Progress on her mother's file and new evidence led the applicant to file a subsequent PRRA application on July 8, 2005. This application was heard on July 12, 2005 and on July 20, Hélène Dostie, the PRRA officer, rejected the applicant's arguments, leading to the current application for judicial review.

[4] The officer started by noting that most of the submitted documents were the same as those that had been considered during the first PRRA and that she would only consider those that introduced new evidence that had previously been unavailable. She therefore rejected a letter certifying that the applicant and her mother had been patients of D^{r} Rosa Ma Bernal Lopez since 1997, even though the document itself was new, because it was not new information and did not contribute to a better understanding of the case. The officer did, however, recognize the significance of the documentation relating to the manner in which women are treated in Mexico and decided to consider it. The only truly new documents were the RPD's ruling on Enedina Barboza and her Personal Information Form (PIF).

[5] According to the officer, the applicant did not really raise any new arguments apart from the fact that her mother had been granted refugee status and that there were similarities between their cases. Each case is distinct and the RPD's decision is not binding on the PRRA officer. The officer found, as in the applicant's first PRRA application, that the applicant could have received

protection from the state and had a reasonable internal flight alternative (IFA); she could have moved to a different city or neighbourhood. The officer referred in particular to an issue paper produced by the Immigration and Refugee Board's Research Directorate, referred to as MEX39866.EF, that determined that abused women could receive effective support even if their abuser was a police officer. Because the applicant had failed to discharge her burden of proof, her application was denied.

Admissibility of evidence

[6] The applicant submitted that the officer erred in refusing to allow some evidence.

[7] The test to establish whether new evidence is admissible in a PRRA application is set out in subsection 113(*a*) of the I*mmigration and Refugee Protection Act* S.C. 2001, c. 27 :

113. Consideration of an application for protection shall be as follows :	**113.** Il est disposé de la demande comme il suit :
(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

[8] As to the application of subsection 113(*a*), in *Mojzisik v. Canada (M.C.I.),* [2004] F.C.J. n^{o} 33, my colleague Mr. Justice Konrad von Finkenstein made the following comments:

> [11] The PRRA is an innovation in the new act which is designed to ensure that the vast majority of individuals facing removal from Canada are given a full but expedited chance to establish that they face a risk of torture or gross mistreatment on their return to a home country. In most cases today, the RPD has first undertaken an assessment of whether or not the applicant is a Convention

> Refugee or a Person in need of protection. Therefore, the PRRA Officer is limited by the first half of subsection 113(*a*) to considering evidence which arose after the RPD hearing.
>
> [12] However, it seems clear that the second half of subsection 113(*a*) addresses the very situation faced by the applicant: namely that in which the CRDD did not determine whether or not he was a person in need of protection. In these cases, the Act makes clear that the officer is entitled to also consider evidence that "the applicant could not reasonably have been exptected . . . to have presented, at the time of the rejection" from the CRDD. This includes information regarding a Section 97 claim which the applicant did not present at the hearing.

[9] In this case, there is no reason to believe that the evidence which the officer refused to consider could not have been offered earlier. Indeed, in all likelihood, the police report and photos of Mr. Sanchez existed prior to the applicant's 2002 refugee claim. The officer was therefore justified in rejecting the evidence.

The availability of an internal flight alternative (IFA)

[10] With respect to the IFA, the officer stated the following in her decision:

> [TRANSLATION] . . . like the IRB, I believe that she could have received and could still receive state protection in Mexico and further that there is a reasonable internal flight alternative (IFA), in any one of the many major cities in Mexico or simply by moving to another neighbourhood in the capital, Mexico city.

[11] The applicable standard of review of a decision on the availability of an IFA is that of patent unreasonableness (see for instance *Ashiru v. Minister of Citizenship and Immigration*, 2006 FC 6, *Chorny v. Canada (M.C.I.)*, 2003 FC 999 and *Singh v. Canada (M.C.I.)*, [1999] F.C.J. N^{o} 1283 (T.D.) (QL)).

[12] The test to determine whether there is indeed an IFA was laid down by Mr. Justice Mahoney of the Federal Court of Appeal in *Rasaratnam v. Canada (M.E.I.)* and well

summarized by my colleague Mr. Justice Richard Mosley in *Kumar v. Canada (M.C.I.)*, [2004] F.C.J. N^{o} 731 (QL):

> [20] In order for the Board to find that a viable and safe IFA exists for the applicant, the following two-pronged test, as established and applied in *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.) and *Thirunavukkarasu*, *supra*, must be:
>
> (1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA; and;
> (2) Conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[13] The applicant complained that the officer failed to provide a sufficiently detailed explanation as to why she believed there was an IFA. While it can be said that the officer's reasoning is not set out in great detail, it is not groundless. Indeed, the officer referred to the RPD's decision, which reads as follows:

> If, as the claimant alleged, there was a problem to do with her living in the State of Mexico and the Federal District, she could have moved to the Federal District, since she testified that she had lived only five blocks from the Federal District.

[14] This passage referred to the fact that the applicant indicated that she could not receive federal police protection because neither she nor her abuser lived in the Federal District. The applicant complained of inaction on the part of the authorities, yet she clearly stated in her PIF that the conduct of federal police was more satisfactory than that of the police in the State of Mexico.

[15] In the circumstances, it was not patently unreasonable for the officer to determine on a balance of probabilities that if the applicant had moved to the Federal District or elsewhere in the country she would have been able to avoid her abuser or to seek more effective legal remedies.

[16] Moreover, the case law has established that, when an IFA for a refugee claimant is being considered, the onus rests on the claimant to prove that he would be in danger even if he were to move to the area which is alleged to afford an IFA (*Thirunavukkarasu v. Minister of Employment and Immigration*, [1994] 1 F.C. 589 (C.A.)).

[17] Now, in this case, the applicant did not offer any serious evidence to show that she could be persecuted if she were to move to another city in Mexico or that she would be unable to handle such a move. Therefore, she has not discharged her burden of proof.

[18] The officer's determination on the IFA must be upheld; that ground alone warrants the dismissal of the PRRA application.

Correct use of the evidence

[19] In this case, the applicant essentially faulted the officer for having ignored her mother's PIF, thereby having ignored evidence which could have served to draw a parallel between her case and her mother's. Although it is true that no reference is made to Enedina Barboza's PIF save for the fact that it was admissible as evidence, one can hardly agree with the applicant's claim that this evidence was not taken into consideration. Indeed, the officer referred to similarities between the two women's cases. She did, however, find that differences between

them were significant enough to warrant different results. I am of the view that this is far from being a case where the officer, who must be presumed to have considered all of the evidence, deliberately ignored part thereof.

State protection

[20] The applicant alleged that the officer erred in finding that state protection was available to her solely on the basis of the MEX39866.EF issue paper, which deals with the availability of support groups for women victims of domestic violence. The applicant argued that, even though the existence of said groups was relevant, it did warrant the conclusion that the State will protect a victim.

[21] However, the officer did not base her decision solely on the existence of support groups, she also based it on MEX40336.EF, that referred to a whole range of remedies available to women seeking protection if they cannot get the desired results from the police. This shows that there is evidence in support of the officer's finding that the applicant could have received the protection of the State.

[22] For all these reasons, the intervention of this Court is not warranted and the application for judicial review is dismissed.

[23] The applicant's counsel proposed the following two questions for certification:

> [TRANSLATION]
>
> Question 1: Must the PRRA officer analyze all of the evidence offered in a PRRA application in light of criteria established in section 113(*a*)?

> Question 2: When documents are filed in support of a PRRA application for a family member, what is the probative value of the reasons and the positive IRB decision? Is the PRRA officer required to consider findings of fact rendered in the IRB's decision and reasons?

[24] In view of these reasons and of the Federal Court of Appeal decision in *Liyanagamage v. Canada (M.C.I.)* (1994), 176 N.R. 4, I am of the view that these questions do not transcend the interests of the immediate parties to the litigation and are not determinative of the appeal. In this regard, generally speaking, I agree with the written representations of respondent's counsel.

"Yvon Pinard"
Judge

OTTAWA, ONTARIO
April 5, 2006

Certified true translation
François Brunet, LLB, BCL

FEDERAL COURT

SOLICITORS OF RECORD

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