Date: 20061127

Docket: IMM-3010-06

Citation: 2006 FC 1426

Ottawa, Ontario, the 27th day of November 2006

Present: The Honourable Mr. Justice Blais

BETWEEN:

JORGE ALBERTO MEDINA OROZCO
ROSAURA SANABRIA NOGUEZ
TANI XIMENA MEDINA SANABRIA

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision dated May 19, 2006, by a pre-removal risk assessment officer, refusing the application based on humanitarian and compassionate grounds for exemption from the requirement to obtain a permanent resident visa before coming to Canada.

RELEVANT FACTS

[2] The applicants, Mr. Medina Orozco, his wife and daughter, who are all citizens of Mexico, submitted an application for visa exemption on humanitarian and compassionate grounds on April 10, 2006. This application was followed by an application for pre-removal risk assessment (the PRRA application) filed on May 2, 2006.

[3] On May 19, 2006, both the application for visa exemption on humanitarian and compassionate grounds and the PRRA application were refused by Mr. Gilles Crête, a pre-removal risk assessment officer (the PRRA officer).

[4] In fact, this was the applicants' second application for visa exemption on humanitarian and compassionate grounds and the second PRRA application; the previous applications were refused on July 4, 2005, and December 7, 2004, respectively.

[5] The applicants had also submitted a refugee claim in 2000 and an application for immigration to Canada from Mexico in 2002; both were denied.

IMPUGNED DECISION

[6] The applicants in this proceeding challenge the decision dated May 19, 2006, by the PRRA officer that there were insufficient humanitarian and compassionate grounds to establish that the applicants would encounter unusual and undeserved or disproportionate hardship should they be required to leave Canada and apply for permanent residence from Mexico.

ISSUE

[7] This case raises the following issue: did the PRRA officer err in not considering all the evidence that was presented?

RELEVANT STATUTORY EXCERPT

[8] The application for visa exemption on humanitarian and compassionate grounds falls within the ambit of subsection 25(1) of the Act. This provision reads as follows:

25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	**25.** (1) Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

STANDARD OF REVIEW

[9] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the Supreme Court determined that the appropriate standard of review applicable to decisions by immigration officers regarding applications based on humanitarian and compassionate grounds is reasonableness *simpliciter*.

ANALYSIS

[10] The applicants submit that the PRRA officer erred in law by failing to conduct a new independent review of their file instead of accepting the findings that he himself had made on the first application and limiting his analysis to the new facts presented by the applicants.

[11] The respondent notes that the first PRRA decision regarding humanitarian and compassionate grounds was not challenged in this Court and therefore remains valid. Moreover, the second application is based on new facts, not the mere passage of time. Accordingly, it was reasonable for the officer to focus his analysis on this fresh evidence.

[12] I would add that it would be unrealistic to expect that an individual could make multiple applications on humanitarian and compassionate grounds, based on the same facts, and expect that each application would be assessed independently, without regard to the previous decisions. In my view, adopting such an approach would permit an applicant to circumvent the Act, which already contains numerous mechanisms for challenging the decision-maker's initial refusal (for example, judicial review of the decision or the PRRA application).

[13] On this point, I concur with Mr. Justice Sean J. Harrington's reasons in *Kouka v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1561, at paragraphs 14 and 15:

> Although foreign nationals are entitled to submit more than one HC application and more than one PRRA application in Canada, the most recent application must be based on new facts; otherwise, what would be the point of submitting it? In short, how would a new application be relevant? Such a procedure would undermine the Canadian justice system, thereby breaching the spirit of the *res judicata* rule, which prevails in judicial matters. In this case, the immigration officer did

> not contravene any rule or principle when he restated findings already made in an earlier decision or limited his assessment of the evidence to new material before him. In that respect, the decision was correct, and the Court should not intervene. It should be noted that in matters of natural justice and procedural fairness, review of a disputed decision must be in accordance with the correctness standard, as the Supreme Court held in *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539.
>
> There is also nothing wrong with the fact that it was the same immigration officer who adjudicated at each stage of the applicants' claim for legal status in this country. In this regard, Mr. Justice Blais wrote the following at paragraph 16 of *Nazaire v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 416, [2006] F.C.J. No. 596 (QL): "In principle, the officer responsible for the first PRRA application could be responsible for the second, but there are rules to follow so that the officer does not fail to observe the principles of natural justice and impartiality." There is nothing in the record to indicate that the immigration officer failed to comply with these rules. It should be noted that the applicants did not establish that an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it was more likely than not that the decision-maker would not decide fairly (*Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369).

[14] In this case, since the officer had already made a decision on the applicants' file less than a year earlier, it was perfectly reasonable that he focused his analysis on the new facts set out in the second application to determine whether those facts could offset the negative finding on the facts presented in the first application. Moreover, no evidence was adduced to show that the PRRA officer's decision was not made fairly.

[15] The applicants also contend that the PRRA officer erred in finding that the positive decision by the Refugee Protection Division (RPD) concerning the principal applicant's daughter-in-law did not constitute corroborating evidence of the applicants' version of the facts.

[16] On the contrary, the respondent maintains that the reasons reflect the officer's meticulous review of the evidence, and that his decision is reasonable.

[17] It is clear from the decision that the PRRA officer considered the fresh evidence submitted by the applicant, in particular the fact that his daughter-in-law had obtained refugee status. On that particular point, the officer found that he was not bound by the RPD decision; every situation is different, and every decision-maker is independent. The PRRA officer commented on a number of gaps in the evidence that led him to reject the RPD decision as corroborating the applicants' allegations. The officer also considered a number of other pieces of evidence submitted by the applicants, *inter alia*, the principal applicant's medical condition; in the end, he concluded that there were insufficient humanitarian and compassionate grounds to establish that the applicants would encounter unusual and undeserved or disproportionate hardship should they be required to leave Canada to apply for a visa from outside the country (*Irimie v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1906).

[18] Where the applicable standard of review is reasonableness, it is not the role of the Court to substitute its assessment of the facts for that of the decision-maker. Instead, the Court must determine "whether the reasons, taken as a whole, are tenable as support for the decision" (*Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, at paragraph 56).

[19] In this case, the officer's findings, taken as a whole, are tenable as support for the decision.

[20] Accordingly, for these reasons, the application for judicial review is dismissed.

[21] I should emphasize the excellent work of both counsel in this matter. Having said that, I note that this is the seventh decision denying the applicants' application. Although the applicants' repeated applications could be viewed as reflecting great persistence, this persistence approaches an abuse of process when the parties appear unable to accept the impact of the decisions and continue to submit fresh applications that are clearly without foundation.

[22] Counsel did not submit any question for certification.

JUDGMENT

1. The application for judicial review is dismissed.

2. There is no question to be certified.

"Pierre Blais"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3010-06
STYLE OF CAUSE:	JORGE ALBERTO MEDINA OROZCO, ROSAURA SANABRIA NOGUEZ and TANI XIMENA MEDINA SANABRIA v. MINISTER OF CITIZENSHIP AND IMMIGRATION
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