**Date: 20070503**

**Docket: IMM-5123-06**

**Citation: 2007 FC 480**

**Ottawa, Ontario, May 3, 2007**

**Present: The Honourable Mr. Justice Blais**

**BETWEEN:**

**OUMOU TOURE**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), against a decision by a pre-removal risk assessment officer (PRRA officer) dated August 4, 2006, dismissing the application for protection claim under section 112 of the Act.

**RELEVANT FACTS**

[2] Oumou Touré (the applicant) is a citizen of Guinea who arrived in Canada on November 23, 2003, and immediately claimed refugee status alleging that she feared her mother-in-law, who wanted her to marry an older man, threatening to kill her if she refused.

[3] On December 15, 2004, her refugee claim had been refused by the Refugee Protection Division of the Immigration and Refugee Board (the Board), which determined that the applicant was not credible.

[4] On December 28, 2004, the applicant gave birth to a daughter, Fanta Touré, in Montréal.

[5] On August 8, 2005, she applied for an exemption from the requirement to obtain a permanent resident visa before coming to Canada, based on humanitarian and compassionate considerations. There is an application for judicial review of the decision regarding that application in docket IMM-5121-06.

[6] On October 31, 2005, she filed a PRRA application which was denied on August 4, 2006, as the PRRA officer determined that the applicant would not be personally subjected to a risk of persecution, a danger of torture, a risk to her life and a risk of cruel and unusual treatment or punishment if she were to return to her native country.

[7] On August 7, 2006, the applicant gave birth to a son, John-Fodé Touré, in Montréal.

**ISSUES**

[8] The following issues were raised by the parties in the context of the judicial review:

1. Should the Court accept the documents filed by the applicant which were not before the officer?

2. Did the officer err because she did not consider the best interest of the children?

3. Did the officer err in finding that the fact that the applicant was a single mother would not expose her to risks in Guinea?

**STANDARD OF JUDICIAL REVIEW**

[9] Several decisions of this Court refer to the decision of Mr. Justice Luc Martineau in *Figurado v. Canada*, 2005 FC 347, [2005] F.C.J. No. 458 (QL), for his analysis of the appropriate standard of review for PRRA decisions, at paragraph 51:

> In my opinion, in applying the pragmatic and functional approach, where the impugned PRRA decision is considered globally and as a whole, the applicable standard of review should be reasonableness *simpliciter* (*Shahi v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1826 (T.D.) (QL), at paragraph 13; *Zolotareva v. Canada (Minister of Citizenship and Immigration)* (2003), 241 F.T.R. 289 (F.C.), at paragraph 24; *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 (CanLII), 2004 FC 39, at paragraph 7). That being said, where a particular finding of fact is made by the PRRA officer, the Court should not substitute its decision to that of the PRRA officer unless it is demonstrated by the applicant that such finding of fact was made in a perverse or capricious manner or without regard to the material before the PRRA officer (paragraph 18.1(4)(*d*) [as enacted by S.C. 1990, c. 8, s. 5; 2002, c. 8, s. 27] of the *Federal Courts Act*; *Harb v. Canada (Minister of Citizenship and Immigration)* (2003), 238 F.T.R. 194 (F.C.A.), at paragraph 14).

[10] In this case, the applicant is challenging the officer's finding regarding the risks she would face as a single mother. The officer made this finding by considering the applicant's credibility and her determination that the applicant had not established the existence of the persecuting agent. The PRRA officer's determination is therefore based on findings of fact and the appropriate standard of review is that of patent unreasonableness.

**ANALYSIS**

***1. Should the Court accept the documents filed by the applicant which were not before the officer?***

[11] The respondent submitted that the Court ought not to consider the two documents which were not before the officer at the time that she made her decision, namely the response to information request GIN43078.F, and the birth certificate of the applicant's son.

[12] The applicant's son was born three days after the officer made her decision. Obviously, the applicant had not been able to file the birth certificate when she filed her PRRA application. Further, the officer acknowledged in her decision that the applicant was pregnant.

[13] For these reasons, the Court agrees to admit the birth certificate of the applicant's son. In any case, there is no issue that depends on this evidence.

[14] With regard to the response to information requests, the applicant submitted that the officer had the obligation to consult this evidence. However, she does not refer to any rule or case law to support this argument.

[15] As a general rule, the applicant has the obligation to file all of the relevant evidence before the tribunal and the Court on judicial review cannot consider new evidence (*Bekker v. Canada*, 2004 FCA 186, [2004] F.C.J. No. 819 (QL)).

[16] In this case, the situation is less clear since the information request at issue is included in the tribunal record for the application for exemption based on humanitarian and compassionate considerations. Considering that the same immigration officer decided the PRRA application and the application for exemption, and that she made the decisions on the same day, I am satisfied that the officer considered the response to information requests. Accordingly, the Court can also consider it.

***2. Did the officer err because she did not consider the best interests of the children?***

[17] The applicant submitted that the officer erred because she did not consider the best interests of the children when she did the PRRA assessment.

[18] The respondent for his part properly argued that it is not a PRRA officer's responsibility to address this issue in the context of a PRRA application. In fact, pursuant to section 112 of the Act, only the foreign national contemplated by a removal order that is in force may file an application for protection. In this case, no removal order was issued with regard to the applicant's Canadian children, who may reside in Canada. The visa officer therefore determined that the assessment of the best interest of the children was not appropriate in the context of the PRRA application, but that this issue would rather be assessed in the context of the application for visa exemption based on humanitarian and compassionate considerations.

[19] This determination by the PRRA officer reflects the decision of the Federal Court of Appeal in *Varga v. Canada (M.C.I.)*, 2006 FCA 394, [2006] F.C.J. No. 1828 (QL), which stated at paragraph 20:

> A PRRA officer has no obligation to consider, in the context of the PRRA, the interests of a Canadian-born child when assessing the risks involved in removing at least one of the parents of that child.

[20] In this case, the officer was not obligated to consider the best interests of the applicant's children.

**3. Did the officer err in finding that the fact that the applicant was a single mother would not expose her to risks in Guinea?**

[21] The applicant argued that the PRRA officer did not adequately examine the risks that the applicant would face as a single mother on returning to Guinea. She relied on the response to information requests, which reads as follows:

> Regarding the perception of unmarried women in Guinea, the president of CONAG-DCF indicated that unmarried mothers are given a negative image and are rejected by society (15 Oct. 2004). The president of OGDHC explained that unmarried mothers are generally frowned upon by the Guinean people and that many of those mothers are victims of family violence, including paternal violence (13 Oct. 2004). According to the president of OGDHC, radical Muslim families drive unmarried mothers out of the family home (13 Oct. 2004). Sometimes, the mother of the pregnant girl is also driven out, by her husband, because she holds the ultimate responsibility of educating her daughter, who brought shame to the family (CONAG-DCF 15 Oct. 2004; OGDHC 13 Oct. 2004.). However, some Muslim families will tolerate unmarried mothers (*ibid.*)

[22] According to the respondent, even if this evidence had been before the officer, this would not be sufficient to establish the risk alleged by the applicant because it

addresses only the general situation of single mothers in Guinea, and not the applicant's particular situation.

[23] Although the response to information requests establishes that single mothers are victims of discrimination it does not necessarily indicate that single mothers are persecuted.

[24] Further, the courts have consistently held that the documentary evidence on a country is insufficient in itself to justify a positive risk assessment, since the risk must be personal (*Kaba v. Canada (M.C.I.)*, 2006 FC 1113, [2006] F.C.J. No. 1420 (QL)).

[25] In the letter that the applicant submitted to the officer, she wrote:

> [TRANSLATION]
>
> As a single mother before society and the law in force in Canada I am an embarrassment to Guinean society and to my family because I breached the laws and practices of my community in [*sic*] the husband that the family had forced on me.

This does not establish a personal risk and, in my opinion, the officer's decision is reasonable.

[26] Finally, the applicant submitted that she is opposed to her daughter being circumcised and claimed that her opposition to this practise will cause problems for her with her family in Guinea. The applicant did not raise this risk before the officer and accordingly this issue cannot be examined by the Court. Indeed, even if the Court could

consider this issue, the applicant did not establish a personal risk associated with her opinions on circumcision.

[27] For these reasons, I determine that the PRRA officer's decision was reasonable and the application for judicial review will therefore be dismissed.

[28] The parties did not submit any question for certification.

**JUDGMENT**

1. The application for judicial review is dismissed;

2. No question will be certified.

"Pierre Blais"

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

## APPENDIX

## RELEVANT STATUTORY EXCERPTS

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**

**112.** (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

(2) Despite subsection (1), a person may not apply for protection if

(*a*) they are the subject of an authority to proceed issued under section 15 of the *Extradition Act*;

(*b*) they have made a claim to refugee protection that has been determined under paragraph 101(1)(*e*) to be ineligible;

(*c*) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or

(*d*) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or

**112.** (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

(2) Elle n'est pas admise à demander la protection dans les cas suivants:

*a*) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la *Loi sur l'extradition*;

*b*) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)*e*);

*c*) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas expiré;

*d*) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

rejected, or their application for protection was rejected.

(3) Refugee protection may not result from an application for protection if the person

(*a*) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

(*c*) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

(*d*) is named in a certificate referred to in subsection 77(1).

**113.** Consideration of an application for protection shall be as follows:

(*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

(3) L'asile ne peut être conféré au demandeur dans les cas suivants:

*a*) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

*b*) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

*c*) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

*d*) il est nommé au certificat visé au paragraphe 77(1).

**113.** Il est disposé de la demande comme il suit:

*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

available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

*b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

*c*) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

*d*) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part:

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5123-06 |
| **STYLE OF CAUSE:** | OUMOU TOURE . MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | March 28, 2007 |
| **REASONS FOR JUDGMENT:** | Blais J. |
| **DATE OF REASONS:** | May 3, 2007 |

**APPEARANCES:**

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|---|---|
| Marie-Andrée Fogg | FOR THE APPLICANT |
| Michel Pépin | FOR THE RESPONDENT |

**SOLICITORS OF RECORD**

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|---|---|
| Bureau d'aide juridique de Montréal<br>Montréal, Quebec | FOR THE APPLICANT |
| John H. Sims, Q.C.<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |