Date: 20071218

Docket: IMM-2378-07

Citation: 2007 FC 1330

Ottawa, Ontario, December 18, 2007

PRESENT: The Honourable Mr. Justice Blais

BETWEEN:

EHAB MOHAMED MO EL GHAZALY
SALWA TAWFIK MO SHALABY
SHADI EHAB MOHA EL GHAZALY
SHAIMAA EHAB MO EL GHAZALY

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision by a Pre-Removal Risk Assessment (PRRA) officer made on April 19, 2007, wherein the applicants' application for protection was refused.

BACKGROUND

[2] Ehab Mohamed Mo El Ghazaly (the principal applicant), his wife Salwa Tawfik Mo Shalaby and their two children Shaimaa Ehab Mo El Ghazaly and Shadi Ehab Moha El Ghazaly (the applicants) are citizens of Egypt.

[3] Apart from the principal applicant, who only arrived in Canada on January 13, 2003, the other applicants arrived in Canada on September 17, 2002. All the applicants applied for permanent residence based on humanitarian and compassionate (H&C) grounds on February 28, 2003.

[4] All the applicants made a refugee claim on August 18, 2003. However, their claim was rejected by the Immigration and Refugee Board (IRB) on March 12, 2004 on the basis of lack of credibility. The decision to reject their claim was also based on the fact that they did not seek protection at the first available moment and that there was insufficient documentation to show a criminal conviction in Egypt. The applicants submitted five certificates of appeal and one judgment concerning the criminal conviction. The application for leave for judicial review of that decision was denied June 25, 2004.

[5] On July 26, 2006, the applicants applied for a Pre-Removal Risk Assessment (PRRA). The applicants submitted four new certificates stating that four appeals of the criminal convictions had been dismissed on April 29, 2002. On April 19, 2007 the officer rejected both their PRRA application and their H&C application.

DECISION UNDER REVIEW

[6] The officer denied the PRRA application on the ground that there was no risk of persecution, nor was there a risk of torture or cruel and unusual treatment, as defined in sections 96 and 97 of the Act.

[7] The relevant parts of the PRRA decision are the following:

> Toutefois, il n'est pas établi que le demandeur serait emprisonné s'il devait retourner en Égypte.
>
> Je note que le demandeur présente ici, en substance, les mêmes allégations qui ont été présentées devant la SPR et qu'elle […] a rejetée[s] pour des motifs de crédibilité. Ici, les demandeurs ont présenté des documents démontrant que le demandeur principal a fait appel aux condamnations dont il fait l'objet. Je voudrais d'abord mentionner qu'il s'agit ici de simples photocopies auxquelles j'accorde peu de force probante puisqu'il m'est impossible d'attester de leur authenticité.
>
> D'autre part, mentionnons que ces documents, à eux seuls, même s'ils étaient considérés authentiques, ne permettraient pas d'établir que le demandeur et sa famille sont à risque de rencontrer les problèmes qu'ils allèguent. Ils ne me permettraient pas de tirer de conclusion en ce qui concerne le contexte de ces condamnations, dont l'abus de pouvoir allégué du proche président, puisque ce fait, ainsi que les autres faits des allégations, n'ont pas été démontrés ni ici, ni devant la SPR.
>
> De plus, pour ces mêmes raisons, je ne peux pas conclure qu'il s'agirait ici d'une sanction d'emprisonnement [qui] serait illégitime ou contraire aux normes internationales. J'accorde conséquemment aucun poids à cette allégation.

ISSUES FOR CONSIDERATION

[8] I believe there are three issues to be reviewed, which should be restated as follow:

a) Did the officer breach the duty of procedural fairness owed to the applicants?

b) Is the officer's finding of facts patently unreasonable?

c) Did the applicants' former lawyer's conduct breach their right to be heard?

PERTINENT LEGISLATION

[9] The relevant legislation concerning a hearing in the context of a PRRA application is found at paragraph 113(*b*) of the Act and at section 167 *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) which read as follow:

113. Consideration of an application for protection shall be as follows: […] (*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	113. Il est disposé de la demande comme il suit : […] *b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following: (*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; (*b*) whether the evidence is central to the decision with respect to the application for protection; and (*c*) whether the evidence, if accepted, would justify allowing the application for protection.	167. Pour l'application de l'alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise : *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*) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection; *c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

STANDARDS OF REVIEW

[10] In *Rizk Hassaballa v. Canada (Citizenship and Immigration),* 2007 FC 489, at paragraphs 9 and 10, I applied the reasonableness standard to a PRRA decision considered globally, as well as to questions of mixed fact and law. However, regarding findings of fact, I concluded that the appropriate standard of review was patent unreasonableness, whereas correctness is the applicable standard for questions of law and procedural fairness (See also *Kim v. Canada (Minister of Citizenship and Immigration)* (2005), 2005 FC 437; *Sing v. Canada (Minister of Citizenship and Immigration),* 2007 FC 361). I see no reason to apply different standards of review in the case at bar.

ANALYSIS

a) Did the officer breach the duty of procedural fairness owed to the applicants?

[11] In this case, the four certificates of appeal were not central to the decision with respect to the applicants' application for protection because, as stated by the officer, even if she had concluded the documents were authentic, she still would not have allowed the application since the applicants did not submit sufficient evidence to support their allegations. As the factors enumerated in section 167 of the Regulations were not met, there was no duty to hold an interview pursuant to paragraph 113(*b*) of the Act.

[12] Regardless of the credibility issues surrounding the authenticity of the documents, the decision is essentially based on the insufficiency of the applicants' evidence as to the risk they would face if returned to Egypt. This also means that no interview was required (*Kaba c. Canada*

(Ministre de la Citoyenneté et de l'Immigration), 2006 CF 1113, at paragraph 29. Therefore, the originals of the certificates would have been of no use to the applicants in their claim.

[13] As stated by the respondent, the certificates in question may serve to indicate that the principal applicant is undergoing legal proceedings in his country. However, this fact in no way substantiates the applicants' alleged fear of persecution regarding the abuse of power of neither the principal applicant's business partner nor the harm that the applicants would allegedly befall if they were to return to Egypt. These same arguments were presented to the IRB, but never established. Considering that leave for judicial review of the IRB decision was refused, and that the applicants based their PRRA application on the same set of facts alleged before the IRB, it was reasonable for the officer to rely on the findings of fact made by the IRB. No new evidence was put forward by the applicants to sustain the rest of their allegations (*Hausleitner v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 641 at paragraphs 33 and 34).

[14] The relevant parts of the IRB decision read as follows:

> Questionné à savoir pourquoi il n'avait pas produit les jugements définitifs d'avril 2002 au dossier, mais avait plutôt déposé des certificats d'appel de ces jugements, il a répondu qu'il avait dû quitter en catastrophe, il aurait pu obtenir, depuis son arrivée au Canada, les jugements définitifs d'avril 2002, ce qui aurait appuyé sa revendication. Le tribunal a donc de sérieux doutes que ces jugements définitifs visaient son arrestation, tel qu'il allègue. Cela affecte à nouveau la crédibilité du demandeur.
>
> Cette conclusion est renforcée par le fait que le seul jugement déposé au dossier est un jugement daté du 19 novembre 2001, dans lequel la cour constate l'extinction de l'action criminelle (poursuite pour chèque sans provision) contre le demandeur et le désistement de l'action civile à la demande de l'accusé, en l'espèce, une filiale de la société du demandeur. Le tribunal a eu l'occasion de vérifier l'original de ce document le matin de l'audience, et a pu constater

> qu'il s'agissait d'un document qui avait été imprimé sur papier à en-tête de la compagnie du demandeur. Questionné sur cette invraisemblance, le demandeur a répondu ne pas savoir pourquoi son avocat avait fait une copie sur du papier de sa société. Le tribunal constate que le demandeur n'a donné aucune explication logique qui aurait pu éclairer le tribunal à savoir pourquoi l'original de la pièce P-8, qui est un jugement d'une audience tenue au palais de justice du Caire, portait à l'endos le nom de la société du demandeur. Cela affecte à nouveau la crédibilité du demandeur.

[15] Although the principal applicant was aware that certificates were given little weight as compared to judgments, he still produced as new evidence other certificates to support his PRRA application. The IRB decision clearly shows that judgments are available. Nevertheless, the principal applicant did not try to obtain them, even though they are the best available evidence to support his claim.

b) Is the officer's finding of fact patently unreasonable?

[16] The officer clearly assessed the evidence that was put before her and, in my view, there is no patently unreasonable finding of fact in the impugned decision. In *Augusto v. Canada (Solicitor General)*, 2005 FC 673, Justice Carolyn Layden-Stevenson wrote, at paragraph 9:

> [i]n my view, in substance, this argument goes to the weight the officer assigned to the evidence. In the absence of having failed to consider relevant factors or having relied upon irrelevant ones, the weighing of the evidence lies within the purview of the officer conducting the assessment and does not normally give rise to judicial review. Here, the reasons reveal that the PRRA officer did consider the evidence tendered by Ms. Augusto, but gave it little weight. There was nothing unreasonable about the officer having done so.

[17] I believe the same can be said in the present case. The objective evidence in and of itself was insufficient to prove that the applicants were at risk as they alleged. The four certificates were also inconclusive.

c) Has the applicants' former lawyer's conduct breached their right to be heard?

[18] As I have already assessed a similar allegation in the file IMM-2377-07, I believe the same can be said in the case at bar. Therefore, this allegation is dismissed for the same reasons which read as follows:

> The applicants allege that their former lawyer failed to file the original version of the Court documents, which the applicants had provided to him. They submitted a letter signed by the former counsel dated July 10, 2007, stating the following:
>
> > La présente e[s]t pour vous confirmer que j'ai représenté Monsieur Ehab dans les dossiers de demande CH et ERRAR. Je confirme aussi que Monsieur EL-GHAZALY était en possession des originaux des jugements émis contre lui en ÉGYPTE, mais je ne peux confirmer qui les aurait déposés auprès de CIC.
>
> As noted by the respondent, the general rule is that a representative acts as an agent for the client and the client must bear the consequences of having hired poor representation. Recently, Justice Michel M.J. Shore in *Vieira v. Canada (Minister of Public Safety and Emergency Preparedness*), 2007 FC 626, held at paragraph 29:
>
> [t]he jurisprudence is clear that an applicant must be held to their choice of adviser and further, that allegations of professional incompetence will not be entertained unless they are accompanied by corroborating evidence. Such evidence usually takes the form of a response to the allegation by the lawyer in question, or, a complaint to the relevant Bar Association. In this case, the Applicants have made an assertion, without providing any evidence in support of their allegation. A failure to provide notice and an opportunity to respond to counsel whose professionalism is being impugned is sufficient to dismiss any allegations of incompetence, misfeasance or malfeasance. (*Nunez v. Canada (Minister of Citizenship and Immigration)*, (2000) 189 F.T.R. 147, [2000] F.C.J. No. 555 (QL), at para. 19; *Geza v. Canada (Minister of Citizenship and Immigration)*, (2004) 257 FTR 114, [2004] F.C.J. No. 1401 (QL), *Shirvan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1509, [2005] F.C.J. No. 1864 (QL), at para 32; *Nduwimana* v. *Canada (Minister of Citizenship and*

> *Immigration)*, 2005 FC 1387, [2005] F.C.J. No. 1736 (QL); *Chavez*, above.) [my emphasis]

In the present case, the principal applicant states that he has filed a complaint against his former lawyer, although there is no evidence before me to corroborate this assertion. This is far from being an exceptional case where "counsel's alleged failure to represent or alleged negligence are obvious on the face of the record and have compromised a party's right to a full hearing" (*Dukuzumuremyi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 278, at paragraph 18). Therefore, this allegation is rejected.

[19] For all the above reasons, the application for judicial review is dismissed.

[20] Neither counsel provided question for certification.

JUDGMENT

1. The application is denied.

2. No question for certification.

"Pierre Blais"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2378-07

STYLE OF CAUSE:

EHAB MOHAMED MO EL GHAZALY, SALWA TAWFIK MO SHALABY, SHADI EHAB MOHA EL GHAZALY, SHAIMAA EHAB MO EL GHAZALY,EHAB MOHAMED MO EL GHAZALY ET AL v. MCI

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: December 12, 2007

REASONS FOR JUDGMENT AND JUDGMENT: BLAIS J.

DATED: December 18, 2007

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