Date: 20090220

Dockets: IMM-1711-08
IMM-1712-08

Citation: 2009 FC 180

Montréal, Quebec, February 20, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

SOTO DUARTE LUIS ROBERTO
GALLEGOS ORIZABA MARIA ELENA
SOTO GALLEGOS BRISEIDA
SOTO GALLEGOS ROBERTO
SOTO GALLEGOS BRENDA
SOTO GALLEGOS CINDY

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are seeking judicial review of two decisions by a pre-removal risk assessment officer (PRRA officer) refusing their application for permanent residence based on humanitarian and compassionate considerations (H&C application) and also refusing their pre-removal risk assessment application (PRRA application) on the ground that they had failed to establish the existence of a personalized risk if they returned to their country of origin.

[2] There will be only one judgment on the two applications, which rely on the same facts and were joined for hearing.

I. Facts

[3] The applicants, who were all born in the city of Toluca, are Mexican citizens and members of one family. The father, Luis Roberto Soto Duarte, is the principal applicant in these proceedings, which include his wife and three of his four children now that one of his daughters, who came to Canada with the family in March 2006, has since decided to return to Mexico with her three young children.

[4] The applicant and his family, who were brought up as Catholics, were converted to and decided to become members of the Evangelical Christian faith.

[5] After announcing their conversion to the rest of the family, the applicants were mocked, insulted and isolated by relatives who closed their doors to them and excluded them from family gatherings. After hearing of the applicants' conversion, some neighbours followed suit and did the same.

[6] According to the applicants, they were segregated, their property was vandalized and they were attacked, insulted and mocked from that time on, to the point where the principal applicant even decided to change his place of residence and his place of employment, which he was

unfortunately unable to do because he could not obtain good references due to his new religious beliefs.

[7] The applicant thought in vain of reporting the persecution he and his family were experiencing to the police authorities. However, since the applicants could not obtain the protection they sought from the Mexican authorities, they finally decided in March 2006 to leave their country for Canada and claim refugee protection here.

[8] On November 6, 2006, the Refugee Protection Division (RPD) rejected the applicants' claim for refugee protection based on their conversion to Evangelical Christianity. In its decision, the RPD found that the applicants' narrative was contradicted by documentary evidence showing that their country recognized freedom of religion and that they could count on the protection of the Mexican state.

[9] The applicants were disappointed and brought an application seeking judicial review of the RPD's decision, but the Court denied them leave to bring such proceedings on March 16, 2007.

[10] When informed of their rights, the applicants made a PRRA application (docket IMM-1711-08) and an H&C application (docket IMM-1712-08) seeking an exemption from the obligation to apply for permanent residence from outside Canada. Those two applications, which the PRRA officer ultimately refused on February 15, 2008, are the subject of these judicial review proceedings.

II. Impugned decisions

PRRA decision

[11] After considering the entire file and the documentary evidence, the PRRA officer refused the applicants' PRRA application (IMM-1711-08) on the ground that it did not meet the requirements of sections 96 and 97 of the IRPA and that the applicants had not met their obligation of establishing that there was a personalized risk for them if they returned to Mexico.

H&C decision

[12] After considering the risks and the humanitarian and compassionate factors referred to by the applicants, the PRRA officer concluded that they would not suffer unusual, undeserved or disproportionate hardship if they had to apply for permanent residence at a Canadian embassy outside Canada.

III. Standard of review

[13] Assessment of the evidence, the risks and the hardship alleged is a question of fact within the PRRA officer's jurisdiction (*Dunsmuir v. New Brunswick*, 2008 SCC 9). The PRRA officer's decisions must therefore be shown deference, especially since the officer has some expertise in matters like this one under her jurisdiction.

[14] The assessment of a decision's "reasonableness" is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court must also ensure that the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47).

IV. Issues

[15] Did the PRRA officer make an unreasonable error in refusing the PRRA and H&C applications?

[16] The purposes of an H&C application and a PRRA application are different. An H&C application seeks to determine whether there are humanitarian and compassionate grounds for allowing an applicant to apply for permanent residence without having to obtain a permanent resident visa outside Canada. On the other hand, a PRRA application allows an applicant to present any new evidence concerning the risks of returning to the country of origin that has arisen between the time of the decision rejecting the claim for refugee protection and the time of deportation from Canada. The two applications therefore have completely different requirements.

Merits of the PRRA decision

[17] The applicants allege that the PRRA officer erred in law because the reasons she gave for her PRRA decision were not based on the evidence, constituted errors of law and were therefore unreasonable.

[18] However, we note that the risks referred to by the applicants had already been assessed and rejected by the RPD in deciding their claim for refugee protection and that the PRRA officer was therefore entitled to reach the same conclusion as the RPD about the problems the applicants allegedly experienced as a result of their religious beliefs.

[19] It is well settled that the purpose of an assessment of the risks of returning is not to give applicants a right to appeal the RPD's decision or to have the evidence reassessed by the PRRA officer or by this Court. The RPD's findings of fact therefore became *res judicata* once the Court dismissed the applicants' leave application challenging the RPD's decision (*Danyluk v. Ainsworth Technologies Inc*., [2001] 2 S.C.R. 460, at paragraph 24; *Angle v. Canada (Minister of National Revenue - M.N.R.)*, [1975] 2 S.C.R. 248, at page 254).

[20] In her reasons for decision, the officer explained that the applicants had submitted three documents concerning incidents allegedly experienced by Evangelical Christians in certain areas of Mexico. The documents in question were blogs from an Internet site and were of uncertain origin, and the PRRA officer chose for good reason not to attach too much weight to them after finding that the source of information was unreliable.

[21] The officer continued her analysis of the applicants' submissions by considering the objective evidence. In the end, she concluded that the evidence submitted did not show any

personal, objectively identifiable risk that existed in all areas of Mexico. This conclusion was not refuted by the evidence the applicants themselves chose to submit.

[22] The burden was on the applicants to prove to this Court that the PRRA decision was unreasonable. It was not enough for them to disagree with the PRRA officer's analysis and her conclusion that they had not discharged their burden of establishing that, if they returned to their country of origin, they would face a personalized risk that justified granting the protection they were claiming.

[23] A PRRA application is an exceptional measure that should be allowed only where there is new evidence that was not available at the time of the RPD's decision and only if the new evidence shows a risk for the applicants if they return to their country of origin.

[24] Unfortunately for the applicants, their vague allegations about the situation waiting for them in Mexico did not refer to any new, sufficiently reliable and objective fact that had arisen since the RPD's decision and that could justify the PRRA officer sharing their fear. In the circumstances, the Court has difficulty seeing how the PRRA officer erred by denying them protection from a risk that she was not satisfied existed.

[25] The Court's role here is not to substitute its opinion for that of the PRRA officer, as the applicants are inviting it to do, but rather to ensure that the PRRA refusal was justified and did not result from an unreasonable error.

[26] After analyzing everything, the Court must conclude that the PRRA decision falls within a range of possible outcomes which are defensible in respect of the facts and law; it is therefore a reasonable decision that does not warrant this Court's intervention.

Law applicable to an H&C application

[27] A person who wishes to immigrate to Canada must generally apply for permanent residence before entering Canada, and thus from outside Canada (*Immigration and Refugee Protection Act* (IRPA), subsection 11(1)).

[28] However, the Minister may make an exception, since the Minister has the discretion to facilitate a person's admission to Canada or exempt a person from any criterion or obligation set out in the IRPA if the Minister is satisfied that this is justified by humanitarian and compassionate (H&C) considerations (subsection 25(1) of the IRPA; *Serda v. Canada (Minister of Citizenship and Immigration),* 2006 FC 356, at paragraph 20).

Merits of the H&C decision

[29] It was up to the applicants to prove that they would face unusual, undeserved or disproportionate hardship if they applied for permanent residence from outside the country (*Mpula v. Canada (Minister of Citizenship and Immigration),* 2007 FC 456, at paragraph 24; *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 358 (C.A.), at paragraphs 23, 28).

[30] The applicants criticize the PRRA officer for making her H&C decision without updating their file, even though they alone always had the burden of establishing all the H&C factors in favour of their application (*Baker v. M.C.I.*, [1999] 2 S.C.R. 817; *Legault*, *supra*, at page 369).

[31] This criticism does not hold up, since the PRRA officer was under no obligation to request additional information. Contrary to what the applicants submit, their burden never became that of the PRRA officer (*Baker, supra*, at paragraphs 30 to 34; *Owusu v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 158 (F.C.A.)).

[32] In view of the RPD's decision and the PRRA officer's decision on the situation in Mexico, as opposed to the applicants' vague allegations on this question without any objective evidence backing them up, the Court has difficulty understanding the criticism of the H&C decision.

[33] The applicants have only themselves to blame for being unable to satisfy the PRRA officer that they expected to face unusual, undeserved or disproportionate hardship if they applied for permanent residence from outside the country. The Court must show deference to the officer's H&C decision, especially since the applicants have not satisfied the Court that the decision is unreasonable. There is therefore no reason to intervene.

V. Conclusion

[34] After analyzing the evidence and the two impugned decisions, the Court finds no error in the decisions and must conclude that the PRRA officer, who had some expertise, could reasonably find that the PRRA application and the H&C application should both be refused based on the evidence she had analyzed. The two decisions to which these proceedings relate fall with a range of possible, acceptable outcomes and are completely defensible in respect of the facts and law; they are therefore reasonable and entitled to deference by this Court.

[35] The two applications for judicial review will therefore be dismissed. Since no serious question of general importance was proposed in either case, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT dismisses the applications for judicial review in dockets IMM-1711-08 and IMM-1712-08 and does not certify any question.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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