Federal Court  Cour fédérale

Date: 20090730

Docket: IMM-560-09

Citation: 2009 FC 794

Vancouver, British Columbia, July 30, 2009

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

DONG DONG JIANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male citizen of the People's Republic of China. He entered Canada on a student visa in 2002. On November 5, 2004, the Applicant made a *sur place* refugee claim. That claim was rejected by a decision of the Immigration and Refugee Board dated July 6, 2006. The Applicant's removal was submitted for a Pre-Removal Risk Assessment (PRRA). That submission was rejected by a decision of a PRRA Officer dated January 13, 2009. It is this decision that is the subject of this application for judicial review.

[2] For the reasons that follow, I find that this application is dismissed.

[3] The Applicant's counsel raises three issues for consideration on this judicial review application:

1. *Did the PRRA Officer err by not holding a hearing pursuant to paragraph 113(b) of the Immigration and Refugee Protection Act, S.C. 2000, c. 27?*

2. *Did the PRRA Officer err regarding the issues of Interested Parties and Corroborating Evidence?*

3. *Did the PRRA Officer err in holding that the Applicant is not at risk as a Protestant and that the activities of the House Church would not necessarily be considered illegal in China?*

[4] I will address each of these issues in turn, but first turn to the standard of review to be applied in cases such as this.

Standard of Review

[5] The issues raised by the Applicant concern the reasonableness of the PRRA Officer's decision including whether the PRRA Officer had proper regard to all the evidence when reaching a decision. Post *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, such decisions in the PRRA context are to be reviewed on a standard of reasonableness (*Christopher v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1199 per Kelen J.).

[6] At paragraph 47 of *Dunsmuir*, reasonableness has been articulated as:

> *… concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.*

[7] The Court should show a high degree of deference to decisions of the PRRA Officer as an administrative fact-finder. At paragraph 46 of *Khosa v. MCI*, 2009 SCC 12, Justice Binnie, for majority of the Supreme Court of Canada, stated that:

> *46 More generally, it is clear from s. 18.1(4)(d) that Parliament intended administrative fact finding to command a high degree of deference. This is quite consistent with Dunsmuir. It provides legislative precision to the reasonableness standard of review of factual issues in cases falling under the Federal Courts Act.*

Issue #1 *Did the PRRA Officer err by not holding a hearing pursuant to paragraph 113(b) of the Immigration and Refugee Protection Act, S.C. 2000, c. 27?*

[8] Section 113(b) of the *Immigration and Refugee Protection Act* (IRPA) provides that a PRRA officer "may" hold a hearing if, on the basis of certain prescribed factors, the Minister is of the opinion that a hearing should be held. Section 167 of the *IRPA Regulations*, SOR/2002-227, as amended, set out the factors to be considered:

> *167. Hearing – prescribed factors – 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.*

[9] Section 167, above, has been considered by Justice Phelan of this Court in *Tekie v. Canada (M.C.I.)*, 2005 FC 27, where he stated, as I would have, that the section is awkwardly worded but that it appears to become operative where credibility is an issue which could result in a negative PRRA decision. He wrote at paragraphs 15 and 16:

> *15 Section 167 is an awkwardly worded section. On one reading of the section, paragraph (a) suggests that the evidence at issue is evidence which challenges the presumption of the Applicant's credibility. However, in paragraph (c), that same evidence would be evidence that would favour an Applicant.*
>
> *16 In my view, section 167 becomes operative where credibility is an issue which could result in a negative PRRA decision. The intent of the provision is to allow an Applicant to face any credibility concern which may be put in issue.*

[10] Justice Zinn of this Court considered section 167 in *Ferguson v. Canada (M.C.I.)*, 2008 FC 1067, noting at paragraph 8 of his reasons that it was "common ground between the parties" that if <u>all</u> the requirements of that section are met then the PRRA Officer should hold a hearing. The question he had to face was whether the grounds set out in subsection 167(a) were met.

[11] A review of the PRRA Officer's decision at issue here makes it clear that her decision was not based on credibility, but on the lack of evidence of personalized risk to the Applicant. The PRRA Officer accepted the Applicant's assertion that he was a baptized Christian, but the PRRA Officer found that there was no evidence of personalized risk as a result. On the evidence, the PRRA Officer concluded that the "house church" where the Applicant had attended would not necessarily be considered illegal. The PRRA Officer found that the lack of corroborative evidence meant that little weight was to be given to the Applicant's assertion that he would be wanted by the Public Security Bureau upon his return to China. The PRRA Officer concluded by writing:

> *Consequently, I find insufficient evidence to show that Mr. Jiang, if he returns to China, would face a personalized, forward-looking risk should he participate in a house church group, or should he help his mother to set up another Bible study session in someone's house.*
>
> …
>
> *I find that the applicant has not established that he faces more than a mere possibility of persecution on any Convention ground, as per section 96 of IRPA. I find that he has not established on a balance of probabilities that he faces a personalized risk to his life, or of cruel and unusual treatment or punishment, or a danger of torture, as per section 97 of IRPA. I find that the applicant is not a Convention refugee or a person in need of protection. The PRRA application is rejected.*

[12] Counsel for the Applicant points to a passage of the PRRA Officer's reasons at page 4 and argues that, by implication, the PRRA Officer's reasoning was influenced and permeated by the Refugee Division's finding that the Applicant lacked credibility:

> *In rendering its decision, the RPD stated that he was "a witness utterly lacking in credibility," and found numerous discrepancies*

> *in his evidence for which he did not provide reasonable explanations. In addition,*
>
> > *The Refugee Protection Division has serious doubts that the claimant himself is a Christian as alleged. Although he has demonstrated some familiarity with the Bible, clearly he has no knowledge of the meaning or significance of either Christmas or Easter.*
>
> *I am not bound by the RPD's decision. However, I have reviewed the decision, and the reasons given for it. The RPD is an expert body in the determination of risk of persecution, and thus considerable weight has been given to the Board's finding with respect to risk.*
>
> *A PRRA application is not an appeal of the RPD decision. It is an opportunity to present new evidence regarding the applicant's circumstances and/or a significant change in the applicant's home country conditions. In addition, a PRRA application is not a Humanitarian and Compassionate application.*

[13] I am satisfied, in reading the PRRA Officer's decision as a whole, that there was no undue influence that would have improperly prejudiced the decision. In that regard, I echo the views of Blanchard J. in *Selliah v. Canada (M.C.I.),* 2004 FC 872, at paragraph 26:

> *26 I find though the PRRA decision does contain references to the adverse credibility findings made by the CRDD, I am satisfied that the Officer did not import into her decision the credibility findings of the CRDD and that such references in the officer's reasons were not determinative of her decision. The Officer did not err in considering the CRDD decision, indeed in the context of a PRRA application it was appropriate for the Officer to do so. Section 113(c) of the IRPA provides that the factors set out in sections 96 and 97 of the IRPA shall form the basis for consideration of an application for protection.*

[14] I find, therefore, that the requirements of section 167 of the Regulations were not met. The PRRA Officer was under no obligation to conduct an oral hearing.

Issue #2 *Did the PRRA Officer err regarding the issues of Interested Parties and Corroborating Evidence?*

[15] It is a function of a PRRA Officer to weigh and consider evidence. Having regard to the decisions of the Supreme Court of Canada in *Dunsmuir* and *Khosa* previously cited, a high degree of deference is to be given to the decisions of the PRRA Officer.

[16] In this regard, the Applicant's counsel raises a number of concerns as to the manner in which the PRRA Officer handled the evidence, namely:

> ***Evidence of the mother*** (letters, medical records): The Officer did not dismiss the material of the mother out-of-hand. The Officer analyzed the mother's evidence but assigned it little weight. It was not unreasonable for the Officer to assign this evidence little weight and to find that the mother was an interested party.
>
> ***Evidence of the family friend, Sun Xiao Ling*** (letter of support): She was a friend of the mother and leader of the house church attended by the mother and from time to time by the Applicant. She is close to being an interested party. The PRRA Officer is not under an obligation to give full weight to such evidence and may give it little weight, as was done in this case.
>
> ***Medical evidence*** (of the mother's physical persecution): The Applicant argues that the Officer used a higher standard of proof for the mother's medical evidence of physical persecution. The Officer stated that she disregarded the medical evidence as "*I have considered these submissions [including the medical evidence], and give them little weight… The uncertified medical certificate is a photocopy*" (Applicant's Record, page 14, para. 7).

There is no evidence that the Officer used a higher standard of proof to evaluate the medical evidence and there was no obligation for the Officer to seek original medical evidence (*Selliah v. Canada (M.C.I.)*, 2004 FC 872 at para. 22, per Blanchard J.).

It was not reasonable for the Officer to dismiss the medical records either because they were uncertified and/or because they were a photocopy. The PRRA Application guidelines (Applicant's Record, page 41) do not state that the documents must be either the original or certified. Furthermore, the evidence in the medical records supports the persecution faced by the mother, and does not directly support the position that the Applicant is in danger.

Opportunity to present better medical evidence: The Applicant argues that the Officer erred in law by not giving the Applicant an opportunity to present the mother's original medical records at a hearing (Applicant's Record, Memo of Fact and Law, para. 34). It is the Applicant's responsibility to prove their case on a balance of probability (*Ferguson v. Canada* supra, para. 21).It was not unreasonable for the Officer to consider the case based on the material before her. The Officer is not obliged to give an Applicant continuing opportunities to improve the evidence.

Evidence that the Applicant was still wanted in China for his associations with an illegal house church: The Applicant states that it was unreasonable for the Officer to assume that the Chinese Government would leave a subpoena with the Applicant's family and that this subpoena could be produced as evidence. In his Affidavit, (Applicant's Record, page 22, para. 11) the Applicant claims that the Chinese authorities came to find him in July 2006 and February 2007, both after his Refugee hearing and decision. He claims that the authorities did not leave a summons or warrant in either 2006 or 2007.

At his Board hearing, the Applicant stated that the Authorities had attempted to arrest him in October, 2004. The Applicant was not clear if his family had a summons from this occurrence, changing his story on several occasions. His position, as stated in his PIF (Applicant's Record, page 34) was that a summons was left. Based on the fact that the Applicant stated he was able to get a summons for the October 13 2004, event, it was not unreasonable for the Officer to expect the Applicant to adduce supportive evidence of the subpoena from 2006 or 2007.

[17] Taking all factors into consideration, it was not unreasonable for the PRRA Officer to evaluate and deal with the evidence as she did.

Issue #3 *Did the PRRA Officer err in holding that the Applicant is not at risk as a Protestant and that the activities of the House Church would not necessarily be considered illegal in China?*

[18] The Applicant argues that the PRRA Officer erred by failing to apply the country documents which she quotes to the situation of house churches. The Applicant argues that the issue for persecution is not if the Applicant is a Protestant, it is if he is a member of an illegal church, namely a house church.

[19] On page 12 of the decision under review the PRRA Officer stated:

> *I find insufficient evidence to show that Mr. Jiang, if he returns to China, would face a personalized, forward-looking risk should he participate in a house church group, or should he help his mother to set up another Bible study session in someone's house.*

[20] The PRRA application appears to contain contradictory evidence with regard to the activities at the house church. There is a letter stating that the church had grown and was anticipated to grow larger than 35 members (AR, page 77). Another is a photo depicting the house church members during a house church session (AR, page 87). The PRRA Officer concluded that the activities in the picture would not necessarily be found to be illegal. The documentary reports as to country conditions also contain contradictory statements. It is the function of the PRRA Officer to weigh this evidence.

[21] As stated by Justice Zinn in *Ferguson v. Canada* supra, at paragraph 35:

> *However, every applicant for a Pre-removal Risk Assessment, and their counsel, must take responsibility to ensure that all of the relevant evidence is before the officer and, of equal importance, that they present the best evidence in support of the application. Where that is not done, the consequences of a failed application rest with the Applicant and counsel.*

[22] Based on the evidence before the PRRA Officer in this case, the determination of the PRRA Officer was not unreasonable.

Conclusion

[23] I find that the criteria established in section 113(b) of IRPA and section 167 of the Regulations need not be applied in the circumstances of this case. The PRRA Officer's handling of the evidence and determination based on the evidence was not unreasonable and does not constitute grounds for setting the decision aside.

[24] The application is dismissed. There is no question for certification and no basis for awarding costs.

JUDGMENT

For the reasons given,

THIS COURT ORDERS AND ADJUDGES that:

1. The application is dismissed.

2. There is no question for certification.

3. No Order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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