Federal Court  Cour fédérale

Date: 20100106

Docket: IMM-1024-09

Citation: 2010 FC 14

Ottawa, Ontario, January 6, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Sandrine Teclaire Simo Massudom
and
Ange Harold Talla Sando

Applicants

and

THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a negative decision regarding a pre-removal risk assessment (PRRA), issued under sections 112 *et seq.* of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, (the Act), and a negative decision in regard to humanitarian and compassionate considerations (H&C), issued under section 25 of the Act. Both decisions were signed by the same immigration officer, Jeff Gullickson.

[2] The Refugee Protection Division (RPD) rejected the refugee protection claim of Ms. Sandrine Teclaire Simo Massudom (the female applicant) on March 10, 2008, on grounds of a serious lack of credibility. The claim was based on allegations of conjugal violence and fear of her former spouse's family. The application for judicial review of that decision was dismissed on July 25, 2008. The female applicant filed an H & C application on November 10, 2008, and a PRRA application on December 4, 2008. Legal custody of Ange Harold Talla Sando, the female applicant's son, was granted to her last March 17. This child's claim, as co-applicant, is based entirely on the allegations of his mother, the female applicant.

[3] The female applicant requested a stay of her removal order on March 30, 2009, but this motion was dismissed by the Court on April 2, 2009. The female applicant did not report for her removal on April 6, 2009. She and her son were arrested at the end of July and placed in detention until August 3, 2009.

[4] The female applicant was born on November 15, 1978. She is a citizen of Cameroon and mother of a son, Ange Harold Talla Sando, who was born on January 10, 2003. Before coming to Canada, the female applicant lived in Germany. Ouafeu Yves Talla Sando is Ange Harold's father and the female applicant's former spouse. He did not accompany them when they came to Canada. The applicants have been in Canada since August 3, 2006.

[5] Ms. Simo Massudom allegedly fled Cameroon claiming fear of being persecuted by her former spouse or by his family and friends. She further claims that her medical condition requires monitoring in Canada.

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[6] The two decisions that are the subject of this application for judicial review were made based on the same claims made by the female applicant as well as the same documents submitted in evidence. Both decisions were issued within a few days of each other (on January 30, 2009, and on February 3, 2009). They are based on the same findings of fact.

[7] The RPD found that the female applicant was not a credible witness and that she had not provided credible evidence of the conjugal and domestic violence she claimed to have suffered. The panel concluded that the female applicant had ‘‘fabricated this story’’ and did not attach any probative value to the ‘‘corroborating’’ documents. The PRRA officer did not conduct an interview because the female applicant had not submitted any new evidence that might have corroborated an important element in her testimony.

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[8] It is settled law that when a PRRA decision is examined in its entirety, the applicable standard of review is reasonableness (*Figurado v. Canada (Solicitor General)*, [2005] 4 F.C.R. 387).

[9] As Justice Yves de Montigny wrote in *Lai v. Canada (Minister of Citizenship and Immigration*), [2008] 2 F.C.R. 3, at paragraph 55: ‘‘Nevertheless, the standard must be adjusted in accordance with the particular issue that is being considered.’’

[10] In the judicial review of PRRA decisions, when it comes to questions of fact, it is not within the jurisdiction of a reviewing court to reassess every piece of evidence and thus substitute itself for the PRRA officer. Nonetheless, if it has been demonstrated that the officer's findings were made in a perverse or capricious manner or without regard for the material before him or her, this Court will intervene (paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. (1985), c. F-7). The applicable standard of review for questions of mixed law and fact is reasonableness, and the applicable standard of review for questions of law is correctness.

[11] Furthermore, it is well established that the purpose of a PRRA is not to serve as an appeal of a decision of the RPD (*Yousef v. The Minister of Citizenship and Immigration*, 2006 FC 864, at paragraphs 20 and 21). The RPD's decision must be considered to be definitive regarding the question of protection under sections 96 and 97 of the Act. Justice Robert Barnes wrote as follows in *Yousef*, at paragraph 20:

> . . . It is not the role of the PRRA officer to re-examine evidence assessed by the Board, and it is not open to the officer to revisit the Board's factual and credibility conclusions. It is also not the duty of the PRRA officer to consider evidence that could have been put to the Board, but was not. The role of the PRRA officer, as defined by section 113 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), is to examine ''only new evidence that arose after the rejection or was not readily available, or that the applicant could not reasonably have been expected in the circumstances to have presented''.
>
> [Emphasis added.]

[12] The female applicant argued first that, in this case, the fact that no hearing was held was a breach of procedural fairness. Section 167 of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227 (the Regulations), lists the factors to be taken into consideration in order to decide whether or not an interview should be held. In order for the female applicant to have the right to an interview in her PRRA application, she had to have submitted new evidence. This new evidence must meet the three criteria set out in section 167.

[13] Moreover, the case law recognizes that the officer may apply the same findings of fact to both of the decisions that are the subject of applications for judicial review. However, it is imperative that the officer's findings be subject to the criterion applicable to each decision.

[14] The respondent alleges that the female applicant restated the same arguments before the PRRA officer that she had presented to the RPD and that she had submitted no new evidence. He cited the Federal Court of Appeal in *Raza v. The Minister of Citizenship and Immigration and The Minister of Public Safety and Emergency Preparedness*, 2007 FCA 385, where the Court concluded that a PRRA application is not an appeal of a decision rejecting a claim for refugee protection.

[15] Given the importance which must be assigned to the question of credibility in this case, the female applicant is arguing that the officer should have met with Ms. Simo Massudom so that he could have personally ascertained that she was a victim of conjugal violence. She is specifically criticizing the officer for having disregarded two reports by independent professionals, one by a social worker and another by a psychologist.

[16] The female applicant asserts that she had a legitimate expectation of having an interview and maintains that the officer breached her right to procedural fairness. She is relying on the reasons of

Justice Elizabeth Heneghan in *Vu v. The Minister of Citizenship and Immigration*, 2006 FC 1339, which explain that the doctrine of legitimate expectations is an aspect of procedural fairness.

[17] After reviewing the circumstances in which a hearing must be held, I do not believe that an interview was necessary in the case at bar. In fact, psychologist Sylvie Laurion found that the female applicant had been the victim of physical violence that caused chronic post-traumatic stress with symptoms of depression. This document was submitted to the RPD, which found that the report did not have probative value to establish that the post-traumatic stress had been caused by the incidents of conjugal violence allegedly suffered by the female applicant, or indeed if the incidents had even taken place.

[18] The female applicant submitted a new report from the same psychologist that was written on November 3, 2008. The PRRA officer found that since this evaluation was the same as the one that had already been assessed by the RPD, it did not have any probative value in the PRRA application. The female applicant also submitted a psychosocial assessment from a CLSC in LaSalle, dated November 3, 2008. The author of that report also surmised that the female applicant had been a victim of conjugal violence. Under the circumstances, the PRRA officer did not consider the document to be a probative piece of evidence supporting the allegations of conjugal violence.

[19] In my view, the last two reports, while not assessed by the RPD, were given reasonable consideration by the PRRA officer. The Federal Court of Appeal held, in *Raza*, above, that even if evidence postdates the RPD's decision, it is not necessarily new evidence according to the criteria under section 167.

[20] In fact, the contents of these last reports merely reflect the contents of the first psychological assessment which was before the RPD. There was nothing new with respect to the allegations of conjugal violence. The PRRA officer could therefore reasonably conclude that these reports had no probative value in this application since the RPD had already found that the female applicant had not proven that she had been a victim of conjugal violence.

[21] The female applicant then claimed that the officer should have assessed the violence or discrimination she would be subjected to once she was back in Cameroon. The respondent replied that the female applicant had submitted no probative evidence showing that she would be subjected to violence or discrimination if she were to return to Cameroon.

[22] In *Jarada v. The Minister of Citizenship and Immigration*, 2005 FC 409, at paragraph 28, Justice Yves de Montigny wrote:

> . . . the assessment of the applicant's potential risk of being persecuted if he were sent back to his country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual . . .
>
> [Emphasis added.]

[23] Relevant extracts from general documentation on the situation regarding violence against women in Cameroon do not show a personalized risk to the female applicant, and the officer carefully considered this lack of evidence of a personalized risk.

[24] Finally, the female applicant maintained that the officer had failed take into account the risk of reprisals by the father's family in his assessment of the best interests of the child. The female applicant alleges that she could be separated from her son in Cameroon, because her former spouse could kidnap him.

[25] Yet the officer found no probative evidence that the former spouse or even his family in Cameroon would persecute the applicants in that country. Furthermore, the child's father is a permanent resident in Canada who has never shown any real interest in his son in this country. It has not been demonstrated that he has left or would leave Canada to go to Cameroon and demand custody of his son. Even if he were to leave Canada, the documentary evidence shows that the female applicant would be able to bring any such matter before a court of first instance in Cameroon.

[26] In both the PRRA and H & C decisions, the officer carefully considered the best interests of the child. While the psychosocial assessment indicated that the child would have a better life in Canada, its considerations are too vague to conclude that the child's integration is such that he would experience undue hardship if he were to return to Cameroon. The female applicant's claim that the PRRA officer failed to provide any reasons showing that the best interests of the child, of whom she had been granted custody by the Quebec Superior Court on March 17, 2009, had been considered in the PRRA decision is therefore without merit. It seems rather that the officer did not treat the matter of the child's custody in Cameroon with indifference.

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[27] For all these reasons, the Court's intervention is not warranted and the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of a negative decision regarding a pre-removal risk assessment and a negative decision in regard to humanitarian and compassionate considerations, dated January 30, 2009, and February 3, 2009, respectively, is dismissed.

''Yvon Pinard''
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1024-09
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