Federal Court Cour fédérale

Date: 20091222

Docket: IMM-2558-09

Citation: 2009 FC 1301

Ottawa, Ontario, December 22, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

SHARAN PAUL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicant, Mr. Sharan Paul, is a Hindu citizen of Bangladesh. He arrived in Canada in August 2002, with a student visa. Prior to his departure from Bangladesh, the Applicant allegedly began a relationship with the daughter of a powerful Muslim man. He returned to Bangladesh in 2003 and 2004, and, he submits, continued his relationship with this woman. The Applicant returned to Canada and made a refugee claim on August 27, 2004 based on persecution from his girlfriend's Muslim family. In a decision dated August 18, 2005, the

Refugee Protection Division (RPD) of the Immigration and Refugee Board rejected the claim on the basis that the Applicant was not credible.

[2] In December 2006, the Applicant submitted an application for a pre-removal risk assessment (PRRA) and, in August 2007, he submitted an application for permanent residence from within Canada, pursuant to s. 25 of the *Immigration and Refugee Protection Act* , S.C. 2001, c.27 (*IRPA*), on humanitarian and compassionate (H&C) grounds. Both these applications were dismissed in two decisions made by the same pre-removal risk assessment officer (the PRRA Officer). The Applicant has sought judicial review of both decisions. The H&C decision has been considered by this Court in Court File No. IMM-2556-09. The following constitutes my reasons for dismissing the application for judicial review of the negative PRRA decision.

II. Issues

[3] In my view, this application raises the following issues:

1. Did the PRRA Officer err by rejecting affidavits from the Applicant's family members on the basis that they were not objective evidence?

2. Did the PRRA Officer err by failing to take into account all of the evidence; specifically, the memorandum from Ms. Rosaline Costa, the Human Rights Advocate for Hotline Human Rights Bangladesh?

3. Did the PRRA Officer make an erroneous finding of fact that certain parts of the evidence were contradictory?

III. **Analysis**

[4] The applicable standard of review for this decision is reasonableness. As such, the Court should not intervene if the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para.47).

[5] A PRRA is not intended to be an appeal or reconsideration of a failed refugee claim (see *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] F.C.J. No. 1632, (*Raza*)). In making a PRRA application, a failed refugee claimant may only present new evidence that arose after the rejection, that was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection (see *IRPA*, s. 113; *Raza*, above).

[6] The RPD determined that the Applicant’s story was not credible. In coming to this conclusion, the RPD relied on inconsistencies in the Applicant’s testimony: his voluntary return to Bangladesh and his lack of corroborative evidence. It follows, based on an understanding of the RPD decision and the role of the PRRA process, that the Applicant's submissions were required to either refute the RPD findings or present evidence of a new risk.

[7] In this case, the Applicant attempted, through evidence submitted with his PRRA application, to refute the findings of the RPD. The Applicant submitted affidavits from a number of family members. These affidavits were used to substantiate that the incidents referred to by the RPD were credible. They also tried to prove that the alleged persecutors still wish to harm the Applicant. The Applicant also submitted a memorandum from Ms. Rosaline Costa, Human Rights Advocate, Hotline Human Rights Bangladesh and a letter from a Member of Parliament, the Honourable David Kilgour. Both Ms. Costa and Mr. Kilgour expressed the opinion that the Applicant would be in danger if he returned to Bangladesh.

[8] The PRRA Officer gave little weight to the letter from the Hon. David Kilgour, who was obviously not in a position to opine on the events in Bangladesh alleged by the Applicant. In this application, the Applicant did not rely on this letter.

[9] It is obvious from reading the PRRA decision that the Officer rejected most of the affidavits as not “new evidence”. Given the facts of this case and the reasons of the RPD for rejecting his refugee claim, I can see no reviewable error in the PRRA Officer's decision. The Officer found that these affidavits contained evidence that could have been available, and was not provided, at the time of the RPD hearing, to corroborate the Applicant's allegations. The PRRA Officer -- reasonably, in my view -- did not accept these affidavits as "new evidence", as contemplated by s. 113 of *IRPA*. Even if one were to acknowledge that these documents referred to events that occurred subsequent to the RPD decision, they were all premised on the underlying truth of the Applicant's story of his involvement with a Muslim woman and subsequent persecution by her family. This story was rejected by the RPD. Thus, the information in the

affidavits did not relate to a new risk. Rather, all of the post-RPD alleged events were based on a story that was simply not believed by the RPD or the PRRA Officer. Further, on the facts of this case, it was not unreasonable for the PRRA Officer to reject the family affidavits as not objective evidence.

[10] However, the situation with respect to the memorandum of Ms. Rosaline Costa is different. Unlike the affidavits of the Applicant's family members, this memorandum was from an independent source and, on its face, refers directly to the Applicant's situation. As stated by Ms. Costa, she personally knew the Applicant's family. According to her memorandum, she visited the Applicant in Canada and, after returning to Bangladesh, investigated his case. It appears that she accepted the truth of the Applicant's story that the RPD had rejected. Further, she stated her understanding that the family of the Applicant's Muslim girlfriend are "waiting for [the Applicant] to come back [to] take revenge for bringing shame to their family".

[11] Contrary to the initial assertions of the Applicant, Ms. Costa's memorandum was considered by the PRRA Officer. Although all of the materials were submitted in English, the decision was originally written in French. At page 4 of the decision (p. 14 of the Certified Tribunal Record), the Officer stated:

> Des lettres <u>d'une avocate</u> et d'un membre du parlement canadien indiquent également qu'à leur avis, [the Applicant] devait etre reconnu réfugié. Je suis sensible au témoinage de ces personnes, mais l'information présente dans les soumissions, incluant la récente mise à jour en 2009, ne permet pas d'établir que les problèmes allégués sont actuels. De plus, ces personnes ne sont pas des témoins directs de l'affaire en cause. [Emphasis added.]

[12] It appears the translator translated the word "avocate" – the feminine form of "avocat" – to "lawyer". I observe that Ms. Costa signed her memorandum as "Human Rights Advocate". Further, there are no other lawyer's letters included in the PRRA submissions. In my view, it is evident that the "lettre d'une avocate" was a reference to the memorandum of Ms. Costa. The reasons given by the PRRA Officer for discounting the memorandum are clear. Most importantly – and reasonably – the Officer pointed out that Ms. Costa was not a direct witness of the events to which she referred (témoin direct de l'affaire en cause). Furthermore, it was not unreasonable for the Officer to weigh the contents of the memorandum (which is not current, and not by an eye-witness) against the facts that there was no news of the alleged girlfriend at this point, no reliable information that the Applicant was still being pursued and a negative credibility finding at the RPD. Again, as stated by the Respondent during oral submissions, the Court must take into account the entire context of the case: the failed RPD determination based on credibility and the fact that the Applicant has returned to Bangladesh in 2003 and 2004.

[13] In sum, it was not unreasonable for the PRRA Officer to conclude that Ms. Costa's opinions did not "establish that the problems alleged are current".

[14] The final alleged error is a factual one. In the decision, the PRRA Officer stated:

> I also noted that contradictory evidence even in these documents, as one of the two states that Mr. Paul was beaten by fundamentalists on August 12, 2004, while the other states that he was beaten on two occasions, on August 1 and August 12, 2004.

[15] It is accepted by the Respondent that this statement was erroneous. No such contradiction exists. In and of itself, this error is not determinative. Even with this error, the decision, read as a whole, falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

IV. <u>Conclusion</u>

[16] For these reasons, the application for judicial review will be dismissed. In reaching this conclusion, I have taken into consideration the written comments of the parties submitted after the close of the hearing.

[17] Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for leave and judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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