Federal Court  Cour fédérale

Date: 20100826

Docket: IMM-6076-09

Citation: 2010 FC 846

Montréal, Quebec, August 26, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

LUISA ELENA LEON SANCHEZ
ARANTZA ANGLES MUNOZ

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, 2001 S.C., c. 27 (the Act), of a decision dated October 13, 2009, by Pre-Removal Risk Assessment (PRRA) Officer Virginie Auger of Citizenship and Immigration Canada (CIC), who found that the applicants would not be subject to a danger of torture or persecution, or to a risk of cruel or unusual treatment or punishment or to a risk to their lives if they were to return to their country of origin within the meaning of sections 96 and 97 of the Act under a PRRA.

Factual background

[2] The principal applicant, Luisa Elena Leon Sanchez, and her granddaughter, Arantza Angles Munoz, are both citizens of Mexico and lived in the city of Villahermosa. They arrived in Canada on August 7, 2007.

[3] The principal applicant alleges that in March 2007, her granddaughter was harassed by Irving Diego Hernandez, the son of Evaristo Hernandez Cruz, a well-known political figure in the cities of Villahermosa, Tabasco and Mexico.

[4] The applicant alleges that Mr. Hernandez would watch her granddaughter while she was at school and would follow and call her. She further alleges that she asked him to not bother them anymore or she would go to the authorities. Mr. Hernandez allegedly answered that the authorities would do nothing to him because of his father's importance and influence.

[5] The applicant submits that she was personally threatened with retaliation if she did not let Mr. Hernandez see her granddaughter or if she made a complaint. She also states that he threatened to confine and mistreat her granddaughter.

[6] The applicant and her granddaughter went to live with the granddaughter's mother in the same city. Then, they left the city to live in the Federal District of Mexico. However, the applicant submits that Mr. Hernandez was able to find them and threatened them by telephone. The applicant

and her granddaughter then came to Montréal where the applicant's daughter has been living since 2004.

[7] On October 27, 2007, the applicants claimed refugee status, which the Immigration and Refugee Board (IRB) rejected on November 20, 2008. On April 1, 2009, an application for leave and judicial review of this decision was dismissed by Justice Beaudry (IMM-5324-09). On July 21, 2009, the applicants then applied for a pre-removal risk assessment (PRRA), which was rejected on October 13, 2009. On December 2, 2009, the applicants brought a motion to stay their removal in docket IMM-6081-09, dismissed by Justice de Montigny on December 7, 2009. Finally, on January 30, 2010, the removal was carried out and the applicants left Canada for Mexico.

Impugned decision

[8] In the PRRA application, dated October 13, 2009, the applicant reiterated that the reasons given in the narrative for their IRB refugee claim still exist. In the reasons for the PRRA decision, the officer deciding this matter noted that the applicant provided eleven pieces of evidence that are all from general texts that can be accessed on the Internet and that they were all published before the IRB decision, i.e. before November 20, 2008.

[9] Since the applicant gave no explanation as to the reason why these documents were not accessible or available or why it was unreasonable to expect that she would provide them as part of her IRB application under section 113(*a*) of the Act, the officer refused to accept this evidence.

[10] In her analysis, the officer observed the general situation in Mexico, while taking into account the applicant's personal profile. She considered four documentary sources on various topics surrounding the problems in Mexico and found that, in light of these, the situation in Mexico had not changed considerably since the IRB decision.

[11] Finally, the officer found that the applicant had not discharged her burden of proving that she and her granddaughter would be at risk, if they were to return to Mexico, of persecution or that they would have serious reasons to believe that they could be subject to a danger of torture or to a risk to their lives or to a risk of cruel or unusual treatment or punishment.

Issue

[12] In this application for judicial review, the only issue is whether the officer's decision was based on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before her with regard to the spirit and intent of the Act.

Standard of review

[13] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 51, recognizes that "questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness". The Court also added at paragraph 62 that the process of judicial review involves two steps and it must first be ascertained "… whether the jurisprudence has already

determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question."

[14] As regards a PRRA officer's decisions, it is well-settled case law that the standard of review to be applied is reasonableness. As Justice Pinard explained in *Martinez v. Canada* (*Minister of Citizenship and Immigration*), 2010 FC 31, [2010] F.C.J. No. 41, at paragraph 18:

> [18] The standard of reasonableness applies to the findings of fact in the PRRA officer's decision because the pre-removal risk assessment of the PRRA officer is an assessment of the facts to which this Court must accord great deference (see, among others, *Pareja v. The Minister of Citizenship and Immigration*, 2008 FC 1333, at paragraph 12 and *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190).

(See also *Figurado v. Canada* (*Solicitor General*), 2005 FC 347, [2005] F.C.J. No. 458, at paragraph 51; *Sani v. Canada* (*Minister of Citizenship and Immigration*), 2008 FC 913, [2008] F.C.J. No. 1144).

Analysis

[15] At the hearing, the Court heard the parties' arguments on the fact that this application could be moot. The Court then decided to hear the parties on the merits, under advisement.

[16] After a careful review of the record and the case law, the Court is of the view that the application for judicial review has become moot because the applicants were returned to Mexico. This evidence is in the record (Applicant's Memorandum at pp. 51-58) and is not disputed by the applicant.

[17] More specifically, in *Perez v. Canada* (*Minister of Citizenship and Immigration*), 2009 FCA 171, [2009] F.C.J. No. 691, Justice Noël of the Federal Court of Appeal affirmed a decision by Justice Martineau, *Perez v. Canada* (*Minister of Citizenship and Immigration*), 2008 FC 663, [2008] F.C.J. No. 836, in which Justice Martineau dismissed an application for judicial review on the ground that the matter was moot because the appellant was no longer in Canada and the Court refused to exercise its discretion to consider the judicial review. Justice Martineau certified the following question and Justice Noël affirmed his decision as follows:

> i) Is an application for judicial review of a PRRA moot where the individual who is the subject of the decision has been removed from or has left Canada after an application for stay of removal has been rejected?
>
> …
>
> [5] We agree that the application for judicial review is moot, and in particular with the statement made by Martineau J. at paragraph 25 of his reasons where he says:
>
> > ... Parliament intended that the PRRA should be determined before the PRRA applicant is removed from Canada, to avoid putting her or him at risk in her or his country of origin. To this extent, if a PRRA applicant is removed from Canada before a determination is made on the risks to which that person would be subject to in her or his country of origin, the intended objective of the PRRA system can no longer be met. Indeed, this explains why section 112 of the Act specifies that a person applying for protection is a "person in Canada".
>
> By the same logic, a review of a negative decision of a PRRA officer after the subject person has been removed from Canada, is without object.
>
> [6] We also cannot detect any error in Martineau J.'s exercise of discretion in deciding not to hear the application despite its mootness.

> [7] The appeal will accordingly be dismissed. The first certified question will be answered in the affirmative. …

[18] As Justice Martineau stated in the above case, the statutory scheme was not designed so that a person outside Canada can obtain a pre-removal risk assessment (section 112 of the Act).

[19] For all of the above reasons and having found that the application for judicial review is moot, the Court refuses to exercise its discretion and consider this application for judicial review given its mootness. Accordingly, the Court dismisses this application.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

"Richard Boivin"
Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6076-09
STYLE OF CAUSE:	LUISA ELENA LEON SANCHEZ ET AL. v. MCI
PLACE OF HEARING:	Montréal, Quebec
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APPEARANCES:

Cristina Marienlli	FOR THE APPLICANT
Émilie Tremblay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nexus Legal Services Inc. Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT