

Federal Court



Cour fédérale

**Date: 20101020**

**Docket: IMM-354-10**

**Citation: 2010 FC 1023**

**Toronto, Ontario, October 20, 2010**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**OUSSAMA AYACH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION  
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant, Mr. Oussama Ayach, is a citizen of Lebanon who came to Canada in August 2006, claiming a fear of persecution by Hezbollah because he is a member of the Druze religious community. His claim for refugee protection in Canada was heard on January 17, 2008 and dismissed by the Immigration and Refugee Board, Refugee Protection Division (the RPD) in a decision dated July 9, 2008 (the RPD Decision). The RPD concluded that the Applicant had failed to produce credible or trustworthy evidence that he had been persecuted by members of Hezbollah.

[2] In an application for a pre-removal risk assessment (PRRA), made in April 2009, the Applicant restated his fear of persecution at the hands of Hezbollah. In support of his PRRA application, the Applicant submitted new evidence regarding the country conditions in Lebanon. Included in the application was a letter from the Applicant's brother describing an attack, by Hezbollah, on members of his family that occurred on May 7, 2008. In the letter, the brother claims that members of Hezbollah asked about the Applicant's whereabouts during the attack.

[3] In a decision dated November 27, 2009, a PRRA Officer dismissed the Applicant's PRRA application. The key determination of the PRRA Officer was that the Applicant was alleging the same risks that were considered and dealt with in the RPD decision. The PRRA Officer concluded that the documentary evidence provided by the Applicant did not demonstrate that country conditions had deteriorated in Lebanon, or that there were new risks to the Applicant since the RPD decision. With respect to the brother's letter, the PRRA Officer stated only the following:

I also acknowledge the letter from the applicant's brother indicating that he is still threatened. I find that the applicant does not rebut the significant findings of the RPD.

[4] Finally, the PRRA Officer states that "I find that if this applicant were at risk a state apparatus of protection would be available to him".

[5] The Applicant seeks judicial review of the decision.

[6] The decision of the PRRA Officer is reviewable on a standard of reasonableness (*Woldegabriel v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1223 at para. 21). As taught by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47:

In judicial review, reasonableness is 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] In my view, the determinative issue in this case is whether the PRRA Officer had regard to the evidence put forward by the Applicant. The Applicant specifically references a change in his personal circumstance in Lebanon by adducing “new” evidence by way of a letter from his brother. However, as noted above, the Officer dismisses the brother’s letter in one sentence. There is no express finding by the PRRA Officer that the letter is not new evidence; nor is there an analysis of whether this letter should be admitted as “new evidence” under s. 113(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*). With respect to the letter, the Officer does not consider its credibility, relevance, newness, materiality, or express statutory conditions. These factors were set out by the Federal Court of Appeal in *Raza v. Canada*, 2007 FCA 385, at paragraph 13, as a basis for assessing whether evidence can be admitted as “new” pursuant to s.113(a) of the *IRPA*.

[8] The responsibility of this Court is not to re-weigh evidence that was before the PRRA Officer, and I will not attempt to do so. However, the letter was not irrelevant. The events discussed in the letter occurred after the Applicant’s hearing date, and before the RPD decision was rendered.

The PRRA Officer should have analyzed either why the letter was not new evidence under s. 113(a) of the *IRPA* or why it should not to be afforded any weight

[9] The alternate finding of state protection could have been determinative of the Applicant's PRRA application. However, the PRRA Officer offers no analysis whatsoever of how she reached the conclusion that state protection was available to the Applicant. I cannot determine that the PRRA Officer's conclusion with regard to state protection was reasonable in this case.

[10] Based on the above, I conclude that the PRRA Officer's decision does not demonstrate the justification, transparency and intelligibility required. The Application for Judicial Review will be allowed.

[11] Neither party proposes a question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is allowed, the decision of the PRRA Officer is quashed and the matter is sent back to a different PRRA Officer for re-determination; and
2. No question of general importance is certified.

“Judith A. Snider”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-354-10

**STYLE OF CAUSE:** OUSSAMA AYACH v.  
THE MINSITER OF CITIZENSHIP AND  
IMMIGRATION, THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 19, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SNIDER J.

**DATED:** OCTOBER 20, 2010

**APPEARANCES:**

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