

Federal Court



Cour fédérale

Date: 20110617

Docket: IMM-7037-10

Citation: 2011 FC 716

Ottawa, Ontario, June 17, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

LUXZUMIKHANDTHAN KANDASAMY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a negative decision dated November 22, 2010, of a Risk Assessment (RA) under section 115(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[2] For the reasons that follow, the application shall be dismissed.

[3] The applicant is a Sri Lankan citizen who arrived in Canada from Mexico in April 2010 and made a refugee claim. He was found ineligible under 101(1)(d) of IRPA to have his claim referred to the Immigration Refugee Board (IRB) because he had already been accepted in Mexico as a non-immigrant refugee, for a period of one year from March 10, 2010.

[4] He fears that if he is sent back to Mexico he will be persecuted because he is a member of a visible minority group, and will be victimized by various unnamed criminals or corrupt police officers.

[5] In his RA application, he mentioned that he has been robbed at gunpoint while in Mexico. He stated that although there were police nearby, he did not ask for help because he did not want to get caught in a potential crossfire between the police and criminals.

[6] The Risk Assessment Officer (Officer) analyzed the country conditions in Mexico and came to the conclusion that there was insufficient evidence that the applicant's profile would make him a particular target.

[7] The Court will intervene only if the decision does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

[8] The applicant states that illegal migrants in Mexico are targeted by criminal gangs as well as the police and security forces. He submits that although he has been offered protection by Mexico, he is viewed, for all intents and purposes, as an illegal migrant because of his characteristics; dark skin, no language skills in Spanish and no family ties in Mexico. As a result, he is treated in the same way as an illegal migrant. Because of this, he argues that the Officer has failed to recognize that the issue for the applicant in Mexico is not who he is but simply who he is perceived to be. He states that there is no distinction between regular and irregular migrants in Mexico and alleges that this is well documented (Applicant's Record, pages 70 and 109).

[9] The applicant refers to *Kovacs v Canada (Minister of Citizenship and Immigration)* 2010 FC 1003, at para 52, where the Court found that a PRRA Officer erred in her assessment of the documentary evidence:

“[T]he subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.”

[10] The respondent underscores that although the applicant has argued that small fragments of the documentary evidence confirm that visible minorities are subject to violence, there is no reviewable error made by the Officer in its analysis (*Gavoci v Canada (Minister of Citizenship and Immigration)*, 2005 FC 207, *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417).

[11] There is a presumption that the Officer considered all the documentary evidence submitted by the parties.

[12] The Court finds that the Officer's conclusion that the applicant's situation is not comparable to migrants as described in the evidence provided, is reasonable. The basis of that finding is justified by the fact that the applicant has a regular status in Mexico.

[13] The Officer analyzed, considered and commented documents on country conditions in Mexico and found insufficient evidence to support the applicant's claim that he would be at risk if returned. There is no reviewable error here.

[14] The decision taken as a whole meets the criteria mentioned in *Dunsmuir* at para.47.

[15] It is not the role of this Court to re-weigh the facts already examined by a decision-maker unless it is not supported by the evidence. The Court's intervention is not warranted.

[16] The applicant proposes the following questions for certification:

- i. In an application for protection pursuant to s. 115(1) of the *Immigration and Refugee Protection Act*, where the applicant was offered protection in another country, (other than Canada) is he afforded all of the same rights as that of an applicant who seeks protection pursuant to sections 96 & 97 of the *Immigration and Refugee Protection Act*?

- i. If so, in an application for protection pursuant to s. 115(1) of the *Immigration and Refugee Protection Act*, is there an obligation on the officer conducting the risk assessment to assess all of the grounds for protection even if those grounds are not raised by the applicant?
- ii. In an application for protection pursuant to s. 115(1) of the *Immigration and Refugee Protection Act*, is there a positive obligation on the Reviewing Officer to have the requisite specialized knowledge and experience of country conditions and for him to apply the law and established legal principles to the facts of the case?

[17] The respondent opposes such questions. The Court agrees with the respondent that the above-mentioned questions are not dispositive of the case at bar. Here, the issue concerned the factual assessment determined by the Officer.

JUDGMENT

THIS COURT ORDERS that:

1. This application for judicial review be dismissed.
2. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7037-10

STYLE OF CAUSE: Luxzumikhandththan KANDASAMY
and MCI

PLACE OF HEARING: Calgary

DATE OF HEARING: June 13, 2011

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

DATED: June 17, 2011

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