Federal Court  Cour fédérale

Date: 20111006

Docket: IMM-915-11

Citation: 2011 FC 1133

Ottawa, Ontario, October 6, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

JEEWAN KHAIMRAJ
FIDEL KHAIMRAJ

Applicants

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Jeewan Khaimraj and his son, Fidel, claimed refugee protection in Canada after departing their country of origin, Guyana, in 2005. They alleged persecution on a variety of grounds – political opinion, religion and ethnicity – but, in 2007, a panel of the Immigration and Refugee Board dismissed their claims for a lack of supporting evidence.

[2] Mr. Khaimraj and Fidel subsequently applied for a pre-removal risk assessment [PRRA]. They claimed to fear their neighbours in Guyana, who had attacked them twice in 2004. The PRRA officer concluded that there was no reason why evidence of those attacks could not have been presented to the Board. Accordingly, the officer found there was no new evidence before him to consider in respect of the PRRA. In addition, the officer found that Guyana is capable of protecting Mr. Khaimraj and his son if they return there.

[3] Mr. Khaimraj argues that the officer erred in rejecting his "new" evidence. He was unaware that he could have presented that evidence to the Board; therefore, the officer had an obligation to consider it. Further, Mr. Khaimraj argues that the officer erred in finding that state protection was available in Guyana. He asks me to overturn the officer's decision and order another officer to carry out a fresh PRRA.

[4] I can find no error on the officer's part and must, therefore, dismiss this application for judicial review. The officer reasonably concluded that there was no new evidence of risk. He had no obligation, therefore, to go on to consider whether Guyana could adequately protect the applicants from risk. Even so, the officer did consider the relevant documentary evidence and concluded that state protection was available.

[5] The two issues to consider are:

1. Did the officer err in finding no new evidence to consider on the PRRA application?
2. Did the officer err in finding adequate state protection?

II. The Officer's Decision

[6] The officer summarized Mr. Khaimraj's allegations regarding attacks by his neighbours in 2004, including his belief that his wife had died of her injuries later that year.

[7] The officer considered whether that evidence was admissible on a PRRA. An important consideration was the fact that Mr. Khaimraj had presented a variety of risk allegations in his refugee claim, all of which had been dismissed by the Board in 2007. Mr. Khaimraj had not provided the officer with any explanation for the failure to present the additional evidence of attacks to the Board.

[8] Accordingly, the officer found that the evidence did not meet the test of "newness" set out by the Federal Court of Appeal in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, para 13. It did not involve an event that occurred after the Board's decision or prove any fact that was unknown to Mr. Khaimraj at the time of his hearing.

[9] The officer also noted that the Board had found that state protection was available to Mr. Khaimraj and Fidel in Guyana. Still, he went on to consider more recent documentary evidence and concurred with the Board that state protection exists in Guyana

III. Issue One - Did the officer err in finding no new evidence to consider on the PRRA application?

[10] Mr. Khaimraj asserts that he was unaware that he could have submitted to the Board evidence of risk based on grounds other than those set out in the Refugee Convention. Therefore, he maintains that he could not reasonably be expected to have presented that evidence at the time of his hearing before the Board. As such, he meets the test for the admission of new evidence on a PRRA set out in s 113(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (see Annex).

[11] In my view, a lack of awareness of the possibility of presenting evidence to the Board does not justify admission of that evidence on a PRRA. A PRRA is intended to deal with matters that arose after a refugee hearing, or evidence that could not reasonably have been obtained sooner. As Justice Karen Sharlow pointed out in *Raza*, where the evidence does not meet the test of "newness", it "need not be considered" (para 13).

[12] In my view, the officer had no obligation to consider the evidence relating to the attacks by Mr. Khaimraj's neighbours; his refusal to do so was not unreasonable.

IV. Issue Two - Did the officer err in finding adequate state protection?

[13] Mr. Khaimraj argues that the officer had a duty at least to consider and weigh the evidence he tendered about the availability of state protection in Guyana.

[14] In my view, the officer did not have a duty to consider that evidence. The Board had already rejected the allegation that Mr. Khaimraj and his son faced a risk of persecution in Guyana. And

there was no evidence properly before the officer with respect to any other source of risk. Therefore, there was no specific risk against which the evidence of state protection could be assessed.

[15] Further, the officer stated that he did consider that evidence and found no basis for departing from the Board's conclusion that state protection was adequate in Guyana.

[16] Again, I can find no error on the officer's part.

V. Conclusion and Disposition

[17] The PRRA officer reasonably concluded that there was no new evidence to consider and, even so, that state protection was available in Guyana. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is stated.

"James W. O'Reilly"
Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27
Consideration of application	Examen de la demande
113. Consideration of an application for protection shall be as follows:	**113.** Il est disposé de la demande comme il suit:
(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or 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;	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-915-11
STYLE OF CAUSE:	JEEWAN KHAIMRAJ, ET AL v MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 27, 2011
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APPEARANCES:

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