Federal Court  Cour fédérale

Date: 20120221

Docket: IMM-4197-11

Citation: 2012 FC 237

Ottawa, Ontario, February 21, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

ARLINE TINDALE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks an order setting aside a May 16, 2011 decision of the Pre-Removal Risk Assessment Office (PRRA) of Citizenship and Immigration Canada (CIC), rejecting her PRRA application for protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application for judicial review is granted.

Facts

[2] The applicant is originally from Jamaica. Her first husband abused her. She fled from him to Canada taking only her youngest son with her but leaving behind several other children. She is

estranged from these children and claims she has no one to return to even though her mother and seven siblings still live Jamaica. The applicant fears return to Jamaica where she claims she suffers a heightened risk of sexual assault.

[3] The applicant has been in Canada for over twenty years (since 1990) without legal status. Her attempts at regularizing her status are set out in *Tindale v Canada (Minister of Citizenship and Immigration)*, 2012 FC 236 (IMM-4194-11) at para 3, issued contemporaneously with this decision.

Issue

[4] The issue in this case is whether the decision of the PRRA Officer to refuse the applicant's PRRA application is reasonable per *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[5] It is not the role of this Court to replace the findings and decision of the PRRA officer with its own findings and decision but rather to review the decision rendered by the PRRA Officer to ensure that it accords with the law under a reasonableness standard of review. The Court must adhere to its jurisdiction and cannot disturb decisions by administrative decision-makers provided these are reasonable, even if they are decisions which the Court would not have come to itself: *Aguebor v Canada (Minister of Employment & Immigration)*, [1993] FCJ No 732.

[6] The principle that a PRRA application is not a forum in which to re-litigate a failed refugee claim is well-settled in the jurisprudence of this Court. As Justice Richard G. Mosley held in *Raza v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1385:

> It must be recalled that the role of the PRRA officer is not to revisit the Board's factual and credibility conclusions but to consider the present situation. In assessing "new information" it is not just the date of the document that is important, but whether the information is significant or significantly different than the information previously provided ….Where "recent" information (i.e. information that post-dates the original decision) merely echoes information previously submitted, it is unlikely to result in a finding that country conditions have changed. The question is whether there is anything of "substance" that is new….

[7] The Federal Court of Appeal affirmed Justice Mosley's decision in *Raza v Canada (Minister of Citizenship & Immigration)*, 2007 FCA 385 and held at para 12:

> A PRRA application by a failed refugee claimant is not an appeal or reconsideration of the decision of the RPD to reject a claim for refugee protection. Nevertheless, it may require consideration of some or all of the same factual and legal issues as a claim for refugee protection. In such cases there is an obvious risk of wasteful and potentially abusive relitigation. The IRPA mitigates that risk by limiting the evidence that may be presented to the PRRA officer. The limitation is found in paragraph 113(a) of the IRPA….

[8] The applicant had the onus of adducing new evidence in support of her PRRA application. To be new evidence in this context, it had to be evidence that arose after the refugee claim decision or evidence that was not reasonably available, or that could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[9] It was not the task of the PRRA officer to consider evidence which has already been presented to the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), rather only that evidence which is adduced in accordance with *IRPA* section 113(a). As the evidence in question did not meet the criteria of *Raza*, the PRRA Officer made no reviewable error.

[10] Turning to the applicant's second argument, counsel has also argued that the PRRA Officer erred in dismissing the concerns of the applicant as being "generalized" evidence and therefore of no relevance to her particular situation.

[11] In this context, the Court concludes that the decision of the PRRA officer does not withstand scrutiny on the basis of a reasonableness standard of review. There is no line or path of analysis within the reasons given which could reasonably lead the decision-maker from the evidence to the conclusion reached, or, put otherwise, it cannot be said that after a somewhat probing examination the reasons and the evidence support the decision; *Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 SCR 247, at para 55. There are four findings, on material points, where the evidence in the record does not support the conclusion reached.

[12] The PRRA Officer relies on a 2010 US Department of State country report (DOS Report). After quoting extensively from the DOS Report the Officer concludes that state protection is adequate for women. The DOS report, on its face, does not support this conclusion.

[13] Secondly, the PRRA Officer noted the existence of a law against rape and observed that based on her research that "the police do not appear to be ignoring" the violence against women. Again, it is unclear how, in light of the DOS Report, that conclusion was reached. The DOS Report, in a full and objective reading, points to the opposite conclusion.

[14] Third, the PRRA Officer predicates her decision, in the main, on the existence of the fact that rape is illegal in Jamaica, and hence the government and police "are not ignoring" the violence.

It is trite law that the mere existence of a law does not equate to adequate state protection. It is a component of such but it is not a complete answer.

[15] Finally, the PRRA Officer relies on “her research” in support of the conclusion as to the adequacy of state protection. No such research is identified, other than “news articles” and “other documentation”. The only evidence identified, the DOS Report, does not support the conclusion reached.

[16] The application for judicial review is granted.

[17] There is no question for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back before a different PRRA Officer at Citizenship and Immigration Canada. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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