Federal Court  Cour fédérale

Date: 20120803

Docket: IMM-6119-11

Citation: 2012 FC 967

Ottawa, Ontario, August 3, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

REGINA SAMUEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Regina Samuel, seeks judicial review of a decision by a Pre-Removal Risk Assessment (PRRA) Officer, dated July 29, 2011. The Officer determined that she would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to her country of nationality, Saint Lucia.

I. Background

[2] The Applicant arrived in Canada from Saint Lucia on March 9, 2008. She filed a claim for refugee protection on August 17, 2009; however, the claim was subsequently declared abandoned by the Refugee Protection Division of the Immigration and Refugee Board for her and counsel's failure to attend a scheduled hearing.

[3] She first applied for a PRRA on March 11, 2011, claiming a fear of persecution and that she would be at risk of being harmed or killed by her abusive, former common-law partner, Trevor LaForce (also occasionally referred to as Mr. Lafos).

[4] Considering her application and counsel's submissions, the PRRA Officer found that the Applicant had failed to provide sufficient objective evidence to support her contentions of the abuse, three complaints to police and a conviction as well as ongoing threats.

[5] As for the adequacy of state protection in Saint Lucia, the PRRA Officer found there was no clear and convincing evidence that the authorities could not protect the Applicant. The PRRA Officer was not persuaded that Mr. LaForce would not have been arrested prior to the dropping of her first two complaints or that "St. Lucian authorities did not respond and act in a reasonable way after the applicant reported Mr. Lafos."

[6] Turning to documentary evidence, the PRRA Officer recognized that domestic violence is a serious problem in Saint Lucia and that there are instances of authorities being ineffective in

protecting some women. It was nonetheless found that, although not perfect, protection would be available to the Applicant based on efforts made in the past to protect her, new legislative measures and the example of the Vulnerable Persons Team established by the police in 2007 to oversee and provide advice in domestic abuse cases.

II. Issues

[7] The two issues raised by the Applicant are as follows:

(a) Did the PRRA Officer breach the Applicant's right to procedural fairness by not affording her an oral hearing?

(b) Did the PRRA Officer err in analyzing state protection?

III. Standard of Review

[8] Decisions of a PRRA Officer are generally subject to review based on reasonableness (see *Hnatusko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 18, 2010 [2010] FCJ no 21 at paras 25-26). This means intervention is only possible where the decision fails to demonstrate the existence of justification, transparency and intelligibility (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[9] Matters of procedural fairness do, however, require the correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

IV. Analysis

A. *Procedural Fairness*

[10] Section 167 of the *Immigration and Refugee Protection Regulations*, SOR-2002-227 prescribes factors relevant to determining whether a hearing may be held in the context of a PRRA application. It states:

Hearing — prescribed factors	Facteurs pour la tenue d'une audience
167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:	**167.** Pour l'application de l'alinéa 113*b*) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[11] Given these factors, the Applicant asserts that the PRRA Officer erred in failing to grant an oral hearing despite putting her credibility at issue in the decision. By contrast, the Respondent maintains that there was no negative credibility finding in this instance but merely an assessment of the sufficiency of the evidence as presented by the Applicant. As a consequence, there was no need for an oral hearing.

[12] The jurisprudence in this area recognizes a distinction between adverse credibility findings and those questioning the sufficiency of corroborating evidence. While this Court has admittedly suggested a need for an oral hearing in certain instances where credibility was put at issue, it has only done so in the clearest of cases (see for example *Zokai v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1103, [2005] FCJ no 1359 at para 12; *Latifi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388, [2006] FCJ no 1738 at paras 54-60). In other circumstances, my colleagues have stressed that there is no requirement for an oral hearing where a PRRA Officer is assessing the weight or probative value of evidence without considering whether it is credible (see for example *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, [2008] FCJ no 1308 at paras 25-27, 32-33; *Cromhout v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1174, [2009] FCJ no 1473 at paras 35-38; *Cosgun v Canada (Minister of Citizenship and Immigration)*, 2010 FC 400, [2010] FCJ no 458 at paras 34-41).

[13] The distinction ultimately rests on the nature of the PRRA Officer's decision. The passage of particular concern to the Applicant in this case reads as follows:

> The applicant's submissions state "Affidavits to follow." I have no affidavits or additional evidence before me. According to my

> department's electronic record, the applicant did not file any evidence post-submissions.
>
> According to the applicant's PRRA application, the applicant's mother and the applicant's four young adult sons all reside in St. Lucia. I note that the applicant has not provided any evidence from these family members or friends regarding abuse at the hands of Mr. Lafos, recent threats from Mr. Lafos, or responses from the authorities in St. Lucia. She has not provided any objective evidence from the authorities in St. Lucia regarding complaints that were filed against Mr. Lafos or his conviction. I find that the applicant has not provided sufficient objective evidence to support her contentions.

[14] Considering this passage, I would agree with the position of the Respondent that the PRRA Officer is focused on weighing objective evidence while raising concerns about its sufficiency as opposed to indirectly challenging the Applicant's credibility. This leads me to conclude that the PRRA Officer did not breach the Applicant's right to procedural fairness in failing to grant her a hearing – a decision always made on a discretionary basis – to consider credibility issues that were not truly of concern to the PRRA Officer in assessing the evidence.

[15] In support of this conclusion, I would reiterate the words of Justice Russel Zinn in *Ferguson*, above at para 27 as they apply directly to the present matter:

> [27] […] If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. […]

[16] In weighing the evidence, it was not necessary for the PRRA Officer to provide an oral hearing. As discussed below, I also consider the assessment of state protection reasonable in the circumstances.

B. *State Protection Analysis*

[17] On reviewing the decision, I see no basis for the Applicant's position that the PRRA Officer failed to provide sufficient analysis of contradictory documentary evidence or explain why certain more favourable portions of the material were given emphasis.

[18] The PRRA Officer conducted a relatively balanced analysis of the documentary evidence related to domestic violence in Saint Lucia. The issue was recognized as a "serious problem in St. Lucia and that some women have been killed in recent years by their domestic partners." The PRRA Officer also recognized that "there have been instances where the authorities have not been effective in protecting some women." This information was, however, contrasted with the Applicant's situation that following her third complaint Mr. LaForce was arrested and convicted. The PRRA Officer was also not persuaded that authorities had failed to respond and arrest him after the two initial complaints. Finally, the PRRA Officer identified some of the changes implemented in Saint Lucia to help address the problem of domestic violence. The PRRA Officer is not required to refer to each and every piece of documentary evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (CA); *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (CA)).

[19] While the protection was not considered perfect, it would be adequate. Given the assistance provided by authorities to her in the past and measures taken to address the issue by the state, the Applicant simply failed to provide clear and convincing evidence to rebut the presumption that state protection would be inadequate for victims of domestic violence in a democratic state such as Saint Lucia (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] FCJ no 399 at para 38).

V. Conclusion

[20] For these reasons, her application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-6119-11**
STYLE OF CAUSE:	**REGINA SAMUEL v MCI**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**JUNE 27, 2012**
REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
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