Federal Court  Cour fédérale

Date: 20121129

Docket: IMM-2061-12

Citation: 2012 FC 1395

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 29, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

RACHEL AYIKEZE

Applicant

and

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

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision dated January 27, 2011, of the pre-removal risk assessment (PRRA) officer of Citizenship and Immigration Canada (the officer),

denying the PRRA application of the applicant on the grounds that she was not a person in need of protection.

Factual background

[2] Rachel Ayikeze (the applicant) is a citizen of Burundi. She left Burundi in November 2005 to travel to the United States where she stayed until December 1, 2005, when she entered Canada. She filed a refugee claim when she arrived in Canada, but the Refugee Protection Division (RPD) of the Immigration and Refugee Board dismissed her claim on November 27, 2006.

[3] The RPD did not believe the applicant's story that her documents were stolen by a group of rebels during an ambush and that she was allegedly subsequently threatened to join the group of rebels. The RPD's decision was subject to an application for judicial review, which was dismissed.

[4] The applicant submitted a PRRA application on February 15, 2010. This application was refused on January 27, 2011. The PRRA decision was submitted to counsel for the applicant on February 23, 2012, and hand-delivered to the applicant in March 2012 (Applicant's Record, p 59).

Impugned decision

[5] The officer dismissed the applicant's PRRA application on January 27, 2011, finding that she was not at risk of being tortured or persecuted, being subjected to cruel or unusual punishment or treatment, or receiving threats to her life if she were removed to Burundi.

[6] The officer first identified the fear raised by the applicant, that of the rebels of the Forces nationales de libération (FNL) who had allegedly threatened her, forced to hand over her personal effects and documents during an ambush and they subsequently sent her a threatening letter ordering her to join the FNL.

[7] The officer first indicated that, following the RPD's rejection of the applicant's refugee claim, only new evidence could be considered in a PRRA, in accordance with paragraph 113(*a*) of the Act. The officer found that the applicant submitted an application that relied on the same facts as those analyzed before the RPD, on the basis of which it had found that the applicant was not credible. The officer reiterated that a PRRA application is not a mechanism to review an RPD decision. She then described the PRRA process in two (2) parts, the first being the evaluation of new evidence submitted since the refugee claim was rejected, the second being a determination that there was a change in the conditions of the country that would lead to a risk if she were to return.

[8] As for the first component, the officer acknowledged that the applicant submitted that the FNL rebels are now part of the government. However, she noted that the applicant had not succeeded in showing that she had been threatened in the past or could be threatened if she were to return and that she did not submit any new evidence supporting her PRRA application

[9] As regards the second component, the officer considered the current conditions in Burundi, on the basis of the objective evidence and assessing whether the applicant fits the profile of a person who is likely to be targeted. Although the officer concluded that there are still some problems in

Burundi, especially in terms of political violence and human rights violations by the government, she found that the applicant does not fit the profile of someone who is likely to be targeted.

Issues

[10] The issues in this case are the following:

a. Did the officer err in finding that the applicant had not provided new evidence?

b. Did the officer err in assessing the risk the applicant would face if she were to return to Burundi?

c. Was there a breach of procedural fairness by the fact that the applicant received the officer's decision one year after her application was refused?

Statutory provisions

[11] The following provision of the *Immigration and Refugee Protection Act* is relevant in this case:

DIVISION 3 PRE-REMOVAL RISK ASSESSMENT	SECTION 3 EXAMEN DES RISQUES AVANT RENVOI
Protection	*Protection*
…	…
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	*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

available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	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;
…	[…]

[12] The following subsection of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) is also relevant:

DIVISION 4 PRE-REMOVAL RISK ASSESSMENT	SECTION 4 EXAMEN DES RISQUES AVANT RENVOI
…	…
New evidence	Nouveaux éléments de preuve
…	[…]
161. (2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(*a*) of the Act and indicate how that evidence relates to them.	**161.** (2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113*a*) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

Standard of review

[13] Issues of procedural fairness draw the highest standard, that of correctness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 129, [2008] 1 SCR 190 (*Dunsmuir*)). Therefore, the first issue in this case will be reviewed on the standard of correctness.

[14] Generally, issues relating to an immigration officer's findings on PRRA applications are assessed on the standard of reasonableness (*Figurado v Canada* (*Solicitor General*), 2005 FC 347, [2005] 4 FCR 387 (*Figurado*); *Martinez v Canada (Minister of Citizenship and Immigration)*, 2010

FC 31, 2010, [2010] FCJ No 41 (QL); *Kanaku v Canada (Minister of Citizenship and Immigration)*, 2009 FC 394, 176 ACWS (3d) 1122). The parties agree and the Court also agrees – to say that reasonableness applies to issues two (2) and three (3). In addressing these issues, the Court must show deference and base its analysis on "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" (*Dunsmuir*, above, at para 47).

Analysis

a. Was there a breach of procedural fairness because of the delay?

[15] The applicant relied on *Figurado*, above, to support her position with respect to the breach of procedural fairness because of the delay in communicating the decision. *Figurado* is different from this case since the applicant in that case had already been removed to his country. The issue was thus whether the judicial review of a PRRA was entirely academic and should have been heard by this Court, while the principal party had already been removed. Justice Martineau pointed out at para 40 that "[t]he PRRA process was implemented to allow individuals to apply for a review of the conditions surrounding the risk of return prior to their removal from Canada and not after their removal. ... Accordingly, the PRRA is closely linked in time to removals and is carried out immediately prior to removal" [Emphasis in original].

[16] As the respondent pointed out, the Act does not set out a specific time period in which a PRRA decision must be made and communicated. Moreover, section 5.19 of the *Procedures Manual PP3 – Pre-removal Risk Assessment*, "Submissions received after a PRRA decision has

been made, but not delivered", indicates that an applicant may reveal new information at any time before receiving the convocation letter, which announces that a decision was made and the officer must consider it (*Chudal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1073, 141 ACWS (3d) 609). The burden of submitting new evidence if there was a change of situation in Burundi was on the applicant. The applicant was free to submit documentation to this effect up to the time when she was informed of the decision. This was not done.

[17] The applicant did not persuade this Court that the delay caused her harm. The Court refers to the statements of Justice Mosley in *Qazi v Canada* (*Minister of Citizenship and Immigration*), 2005 FC 1667, at para 24, 144 ACWS (3d) 708, where a period of two years elapsed between the negative PRRA decision being made and it being communicated to the applicant:

> In the absence of any evidence demonstrating that the applicant has been prejudiced by the delay in providing him with the PRRA decision, I am unable to conclude that the applicant has been denied procedural fairness or natural justice. …

[18] In this case, the applicant did not provide any evidence and did not persuade this Court that the delay in this case could have been considered excessive and have caused her harm (*Blencoe v British Colombia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 (*Blencoe*); *Malhi v Canada* (*Minister of Citizenship and Immigration*), 2004 FC 802, at para 10, 131 ACWS (3d) 730).

b. Did the officer commit an error in assessing the evidence?

[19] Paragraph 113(*a*) of the Act clearly establishes that only new evidence will be considered for a PRRA application. Further, subsection 161(2) of the Regulations states that a person must

identify how the new evidence applies in this case. The Court is of the view that the officer did not err in her assessment of the evidence. Although the officer mentioned that [TRANSLATION] "The applicant did not submit any new evidence" (Applicant's Record, p 10), the officer still considered the applicant's statement that the FNL, who had allegedly threatened her, were now part of the government. In addition, the Court noted that the applicant did not submit any documentary evidence to support her PRRA claim in support of this allegation.

[20] The officer considered the fact that the FNL are now members of the government, which was not the case at the time of the application before the RPD. The officer could reasonably conclude that the fact that the FNL are now members of the government is not new evidence since the applicant did not show that she was threatened by the FNL in the past or that she could be if she were to return to Burundi. In fact, the applicant based her PRRA application on the same facts as those already analyzed at the RPD. The Court notes that the PRRA is not an appeal of the RPD decision (*Abdollahzadeh v Canada* (*Minister of Citizenship and Immigration*), 2007 FC 1310, at para 26-28, 325 FTR 226).

[21] The applicant also argued that the officer erred by not considering the fact that she is a woman and that the objective evidence identified problems of sexual violence in Burundi. However, the applicant's claim is based on her ethnicity and the fact that the rebels were attempting to recruit her and makes no reference to problems of sexual violence.

[22] The case law of this Court is clear that the burden is on the applicant to make the link between the objective evidence and her personal situation and, in this case, the applicant did not

show that she was threatened or that she would be if she were to return to Burundi. The documentary evidence on record, in itself, cannot supplement the lack of evidence related to the applicant's particular case (citing *Dreta v Canada* (*Minister of Citizenship and Immigration*), 2005 FC 1239, 142 ACWS (3d) 493, and *Nazaire v Canada* (*Minister of Citizenship and Immigration*), 2006 FC 416, 150 ACWS (3d) 902).

c. Did the officer err in her assessment of hardship?

[23] The Court is of the view that the officer did not err in evaluating the risk that the applicant would face in returning to Burundi. She considered the objective evidence and found that there is some ongoing political violence in Burundi, based on the *US Department of State Country Report on Human Rights Practices, Burundi-2009* (*USDS Country Report*), dated March 2010. She also noted that several Burundians were able to return to their country of origin, although this has caused some border disputes. The evidence does not show that the border disputes involve the applicant.

[24] The Court reiterates that the burden is on the applicant to show the risk that she is facing and to link her personal situation to the objective evidence consulted (*Choufani v Canada* (*Minister of Citizenship and Immigration*), 2010 FC 611, at para 24, 365 FTR 232).

[25] The Court is of the view that the officer came to a reasonable decision, supported by the evidence and reasons.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

"Richard Boivin"
Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2061-12
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