Federal Court  Cour fédérale

Date: 20130715

Docket: IMM-10931-12

Citation: 2013 FC 791

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 15, 2013

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

FRANCIS MBAIOREMEM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review submitted under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision by a pre-removal risk assessment (PRRA) officer, dated May 31, 2012, rejecting the application for a stay of removal of Francis Mbaioremem (the applicant).

[2] For the following reasons, this application for judicial review is dismissed.

II. Facts

[3] The applicant is a citizen of Chad. He left his country on April 13, 2008, and arrived in the United States the following day. He then made his way to Canada and claimed refugee protection on April 29, 2008.

[4] On November 29, 2010, the Refugee Protection Division (RPD) dismissed his refugee protection claim on the ground that he was not credible.

[5] The Court heard the applicant's application for judicial review of the RPD's decision and dismissed it on September 20, 2011 (see *Francis v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1078).

[6] The applicant subsequently submitted a PRRA application. He claims to fear returning to Chad because the regime currently in power views him as being a supporter of a rebel group.

[7] On May 31, 2012, the immigration officer (the officer) denied the PRRA application. He refused to consider the two letters (Exhibits A-3 and A-5) and affidavit (pièce A-1) filed by the applicant because he determined that these did not constitute new evidence within the meaning of paragraph 113(*a*) of the IRPA. After having weighed all of the admissible evidence, the officer

found that the applicant had not established the existence of a serious possibility of persecution on one of the Convention grounds or that he would face a personalized risk of torture, a risk to his life or a risk of cruel and unusual treatment if he were to return to Chad.

III. Legislation

[8] Section 113 of the IRPA stipulates that:

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;
(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	*b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	*c*) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
(*d*) in the case of an applicant described in	*d*) s'agissant du demandeur visé au paragraphe 112(3) —

subsection 112(3) — other than one described in subparagraph (e)(i) or (ii) — consideration shall be on the basis of the factors set out in section 97 and

sauf celui visé au sous-alinéa e)(i) ou (ii) —, sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada; and

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada;

(*e*) in the case of the following applicants, consideration shall be on the basis of sections 96 to 98 and subparagraph (d)(i) or (ii), as the case may be:

e) s'agissant des demandeurs ci-après, sur la base des articles 96 à 98 et, selon le cas, du sous-alinéa d)(i) ou (ii) :

(i) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punishable by a maximum term of imprisonment of at least 10 years for which a term of imprisonment of less than two years — or no

(i) celui qui est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle soit un emprisonnement de moins de deux ans a été

term of imprisonment — was imposed, and	infligé, soit aucune peine d'emprisonnement n'a été imposée,
(ii) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, unless they are found to be a person referred to in section F of Article 1 of the Refugee Convention.	(ii) celui qui est interdit de territoire pour grande criminalité pour déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans, sauf s'il a été conclu qu'il est visé à la section F de l'article premier de la Convention sur les réfugiés.

Issues and standard of review

Issues

1. ***Did the PRRA officer err by rejecting certain pieces of evidence in the record?***
2. ***Are the PRRA officer's findings reasonable in this case?***

B. Standard of review

[9] In *Selduz v Canada (Minister of Citizenship and Immigration)*, 2009 FC 361, [2009] FCJ No 471 at paragraphs 9 and 10, Justice Kelen wrote the following with respect to the appropriate standard of review for decisions by PRRA officers:

> [9] The Court has held that the appropriate standard of review for a PRRA officer's findings of fact and on issues of mixed fact and law is reasonableness: see Erdogu v. Canada (Minister of Citizenship and Immigration), 2008 FC 407, [2008] F.C.J. No. 546 (QL); Elezi v. Canada, 2007 FC 40, 310 F.T.R. 59. In Ramanathan v. Canada (Minister of Citizenship and Immigration), 2008 FC 843, 170 A.C.W.S. (3d) 140 at paragraph 18, I held that where an applicant raises issues as to whether a PRRA officer had proper regard to all the evidence when reaching a decision, the appropriate standard of review is reasonableness.
>
> [10] Accordingly, the Court will review the PRRA officer's findings with an eye to "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (Dunsmuir v. New Brunswick, 2008 SCC 9, 372 N.R. 1 at paragraph 47). However, where the PRRA officer fails to provide adequate reasons to explain why relevant, important and probative new evidence was not considered, then the court will consider that an error of law reviewed on the correctness standard.

[10] The appropriate standard in this case is reasonableness.

[11] "Reasonableness is concerned both with the existence of justification, transparency, and intelligibility in the decision-making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 190, [2008] SCJ No 9 at para 47).

V. Position of the parties

A. Applicant's position

[12] The applicant contends that the officer erred in law when he excluded Exhibits A-1, A-3 and A-5 because he misapplied the test set out in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 at paragraph 13 (*Raza*). He maintains that this evidence was produced after the RPD's decision and thus constitutes new facts in the record.

[13] In addition, the applicant further claims that the expressions "not reasonably available" and "not reasonably have been expected" in section 113 if the IRPA should be narrowly construed, given the objective of the Act.

[14] The applicant argues that the officer failed to consider some of the documentary evidence that corroborated his allegations. In so doing, he committed an error of mixed fact and law. The applicant submits that the evidence as a whole is sufficient to rebut the findings of the RPD and to conclude that there is a substantial risk to his life and safety if he returns to Chad.

[15] Furthermore, the applicant alleges that the officer showed a biased and capricious attitude when he rejected Abbott Diondoh's letter on the ground that it was from a person with a direct

interest in the outcome. He noted that as the Abbott did not stand to gain any benefit from the result of this refugee protection claim, the officer treated this piece of evidence in a purely capricious and perverse manner.

B. Respondent's position

[16] The respondent argues that the officer considered all of the admissible new evidence in this PRRA application and rendered a reasonable and well-reasoned decision. It was reasonably open to the officer to refuse to consider Exhibits A-1, A-3 and A-5 on the ground that they did not constitute new evidence within the meaning of section 113 of the IRPA. The respondent notes that it matters little whether the exhibits in question were dated or had been produced after the RPD's decision. Rather, the focus should be on whether the information contained in these exhibits was available or could have been provided at the time of the refugee protection hearing.

[17] The respondent also claims that it was reasonable for the officer to attach little probative value to Abbott Diondoh's letter because: (1) In his letter, Abbott Diondoh re-states information he had already submitted in support of the applicant's refugee protection claim; (2) the letter merely states that those who were after the applicant continue ask for information about him under the same pretexts, but without providing further details or additional evidence; (3) the letter does not suggest that the applicant's three children, who remain in Chad, have been subject to any threats; and (4) Abbott Diondoh lacks objectivity because he is responsible for the care of the applicant's three children.

[18] Lastly, the respondent concludes that the officer weighed all of the documentary evidence describing the situation in Chad but determined that this evidence, along with other admissible evidence submitted by the applicant, was not sufficient to establish the existence of a real risk to the applicant's life and safety if he were to return to Chad. In short, the respondent argues that the officer's conclusion was reasonable and well-reasoned.

VI. Analysis

1. Did the PRRA officer err by rejecting certain pieces of evidence in the record?

[19] The PRRA did not err by rejecting certain pieces of evidence, for the following reasons.

[20] After having carefully read Exhibits A-1, A-3 and A-5, the Court is of the view that the officer correctly refused to take this evidence into consideration. These documents do not describe any "event that occurred or a circumstance that arose after the hearing" (*Raza*, above, at paragraph 13). Even if Exhibit A-1 was able to rebut the RPD's doubts about the applicant's membership in the Association pour la Promotion des Libertés Fondamentales au Tchad (APLFT), this evidence was available to the applicant at the time of the refugee protection hearing and therefore he could reasonably have been expected to have filed it at that time (*Raza*, above, at paragraph 13). Moreover, such evidence indicating membership in an opposition movement is often submitted with a refugee protection claim. The officer therefore correctly applied paragraph 113(*a*) of the IRPA to the exhibits in question.

[21] The Court concurs with the respondent's argument to the effect that the officer adequately considered the objective documentary evidence contained in the record. First, I emphasize that the officer is presumed to have considered all of the evidence before him or her and is not required to refer to each and every piece of that evidence (*Florea v Canada (Minister of Employment and Immigration*), [1993] FCJ No 598); *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ No 946 (FCA)).

[22] Furthermore, it should be noted that at page 4 of his decision, the officer stated as follows:

> " . . . I acknowledge that Chad has continued reports of human rights abuses against political dissidents and those believed to be involved in rebellious groups. The applicant did not establish through evidence that he faces a serious possibility of persecution for perceivably being a supporter of rebel groups who attacked the capital in 2008. . . ."

[23] The PRRA officer acknowledged that the authorities in Chad continue to violate the fundamental rights of political dissidents and those suspected of belonging to rebel groups. The officer adequately considered the documentary evidence.

[24] The applicant failed to persuade the officer, with the evidence he adduced, that he was a member of a class of persons who would be personally at risk in Chad. As with a claim made pursuant to section 96 and subsection 97(1) of the IRPA, the purpose of a PRRA application is to assess the risk to which a refugee claimant would be subject to if returned to his or her country of origin. Since the *Raza* decision, above, it is settled law that the purpose of a PRRA application is to consider new circumstances that have occurred since the rejection of the refugee protection claim, a

PRRA application cannot and must not be used to reassess the claim (see also *Badobrey v Canada (Minister of Citizenship and Immigration)*, 2012 FC 990 at paragraph 23).

[25] It appears that the only new evidence filed in the record, namely, Abbott Diondoh's letter, states that the applicant's persecutors continue ask for information about him under the same pretexts. It was reasonable for the officer to find that the RPD would not have ruled otherwise if it had been apprised of this information.

2. Are the PRRA officer's findings reasonable in this case?

[26] The officer attributed little probative value to Abbott Diondoh's letter on the following grounds: (1) the letter reiterates the same information that had been submitted in the applicant's refugee protection claim; (2) it states that those who were after the applicant continue ask for information about him under the same pretexts, but without providing additional details or corroborating evidence; (3) the letter does not suggest that the applicant's three children, who remain in Chad, have been subject to any threats; and (4) there is a connection between the applicant and Abbott Diondoh, as the latter is responsible for the care of the applicant's three children; the letter lacks objectivity.

[27] It is not for the Court to substitute its own assessment of one piece of evidence for that of the decision maker, in this case the PRRA officer, but rather, to ensure its reasonableness (see *Ferreira v Canada (Attorney General)*, 2013 FCA 81 at paragraph 5; *Eid v Canada (Minister of Citizenship*

and Immigration), 2010 FC 639 at paragraph 69). Contrary to the applicant's arguments, the Court considers the officer's determination as to the probative value of Abbott Diondoh's letter to be reasonable and within the possible outcomes pursuant to paragraph 113(*a*) of the IRPA.

[28] In his memorandum filed on November 26, 2012, the applicant submits that limiting the evidence that can be considered in a PRRA context to new evidence within the meaning of paragraph 113(*a*) of the IRPA is inconsistent with sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter] and Canada's international obligations on human rights. However, in his supplementary memorandum filed May 6, 2013, the applicant states, at paragraph 16, that the interpretation and application of paragraph 113(*a*) in *Raza*, above, are consistent with the Charter's principles, and with Canada's obligations under international law. The Court agrees with the applicant that *Raza* clearly dealt with the legality of paragraph 113(*a*) of the IRPA.

[29] Given that the assessment of the evidence adduced by the applicant and considered by the officer contains no errors in terms of the application of paragraph 113(*a*) of the IRPA and that the officer's finding falls within a range of possible outcomes, the Court dismisses this application for judicial review.

JUDGMENT

THE COURT DISMISSES this application for judicial review and finds that there is no question of general interest to certify.

"Andre F.J. Scott"
Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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