Federal Court Cour fédérale

Date: 20130716

Docket: IMM-10834-12

Citation: 2013 FC 792

Ottawa, Ontario, July 16, 2013

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

YOUNDOM SYLVESTER LUANJE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Were Mr. Luanje returned to Cameroon, would he be at serious risk of persecution because of:

a. his religious belief;

b. his political opinion; or

c. his sexual orientation?

[2] In his Personal Information Form, he only listed the first, his religious belief.

[3] At his refugee hearing, he added the second, his political opinion. His application was dismissed.

[4] He then applied for a pre-removal risk assessment. This time, he submitted a new basis of risk of persecution, his sexual orientation. He is gay. The assessment was negative. This is the judicial review of that decision.

[5] Counsel submitted that if one reads between the lines, it is obvious that the PRRA officer did not believe a word of Mr. Luanje's story. If so, there should have been an oral hearing. One of the prescribed factors under s. 167 of the *Immigration and Refugee Protection Regulations* leading to a hearing is whether there is evidence that raises a serious issue as to the applicant's credibility. There was no such hearing and, therefore, the decision should be set aside.

[6] Furthermore, no analysis was made of the material submitted, which should have been done in the circumstances, including the fact that Mr. Luanje was self-represented.

[7] One may speculate that the officer did not believe a word of what Mr. Luanje wrote. He came to Canada on false papers and was found at his refugee hearing not to be credible. However, credibility is not at issue. The law relating to pre-removal risk assessments is very clear. Section 113(a) of the *Immigration and Refugee Protection Act*, as it was, before recent amendments, provides:

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;

[8] Section 161(2) of the Regulations requires the applicant to identify the new evidence and indicate how it relates to him.

[9] In this case, we are not talking about new evidence, but rather a new risk, at least new in the sense that it had not been presented to the Canadian authorities before.

[10] The pre-removal risk analysis is not a second refugee determination process. It deals with changes that may have occurred between the decision on the refugee claim and the removal, so that changed conditions and circumstances may be assessed. As stated by Madam Justice Snider in *Cupid v Canada (Minister of Citizenship and Immigration)*, 2007 FC 176, [2007] FCJ No 244 (QL), at paragraph 4:

> […] Canada has taken steps to ensure that a claimant is provided with a process whereby changed conditions and circumstances may be assessed. It follows that, if country conditions or the personal situation of the claimant have not changed since the date of the RPD decision, a finding of the RPD on the issue of state protection – as a final, binding decision of a quasi-judicial process – should continue to apply to the claimant. In other words, a claimant who has been rejected as a refugee claimant bears the onus of demonstrating that country conditions or personal circumstances have changed since the RPD decision such that the claimant, who was held not to be at risk by the RPD, is now at risk. If the applicant for a PRRA fails to meet that burden, the PRRA application will (and should) fail.

See also *Kaybaki v Canada (Minister of Citizenship and Immigration)*, 2004 FC 32, [2004] FCJ No 27 (QL), at paragraph 11.

[11] In his submissions, Mr. Luanje claims that he has been openly gay for some time. Accepting, as he says, that he was openly gay at least a year before his refugee board hearing, he has offered no reason whatsoever why he could not have advanced a claim based on sexual orientation at that time. By his own statements, the situation in Cameroon has remained stable, albeit dismal. All that can be said is that he found out after the refugee hearing that a friend of his had been attacked. However, as he says: "My experience as a gay in Cameroon was totally recessive because of fear for persecution and torture."

[12] Madam Justice Sharlow, speaking for the Federal Court of Appeal, analyzed s. 113 of the Act in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] FCJ No 1632 (QL), 289 DLR (4th) 675. One issue is that of relevance. She asked at paragraph 13: "Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving a fact that is relevant to the claim for protection? If not, the evidence need not be considered." The evidence presented is not relevant to the claim for refugee protection.

[13] She also asked if the evidence was new in the sense of proving a state of affairs, or an event or a circumstance that arose after the refugee hearing, or proving a fact that was unknown to the refugee claimant at the time of the hearing. If not, the evidence need not be considered. Again, the PPRA officer was correct in not considering the evidence.

[14] The Court is asked to show mercy, given that Mr. Luanje was self-represented. However, there is not one law for those who are represented by counsel and another for those who are not. As Lord Atkin stated in *Evans v Bartlam*, [1937] AC 473, [1937] 2 All ER 646, at page 479:

> The fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.

[15] I referred to that quote in *Agri v Canada (Citizenship and Immigration)*, 2007 FC 349, [2007] FCJ No 487 (QL), where I stated at paragraph 13:

> The documents issued by the Board make it perfectly clear that a party is entitled to be represented by counsel if he or she so chooses. One has no right to expect, by not retaining counsel, that the Board will act both as a decision-maker and as advocate for the applicant.

ORDER

FOR REASONS GIVEN:

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10834-12
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PLACE OF HEARING:	CALGARY, ALBERTA
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