Federal Court  Cour fédérale

Date: 20131016

Docket: IMM-10486-12

Citation: 2013 FC 1046

Ottawa, Ontario, October 16, 2013

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HANY MICHEAL SAMY BOTROS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of C. Ruthven, a Senior Immigration Officer at Citizenship and Immigration Canada [the Officer], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Officer rejected a Pre-Removal Risk Assessment [PRRA] application submitted by the Applicant.

I. Issues

[2] The issues raised in the present application are as follows:

A. Was the Officer's decision unreasonable?

i) Did the Officer err by failing to consider a risk raised by the Applicant?

ii) Did the Officer err by ignoring country conditions evidence before him?

iii) Did the Officer err by either (a) making a negative inference based on the absence of evidence which the officer thought "should" have been present; or (b) dismissing the Applicant's evidence for its non-compliance with technical rules of evidence, which do not apply in administrative decision-making?

II. Background

[3] The Applicant is an Egyptian citizen and a Coptic Christian. He arrived in Canada on December 3, 2002, and made a refugee claim that was refused in September, 2003.

[4] The Applicant filed an application for permanent residence in Canada on humanitarian and compassionate grounds on November 2, 2006, and an application for a first PRRA the following month. Both were dismissed on February 13, 2009, and the Applicant was scheduled for removal on April 30, 2009.

[5] A second PRRA was filed on March 19, 2009. It was refused on December 8, 2010, and the Applicant's removal was scheduled for January 29, 2011. The Applicant applied for judicial review of the second PRRA decision and for a stay of his removal. These were granted, and the second PRRA was remitted for redetermination.

[6] On February 16, 2012, the second PRRA was refused. The Applicant applied for judicial review and subsequently discontinued this application the following month.

[7] Previously, on March 10, 2011, a third PRRA was submitted, with additional testimonials submitted on July 27, 2011. On October 16, 2012, an addendum to the third PRRA was submitted [the Addendum]. This material formed the basis for the decision under review.

[8] Through the third PRRA, the Applicant claimed that he would be subject to persecution if he was returned to Egypt. Cited in support was documentary evidence of persecution of Copts and government instability in Egypt, letters of corroboration from One Free World International (Reverand Majed El-Shafie), the Middle East Christians Association, St. Mark's Coptic Orthodox Church, and a number of individuals in Canada. In addition, the Applicant provided an undated letter from his wife, describing an incident where she and the Applicant's children were intimidated and subsequently shot at in a taxi, resulting in injuries from broken glass. The existence of these injuries is corroborated by a letter from the treating physician. The Officer did not challenge the credibility of this evidence.

[9] The Addendum includes additional documentary evidence, particularly regarding the impact of the anti-Islamic film, Innocence of Muslims, in September, 2012.

[10] On August 31, 2012, the Officer rejected the PRRA. The Officer's decision rested on the fact that there was insufficient objective evidence that would reverse the rejection of the Applicant's previous PRRA applications and original refugee claim.

[11] The Officer considered the various letters of support but found that they were either too vague, consisted of second-hand information, or too speculative. As a result, the Officer assigned them low probative value. The Officer stated that he preferred instead to rely on notional first-hand accounts sourced from family members, who would have been physically present in Egypt, or first-hand accounts from medical authorities or non-governmental organizations in Egypt, which were missing. Numerous inconsistencies leading to credibility and plausibility questions concerning the Applicant's position as a Court Clerk in Egypt were raised by the Officer in respect of his earlier PRRA applications.

[12] The Officer considered the letter portraying the alleged incident involving the Applicant's spouse, noting that there was no corroborative evidence from objective sources and the injuries described by the treating physician do not confirm her description of how the injuries occurred, merely that they exist.

[13] Based on a review of current country conditions, the Officer found that there was insufficient objective evidence to find that the discrimination that the Applicant would potentially face in Egypt would, in cumulative effect, amount to persecution. The Officer held that there was no more than a mere possibility that the Applicant would face persecution, a risk to his life, or cruel and unusual treatment pursuant to sections 96 and 97 of the Act.

[14] The Addendum to the PRRA decision, released on October 16, 2012, followed the receipt of additional documentary evidence. The Officer held that the sole topic which was not fully addressed in the August 31, 2012, decision was evidence pertaining to the Innocence of Muslims, an anti-Islamic film released in California by a Copt. This film engendered backlash in various Muslim communities, and documentary evidence provided to the Officer suggested that Copts in Egypt were fearful of reprisals.

[15] The Officer found that the Applicant had not demonstrated a personalized risk to himself in Egypt based on the attempts to protest against the film or persecute the film's producers in the United States. The Officer concluded this based on the fact that the Applicant had failed to show objective evidence that he was involved in the production, distribution or otherwise associated with the film.

III. Standard of review

[16] The standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51-52; *Sidhu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 39; *Ram v Canada (Minister of Citizenship and Immigration)*, 2010 FC 548).

IV. Analysis

[17] Based on the reasons that follow, I allow the Applicant's application.

A. *Was the Officer's Decision Unreasonable in Failing to Consider a Risk Raised by the Applicant?*

[18] The Applicant alleges in his Memorandum of Fact and Law that the Officer failed to consider all the risks raised by the Applicant (*Thiyagarajah v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1015 at paras 13-16). I agree. The Officer's Addendum decision failed to relate the impact of the Innocence of Muslims film to Copts as a group, rather to his personalized involvement in the film or his connection to the American government. In making this argument, the Applicant cites page 2 of the Addendum, where the Officer emphasized the Applicant's lack of ties to the production and distribution of the film or ties to the American government. Citing the Addendum documentary evidence, the Applicant argues that there were examples of Copt Egyptians who were unrelated to the production of the film but were nonetheless persecuted.

[19] The Officer claims to have "carefully reviewed" the relevant portions of the Addendum submissions, including the Applicant's claims that the film would present a risk of persecution as a member of the Copt community, but that is the extent of the Officer's analysis with regard to the Applicant as a member of a group. Beyond assertions that the Applicant has provided insufficient evidence, the Officer's analysis states:

> Specifically, I do not find that the applicant has presented sufficient objective evidence to demonstrate that he was involved in the production of the film; involved in the posting of the film on web pages or on social media; or involved in the film's distribution or publicity. In addition, I do not find that the applicant has presented sufficient objective evidence to demonstrate that he has any type of direct association with the government of the United States of America, or any type of direct association with the diplomatic staff of the United States of America who are posted in the Arab Republic of Egypt.

His analysis was unreasonable based on the evidence before him.

B. *Did the Officer Err by Ignoring Country Conditions on the Evidence Before Him?*

[20] In his Memorandum of Fact and Law, the Applicant claims that the Officer made three errors in ignoring evidence before him.

[21] First, the Applicant argues that a PRRA officer is expected to analyze country condition documentation, rather than simply quote long extracts (*Ram*, above).

[22] Second, the PRRA officer is expected to discuss documentary evidence contradicting his findings (*Guzman v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 401 at paras 23-24).

[23] In his Further Memorandum of Argument, the Applicant also argues that the Officer selectively referred to documentary evidence to support his conclusion that the Applicant would face discrimination, rather than persecution, an error that renders the decision unreasonable (*Prekaj v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1047 at paras 26-31; *SRH v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1271 at paras 39-43). While acknowledging that an officer need not consider all evidence, the omission of key evidence from a decision will render it unreasonable (*Rathnavel v Canada (Minister of Citizenship and Immigration)*, 2013 FC 564 at para 25-26; *Pinto Ponce v Canada (Minister of Citizenship and Immigration)*, 2012 FC 181).

[24] Finally, a PRRA officer's conclusion is unreasonable where the documentary evidence cited actually contradicts an officer's findings (*Touma v Canada (Minister of Citizenship and Immigration)*, 2012 FC 657).

[25] It is trite law that an administrative decision-maker need not refer to every piece of evidence in its decision, but the more important that evidence is to its decision, the more likely a court will be to find that it ignored evidence if that evidence is not discussed (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paras 16-17).

[26] In this case, the Applicant provides numerous excerpts from the evidence before the Board which shows evidence of Copts suffering persecution in Egypt, evidence which contradicts the Officer's ultimate finding but was not analyzed.

[27] In particular, the Applicant notes that a definition of "Persecution" from the United Nations Handbook is omitted from the excerpts provided by the Officer in the Decision. Similarly, the Officer omitted portions of the United States Department of State 2011 Report on International Religious Freedoms and the 2012 Report of the United States Commission on International Religious Freedom, which support the claims of the Applicant by describing various physical attacks against Copts in Egypt.

[28] In this case, the Officer referred, generally, to a great deal of evidence showing instances of persecution against Coptic Christians.

[29] While the Officer considered evidence of persecution that painted a broad picture of the persecution suffered by the Copts, including instances of brutal state oppression, probative evidence on this front, fundamental to the decision, seems to have been dismissed or ignored (*Cepeda-Gutierrez*, above). This is unreasonable.

[30] Citing long excerpts without more may lead to the conclusion that the PRRA officer has not carried out a proper analysis or ignored pertinent information. This appears to be the case here with respect to the Officer's review of the documentary evidence before him. Again, this is unreasonable.

C. *Did the Officer Err by Either (A) Making a Negative Inference Based on the Absence of Evidence Which the Officer Thought "Should" Have Been Present; or (B) Dismissing the Applicant's Evidence for its Non-Compliance with Technical Rules of Evidence, Which Do Not Apply in Administrative Decision-Making?*

[31] In his Memorandum of Fact and Law, the Applicant argues that the Officer erred in dismissing the testimonial evidence on the basis of what hypothetical evidence he thought was preferable and the fact that the evidence did not conform to the rules of evidence (*Ahmadi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 812 at para 20; *Canada (Attorney General) v Jolly*, [1975] FC 216 (FCA)).

[32] With regard to hypothetical evidence, the Applicant alleges that the Officer was not allowed to dismiss evidence based on the fact that other evidence would have been more desirable (*Mui v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1020 at paras 34-36). In his Further Memorandum of Argument, the Applicant re-emphasizes this point, suggesting that the Officer failed to undertake any meaningful analysis of the written testimony, choosing instead to focus

exclusively on what was not submitted (*Zheng v Canada (Citizenship and Immigration)*, 2007 FC 974 at para 9).

[33] I agree. Moreover, the Officer seems to have a "notion" of what evidence he would like to have seen (direct from third party witnesses), but chose to disregard probative evidence before him. This includes the findings in the Report of the United States Commission on International Religious Freedom, which refers to the systematic, ongoing and egregious violation of religious freedom in Egypt, including Coptic Christians.

[34] Given my reasons above, I need not deal with the issue concerning the technical rules of evidence.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Applicant's application is allowed and referred back to a differently constituted Board for reconsideration;

2. No question is to be certified; and

3. Given no submissions were made as to costs, no costs are awarded.

"Michael D. Manson"
Judge

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10486-12
STYLE OF CAUSE:	Botros v. MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 9, 2013
REASONS FOR JUDGMENT AND JUDGMENT BY:	MANSON J.
DATED:	October 16, 2013

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