Federal Court Cour fédérale

Date: 20150105

Docket: IMM-2500-14

Citation: 2015 FC 6

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 5, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

JOSEPH REZKO
SAYDI JAJJO
MERIAM REZKO

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by Officer C. Palmer [Officer] of Citizenship and Immigration Canada [CIC] dated February 6, 2014, rejecting the applicants' application for a pre-removal risk assessment [PRRA] on the ground that they had not demonstrated more than a mere possibility of persecution or established, on a balance of

probabilities, that they would face a risk to their life or a risk of torture or cruel and unusual treatment if returned to Syria.

[2] The applicants left their country in 2010. Their claim for refugee protection was rejected on December 12, 2011 (leave refused by this Court on April 11, 2012). In March 2012, the applicants submitted a PRRA application, which was refused on June 7, 2013, and which resulted in an application for leave and judicial review. The applicants were represented at the time by Luc R. Desmarais [former counsel]. On December 13, 2013, the former counsel discontinued the review application after reaching an agreement with the respondent that there would be a new review of the PRRA application. In fact, on December 20, 2013, a CIC officer advised the former counsel that the applicants had until January 12, 2014, to submit any new documentation or information to add to their PRRA application. On February 6, 2014, the Officer refused the PRRA application.

[3] The applicants are now accusing their former counsel of professional negligence because they say they knew nothing about the settlement, the discontinuance or the opportunity to submit new evidence. In addition, they say that their former counsel was not acting as a designated representative of the applicants in the PRRA application; rather, it was the immigration consultant who completed the PRRA application. In the alternative, they submit that the impugned decision was unreasonable.

[4] The application for judicial review must fail.

[5] Exceptionally, this Court may consider that counsel's failure or negligence can result in a breach of procedural fairness and justify a new hearing before an administrative decision-maker, but only if the fault alleged falls within professional incompetence and the outcome of the case would have been different had it not been for counsel's wrongful conduct (*R v GDB*, 2000 SCC 22 at paras 26-29; *Yang v Canada (Citizenship and Immigration)*, 2008 FC 269 at paras 19-24; *Kaur v Canada (Citizenship and Immigration)*, 2014 FC 505 at paras 23-24).

[6] Moreover, this Court has developed the *Procedural Protocol re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases Before the Federal Court* (March 7, 2014, Notice to the Legal Profession, online: Federal Court http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Notices/procedural-protocol_7mar2014) [*Procedural Protocol*]. Under this protocol, current counsel must notify the former counsel in writing with sufficient details of the allegations of incompetence or negligence against him or her and must give the former counsel seven days to respond, in order to determine whether the allegations are founded even before filing and serving the application record. In addition, if leave is granted in the case, current counsel must inform the former counsel, who may make a motion for leave to intervene.

[7] In this case, because the *Procedural Protocol* was not followed, the only information the Court has regarding the conduct of the applicants' former counsel consists of general allegations in the principal applicant's affidavit. The former counsel did not receive notice, he did not respond to the allegations against him, and he did not ask to intervene. The Court therefore does not have the benefit of the former counsel's representations.

[8] In the principal applicant's affidavit, he indicates only that the former counsel did not advise them of the discontinuance or the opportunity to submit new evidence. However, the principal applicant does not indicate that he was following his own case or that he himself had tried to contact his lawyer in the period between the filing of the application for judicial review and the receipt of the PRRA decision. In addition, the applicants now submit that they were prejudiced, referring to various passages of the impugned decision that mention the lack of additional evidence, but the principal applicant's affidavit, memorandum and supplementary memorandum do not identify the nature of this new evidence or how its production could lead to a different result.

[9] The applicants' general allegations are not sufficient in this case. The applicants did not follow the *Procedural Protocol*, which means that the Court does not have the former counsel's representations. Moreover, the applicants have not shown that the former counsel's conduct prejudiced them. The Court still does not know what the applicants' real intentions are. However, they have new counsel, even though he did not find it appropriate to request an extension of time to submit a new affidavit or to ask that the hearing be adjourned so that the former counsel could be involved (if only to confirm that these clients had not filed a complaint with the Barreau du Québec against their former counsel). Accordingly, the Court is unable to find that the former counsel's actions resulted in a breach of procedural fairness that would justify setting aside the impugned decision.

[10] The applicants also submit that they designated Mr. Raed Makho [consultant] to represent them in dealings with CIC regarding the PRRA application (see forms IMM 5476

dated February 18, 2013). They contend that all communications between CIC and the applicants had to go through the consultant, not the former counsel. There is no indication that the applicants changed or withdrew the consultant's authorization. The fact that the applicants instructed Mr. Desmarais to represent them in this Court does not imply that the applicants had also instructed him to represent them in dealings with the CIC.

[11] I concur with the respondent that CIC did not act improperly in the circumstances. As a result of the exchange of correspondence with Mr. Desmarais in December 2013 after the discontinuance—he did not ask the CIC to redirect the correspondence to the consultant—CIC could reasonably believe that he was acting as the applicants' representative. Moreover, I am also not satisfied that CIC's Operational Manual *Inland Processing* at Chapter 9 *Use of Representatives* [IP 9] is determinative because there was a final decision on the PRRA application for which the consultant was designated. Based on the apparent agency doctrine, everything indicated with respect to third parties, including CIC, that the applicants' former counsel was acting with the consent of the applicants who had authorized him to discontinue the review application (see for example *Wandlyn Motels Limited et al v Commerce General Insurance Co et al*, [1970] SCR 992, 1970 CanLII 162 (SCC) at pp 1003-1004; *Bois Expansion inc c Yaraghi*, 2008 QCCA 739 at para 27). The former counsel represented the applicants when the application filed with this Court was settled, and CIC could therefore send the former counsel the letter indicating that the applicants had until a certain date to file new evidence because this was a communication directly related to the settlement reached with the respondent.

[12] On the merits, the applicants have not shown that the decision was unreasonable. In the impugned decision, the Officer conducted a complete and well reasoned analysis of the evidence submitted by the applicants in their PRRA application in March 2012 as well as the more recent objective evidence. The Officer extensively assessed the current conditions in Syria, generally and more specifically for Christians, and her analysis shows that she considered all the evidence, including the evidence supporting the applicants' claims The Officer concluded that, based on the evidence before her, Christians in Syria do not face persecution throughout the country but that Christians face a risk under paragraph 97(1)(*b*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in the city of Homs, while internal flight alternatives are available in Damas, Alep and other regions. This was an acceptable outcome given the applicable law and the evidence before the Officer.

[13] Since the applicants have not established that there was a breach of procedural fairness or that the decision was unreasonable, the application for judicial review will be dismissed. Counsel agree that no question of general importance was raised in this case and, therefore, the Court will not certify a question.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Luc Martineau"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2500-14
STYLE OF CAUSE:	JOSEPH REZKO, SAYDI JAJJO, MERIAM REZKO v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	DECEMBER 18, 2014
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	JANUARY 5, 2015

APPEARANCES:

Rami Kaplo	FOR THE APPLICANTS
Isabelle Brochu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet Kaplo Montréal, Quebec	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT