Federal Court

Cour fédérale

Date: 20160331

Docket: IMM-1983-15

Citation: 2016 FC 366

Ottawa, Ontario, March 31, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

AZEB GEBREMEDHIN ASFAW

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a Citizenship and Immigration Services Assistant [Services Assistant] who refused to process the applicant's Pre-Removal Risk Assessment [PRRA] application because it was submitted before the applicant had received a notification of eligibility to apply for a PRRA pursuant to subsection 160(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The facts of this case are unusual in that the applicant has sought and received sanctuary in a church.

[3] The applicant is a citizen of Ethiopia. She arrived in Canada on March 1, 2013, and made a refugee claim. She was issued a Departure Order that same day. The respondent took the position at the hearing of this application that she was not subject to an enforceable removal order, but resiled from that position following the hearing when, with leave of the Court, the applicant provided a copy of the Departure Order.

[4] The refugee claim was denied on April 30, 2013, largely due to concerns about the applicant's credibility. The applicant was denied leave to review the RPD's decision on December 11, 2013.

[5] The Canada Border Services Agency [CBSA] sent the applicant a letter dated January 16, 2014, advising her that she was "subject to a removal order that is in force" and calling her in for an interview on January 28, 2014. On that date she was provided with a Call-In Notice which provided that she was to attend an interview on February 7, 2014, and was to provide a ticket for her return to Ethiopia on or before February 28, 2014. She provided no such ticket. She was subsequently provided with a second Call-In Notice on February 12, 2014, and told to attend an interview on March 3, 2014, for a "pre-removal interview." At the meeting on February 12, 2014, the applicant was issued with a Direction to Report for removal on March 4, 2014. The applicant attests that "Rather than attend at the airport to be deported to Ethiopia, where I fear for

my life and safety, I accepted an invitation to take Sanctuary in a church in Toronto, where I remain to this date."

[6] As a consequence of the 12-month PRRA bar in subsection 112(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the applicant had no right to a PRRA at the time she was first to be removed from Canada. She became eligible for a PRRA on April 30, 2014. Since then she has been unable to apply for a PRRA because she has not been issued a notification of PRRA eligibility – a requirement (subject to limited exceptions) provided for in section 160 of the Regulations, which provides as follows:

160 (1) Subject to subsection (2) and for the purposes of subsection 112(1) of the Act, a person may apply for protection after they are given notification to that effect by the Department	160 (1) Sous réserve du paragraphe (2), pour l'application du paragraphe 112(1) de la Loi, toute personne peut faire une demande de protection après avoir reçu du ministère un avis à cet effet.
(2) A person described in section 165 or 166 may apply for protection in accordance with that section without being given notification to that effect by the Department.	(2) La personne visée aux articles 165 ou 166 peut faire une demande de protection conformément à ces articles sans avoir reçu du ministère un avis à cet effet.
(3) Notification shall be given	(3) L'avis est donné
(a) in the case of a person who is subject to a removal order that is in force, before removal from Canada; and	a) dans le cas de la personne visée par une mesure de renvoi ayant pris effet, avant son renvoi du Canada;
(b) in the case of a person named in a certificate described in subsection 77(1) of the Act, when the summary of	b) dans le cas de la personne nommée dans le certificat visé au paragraphe 77(1) de la Loi, lorsque le résumé de

information and other evidence is filed under subsection 77(2) of the Act.	la preuve est déposé en application du paragraphe 77(2) de la Loi.
(4) Notification is given	(4) L'avis est donné :
(a) when the person is given the application for protection form by hand; or	a) soit sur remise en personne du formulaire de demande de protection;
(b) if the application for protection form is sent by mail, seven days after the day on which it was sent to the person at the last address provided by them to the Department.	b) soit à l'expiration d'un délai de sept jours suivant l'envoi par courrier du formulaire de demande de protection à la dernière adresse fournie au ministère par la personne.

[7] On April 8, 2015, the applicant's counsel sent a letter to Citizenship and Immigration Canada's Backlog Reduction Office, attaching a PRRA application. The letter explained that the applicant was subject to a removal order, that she had declined to appear for removal, and that she had instead sought sanctuary in a Toronto-area church. The letter went on to state that:

> We are aware that s. 160(1) of the Regulations states that "a person may apply for protection after they are given notification to that effect by the Department," and that pursuant to s. 160(4) notification can be done either in person or by mail. To date, to our knowledge, Ms. Asfaw has not received formal notification of her PRRA eligibility. Nevertheless, it is clear that she is in fact eligible. We therefore request that you either:
>
> (a) Mail us, as soon as possible, written notification of PRRA eligibility pursuant to s. 160(4) of the Regulations, and thereupon process the attached PRRA application; or
>
> (b) Use the discretion available to you under s. 25 of the IRPA to waive the notification requirement of s. 160(1) of the Regulations, on humanitarian and compassionate grounds taking into account the submissions and

> evidence included in the attached PRRA application, especially that relating to Ms. Asfaw's fear of harm in Ethiopia, her past persecution, her resulting psychological state, the fact that she has the support of the Sanctuary community.

[8] In returning the PRRA application, the Services Assistant wrote:

> In response to your application received on 08 April 2015, we wish to advise you that your application cannot be processed as you are ineligible to apply for PRRA at this time. PRRA must be initiated by the Canada Border Services Agency (CBSA) in order for you to be eligible. Your application has been returned for your records.

[9] The only issue in this application is whether the Services Assistant's decision was reasonable.

[10] The applicant submits that the Services Assistant acted unfairly by refusing to consider her request for either a notification of PRRA eligibility or an exemption from the notification requirement.

[11] It is clear that the applicant is subject to the notification requirement. She does not qualify for the exception to that requirement. She is not a person described in section 165 because that section only applies to individuals who have already been given a notification under section 160. She is not a person described in section 166 because her removal order was conditional when first issued because she was a refugee protection claimant.

[12] The applicant takes exception to the statement in the decision that a "PRRA must be initiated by the Canada Border Services Agency (CBSA) in order for you to be eligible." She

notes that subsection 160(1) of the Regulations stipulates that the PRRA application may be made after one is "given notification to that effect by the Department" and "Department" is defined in section 2 as "the Department of Citizenship and Immigration" and not as the Canada Border Services Agency.

[13] The respondent notes that the relevant enforcement manual (ENF 10 Removals) specifies that it is a CBSA officer who initiates the PRRA process by providing the notification specified in subsection 160(1) of the Regulations close in time to the removal being made.

[14] Whether the Minister has delegated the authority to initiate the PRRA process to CBSA was not evident in the record before the Court, and so a Direction was issued to advise the Court whether such a delegation of authority had been made. In response, counsel advised the Court that "there is no direct delegated authority contained in the instrument regarding the issuance of a PRRA notice." Regardless, I have concluded that it makes no difference to the issues before me whether the notification was to be issued by the respondent or by CBSA. The fact is that no such notification has been issued by anyone.

[15] Paragraph 160(3)(a) of the Regulations provides that "notification shall be given … before removal from Canada." In the case before the Court, there is no suggestion that the applicant is to be soon removed from Canada such that the notification requirement comes into effect. I expect that the authorities wish her to be removed from Canada at some time – but there is no imminent removal planned, nor is it likely unless she leaves sanctuary or the Minister takes steps to forcibly remove her from the church where she now resides.

[16] Perhaps more importantly, a PRRA *should not* be conducted immediately, because its effectiveness in safeguarding the applicant's right of *non-refoulement* depends on it being conducted just prior to removal, a point made by this Court in *Revich v Canada (Minister of Citizenship and Immigration)*, 2005 FC 852 at paras 15-16:

> …the purpose of the PRRA is to prevent a foreign national whose refugee claim has already been rejected from being required to return to his country of residence or citizenship when the situation has changed in that country and he would be exposed to a risk of persecution.
>
> In my opinion, if this review is to be effective and consistent with Parliament's intention when creating it, the PRRA must coincide as closely as possible with the person's departure from the country.

[17] The applicant in her counsel's letter of April 8, 2015, requested that the Department "mail us, as soon as possible, written notification of PRRA eligibility pursuant to s. 160(4) of the Regulations, and thereupon process the attached PRRA application" [or] "use the discretion available to you under s. 25 of the IRPA to waive the notification requirement of s. 160(1) of the Regulations."

[18] I agree with the respondent that section 25 of the Act is limited to applications for permanent resident status. It has no application to the PRRA process.

[19] Accordingly, even if the Services Assistant erred in taking the position that the responsibility to issue a notification was with CBSA, no notification had issued nor was there reason to think it ought to issue when requested. Accordingly, the decision is reasonable as this applicant has no automatic right to a PRRA nor does she have a right to require a notification be issued to permit the PRRA at this time.

[20] If the applicant wishes to have the benefit of a PRRA, then she must be close to removal and that is unlikely to happen so long as she remains in the church. It appears to the Court that if she wishes to have the benefit of a PRRA then she will have to leave sanctuary.

[21] No question for certification arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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