Federal Court Cour fédérale

Date: 20181205

Docket: IMM-1592-18

Citation: 2018 FC 1220

Ottawa, Ontario, December 5, 2018

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

NELSON RAUL GAMEZ BARRIENTOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [the IRPA] of a pre-removal risk assessment [PRRA] decision dated February 23, 2018 [the Decision]. In this PRRA, a Senior Immigration Officer [the Officer] determined that the Applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if removed to Honduras, on the grounds that there was insufficient objectively identifiable evidence of risk.

[2] For the reasons that follow, the application is dismissed.

II. Facts

[3] The Applicant is a citizen of Honduras seeking refugee protection in Canada pursuant to section 96 and 97(1) of the IRPA. The Applicant alleges that he is at risk of torture or cruel and unusual treatment or punishment in Honduras for, among several reasons, refusing to cooperate with criminal gangs.

[4] The Applicant's problems with the gang MS 13 began when he was a teenager in Tegucigalpa in 1999. The Applicant claims that members of the MS 13 extorted money from people by way of demanding pass fees for people going by on the street. The Applicant states that he could not pay the fees and tried his best to avoid them and make excuses, however, eventually they demanded that he join them so that he and his family would be protected by them and exempt from paying the fees. The Applicant put off his membership by telling members of the gang that he was not ready because his parents would not be happy. The Applicant was stalling because he feared the severe initiation rituals required to join the gang.

[5] The Applicant was deported three times between his first arrival in the United States and the last time that he was deported in 2011. The Applicant maintains that the first time he was deported back to Honduras from the United States; he went to live in El Porvenir, where he had family. The Applicant believed this location would be safe, but within a month of his arrival his relatives informed him that the gang members were asking about him so he again fled to the United States. During his time in the United States, the Applicant was charged twice with drug-

related offences: once in 2002 and once in 2008, after which he served a six-year sentence for conspiracy to traffic controlled substance. During his time in detention, the Applicant learned about the death of his cousin, Milton Medardo Martinez Cruz, who had joined MS 13. The Applicant believes that his cousin was murdered by members of his gang or a rival gang.

[6] In 2012, the Applicant met a woman in Honduras and began living with her. When the woman's family found out about the relationship, they demanded the couple get married. The Applicant agreed, due to his fear of the woman's father, who he claims was influential and dangerous.

[7] In May 2012, while the Applicant was playing soccer he heard shooting nearby and someone calling his name. Fearing that MS 13 was once again looking for him, he ran and hid in the mountains nearby. Shortly after the incident, the Applicant received threats from his wife's family for abandoning her. The Applicant maintains that he had to pay them money to arrange for a divorce. As a result, the Applicant fled Honduras again.

[8] On July 20, 2012, the Applicant arrived in Canada and claimed refugee protection three days later.

[9] On September 25, 2012, the Applicant learned that his father was attacked in Honduras, while riding his motorcycle with a passenger. The Applicant states that his father was run off the road deliberately and is now permanently disabled. The Applicant's relatives claim that his father

was being chased and attacked by a gang member because they thought the Applicant was the passenger travelling with him on the motorcycle.

[10] On May 1, 2017, the Applicant's claim was heard before a panel of the Refugee Protection Division [RPD] of the Immigration and Refugee Board . The panel rendered an oral decision that same day, concluding that the Applicant was excluded from refugee protection pursuant to Article 1F(b) of the schedule of the Act, as there were serious reasons to consider that he committed a serious non-political crime in the United States prior to coming to Canada. The Applicant subsequently submitted a PRRA application.

[11] On February 23, 2018 a Senior Immigration Officer rejected the PRRA, as the Applicant was found not to be at risk of torture or cruel and unusual punishment or treatment should he be returned to Honduras on the grounds that there was insufficient objectively verifiable evidence of risk.

III. Issues

[12] The Applicant raises two issues in this application:

1. Was the Officer's decision refusing to grant the Applicant an oral hearing reasonable?
2. Was the Officer's assessment that the evidence was insufficient unreasonable?

IV. Standard of Review

[13] With regard to the first issue, I recently reviewed the disagreement in the jurisprudence and after analyzing the issue at some length and based on the past jurisprudence concluded that

the issue of whether to hold a hearing should be reviewed on the basis of a deferential standard of reasonableness: *Mavhiko v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1066, paras 14 to 20. Neither standard would affect the outcome of this decision.

[14] Inasmuch as the assessment of evidence and inferences to be drawn therefrom are at the core of the expertise of the PRRA officers, the standard of review with respect to the officer's findings that the evidence is insufficient to establish the alleged facts is reviewed on the highly deferential standard of reasonableness: *Zdraviak v Canada* (*Citizenship and Immigration*), 2017 FC 305 at paras 6-7, *Dunsmuir v New-Brunswick*, 2008, SCC 9 at para 54. The Court should not substitute its opinion on the assessment of the probative value of the new evidence except in the clearest of error. *Njeri v. Canada (Citizenship and Immigration)*, 2009 FC 291 at para. 11

V. Analysis

A. *Did the officer unreasonably adopt credibility findings made by the RPD? If so, did the Officer err in failing to convene an oral hearing?*

[15] The Applicant argues that the Officer adopted the negative credibility findings made by the RPD as part of his rationale. I am not convinced by the Applicant's contention that credibility played any role in the decision. The Officer set out the reasons of the RPD in some detail, but the reasons were exceptionally thorough and well-reasoned in all respects, which is a factor supporting the reasonableness of the decision given the detail provided. Otherwise, the Officer's decision rejecting the application is clearly based on the insufficiency of the evidence as repeated continually throughout the reasons and in the summary paragraph. There is no basis to argue that a hearing ought to have been convened as credibility findings played no role in the decision.

B. *Was the Officer's assessment of the evidence reasonable?*

[16] The Applicant argues that the Officer erred in assigning minimal weight to his father's medical certificate and his cousin's death certificate to prove risk. He also maintains that the Officer erred in discrediting the medical evidence because it does not make mention of the passenger. Medical evidence regarding the nature of the injuries of a person is generally irrelevant to establish risk. These documents were limited in their utility to the Applicant's case: these documents corroborated that the Applicant's father was involved in an accident and that his cousin died, however, nothing in their contents allowed the Officer to draw a connection between these incidents and the Applicant's alleged agents of persecution. The Applicant has not established that the Officer's conclusions in respect of the medical certificate were unreasonable.

[17] With respect to the assessment of the expert evidence, I have previously held that as the expertise of Officers extends to the assessment of country conditions documentation, the admission of expert evidence on this subject is not required because it tends to usurp the functions of the Officer and should be admitted only when necessary in the sense that it provides information which is likely to be outside the experience or knowledge of the decision-maker: *Fadiga v Canada*, 2016 FC 1157 at para 32. Nevertheless, the PRRA Officer considered and gave positive weight to the opinions set out in the statements by Dawn Paley and Dr. Jon Home Carter, as well as several independent country condition documents for Honduras. These documents could only speak to the objective basis for his fear of persecution, and read as a whole, this evidence did not rebut the presumption of state protection.

[18] When considered with the other state reports submitted by the Applicant, it was open to the Officer to conclude that the Applicant would could avail himself of the protection of the state. . The Officer's finding that the Applicant could have reported the incident to Honduran authorities cannot be said to be a case of the clearest error. The Court is being asked to reweigh these assessments which it cannot do. Failing to seek state protection is dispositive of the case.

[19] There was no outright rejection of evidence of the witnesses' sworn statements. The Officer considered them and gave them little weight as they were not provided by unbiased, disinterested sources, nor were the statements supported by sufficient or any corroborating objective evidence. This Court has held that evidence from a witness with a personal interest in the case may be examined for its weight because such evidence typically requires corroboration in order to have much probative value: *Ferguson v Canada*, 2008 FC 1067. The PRRA officer assessed the probative value of the evidence and deference must be afforded these assessments given that it is not the function of this Court to reweigh the evidence, including its sufficiency, unless wholly unreasonable. I do not find that the Applicant has established this to be the case in this matter.

VI. Conclusion

[20] For the foregoing reasons, I conclude that the decision of the Officer was reasonable. Accordingly, the application must be dismissed. There are no questions for certification.

JUDGMENT in IMM-1592-18

THIS COURT'S JUDGMENT IS THAT the application is dismissed and there are no questions for certification.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1592-18
STYLE OF CAUSE:	NELSON RAUL GAMEZ BARRIENTOS v. MCI
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	SEPTEMBER 24, 2018
JUDGMENT AND REASONS:	ANNIS J.
DATED:	DECEMBER 5, 2018

APPEARANCES:

Douglas Cannon	FOR THE APPLICANT
Helen Park	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cannon & Associates Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada	FOR THE RESPONDENT