Federal Court  Cour fédérale

Date: 20181218

Dockets: IMM-2314-18
IMM-2317-18

Citation: 2018 FC 1276

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, December 18, 2018

PRESENT: The Honourable Madam Justice Roussel

Docket: IMM-2314-18

BETWEEN:

ROSE CANIE PETIT FRÈRE JOSEPH

Female applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-2317-18

BETWEEN:

JACQUES ROBINSON PETIT FRÈRE

Male applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Context

[1] The applicants, Rose Canie Petit Frère Joseph and her husband, Jacques Robinson Petit Frère, are citizens of Haiti. On August 23, 2017, they entered Canada from the United States and filed a first claim for refugee protection. They were accompanied by their three-year-old daughter, who is a U.S. citizen. Their refugee protection claim was deemed ineligible, and they were issued a removal order. They returned to the United States.

[2] On August 26, 2017, the female applicant and her daughter returned to Canada without authorization to return. A deportation order was made against them on August 30, 2017. Faced with this removal order, they submitted an application for a pre-removal risk assessment [PRRA] on September 28, 2017.

[3] On October 12, 2017, the male applicant joined his wife and daughter in Canada by crossing the border illegally. An exclusion order was made against him a few days later. On November 6, 2017, he also submitted a PRRA application. In their PRRA applications, the applicants allege that they received death threats and that they were the victims of targeted violence because of the political affiliations of the applicant and his father with the Fanmi Lavalas [FL] party.

[4] On March 12, 2018, a PRRA officer rejected both applications. He found that the evidence submitted by the applicants was insufficient to establish that they were persons at risk

within the meaning of sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[5] The applicants are seeking judicial review of both these decisions. Their young daughter is not a party to the application. Given that the cases raise the same risk and that the PRRA officer's decisions are almost identical, a joinder of the cases was ordered on October 10, 2018. The following reasons apply to both files and, for convenience, refer to the decisions as if there were only one.

[6] The applicants submit that the PRRA officer's decision is unreasonable. They criticize the PRRA officer for erring in his assessment of their personalized risk. They also criticize him for erring in his decision to give little weight to two pieces of evidence on the grounds that one of the two documents was partially illegible and the other contained sentences that had not been translated. The applicants submit that the PRRA officer should have allowed them to correct these shortcomings and that this failure was a breach of procedural fairness.

II. Analysis

[7] It is trite law that a PRRA officer's decision, including his or her assessment of the evidence, involves questions of mixed facts and law, and is reviewable on a standard of reasonableness (*Gari v Canada (Citizenship and Immigration)*, 2018 FC 660 at para 8 [*Gari*]; *Shariaty v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 986 at para 25 [*Shariaty*]; *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at para 19; *Ormankaya v Canada (Citizenship and Immigration)*, 2010 FC 1089 at para 23 [*Ormankaya*]).

[8] When the standard of reasonableness applies, the Court's role is to determine whether the decision falls within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law". As long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility", it is not open to this Court to substitute its own preferred outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[9] Regarding the alleged breach of procedural fairness, the Federal Court of Appeal recently clarified that questions of procedural fairness do not necessarily lend themselves to a standard of review analysis. The Court's role is rather to determine whether the procedure was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Dunsmuir* at para 79).

[10] The Court finds that there is no reason to intervene here.

[11] Contrary to the applicants' assertions, it is not because the PRRA officer checked "*No*" to "*[t]he risk is personal, or [o]ther individuals in a similar situation share the same risk*" in the table entitled "*6. Common Considerations*" in the "*Nature of the Risk*" section at page 4 of the decision that one can conclude that he did not assess the applicants' personalized risk.

[12] A review of the decision, read as a whole, reveals that the PRRA officer analyzed and assessed the applicants' personalized risk. He notes the allegations of risk made by the applicants, examines the objective evidence and the evidence submitted by the applicants, and

concludes that the applicants did not establish a nexus between the political affiliations of the male applicant and his father to the FL party and the events the applicants claim to have experienced. Given the profile presented by the applicants and the evidence on the record, it was reasonable for the PRRA officer to draw this conclusion. While the applicants may not agree with the PRRA officer's findings, it is not up to this Court to reassess and reweigh the evidence to reach a conclusion that is favourable to the applicants (*Khosa* at para 59).

[13] As for the applicants' argument that the PRRA officer breached the rules of procedural fairness, the Court cannot agree. First, it was reasonable for the PRRA officer to give limited weight to the medical certificate produced by the applicants because it was partially illegible. Even though some handwritten words referring to medication and an appointment can be made out, other words are illegible. The Court is not satisfied that the PRAA officer was obliged, in the circumstances, to communicate with the applicants to ask them to obtain a more comprehensible version from the doctor. In any event, the Court finds that the applicants did not establish that the medical certificate establishes the existence of a personalized risk.

[14] The Court is also not satisfied that the PRRA officer was obliged to ask the applicants to produce a translation of the excerpts in Creole in the report dated July 11, 2016. The applicants bore the burden of providing the PRRA officer with all the evidence required to support their allegations. The PRRA officer was only obliged to consider the evidence before him. He was not required to ask the applicants for better or additional evidence (*Gari* at para 10; *Shariaty* at para 31; *Ormankaya* at paras 31–32). This includes the obligation to produce the excerpts that

were not in either of the two official languages. Guide 5523 – Applying for a Pre-Removal Risk Assessment provides the following guideline in this regard:

> Your written submissions and any supporting documentary evidence must be provided in either English or French. If you wish to submit any documents in another language, you must also provide an English or French translation of the document, and a translator's declaration. A translator's declaration must include the translator's name, the original language of the translated document and a statement signed by the translator that the translation is accurate. Documents submitted in a language other than English or French without a translation will not be considered.
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> [Emphasis added in the PRRA officer's decision.]

[15] At the hearing, the applicants attempted to adduce before this Court a translation of the excerpts in Creole. They submit that the excerpts in question establish that the threats received by the female applicant's brother had been proffered as a result of the male applicant's membership in the FL political party and that they have a nexus with the death of the male applicant's father. For a variety of reasons, the Court cannot consider this evidence. First, it is well established that a decision under judicial review must be considered on the basis of the documents before the original decision-maker. The translation of the excerpts was not before PRRA officer, and the applicants failed to establish that any of the exceptions to the general rule against this Court receiving evidence in an application for judicial review applied in this case (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19−20). Moreover, even if the applicants had demonstrated that the document they sought to adduce fell under one of these exceptions, the translation is not dated or signed, or accompanied by an affidavit.

[16] In conclusion, the Court finds that the PRRA officer's decision falls within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" and that it is justified in a manner that meets the test of transparency and intelligibility of the decision-making process (*Dunsmuir* at para 47).

[17] The applications for judicial review are dismissed. No question of general importance was submitted for certification and the Court feels that this case does not give rise to one.

JUDGMENT in dockets IMM-2314-18 and IMM-2317-18

THE COURT ORDERS AND ADJUDGES that:

1. The applications for judicial review are dismissed;

2. The Minister of Public Safety and Emergency Preparedness is removed from the style of cause;

3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
This 10th day of January 2019.

Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2314-18 AND IMM-2317-18
DOCKET:	IMM-2314-18
STYLE OF CAUSE:	ROSE CANIE PETIT FRÈRE JOSEPH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-2317-18
STYLE OF CAUSE:	JACQUES ROBINSON PETIT FRÈRE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	DECEMBER 12, 2018
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	DECEMBER 18, 2018

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