Federal Court | Cour fédérale

CANADA

Date: 20070125

Docket: IMM-2639-06

Citation: 2007 FC 83

Ottawa, Ontario, the 25th day of January 2007

Present: The Honourable Mr. Justice Beaudry

BETWEEN:

MOHAMED MAOULOUD AHMED SALEM OULD

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision dated April 10, 2006, of Olivier Perreault, Immigration Officer, Department of Citizenship and Immigration Canada (the Tribunal), rejecting a pre-removal risk assessment (PRRA) application.

I. Issues

[2] This case raises several issues, which may be summarized as follows:

(a) Did the Tribunal err in its assessment of the evidence and risks in concluding that the documents submitted by the applicant did not constitute new evidence within the meaning of paragraph 113(*a*) of the Act?

(b) Did the Tribunal err in concluding that the risk identified by the applicant was not a personal risk?

(c) Did the Tribunal err in taking into consideration for the purposes of its analysis the change of government in Mauritania?

(d) Did the Tribunal err in law in depriving the applicant of the right to be heard pursuant to paragraph 113(*b*) of the Act?

[3] The answer to each of these five questions is negative. Accordingly, this application for judicial review will be dismissed for the following reasons.

II. Background

[4] Born into a family of slaves in Mauritania, the applicant arrived in Canada on July 25, 2002, and claimed refugee protection after having abandoned an asylum claim in the United States. The applicant had arrived in the United States on March 4, 2000, with a tourist visa, and waited four months before claiming refugee status.

[5] This delay and the numerous credibility issues concerning omissions and contradictions in his narrative constitute the basis on which his initial claim in Canada was rejected. On October 1, 2004, Mr. Justice Yvon Pinard dismissed the application for judicial review of this decision.

[6] On January 20, 2005, the applicant submitted a request for exemption from the visa requirement for humanitarian and compassionate considerations (H&C). On June 9 of that same year, he made a PRRA application. In support of this application, he submitted 19 documents as new evidence to support his allegations of risks to which he would be subjected if he were to return to his country:

1. Article from Liberté-Égalité-Humanité: "Esclavage et propagande défensive en Mauritanie : Note de synthèse" [slavery and defensive propaganda in Mauritania: Abstract] (2005);

2. Article by Convergence Républicaine pour l'Instauration de la Démocratie en Mauritanie (CRIDEM): "What's At Stake! Help Free the Mauritania Three" (March 14, 2005);

3. Press release from CRIDEM: "*Enlèvement d'opposants mauritaniens en Gambie*" [abduction of Mauritanian opponents in Gambia] (June 2, 2005);

4. Article by CRIDEM: "Le point sur les arrestation [sic] en Mauritanie" [update on arrests in Mauritania] (May 19, 2005);

5. Article from *Walfadjiri*: "Mauritanie : Une esclave délivrée de ses maîtres" [slave freed from her masters] (March 16, 2005);

6. Article from the *BBC News*: "Slavery: Mauritania's best kept secret" (December 13, 2004);

7. Article from *IRIN News*: "Mauritanie : Condamnation à perpétuité, mais pas de peine capitale pour les putschistes" [Mauritania: life sentence, but no death penalty for putschists] (February 4, 2005);

8. Article from *IRIN News*: "Mauritanie : Un ancien maire placé en détention secrète" [former mayor in secret detention] (January 12, 2005);

9. Article from *Le Monde*: "Accrochage meurtrier dans le Nord-Est de la Mauritanie" [murderous skirmish in north-eastern Mauritania] (June 5, 2005);

10. Declaration of the Fondation mauritanienne pour la démocratie: "Moratoire International sur les violations perpétuelles des droits de

l'Homme en Mauritanie" [international moratorium on ongoing violations of human rights in Mauritania] (June 5, 2005);

11. Article by Amnesty International: "Maurianie [sic] – Vague d'arrestation d'opposants politiques et d'imams" (May 18, 2003); [English version: "Mauritania: Wave of arrests of political opponents and imams", May 12, 2003];

12. Press release from Amnesty International: *AFR 38/007/00* (Craintes pour la sécurité/mauvais traitements) (November 28, 2000) [English version: "Mauritania: Further information on Fear for safety/ill-treatment", November 28, 2000];

13. "Acknowledgement of Receipt" from the Department of Immigration and Naturalisation (July 8, 2000);

14. *Résumé de jugement ou arrêt* [summary of decision/judgment] of the justice department of Mauritania (July 23, 2003);

15. Membership card of the Union des Forces Démocratiques (UFD) (February 1, 1992);

16. Letter from Liberté-Egalité-Humanité (November 3, 2003);

17. Letter from the Harateen Institute for Research and Development (October 23, 2003);

18. Letter from SOS Esclaves [SOS Slaves] (January 5, 2005);

19. Letter from the Mauritanian Foundation for Democracy (January 10, 2005).

[7] On April 10, 2006, the Tribunal rendered two negative decisions in connection with the H&C and PRRA applications. On August 24, 2004, Mr. Justice Simon Noël dismissed the application for leave and for judicial review with regard to the H&C decision. The present application for judicial review concerns the decision rejecting the PRRA application.

III. Impugned decision

[8] The Tribunal concluded that the applicant was not at risk of being tortured or persecuted and that his life would not be in danger if he returned to Mauritania. The risks invoked had already been ruled to be unfounded in connection with the initial claim, and the applicant did not submit anything new that might warrant a favourable decision.

[9] As far as the new evidence is concerned (exhibits 1 to 19, *supra*), the Tribunal declared that they do not meet the requirements of paragraph 113(*a*) of the Act, because this evidence predates the decision of the Immigration and Refugee Board (IRB). However, it should be noted that exhibits 16 and 17 are dated later than this decision.

[10] With regard to the evidence dated before the IRB decision, that is, exhibits 1 to 10, 18 and 19, the decision-maker was of the opinion that this was not new evidence, because the applicant could have obtained it and filed it before the IRB hearing.

[11] As far as documents 18 and 19 are concerned, the Tribunal stated the following:

> [TRANSLATION]
> . . . This evidence had not been adduced previously for the simple reason that the applicant was of the opinion that because he held a UFD card, he did not have to submit any other evidence of his political activities at his hearing before the IRB.

IV. Relevant legislation

[12] Section 113 of the Act reads as follows:

Consideration of application 113. Consideration of an application for protection shall be as follows:	**Examen de la demande** 113. Il est disposé de la demande comme il suit :
(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	*b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

[13] Sections 161 and 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, specify the factors to be considered in applying paragraph 113(*b*).

Submissions 161. (1) A person applying for protection may make written submissions in support of their application and for that purpose may be assisted, at their own expense, by a barrister or solicitor or other counsel.	**Observations** 161. (1) Le demandeur peut présenter des observations écrites pour étayer sa demande de protection et peut, à cette fin, être assisté, à ses frais, par un avocat ou un autre conseil.
New evidence (2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(*a*) of the Act and indicate how that evidence relates to them.	**Nouveaux éléments de preuve** (2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113*a*) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	*a*) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(*b*) whether the evidence is central to the decision with respect to the application for protection; and	*b*) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(*c*) whether the evidence, if accepted, would justify allowing the application for protection.	*c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[14] It is also useful to cite sections 96 and 97 of the Act:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa

residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection
(2) A person in Canada who is a member of a class of persons

résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger
97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger
(2) A également qualité de personne à protéger la personne

prescribed by the regulations as being in need of protection is also a person in need of protection.	qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

V. Analysis

Standard of review

[15] The arguments raised by the applicant involve several standards of review. On this point, I adopt the analysis of Madam Justice Eleanor Dawson, who had to deal with a similar matter in *Demirovic v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284, [2005] F.C.J. No. 1560 (F.C.) (QL). She wrote the following at paragraphs 23 and 24:

> As to the appropriate standard of review to be applied to a decision of a PRRA officer, in *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 540 (T.D.) at paragraph 19, Mr. Justice Mosley, after conducting a pragmatic and functional analysis, concluded that "the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness". Mr. Justice Mosley also endorsed the finding of Mr. Justice Martineau in *Figurado v. Canada (Solicitor General)*, [2005] F.C.J. No. 458 (T.D.) at paragraph 51, that the appropriate standard of review for the decision of a PRRA officer is reasonableness *simpliciter* when the decision is considered "globally and as a whole". This jurisprudence was followed by Madam Justice Layden-Stevenson in *Nadarajah v. Canada (Solicitor General)*, [2005] F.C.J. No. 895 (T.D.) at paragraph 13. For the reasons given by my colleagues, I accept this to be an accurate statement of the applicable standard of review.
>
> When applying the standard of review of reasonableness *simpliciter,* a reviewing Court is to inquire into whether the decision is supported by reasons that are, in turn, supported by a proper evidentiary basis. An unreasonable decision is one that, in the main, is not supported by reasons that can stand up to a "somewhat probing examination"; the reviewing court must be satisfied that the conclusions drawn from the evidence are logically valid. (See: *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 at paragraph 56). A decision will be

> unreasonable "only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived". (See: *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at paragraph 55). A decision may satisfy the standard of review if supported by a tenable explanation, even if the explanation is not one that the reviewing court finds compelling.

Did the Tribunal err in its assessment of the evidence and risks in concluding that the documents submitted by the applicant did not constitute new evidence within the meaning of paragraph 113(*a*) of the Act?

[16] The PRRA officer was called on to determine if the documents submitted met the requirements of paragraph 113(*a*) of the Act. This is therefore a question of mixed fact and law. The standard of review is reasonableness *simpliciter*.

[17] The parties agree that only exhibits 16 to 19 are in issue. These are four letters from non-governmental organizations (NGOs) which deal with the applicant's personal commitment to political activities in his country. The applicant submits that the Tribunal erred in concluding that these letters did not constitute new evidence, because they are subsequent to the decision.

[18] However, the respondent is of the opinion that it was reasonable for the Tribunal to reject these documents, because they were accessible before the IRB hearing was held.

[19] I am satisfied that the Tribunal did not err in its interpretation of the requirements of paragraph 113(*a*). Exhibits 16 to 19 submitted by the applicant do not show any evidence of new risks, and it was not unreasonable to conclude that these documents were also accessible before the hearing.

Did the Tribunal err in concluding that the risk identified by the applicant was not a personal risk?

[20] The applicant alleges that the Tribunal erred in law by requiring that he show a personalized risk of persecution in Mauritania. The applicant submits that the documentation concerning the situation in his country as described in the newspaper articles should be sufficient to establish the harmful atmosphere and the reality of the risks to which he was subject. However, the respondent answers that the general documentary evidence about political or anti-slavery activities cannot in itself establish the merits of a claim for refugee protection, be it under section 96 or 97 of the Act.

[21] In *Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, [2005] F.C.J. No. 506 (F.C.) (QL), Mr. Justice Yves de Montigny wrote the following at paragraph 28:

> That said, the assessment of the applicant's potential risk of being persecuted if he were sent back to his country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual (*Ahmad v. M.C.I.*, [2004] F.C.J. No. 995 (F.C.); *Gonulcan v. M.C.I.*, [2004] F.C.J. No. 486 (F.C.); *Rahim v. M.C.I.*, [2005] F.C.J. No. 18 (F.C.)).

[22] In *Sinora v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 725 (F.C.T.D.) (QL), Mr. Justice Marc Noël wrote the following at paragraph 5:

> In my opinion, the applicant's claim is entirely unfounded. It is settled law that an applicant must demonstrate an objective and subjective fear of persecution. In this case, it was not sufficient simply to file documentary evidence. It was necessary at the very least to establish that the applicant himself had a real fear of persecution. In the absence of such evidence, the Board members were entitled to conclude as they did.

[23] This case law is highly relevant to the case at bar. The applicant had to establish a connection between the conditions in his country and his personal situation, which he did not do. It is useful to cite this excerpt from page 5 of the impugned decision:

> [TRANSLATION]
> Documents #1 to #10 do not deal with the applicant's specific case and do not show that he is subject to the risks alleged. In this case, he did not discharge the burden of showing that he is personally subject to the risks he alleges or of corroborating the facts underlying these risks. More specifically, he did not show he was a member of the El-Hor organization or of the AC and UFD parties, that he had been arrested by the police before he left Mauritania, or that he is presently wanted because of these activities. Accordingly, I conclude that there is no more than a mere possibility he might be subject to the risks he alleges . . . .

Did the Tribunal err in taking into consideration for the purposes of its analysis the change of government in Mauritania?

[24] The applicant criticizes the Tribunal for having considered the change of government which took place in Mauritania on August 3, 2005, following a coup d'état. According to the applicant, nothing changed in spite of the amnesty declared by the new president on September 5 of the same year.

[25] The respondent submits that the Tribunal was correct in considering this change as being significant, even though social and economic conditions are still difficult.

[26] The Court agrees with the Tribunal's reference to the changes that took place in 2005, especially since all the exhibits submitted predated this change and mentioned the atrocities committed under the Taya dictatorship. No intervention is warranted here.

Did the Tribunal err in law in depriving the applicant of the right to be heard pursuant to paragraph 113(*b*) of the Act?

[27] To answer this question, the Tribunal had to determine if the conditions of section 167 of the Regulations had been met. The Tribunal did not reach any conclusion about the applicant's credibility but noted that the new evidence and the documents submitted did not allow it to give the

applicant a favourable answer. Having read these documents and the decision, the Court notes that there were no negative findings regarding the applicant's credibility. With regard to the interview, the following excerpt by Mr. Justice Edmond Blanchard in *Thamotharem v. Canada (Minister of Citizenship and Immigration),* 2006 FC 16, [2006] F.C.J. No. 8 (F.C.) (QL) at paragraph 77 is useful:

> Failed refugee claimants may also have the opportunity to make a pre-removal risk assessment [PRRA] application: sections 112-115 of the IRPA. However, PRRA applications and refugee protection claims before the Board are different. PRRA applications by failed refugee claimants can only submit "new evidence"—that is, evidence that could not have been adduced to the Board—and an oral hearing is provided in only very limited circumstances. Further, PRRA decisions are made not by an independent administrative tribunal but by officers of Citizenship and Immigration Canada.

[28] The parties did not suggest any question to be certified, and this file does not contain any.

JUDGMENT

THE COURT ORDERS that this application for judicial review be dismissed without costs. No question is certified.

"Michel Beaudry"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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