Date: 20070830

Docket: IMM-6636-06

Citation: 2007 FC 875

Montréal, Quebec, the 30th day of August 2007

Present: the Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

BEATRICE LEUDJEU
(A.K.A. IRENE NGOUDJOU)

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), from the decision of an immigration officer on August 28, 2006 the effect of which was to dismiss the applicant's pre-removal risk assessment (PRRA) application.

FACTS

[2] The applicant Béatrice Leudjeu is a citizen of Cameroon and a member of the Bamileke tribe: she was born in Douala.

[3] She left her country on June 30, 1998 and on arrival in Canada on July 2, 1998 claimed refugee status. On April 14, 1999 the Refugee Protection Division (RPD) concluded that the applicant is not a Convention refugee. The applicant challenged this decision and filed an application for judicial review in the Federal Court, which dismissed it on June 30, 1999 as a consequence of the applicant's failure to file her record within the specified deadline.

[4] On November 1, 2000 the applicant sent Citizenship and Immigration Canada a letter from France falsely stating that she had left Canadian territory, whereas on the contrary she not only did not leave Canadian territory but remained in hiding under a false identity in order to avoid her removal, scheduled for December 13, 2000, for which she did not appear.

[5] The result was that on January 10, 2001 an arrest warrant was issued for the applicant's removal and it was not until January 6, 2005 that she was arrested and made a pre-removal risk assessment (PRRA) application.

[6] In her PRRA application the applicant alleged that her father was a member of the Social Democratic Front (SDF) and that she accompanied him to raise funds and attend certain meetings. The applicant alleged she was arrested by the police twice with her father in 1992.

[7] Further, the applicant stated that in June 1998 members of the militia came to the family residence to ask her father to stop financing the SDF, and threatened to kill his children. She said she fled to another room and not long afterwards found her father bathed in blood. The following day, he succumbed to his injuries in hospital.

[8] Two weeks later, the applicant gave her children to a sister to care for and left Cameroon with a false passport. She stated that the risks which led her to flee her country still exist, as she is the daughter of a former SDF member and a member of the Bamileke tribe. She also alleged that as a woman with AIDS, she risks being ostracized in her country.

IMPUGNED DECISION

[9] On August 28, 2006 the officer responsible for the PRRA dismissed the application, concluding that Ms. Leudjeu had not discharged her burden of showing that if she returned to Cameroon she would incur risks justifying the protection sought, pursuant to sections 96 and 97 of the Act.

ISSUE

[10] The only issue in the case at bar is whether the decision of the PRRA officer which had the effect of rejecting the applicant's PRRA application is vitiated, as she maintains, by an error warranting the cancellation sought.

ACT

[11] For a protection application, subsection 112(1) of the Act provides that:

112(1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).	112(1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

[12] For review of an application, section 113 of the Act provides that it is disposed of as follows:

(*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;

(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	*c*) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and	*d*) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :
(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or	(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,
(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

STANDARD OF REVIEW

[13] The standard of review for conclusions dealing with credibility, which are at the heart of the PRRA decision, is that of patent unreasonableness. The standard of review on specific findings of fact comes under paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, which provides that the Court must be satisfied that a tribunal has based its decision or order on an "erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it" (*Tekie v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 27, [2005] F.C.J. No. 39 (QL), at paragraph 6; *Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] F.C.J. No. 458 (QL), at paragraph 51; *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540 (QL), at paragraph 22).

[14] As to the PRRA decision in general, that is, application of the law to the facts by the immigration officer, the standard of review in such a case is that of reasonableness *simpliciter* (*Figurado*, *supra*, and *Kim*, *supra*, at paragraphs 19-20).

[15] **Did the PRRA officer make a reviewable error in dismissing Ms. Leudjeu's PRRA application?**

[16] The applicant maintained that the PRRA officer erred on two points. First, the officer's decision on the applicant's HIV status was wrong in that:

(i) he did not make a cumulative analysis of the risks of persecution of persons with AIDS;

(ii) his analysis of the risks was patently unreasonable;

(iii) he did not properly explain why the risks incurred by persons with AIDS did not amount to persecution;

(iv) he treated the documentation selectively and his conclusion was unreasonable, in that it had the effect of imposing too high a burden of proof on the applicant.

Second, the officer did not make a cumulative analysis of the applicant's risk of persecution resulting from her HIV status and her status as a member of the SDF.

[17] Contrary to the applicant's arguments, the Court considers that the PRRA officer made a thorough analysis of the applicant's risks of persecution if she were to return to Cameroon.

[18] The only purpose of the PRRA is to assess the risks to which a person might be exposed on removal to his or her country of origin, based on new facts occurring since the decision by the RPD on his or her refugee status application. Paragraph 113(*a*) of the Act leaves no room for ambiguity in this regard.

[19] The PRRA officer first assessed the applicant’s involvement as a member of the SDF. He noted that the SDF had been recognized as a political opposition party by the Government of Cameroon. He also noted that the leaders of the party had been beaten or killed by supporters of the Cameroon People's Democratic Movement (CPDM).

[20] However, the officer noted that no political murder or disappearance had been reported in the last year and that legal action had been taken against an SDF leader, John Khontem. Further, the officer noted that unlike in previous years the police no longer intervened to end SDF political meetings. Consequently, and in view of these findings based on the evidence, it was not unreasonable for the PRRA officer to conclude that the applicant was no longer at risk of persecution if she returned to her native land.

[21] The officer also assessed the applicant’s risks of persecution as a woman with AIDS. After analyzing medical treatments for AIDS in Cameroon, the officer admitted that there was still some distance to go in changing attitudes and ending the inadequate or mistaken information circulating about the virus, and the stigma and discrimination against persons suffering from the illness.

[22] However, the officer noted that although the situation was not ideal in Cameroon for persons with AIDS, they were not for that reason persecuted. The officer noted that the applicant could get the available medical services existing in her native land.

[23] It is up to the PRRA officer to assess the risks to which Ms. Leudjeu would be exposed if she returned to Cameroon. Since the Court considers here that the officer reviewed all the risks of discrimination alleged by the applicant and explained why he was not extending the protection sought, and none of his findings appear to be perverse or unreasonable, the Court clearly cannot in such circumstances intervene to substitute its opinion for that of the PRRA officer.

[24] The application for judicial review of the PRRA decision will accordingly be dismissed.

QUESTIONS SUGGESTED BY APPLICANT FOR CERTIFICATION

[25] The applicant submitted the following questions for certification:

Question 1

(A) If the PRRA officer receives new evidence on an applicant's credibility, should he rule clearly and specifically on the latter's credibility?

(B) If so, can it be assumed that if the officer does not rule on the applicant's credibility he believes the latter?

Question 2

(C) When the record indicates that an applicant may face various types of harassment and/or discrimination, should the officer rule in clear and

> specific language in his decision on the cumulative effect of the risks of persecution?

[26] The applicant submitted that the PRRA process set out in the Act is new law and that several questions arise which the Court has not answered regarding the function and responsibility of the PRRA officer. She further submitted that the questions submitted transcend the parties' immediate interests, contemplate issues of broad significance or general application and are determinative of the appeal.

[27] In *Canada (M.C.I.) v. Liyanagamage*, [1994] F.C.J. No. 1637 (C.A.), the Federal Court of Appeal laid down the following rules:

> [4] In order to be certified pursuant to subsection 83(1), a question must be one which, in the opinion of the motions judge, transcends the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application (see the useful analysis of the concept of "importance" by Catzman J. in *Rankin v. McLeod, Young, Weir Ltd. et al.* (1986), 57 O.R. (2d) 569 (Ont. H.C.)) but it must also be one that is determinative of the appeal. The certification process contemplated by section 83 of the *Immigration Act* is neither to be equated with the reference process established by section 18.3 of the *Federal Court Act*, nor is it to be used as a tool to obtain from the Court of Appeal declaratory judgments on fine questions which need not be decided in order to dispose of a particular case.

[28] The respondent objected to certification of the questions, and unlike the applicant maintained that the questions submitted did not transcend the immediate interests of the parties and were not determinative of the appeal in the case at bar.

[29] The first question suggested is essentially as to whether a PRRA officer who, as in the case at bar, is given new evidence must rule on the application of that evidence to an applicant's credibility. In suggesting this question, however, the applicant appeared to forget that her credibility has never been questioned in the case at bar either by the officer or by the respondent.

[30] On the applicant's membership in the SDF party, the PRRA officer said the following:

> [TRANSLATION]
>
> In this regard, even admitting that the applicant is an SDF party member, I also have to recognize that the SDF is the main opposition party in Cameroon and it is this party which plays the leading role in opposition to the existing government. The party is legally registered, which does not make membership in the party illegal. Further, as shown earlier, although its members may occasionally be the victims of discrimination, I am not satisfied that this amounts to persecution.

[31] It appears from this passage from the PRRA that for purposes of analyzing the risk to which the applicant said she would be exposed as a member of the SDF the officer assumed she was a member of that party. On that basis, therefore, he did not have to rule on the applicant's status as a member or to say whether he believed it. Once the officer assumed for purposes of analyzing the risk that she was a member of the SDF, the question of the applicant's credibility on this point no longer arose.

[32] Consequently, as the applicant's credibility was not at issue in respect of the facts underlying the first question, as regards her status as an SDF member, there is no need to certify the

question. The applicant's credibility has nothing to do with the reasons which led the PRRA officer to reach the conclusion which he did.

[33] The second question seeks to require the PRRA officer to indicate clearly and specifically in his analysis the cumulative effect of all the risks of harassment or persecution to which an applicant proves she is exposed.

[34] Here, the applicant attached great importance to the following passages from the judgment in *Mete* v. *M.C.I.*, 2005 FC 840, when the Court, *per* Dawson J., recalled the well-established legal principles:

> [5] Second, in cases where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of that conduct. This requirement reflects the fact that prior incidents are capable of forming the foundation of present fear . . .
>
> [6] Third, it is an error of law for the RPD not to consider the cumulative nature of the conduct directed against a claimant . . .

[35] The evidence in the case at bar recently did not "[establish] a series of actions characterized to be discriminatory". On the contrary, the applicant presented evidence of no incident specifically directed against her. She offered no documentary proof that SDF members and persons with AIDS were the subject of discrimination that amounted to persecution.

[36] However, it appears from *Mete, supra*, that what is important is not so much the way in which the PRRA officer said he examined the cumulative effect of the risks, but his having weighed and analysed all of them. It would not suffice for the officer to say he had examined the cumulative effect of risks if it were to appear that he was ignoring certain important points in the analysis leading to his conclusion.

[37] Based on the evidence in the record, the second question suggested by the applicant for certification is at most a means of obtaining declaratory relief from the Court of Appeal on a point which does not have to be decided in order to dispose of the case at bar. Certification of this question will never make up for the absence of a series of actions against the applicant which could be regarded as discriminatory, evidence which the PRRA officer did not have.

[38] For these reasons, the second question suggested by the applicant will also not be certified.

JUDGMENT

THE COURT, for these reasons:

1. dismisses the application for judicial review;

2. rejects the certification of the suggested question.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6636-06
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