

**Date: 20071204**

**Docket: IMM-84-07**

**Citation: 2007 FC 1273**

**Ottawa, Ontario, December 4, 2007**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**NDRE MALSHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] “[I]t is not the role of a PRRA officer to act as a court of appeal from a prior refugee/protection decision.” (*Yousef v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 864, [2006] F.C.J. No. 1101 (QL); Reference is also made to *Quiroga v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1306, [2006] F.C.J. No. 1640 (QL) and *Kaybaki v. Canada (Solicitor General of Canada)*, 2004 FC 32, [2004] F.C.J. No. 27 (QL).)

## **JUDICIAL PROCEDURE**

[2] This is an application for judicial review, pursuant to paragraph 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), of a decision of a Pre-Removal Risk Assessment (PRRA) Officer, dated, December 6, 2006, wherein, the PRRA Officer determined that the Applicant would not be subject to danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to his home country.

## **FACTS**

[3] The Applicant, Mr. Ndre Malshi, is a citizen of Albania. He entered Canada in 2000 and made a claim for refugee protection based on fear of bank robbers whose commission of crime he had witnessed. (Reasons of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (Board), Applicant's Record, pp. 20-21.)

[4] The RPD of the Board denied Mr. Malshi's claim as it found that he lacked a nexus to a Convention ground, was not at risk and had not rebutted the presumption of state protection. (Reasons of the Board, above, pp. 19-21.)

[5] This Court denied leave of Mr. Malshi's application for leave to judicial review of the Board's decision.

[6] On March 28, 2006, Mr. Malshi submitted a PRRA application. The PRRA Officer found that the evidence submitted by Mr. Malshi was not sufficient to overcome the Board's findings with

respect to risk, state protection and nexus to a Convention ground. The PRRA Officer further found that Mr. Malshi had failed to rebut the presumption of state protection. The PRRA Officer accordingly denied the application. (PRRA Reasons, Applicant's Record, pp. 5-11 (Tabs 2 and 3).)

[7] Mr. Malshi brought a motion for a stay of his removal which was heard before Justice Michael Phelan, on January 29, 2007. The motion was granted in an Order dated, February 20, 2007.

## ISSUE

[8] Has any error been demonstrated that would warrant judicial intervention of the PRRA Officer's decision?

## ANALYSIS

### **Higher threshold for Leave not met**

[9] The stay of removal of Mr. Malshi's removal was granted based on the relatively low threshold for "serious issue" (i.e. not frivolous and vexatious) concerning the adequacy of reasons provided by the PRRA Officer. In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, the Supreme Court of Canada stated that courts should not delve into the merits of an application on interlocutory motion:

[50] Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable. (Emphasis added.)

**PRRA Officer not entitled to revisit Board's findings of risk**

[10] Mr. Malshi's submissions make confusing references to both the Board and the PRRA Officer. It appears that Mr. Malshi is also attempting, in the present application, to challenge the Board's state protection findings.

[11] As this Court recently reaffirmed, the PRRA officer may not revisit the Board's factual finding, or act as an avenue of appeal in respect of the factual findings made by the Board.

[20] Some of the evidence-based arguments made here on behalf of the Applicant appear to misconstrue the role of the PRRA officer. It is not the role of the PRRA officer to re-examine evidence assessed by the Board, and it is not open to the officer to revisit the Board's factual and credibility conclusions. It is also not the duty of the PRRA officer to consider evidence that could have been put to the Board, but was not. The role of the PRRA officer, as defined by section 113 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA), is to examine "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". Here, the PRRA officer clearly and correctly defined her role in conformity with the above section 113 limitations.

[21] In *Kaybaki v. Canada (Solicitor General)*, [2004] F.C.J. No. 27, 2004 FC 32, Justice Michael Kelen very succinctly confirmed the limited role of a PRRA officer at paragraph 11:

... For this reason, the PRRA officer should not have considered these letters. The PRRA application cannot be allowed to become a second refugee hearing. The PRRA process is to assess new risk developments between the [IRB] hearing and the removal date.

I would also add to Justice Kelen's remarks that it is not the role of a PRRA officer to act as a court of appeal from a prior refugee/protection decision.

(*Yousef*, above; Reference is also made to *Quiroga*, above and *Kaybaki*, above.)

**State protection findings reasonable**

[12] Mr. Malshi's submissions allege that the PRRA Officer erred in ignoring or selectively reviewing the evidence that was before him and by failing to correctly assess the adequacy of state protection in Albania.

[13] In the present case, the PRRA Officer did, as it was required to, consider the Board's findings with respect to state protection as well as post-Board hearing evidence on country conditions. The PRRA Officer noted that the Board made significant findings with respect to state protection. (PRRA Reasons, above, p. 9.)

[14] The Board found that, *inter alia*, the police acted "promptly and reasonably effectively" in respect to Mr. Malshi's alleged abduction and assault. (Reasons of the Board, above, pp. 19 and 21.)

[15] With respect to the updated country documentation, the PRRA Officer noted that the information was not relevant to the Applicant's personal circumstances. For example, Mr. Malshi submitted information on the witness protection program, but did not submit any evidence that he was in that program. In any case, the evidence with respect to the witness protection program related only to witnesses in human trafficking and organized crime cases and, furthermore, does not amount to a rebuttal of the presumption of state protection even with respect to these witnesses, much less with respect to Mr. Malshi. (PRRA Reasons, above, p. 9; United States Department of State report on Albania, Applicant's Record, p. 41; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, pp. 726.

[16] Mr. Malshi argues that the PRRA Officer required him to seek protection through his brother. The PRRA Officer did not, in fact, hold Mr. Malshi to some strict requirement that he seek state protection through “proxy”, but instead made a reasonable finding when referred specifically to the undated letter from the brother (this does not negate that there was also other correspondence). That, in and of itself, was not probative of the issue of whether or not state protection had, since the Board hearing, become unavailable. (PRRA Reasons, above, p. 9; Letter from Applicant’s brother, Applicant’s Record, pp. 23 and 28.)

[17] Essentially, Mr. Malshi is taking issue with the manner in which the PRRA Officer weighed the evidence before her. Weight of the documentary evidence is clearly within the province and expertise of the PRRA Officer. (*Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540 (QL).)

[18] Mr. Malshi has not shown that the findings made by the PRRA Officer were perverse or capricious, or made without regard to the material before her. The onus was on Mr. Malshi to demonstrate that the PRRA Officer’s findings were not supported by the evidence in the record. Mr. Malshi has not met his onus and, therefore, this Court declines to interfere with the PRRA Decision. (*Sinan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 87, [2004] F.C.J. No. 188 (QL); *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748, para. 57; *Kim*, above; *Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] F.C.J. No. 458 (QL); *Cupid v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 176, [2007] F.C.J. No. 244 (QL), paras. 18-19.)

**CONCLUSION**

[19] For all of the above reasons, the application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that**

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-84-07

**STYLE OF CAUSE:** NDRE MALSHI v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 27, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** December 4, 2007

**APPEARANCES:**

Mr. Ronald Shacter FOR THE APPLICANT

Ms. Linda H-C. Chen FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

RONALD SHACTER FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

JOHN H. SIMS, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada