Date: 20090409

Docket: IMM-4691-08

Citation: 2009 FC 364

Ottawa, Ontario, April 9, 2009

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

PINKY LOURICE MARK
ADAINA THERESA TENISHA THOMAS

Applicants

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), of a decision by a delegate of the Minister of Citizenship and Immigration Canada, a Pre-removal Risk Assessment (PRAA) Officer, dated August 26, 2008, whereby the Applicants' application for permanent residence based on humanitarian and compassionate grounds was refused.

BACKGROUND FACTS

[2] Pinky Lourice Mark and her minor daughter (the Applicants), are citizens of Grenada. They entered Canada July 24, 2001 as temporary residents, having left Grenada due to an abusive relationship with the principle applicant's boyfriend and boyfriend's father.

[3] On June 29, 2004, pursuant to s. 44 of the Act, a Report on Inadmissibility was written against the principle applicant for entering Canada without first obtaining the necessary immigrant visa. A departure order was issued.

[4] Also on June 29, 2004**,** the Applicants made a claim for refugee protection, the claim being refused November 1, 2004, on the basis that the Applicants were not convention refugees or persons in need of protection, as state protection from domestic violence was available in Grenada. Leave to judicially review this decision was denied in June 2005.

[5] The principle applicant was then served with a PRAA application on August 26, 2006, which was rejected in January 2007. She successfully sought judicial review of that decision.

[6] In February 2007, the principle applicant was served with a direction to report for removal, was denied a deferral, but successfully obtained a stay until July 2007 to allow her daughter to complete the academic year. The principle applicant's daughter has severe learning difficulties, requiring her to follow an individual education plan. She has completed all her schooling to date in Canada.

[7] In February 2008, the principle applicant submitted a humanitarian and compassionate grounds application (H&C application) for permanent residence, which was denied in August 2008.

[8] A new departure order was issued for November 14, 2008, with the Applicants' application for deferral of removal denied November 5, 2008, and application to stay the removal denied November 13, 2008. The principle applicant was then granted a statutory stay of removal until after a trial commencing December 17, 2008, in which she was to appear as a witness against an ex-boyfriend who assaulted her.

[9] The Officer found the Applicants would not suffer unusual, undeserved, or disproportionate hardship on return to Grenada. The Officer considered the Applicants' establishment and work history in Canada, family ties in Canada, the best interests of the principle applicant's daughter to remain in Canada considering her learning disabilities and the services available via the Canadian education system, the risk of domestic violence in Grenada previously addressed by the Refugee Protection Division at the Applicants' refugee hearing and in the Applicants' PRAA, and the challenges in finding a residence in Grenada.

ISSUES

[10] This application raises the following issues:

a) Did the Officer err in relying on extrinsic evidence that was not disclosed to the Applicants**;**

b) Did the Officer err in her analysis of risk and consideration of evidence on state protection for victims of domestic violence in Grenada; and

c) Did the Officer err by not giving the Applicants the opportunity to update their file?

ANALYSIS

(a) Did the officer err in relying on extrinsic evidence that was not disclosed to the Applicants?

[11] The Applicants contend that the Officer erred by relying on a 2005 United Nations article, publicly available on the United Nations Website, without having first notified the Applicants so the Applicants could provide a response to the article. Although the article in question was on general country conditions, it was used by the Officer to counter the Applicants' specific submissions that they would be homeless in Grenada because the principle applicant's mother's house had been destroyed by hurricane Ivan in 2004.

[12] The Respondent **s**ubmits that publicly available internet documents on general country conditions are not extrinsic evidence requiring disclosure by an officer prior to making a decision.

[13] For the Respondent, country condition documents that come from public sources are not extrinsic evidence**:** *Latifi v. Canada (MCI),* [2006] F.C.J. No. 1739, 2006 FC 1389. While this may be true as a general statement, in the present case, I disagree with the Respondent for the following reasons:

[14] First, contrary to the Respondent's view that the article was used simply to show the efforts made in Grenada to develop housing since the hurricane, a fair reading of the decision under the heading "Ties or residence in Grenada" shows that, in context, the **O**fficer relied on the UN article to counter the Applicants' submission that they would be homeless upon returning to Grenada:

> Prior to her arrival in Canada the applicant had moved out of her ex common-law's house to avoid the physical and mental abuse inflicted by him and his parents. She moved into her mother's house. The applicant states that the house has now been destroyed by Hurricane Ivan. Documentary evidence indicates that houses are being rebuilt in Grenada. Various initiatives were introduced to assist the victims of hurricane Ivan. According to an article titled "Grenada Rebuilds After the Hurricane" and published by the UN Chronicle the immediate post-hurricane response saw the deployment of a UN disaster assessment and coordination team to Grenada. A number of priority recovery and development projects were implemented including shelter restoration.

[15] This was a crucial part of the Applicants' H&C application and it was entirely speculative for the Officer to use this article to disregard the Applicants' submission that they would have no place to stay upon return to Grenada because the principle applicant's mother's house had been destroyed. As the Applicants' counsel points out, it is worth noting that the same article mentions that, out of the 10, 000 houses needed to be rebuilt, "only 23 had been rebuilt with another 50 under reconstruction, leaving several thousands of people still in temporary shelters or deplorable conditions, dependant on the assistance of public aid."

[16] Further, with regard to the argument that the article was publicly available and therefore did not need to be disclosed, I would mention that there are thousands of publications released by the

UN every year and that there was no way for the Applicants to be aware that an outdated publication would play an integral role in assessing their fears of homelessness and the hardship flowing from it. This is particularly acute in an H&C application where the emphasis is not solely, as it is the case for a PRRA, on country conditions, as an H&C application depends on several factors.

[17] The Respondent relied heavily on *Latifi*, supra, for the proposition that there was no need to disclose this article. I note that in that case, the officer's determinations of hardship were based, inter alia, on the lack of any connection between the country conditions and the personalized hardship faced by the applicant. This is not the situation in the present case. The availability of shelter was a crucial issue and therefore, contrary to *Latifi*, supra, there was a strong connection between the country conditions and the situation of the Applicants.

[18] I find that the Officer did breach the duty of fairness owed to the Applicants by relying on an outdated archived article without providing the Applicants with an opportunity to refute this evidence.

CONCLUSION

[19] The application for judicial review is therefore allowed, the decision of the PRAA Officer is set aside and the matter is referred back to a different officer for re-determination. Because of this finding I do not need to answer the other issues raised in this application. There is no question for certification.

JUDGMENT

The application for judicial review is allowed. The decision of the PRAA Officer is set aside and the matter is referred back to a different officer for re-determination.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4691-08

STYLE OF CAUSE:

PINKY LOURICE MARK
ADAINA THERESA TENISHA THOMAS

APPLICANTS

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

RESPONDENT

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: APRIL 6, 2009

REASONS FOR: HON. MADAM JUSTICE TREMBLAY-LAMER

DATED: APRIL 09, 2009

APPEARANCES:

Mr. Richard Wazana	FOR THE APPLICANTS
Ms. Alison Engel-Yan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Wazana Law Toronto, Ontario	FOR THE APPLICANTS
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT