

Federal Court



Cour fédérale

Date: 20090729

Docket: IMM-530-09

Citation: 2009 FC 782

Toronto, Ontario, July 29, 2009

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MYUNG SOON LEE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Myung Soon Lee seeks judicial review of the negative decision of a PRRA officer. At the conclusion of the hearing, I advised the parties that the application for judicial review would be allowed, as I was satisfied that the decision under review had been arrived at in a procedurally unfair manner, and that it was not clear that the outcome of the case would inevitably have been the

same, but for the breach of procedural fairness. These are my reasons for coming to that conclusion.

Background

[2] Ms. Lee is a citizen of the Republic of Korea. The PRRA officer accepted that she had endured some 20 years of serious physical and emotional abuse at the hands of her husband, but concluded that South Korea had adequate mechanisms in place to protect victims of domestic violence.

[3] Ms. Lee provided the PRRA officer with several sets of detailed submissions in support of her application. Her initial package of submissions included a covering letter, which listed the various categories of documents included in the package. One of these enclosures was described as a “Country Conditions Package on South Korea: Violence against Women”.

[4] Also included in the package were 15 pages of written submissions. The first paragraph of these submissions made specific reference to the documentary information that had been provided with respect to conditions within South Korea for victims of domestic violence. There are approximately 25 further references to the country condition information contained in the submissions.

[5] None of the 55 pages of country condition information that had been submitted by Ms. Lee in support of her PRRA application were included in the Certified Tribunal Record. It is now

conceded by the respondent that this material had never been put before the PRRA officer, and that there had been a breach of procedural fairness in this regard.

[6] Counsel for the respondent argues, however, that the country condition information submitted by Ms. Lee pre-dated the country condition information relied upon by the PRRA officer. Even if the earlier information had been in front of the officer, the respondent says that it would have been entirely reasonable for the PRRA officer to prefer the more recent information with respect to the availability of state protection for victims of domestic violence. As a consequence, the outcome of the application would inevitably have been the same, and nothing is to be gained by sending the matter back for re-determination.

Analysis

[7] Where there has been a breach of natural justice or a denial of procedural fairness in the process followed in arriving at a decision, a new hearing will ordinarily be necessary. There is, however, an exception to this rule.

[8] That is, a court may disregard a breach of natural justice or procedural fairness “where the demerits of the claim are such that it would in any case be hopeless”: see *Mobile Oil Canada Ltd. et al. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, at para. 53. See also *Yassine v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 949 (F.C.A.).

[9] I agree with the respondent that as a risk assessment involves a forward-looking analysis, the most recent information regarding conditions in a particular country will ordinarily be the most probative. However, I cannot agree that the missing information in this case was not material to Ms. Lee's application, and could not have changed the result of her PRRA application.

[10] In her analysis, the officer accepted that there had been serious problems with domestic violence in South Korea in the past. However, after reviewing the country condition information before her, including documents such as the United States' Department of State Report for 2006, the officer found that "there had been positive changes made by the government of Korea" in this regard, and that police officers' behaviour towards victims of domestic violence "had improved remarkably" since 2004.

[11] Indeed, the general tenor of the decision is that whatever problems there may have been in the past, the picture for victims of domestic violence in South Korea had improved significantly in recent years.

[12] The 2006 U.S. Department of State Report indicates that nearly 50% of women in South Korea were victims of domestic violence. In contrast, the 2005 Department of State Report submitted by Ms. Lee, which was not considered by the PRRA officer, indicates that domestic violence occurred in 30% of South Korean households. On its face, this evidence arguably suggests that far from diminishing, the incidence of domestic violence in South Korea had increased markedly in recent years. This in turn could arguably indicate that measures taken to combat the

problem of domestic violence in South Korea were not working. If accepted, this evidence would clearly be material to Ms. Lee's application.

[13] In light of the above example, I am not persuaded that the evidence that was not considered by the PRRA officer was clearly not material to the application, or that it could not have affected the result. As a consequence, I am of the view that the matter must be remitted for a fresh assessment.

[14] Before concluding, I would also note that given the repeated references to the country condition information in Ms. Lee's written submissions, the fact that the PRRA officer apparently did not notice that the information package was missing also raises a concern with respect to the overall care that was taken in relation to this application.

Conclusion

[15] For these reasons, the application for judicial review is allowed.

Certification

[16] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a different PRRA officer for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-530-09

STYLE OF CAUSE: *MYUNG SOON LEE v. MCI*

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 29, 2009

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

DATED: July 29, 2009

APPEARANCES:

Carol Simone Dahan

FOR THE APPLICANT

Ada Mok

FOR THE RESPONDENT

SOLICITORS OF RECORD:

CAROL SIMONE DAHAN
Refugee Law Office
Toronto, Ontario

FOR THE APPLICANT

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

FOR THE RESPONDENT