Federal Court		Cour fédérale

Date: 20100826

Docket: IMM-5954-09

Citation: 2010 FC 850

Ottawa, Ontario, August 26, 2010

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

DOODPATTIE PERSAUD
and GAYATRI RAMDEHOLL

Applicants

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by a Pre-Removal Risk Assessment (PRRA) Officer, dated October 16, 2009, denying the applicants' application for protection because of the availability of state protection.

FACTS

Background

[2] The two applicants are citizens of Guyana. Ms. Doodpattie Persaud is the forty-two (42) year old applicant mother. Ms. Ramdeholl Gayatri is the nineteen (19) year old applicant daughter.

[3] The applicants entered Canada on August 19, 2003 together with Ms. Persaud's ex-husband, Mr. Repunandan Ramdeholl, and claimed refugee protection on December 10, 2003. The Refugee Protection Division (RPD) of the Immigration and Refugee Board dismissed the refugee claim on July 15, 2004, finding the applicants were neither Convention refugees nor persons in need of protection. The application for leave to judicially review the RPD's decision was dismissed. The first PRRA which included Mr. Ramdeholl was dismissed on December 6, 2005. The applicants did not depart Canada by the required date. An immigration arrest warrant was issued but it was not enforced until the applicants came to the attention of immigration authorities.

[4] Ms. Persaud's and Mr. Ramdeholl's 26 year-old relationship was marked by physical, verbal, and psychological abuse inflicted by Mr. Ramdeholl. In Guyana, Ms. Persaud attempted to escape her ex-husband's abuse but she could not find shelter with her impoverished family. The applicant made a number of police complaints in Guyana which were dismissed. In Canada, Mr. Ramdeholl divorced Ms. Persaud on May 12, 2008 but they continued to cohabit along with their daughter. On March 10, 2009 Mr. Ramdeholl violently assaulted Ms. Persaud with a meat cleaver and injured her. He also tried to strangle her. She went to the hospital which reported the assault to the police. This led to criminal charges against Mr. Ramdeholl and his deportation on May 8, 2009.

The respondent re-initiated removal proceedings against the applicants who filed their second PRRA on March 25, 2009 alleging a risk of persecution at the hands of Mr. Ramdeholl in Guyana in revenge for his deportation. The applicants' removal was administratively deferred on June 26, 2009 pending the decision on their PRRA and judicially stayed on January 25, 2010 by Justice Barnes following the PRRA Officer's negative decision on October 16, 2009.

Decision under review

[5] The applicants' PRRA was dismissed by an Officer on October 16, 2009 because they were not able to rebut the presumption of adequate state protection in Guyana from Mr. Ramdeholl. The Officer determined that there was insufficient objective evidence that would discharge the applicants' obligation to seek state protection or that Guyana is not able or willing to provide state protection.

[6] The Officer noted that the requirement that the PRRA contain new evidence pursuant to subsection 113(a) of the *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27 did not apply to a repeat PRRA.

[7] The Officer summarized the facts which led to this PRRA at page 2 of the decision:

> In March 2009, Mr. Ramdeholl physically assaulted and threatened to kill the applicant during a domestic dispute. The applicant pressed criminal charges as a result of the attack which resulted in a conviction against Mr. Ramdeholl [NOTE: this is not correct] and his subsequent deportation to Guyana in May 2009.

The Court notes that Mr. Ramdeholl was not convicted. The charges were stayed so he could be deported immediately. The Officer summarized the basis of the applicants' PRRA at page 3 of the decision:

> Counsel's submission of 22 May 2009, indicates that Mr. Ramdeholl has demonstrated a consistent pattern of abusive and dangerous behaviour towards the principal applicant over the past 20 years that they have been together. He regularly abused the principal applicant both physically and emotionally, but she remained in the relationship out of devotion for her husband and the sake of their daughter.
>
> Counsel contends that during the years she was abused by Mr. Ramdeholl in Guyana, the principal applicant attempted to seek help from the police on a number of occasions. However, once Mr. Ramdeholl discovered she had gone to the police, he would pay a bribe to the officers in charge and the record of her attempt to seek help would quickly "disappear".

The applicants submitted that they fear returning to Guyana where Mr. Ramdeholl could persecute them in revenge for his deportation from Canada.

[8] The Officer acknowledged that domestic violence in Guyana is a widespread phenomenon. However, a review of the objective country documentation indicated that the state of Guyana has taken responsibility to alleviate the problem of domestic violence through the following measures:

i. developing educational programs;

ii. publishing reports;

iii. raising public awareness;

iv. establishing support services for abused women; and

v. police training on effective handling of domestic abuse cases and the formation of specialized domestic abuse units in each police division.

[9] The Officer further found that domestic abuse victims could avail themselves of Guyana's *Domestic Violence Act*, which authorizes the dispensation of protection orders which can be enforced by police. Victims are also able to avail themselves of counselling, accommodation and legal services delivered by government ministries and non-governmental organizations. The Officer concluded that the applicants would not face more then a mere possibility of persecution or danger of torture, a risk to life, or a risk of unusual treatment or punishment if returned to Guyana because of the adequacy of state protection. The PRRA was therefore dismissed.

LEGISLATION

[10] Section 96 of IRPA grants protection to Convention refugees:

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 residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[11] Section 97 of IRPA grants protection to certain categories of persons:

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	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*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*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*) 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.	*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.

ISSUES

[12] The applicants raise the following issue:

i. Did the PRRA Officer err with respect to the analysis of state protection?

STANDARD OF REVIEW

[13] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Khosa v. Canada (MCI)*, 2009 SCC 12, per Justice Binnie at para. 53.

[14] The issue of state protection concerns the relative weight assigned to evidence, the interpretation and assessment of such evidence, and whether the officer had proper regard to all of the evidence when reaching a decision. It is clear that as a result of *Dunsmuir* and *Khosa* that such questions are to be reviewed on a standard of reasonableness: see my decisions in *Christopher v. Canada (MCI)*, 2008 FC 964 *Ramanathan v. Canada (MCI)*, 2008 FC 843; *Erdogu v. Canada (MCI)*, 2008 FC 407; *Perea v. Canada (MCI)*, 2009 FC 1173 at para. 23.

[15] In reviewing the officer's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are

defensible in respect of the facts and law." (*Dunsmuir*, *supra* at paragraph 47, *Khosa*, *supra*, at paragraph 59).

Issue: **Did the PRRA Officer err in its assessment of whether state protection is available to the applicants?**

[16] The applicants submit that the RPD erred in failing to conduct any practical assessment of whether the state of Guyana is able to protect the applicants from Mr. Ramdeholl. The applicants submit that it was necessary for the officer to carefully analyze the country condition documentation because the applicants' claim has never been assessed in a refugee hearing. The applicant also submits the Officer erred in stating that Mr. Ramdeholl has been convicted in Canada.

[17] In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, Justice La Forest held at page 709 that refugee protection is a form of "surrogate protection" intended only in cases where protection from the home state is unavailable. Further, the Court held that, except in situations where there has been a complete breakdown of the state apparatus, there is a general presumption that a state is capable of protecting its citizens.

[18] While the presumption of state protection may be rebutted, this can only occur where the refugee claimant provides "clear and convincing" evidence confirming the state's inability to provide protection. Such evidence can include testimony of similarly situated individuals let down by the state protection arrangement, or the refugee claimant's own testimony of past incidents in which state protection was not provided: *Ward*, *supra*, pp. 724-725. Refugee

claimants must make “reasonable efforts” at seeking out state protection, and the burden on the claimant increases where the state in question is democratic: *Kadenko v. Canada (Solicitor General)* (1996), 206 N.R. 272 (F.C.A.), at para. 5.

[19] The Federal Court of Appeal recently clarified the presumption of state protection in *Carillo v. Canada (MCI)*, 2008 FCA 94, 69 Imm. L.R. (3d) 309, per Justice Létourneau. The Court engaged in a detailed discussion at paragraphs 16-30 on the distinctions between *“burden of proof, standard of proof and quality of evidence”* and found that the burden proof rests on the applicant to show with “clear and convincing” evidence that state protection is inadequate or unavailable on a balance of probabilities.

[20] The applicants rely on this Court’s decision in *Alvandi v. Canada (MCI)*, 2009 FC 790, per Justice Snider where she held at paragraph 15 that the assessment of the adequacy of state protection in a PRRA, which was not preceded by an RPD assessment, must be carefully undertaken and not be too generalized:

> ¶15 …Further, the Applicant's claim has never been assessed in a refugee hearing. In such circumstances, I would expect the Officer to be very careful to analyze the country condition documents in light of the particular circumstances of the Applicant. This is not a case where a “cookie cutter” state protection analysis will suffice…

[21] The applicants rely on this Court’s decision in *Wisdom-Hall v. Canada (MCI)*, 2008 FC 685, per Justice Hughes where he held at paragraph 8 and 9 that the RPD erred in requiring only “serious efforts” of the state to tackle domestic violence which consisted of examining the laws in place and the expectations that they might be adequate. Justice Hughes held that a reasonable

assessment of the adequacy of state protection requires an examination of the evidence as to how, as a practical matter today, the state can protect women from domestic violence.

[22] It is trite law that PRRA Officer is not required to refer to every piece of evidence as long as the decision states that the all the evidence has been considered: *Cepeda-Gutierrez v. Canada (MCI)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264 (F.C.T.D.), per Justice Evans (as he then was) at paragraph 16. In this case the PRRA Officer's reasons reflect the ambiguous assessment in the RPD's *Response to Information Request* (RIR) GUY102929.E for Guyana which details the condition of domestically abused women. The RIR is based on research from publicly available country condition information and is footnoted with multiple documentary references.

[23] The RIR indicates that bribery can be used to dismiss criminal complaints of abuse and that police take a laissez-faire attitude when a complaint is filed. Upon review of the Officer's reasons it is apparent that the applicants' evidence which pointed towards less then adequate state protection was not fully considered. The evidence from the 2008 DOS Report was that the legislation against domestic abuse in Guyana was frequently not enforced; that the government's enforcement of these laws was poor, and that police officers could be bribed to make cases of domestic violence "go away". The RIR also states that the legislation is frequently not enforced.

[24] Considering the applicant has been a victim of a violent knife attack and strangulation attempt by her husband in Canada which led to his deportation, considering that the applicant has suffered a long history of domestic abuse by her husband which she has from time to time reported

in Guyana to the police without any result from the police, and considering that the evidence demonstrates that domestic violence is widespread in Guyana and that the police maintain a "laissez-faire" attitude with respect to complaints of domestic violence, it was not reasonably open for the PRRA officer to conclude that the objective country evidence establishes that the applicant would probably receive adequate state protection from her ex-husband when she is returned to Guyana without first assessing this contradictory evidence.

CERTIFIED QUESTION

[25] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

The application for judicial review is allowed, the PRRA decision is set aside, and the matter is referred to another PRRA officer for redetermination.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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