Federal Court  Cour fédérale

Date: 20101116

Docket: IMM-1846-10

Citation: 2010 FC 1151

Toronto, Ontario, November 16, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

RAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult female citizen of Mexico. She was the victim of incest perpetrated by her father and fled to Canada for that reason as soon as she was reasonably able to do so. To protect her identity I have made an order that she simply be referred to in the style of cause and otherwise as RAM.

[2] The issue before the Court presently is a decision of the PRRA Officer rejecting the Applicant's application that she not be removed to Mexico. It is conceded by the Respondent that a substantial bundle of documents was submitted by the Applicant in support of her PRRA application but that those documents were not in the record considered by the PRRA Officer. It is further conceded by Respondent's Counsel that at least many of those documents are in the category of "new" documents that should have been considered by the Officer. The Respondent's Counsel states in the Memorandum filed with the Court that it is "regrettable" that these documents were overlooked but makes two arguments in resisting this application for judicial review. The first argument is that the documents, even if considered, would not have made a difference to the decision. The second is that the decision of the RPD and the PRRA Officer as to an Internal Flight Alternative are not addressed in any sufficient way by these documents and therefore they are irrelevant to the final result.

[3] Both arguments raised by Respondent's Counsel would require this Court to make a detailed review of the 23 or so documents in question, including several affidavits providing legal opinions, and make a determination both as to relevance and their effect on the ultimate result. This is not the sort of exercise this Court should pursue. Once it is shown that the documents were overlooked and that at least some documents are "new" then, unless on their face the documents are clearly irrelevant, the matter should be returned to the PRRA Officer for a reasoned assessment. I echo the carefully chosen words of Mactavish J. at paragraph 13 in *Lee v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 782, 82 Imm L.R. (3d) 235:

> *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.*

[4] I understand that the Department representing the Respondent has wanted to make an issue of this matter, however, given the obvious way in which such a matter should have been handled, namely, consent to have it redetermined, and the large volume of cases of this nature flooding the Courts, the Respondent should have consented to its return for redetermination. For this reason I will award costs to the Applicant but fixed in the modest amount of $250.00, enough to send a message.

[5] I must comment respecting a further matter raised by the Applicant in her written material. The Applicant alleges misconduct by her former Counsel. She says that certain documents as to her father's psychiatric condition were given to her Counsel in a timely way for presentation to the RPD but were never translated from the Spanish language as was instructed. Therefore, the RPD gave no regard to the documents. In the record before me I find a complaint that was lodged with the Law Society but nothing further is on the record. Applicant's Counsel advised that the former Counsel provided a written response to the Law Society but that is not in the record before me. I am concerned with a practice, fortunately not widespread, but nonetheless which is seen in this Court from time to time, of putting blame on a former counsel. Usually there is no evidence of a complaint to the Law Society. Here there is such evidence but the response is not in evidence. If a serious argument is raised based on alleged misconduct or negligence of a former counsel the Court should have in the record before it all relevant evidence as to the matters alleged. I raise the possibility, without determining the matter, that the former Counsel should be contacted and

provided with the material and given an opportunity to respond in cases of this kind. In the present case in any event I do not base my decision on this ground.

[6] No counsel requested certification of a question.

JUDGMENT

For the reasons provided:

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Applicant simply as RAM and, to the extent possible, the existing Court records including electronic records should be amended accordingly;
2. The application is allowed;
3. The Applicant's PRRA application is returned for redetermination by a different officer upon consideration of a complete record;
4. The Applicant is entitled to costs fixed in the sum of $250.00.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1846-10
STYLE OF CAUSE:	RAM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 16, 2010
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DATED:	NOVEMBER 16, 2010

APPEARANCES:

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