Federal Court Cour fédérale

Date: 20120605

Docket: IMM-8310-11

Citation: 2012 FC 685

Ottawa, Ontario, June 5, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SATWINDER PAL SINGH GREWAL
RAJINDER KAUR GREWAL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] It is trite law that deference is due to a Pre-Removal Risk Assessment [PRRA] officer's findings of facts. As stated in *Abdollahzadeh v Canada (Minister of Citizenship and Immigration),* 2007 FC 1310:

> [29] I would add, as it had been mentioned in Colindres, supra, in circumstances similar to this case, that the fact that the applicant disagrees with the findings of the PRRA officer does not render the PRRA officer's decision unreasonable. In my opinion, the applicant in her submissions is in reality asking the Court to substitute its assessment of the evidence for the assessment made by the officer. This is not the

> Court's role at this stage of the applicant's file (*Gonzalez v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1592, 2006 FC 1274 at paragraph 17; *Maruthapillai v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 761 at paragraph 13).

II. Judicial Procedure

[2] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], dated September 30, 2011, which dismissed the Applicants' PRRA application.

III. Background

[3] Mr. Satwinder Pal Singh Grewal, and his wife, Mrs. Rajinder Kaur Grewal, are citizens of India.

[4] The Applicants entered Canada in October, 2008 to visit their son who is studying at the University of Windsor. They claimed refugee protection on February 13, 2009 alleging a risk from the Indian police and authorities and Sikh militants as Mr. Grewal has supported the Congress Party.

[5] The Refugee Protection Division of the Immigration and Refugee Board [Board] dismissed their claim in January 2011 finding they had an internal flight alternative [IFA] in Delhi. This Court denied leave for judicial review of the Board's decision.

[6] The Applicants filed a PRRA application in July 2011.

IV. Decision under Review

[7] The officer analyzed the evidence the Applicants submitted in support of their PRRA application. The evidence before the officer included the Applicants' Personal Information Forms [PIF] and three letters; one from the Applicant's sister-in-law, Mrs. Manjit Kaur, one from advocate P.L. Sharma, and one from counsel, Mr. Sarpanch Nachhattar Singh. The Applicants also submitted as evidence a newspaper article translated into English.

[8] The officer found that neither the PIFs nor the Board's country conditions documentation constituted new evidence. The officer gave little probative value to the three letters because there were inconsistencies between them. He found important core elements were missing. The officer concluded that all three letters were formulated only to support the PRRA application.

[9] The officer found the newspaper article did not establish a personalized risk for the Applicants. The officer did not give weight to the allegation that Mr. Satwinder Pal Singh Grewal is wanted by the police because there was no corroborating evidence to that effect. The officer noted that the Applicants' youngest son and other relatives live in India.

[10] The officer reviewed country conditions in India and concluded that "progress has been made in addressing the issue of corruption and impunity in the police force, the government and judiciary" (PRRA Decision at p 7).

[11] The officer found that a valid IFA exists for the Applicants in Delhi.

V. Issue

[12] Is the officer's decision reasonable?

VI. Relevant Legislative Provisions

[13] The following legislative provisions of the IRPA are relevant:

Consideration of application	**Examen de la demande**
113. Consideration of an application for protection shall be as follows:	**113.** Il est disposé de la demande comme il suit :
(*a*) an applicant whose claim to refugee protection has been rejected may present 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, at the time of the rejection;	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	*b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
(*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	*c*) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the	*d*) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

basis of the factors set out in section 97 and	
(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or	(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,
(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

[14] The following legislative provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*], are relevant:

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167. For the purpose of determining whether a hearing is required under paragraph 113(*b*) of the Act, the factors are the following:	**167.** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(*a*) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	*a*) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(*b*) whether the evidence is central to the decision with	*b*) l'importance de ces éléments de preuve pour la

respect to the application for protection; and	prise de la décision relative à la demande de protection;
(*c*) whether the evidence, if accepted, would justify allowing the application for protection.	*c*) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

VII. Position of the parties

[15] The Applicants submit that the officer erred in his finding inconsistencies between the letters. The Applicants also argue that the officer should have held a hearing to give them an opportunity to respond to his concerns in accordance with the *Regulation*s. They further contend that the officer's IFA finding is erroneous.

[16] The Respondent argues that credibility was not a central issue that justified holding a hearing. The Respondent adds that the officer reasonably weighed only the evidence the Applicants submitted. Finally, the Respondent submits that the officer correctly applied the test for an IFA.

VIII. Analysis

[17] The standard of review that applies to a PRRA officer's decision with respect to his assessment of the facts is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[18] It is trite law that holding an oral hearing is exceptional and is only justified when all the factors in subsection 167(1) of the *Regulation*s are met (*Andrade v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1074).

[19] In the present case, it is clear that the officer did not question the Applicants' credibility; rather, the central issue was the probative value of the new evidence the Applicants submitted. Paragraph 167(1)(*a*) of the *Regulation*s was not met; therefore, no oral hearing was required.

[20] In *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, this Court made the following statement:

> [33] The weight the trier of fact gives evidence tendered in a proceeding is not a science. Persons may weigh evidence differently but there is a reasonable range of weight within which the assessment of the evidence's weight should fall. Deference must be given to PRRA officers in their assessment of the probative value of evidence before them. If it falls within the range of reasonableness, it should not be disturbed. In my view the weight given counsel's statement in this matter falls within that range.

[21] In the present case, the omission of relevant information from some of the letters led the officer to conclude, as he was entitled to, that these letters did not demonstrate the alleged fear from the police, authorities and militant Sikhs (*J.E.P.G. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 744). It is not the role of this Court to re-assess the evidence the officer weighed.

[22] With respect to the officer's finding of an IFA in Delhi, the Applicants have not demonstrated that the officer erred. The Court notes that the officer did not analyze whether the Applicants had an IFA. His conclusion on IFA is as follows:

> In addition, should they not wish to return to Punjab, I find insufficient new evidence to cause me to come to a different conclusion from the RPD; that a valid Internal Flight Alternative exists for the applicants in Delhi.

(PRRA Decision at p 9).

[23] Nevertheless, this conclusion is reasonable, given the officer's analysis of the conditions in India. Based on his analysis of country conditions, he reasonably concluded that the Applicants did not face a personalized risk in India; therefore, it was not necessary for the officer to consider an IFA.

IX. Conclusion

[24] For all the above reasons, the Applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicants' application for judicial review be dismissed.

No question of general importance for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8310-11
STYLE OF CAUSE:	SATWINDER PAL SINGH GREWAL RAJINDER KAUR GREWAL v THE MNISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 30, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	June 5, 2012

APPEARANCES:

Micheal Crane	FOR THE APPLICANTS
Nimanthika Kaneira	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Micheal Crane Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT