Federal Court  Cour fédérale

Date: 20120815

Docket: IMM-9239-11

Citation: 2012 FC 997

Ottawa, Ontario, August 15, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

MOSAMMAT MONOWARA KHATUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
and
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application by Mosammat Monowara Khatun (the Applicant) for judicial review of a decision of the Pre-Removal Risk Assessment [PRRA] Officer, C. Kratofil, dated October 27, 2011, in which she concluded that the Applicant faces less than a mere possibility of persecution in

Italy and or in Bangladesh as described in Section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The PRRA Officer also determined that the Applicant would not likely be at risk of torture, or likely face a risk to life, or a risk of cruel and unusual treatment or punishment as described in section 97 of *IRPA*.

[2] For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[3] The Applicant is a 46 year old woman from Bangladesh. She was issued a visitor's visa in September 2000 by the Canadian Visa section in Rome. Upon her arrival in Canada, she made a refugee claim on October 24, 2000. The Refugee Protection Division [RPD] of the Immigration and Refugee Protection Board [the Board] concluded, on June 10, 2004, that she was not a Convention Refugee or a person in need of protection as contemplated by sections 96 and 97 of the *IRPA*.

[4] Judicial review of the Board's decision was denied by this Court on July 29, 2005.

[5] A PRRA application was initiated on October 16, 2010. The PRRA Officer made a negative determination on March 18, 2011. The Applicant sought leave for judicial review of that negative PRRA. The Respondents agreed to have the application reconsidered. The Applicant was subsequently granted until June 21, 2011 to present new and/or additional submissions in support the re-determination of her PRRA application.

[6] On October 27, 2011, the officer rendered a decision on the Applicant's PRRA application. In denying the Applicant's application, the Officer found that the Applicant had essentially repeated the same allegations in her PRRA application as those presented before the Board and assigned a low probative value to the new evidence presented in support of her position.

[7] On January 5, 2012, Mr. Justice Shore ordered that a stay of execution of the removal order of the Applicant be granted until the application for judicial review be dealt with. In support of his conclusion, Justice Shore made the following remarks:

> [3] Allegedly because the Applicant is unable to bear children, she has brought shame on her husband and his family; therefore, the Applicant fears for her life.
>
> [4] Although the Court recognizes that the Applicant may be at risk in Bangladesh (such as clearly described in the provided Country references), she could have claimed asylum in Italy, or in Spain, where her brother was allegedly granted asylum. Yet, nevertheless, she allegedly feared (for life and limb) being in too close proximity to her husband.
>
> [5] In respect of the significant new evidence gathered six years subsequent to the Refugee Protection Division decision, the Court understands that certain details may not have been included in the situation-report in respect of the Applicant by a lawyer in Bangladesh of whom a report had been requested and even by the Applicant's psychologist to minimize the information given for the Applicant's safety, as women have been at risk in such situations where details have been divulged.
>
> [6] For all the above reasons, the criteria of the tripartite conjunctive test in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR, 302 (FCA) have been met in favour of the Applicant, recognizing that the matter should at least be heard in depth, and, thus, analyzed in the context of judicial review.
>
> [7] Therefore, the stay of execution of the removal order is granted until the review in respect of the Pre-Removal Risk Assessment [PRRA] is determined (see Applicant's Application Record, at pages 5-8).

[8] This Court is now seized with the application for judicial review of the PRRA Officer's decision.

III. Legislation

[9] Section 96, subsection 97(1) and paragraph 113*(b)* of the *IRPA* and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] provide as follows:

Convention refugee	Définition de « réfugié »
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.
Person in need of protection	Personne à protéger
97. (1) A person in need of protection is a person in Canada	**97.** (1) A qualité de personne à protéger la personne qui se

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

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 :

113. (*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

113. *b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

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 113*b*) 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 respect to the application for protection; and

b) l'importance de ces éléments de preuve pour la 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.

IV. Issues and standard of review

A. Issues

1 Did the PRRA Officer err in making credibility findings without considering whether or not to interview the Applicant?

2. Are the PRRA Officer's determinations reasonable?

B. Standard of review

[10] The first issue is a question of procedural fairness and must be determined on a standard of correctness (see *Lai v Canada (Minister of Citizenship and Immigration)*, 2007 FC 361, [2008] 2 FCR 3 at para 55; and *Sketchley v Canada (Attorney General)*, 2005 FCA 404, [2006] 3 FCR 392).

[11] As for the second issue, it is well established by the jurisprudence of this Court that PRRA Officers' decisions are accorded significant deference and are reviewable on a standard of reasonableness (see *James v Canada (Minister of Citizenship and Immigration)*, 2010 FC 318, [2010] FCJ No 368 (QL) at para 16). "In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

V. Parties' submissions

A. Applicant's submissions

[12] The Applicant submits that the PRRA Officer ignored the issue of battered women in Bangladesh and evidence such as the report from Mr. Siddiquzzaman Tarafder, a lawyer from Bangladesh who stated that his investigation revealed that the Applicant will be at risk in Italy or Bangladesh. Mr. Tarafder suggested in his letter dated November 2010, that he contacted the Applicant's father-in-law who explained that she humiliated the family's name. He also suggested that her husband's family was involved with Islamic militants and the war in Afghanistan.

[13] The PRRA Officer did not seek further clarification as to the evidence adduced by the Applicant in support of her position. The Applicant argues that an interview was warranted because the Applicant's credibility was being questioned.

[14] The Applicant also claims that Mr. Tarafder's report is corroborated by the documentary evidence which shows that violence against women is endemic in Bangladesh and that there is hardly any recourse available to them despite the existing legislation on domestic violence.

[15] Furthermore, the Applicant relies on Mr. Ahmed Hussein's book entitled "A Thousand Suns" that details situations of abuse against women in Bangladesh because of their inability to bear children.

[16] The Applicant also claims that the PRRA Officer ignored a psychological report establishing that she suffers from psychological trauma due to her past experience at the hands of her husband and in-laws.

[17] The Applicant affirms that the Officer's failure to conduct a hearing on the credibility of the evidence adduced by an Applicant constitutes an error reviewable on a standard of correctness (see *Canada (Minister of Employment and Immigration) v Jiminez-Perez*, [1984] 2 SCR 565).

B. The Respondents' submissions

[18] The Respondents allege that the Officer's decision determining that the Applicant raised the same risks that were before the Board in her PRRA application was reasonable. The PRRA Officer did not ignore evidence of risk. The wording of the decision, according to the Respondents, indicates that the Officer reviewed and assessed all of the evidence. The Officer however came to the conclusion that the Applicant failed to establish a significant change in country conditions in Italy or Bangladesh (see *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385).

[19] The Respondents refer to the Officer's reasons where she determined that:

> a) the Officer found the letter submitted by a lawyer in Bangladesh to be of low probative value as it was vague and speculative and lacking multiple important details;
>
> b) as for the psychological report from Dr. Pilowski, the Officer found the letter lacked important details regarding further diagnostic

> and treatment and also that Dr. Pilowski lacked any details of potential treatment options in Bangladesh;
>
> c) the Officer further found that the documents on country conditions were general in nature, were not related to the personal circumstances of the Applicant and were not sufficient overcome the findings of the RPD in relation to state protection.

[20] According to the Respondents, the Officer considered all of the evidence adduced before her and came to the conclusion that the Applicant had not demonstrated the existence of a new risk of persecution. The Officer's decision consequently "falls within [the] range of possible, acceptable outcomes which are defensible in fact and law" (see *Dunsmuir* cited above at para 47).

VI. Analysis

1. Did the PRRA Officer err in making credibility findings without considering whether or not to interview the Applicant?

[21] Section 167 of the *IRPR* provides that certain factors are to be considered by PRRA Officers in determining whether to hold a hearing or not. The factors reads as follows:

> *(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;
>
> *(b)* whether the evidence is central to the decision with respect to the application for protection; and
>
> *(c)* whether the evidence, if accepted, would justify allowing the application for protection.

[22] It is trite law that, in the context of a PRRA application, an oral hearing is the exception. Moreover, serious credibility issues must be central to the PRRA application in order to trigger the holding of an oral hearing. In reading the Officer's decision, it is clear that no such serious issue of credibility was found to exist (*Tekie v Canada ((Minister of Citizenship and Immigration)*, [2005] FCJ No 39, 2005 FC 27; *Yousef v Canada (Minister of Citizenship and Immigration)*, 2006 FC 864 at para 36 [*Yousef*]).

[23] The Officer did not breach her duty of procedural fairness. She determined that "[t]he evidence before me does not support that the applicant is of interest to her husband or his family after an absence of over 10 years. The evidence before me does not overcome the [Board]'s finding of fact, nor does the evidence before me support that there has been a change in country conditions in Italy or Bangladesh since the finding of the [Board] that negatively impacts this applicant such that she is now described in Section 96 and/or 97 of the IRPA" (see the PRRA Officer's decision at page 12 of the Certified Tribunal Record). In light of the foregoing determination, it is clear that "the PRRA officer's decision was based on the insufficiency of the evidence submitted by the Applicant in support of his contention that he faced new or heightened risks if he returned to [his country of nationality]" (see *Yousef* at para 36). In addition, this Court finds that the criteria set out in section 167 of the *IRPR* were not met by the Applicant. Assigning a low probative value to documentary evidence does not signify that an Applicant's credibility is being challenged. In this case the Officer was clearly discharging her duty to weigh the evidence adduced by the Applicant. Consequently, this Court rejects the Applicant's allegation that the Officer committed a reviewable error.

2. Are the PRRA Officer's determinations reasonable?

[24] The role of a PRRA Officer is to examine, as stated in section 113 of the *IRPA*, "only new evidence that arose after the rejection [of the claim to refugee protection] 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". Section 113 of the *IRPA* strictly limits the scope of a PRRA Officer's intervention. In *Kaybaki v Canada (Solicitor General of Canada)*, 2004 FC 32, [2004] FCJ No 27 (QL), Justice Kelen writes, in paragraph 11 of his decision, that "[t]he PRRA application cannot be allowed to become a second refugee hearing. The PRRA process is to assess new risk developments between the [IRB] hearing and the removal date".

[25] Justice Mosley held, in *Raza v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1385 at para 10, that:

> [10] PRAA officers have a specialized expertise in risk assessment, and their findings are usually fact driven, and therefore warrant considerable deference: *Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 872, 256 FTR 53 at para 16 [*Selliah*]. Considerable deference is owed to the factual determinations of a PRAA officer including their conclusions with respect to the proper weight to be accorded to the evidence placed before them: *Yousef v Canada (Minister of Citizenship and Immigration)*, 2006 FC 864, [2006] FCJ No 1101 at para 19 [*Yousef*]. In the absence of a failure to consider relevant factors or reliance upon irrelevant ones, the weighing of the evidence lies within the purview of the officer conducting the assessment and does not normally give rise to judicial review: *Augusto v Canada (Solicitor General)*, 2005 FC 673, [2005] FCJ No 850, at para 9.

[26] The Applicant alleges that the Officer failed to reasonably assess or completely ignored the evidence adduced establishing her fear of persecution.

[27] The Applicant provided a letter from Mr. Tarafder, a psychological report from Dr. Pilowsky and documentary evidence on country conditions in Bangladesh and Italy. The Officer's conclusion rests on her finding that there was insufficient evidence to show that the Applicant would face a risk of persecution at the hands of her husband's family upon her return to Bangladesh or Italy. In reading the Officer's decision, it is clear that she reasonably weighed the evidence adduced by the Applicant and explained her reasons for assigning a low probative value. She determined that Mr. Tarafder's letter omitted important details as to how he obtained the information and found that his statements were speculative in nature and "made by a person with an interest in the outcome of this application" (see the PRRA Officer's decision at page 9 of the Certified Tribunal Record).

[28] Moreover, the Officer noted that "[w]hile Dr. Pilowski advises that the information in the letter could contain information that was not forthcoming to the [Board] as persons often disclose more to psychologists, neither the applicant, her counsel, or Dr. Pilowski have indicated that the statements of the applicant differ materially from evidence heard or considered by the [Board]" (see the PRRA Officer's decision at pages 9 and 10 of the Certified Tribunal Record). In this regard, the Court must underline that PRRA Officers are solely limited to considering new evidence presented before them.

[29] In her assessment of the documentary evidence on country conditions in Bangladesh and Italy, the Officer concluded that "while I find that there remain challenges in both countries, the evidence informs that the government have taken steps to improve conditions in many areas. There are avenues of recourse available to the applicant in either country should she choose to seek them". She also underlined that "[t]he evidence before me does not overcome the [Board]'s finding of fact, nor does the evidence before me support that there has been a change in country conditions in Italy or Bangladesh since the finding of the RPD…" (see the PRRA Officer's decision at pages 11 and 12 of the Certified Tribunal Record).

[30] In a PRRA application, the Officer is required to conduct an individualized analysis. Such analysis was correctly performed in the present case (see *Kovacs v Canada (Minister of Citizenship and Immigration*), 2010 FC 1003, [2010] FCJ No 1241 (QL)). The Court finds no valid reason to intervene, even though it may have reached a different conclusion. The Court's duty in judicial review is not to reweigh the evidence adduced by an Applicant but to ensure that the outcome falls "within a range of possible acceptable outcomes which are defensible in light of the facts and the law", as per *Dunsmuir* cited above. Such is our finding in this instance.

VII. Conclusion

[31] The PRRA Officer did not breach her duty of procedural fairness since she determined that the Applicant had failed to provide sufficient evidence to demonstrate the existence of a new risk.

[32] The PRRA Officer also concluded that the Applicant failed to demonstrate that there is more than a mere possibility that she would personally face persecution or risk to her life if returned to Bangladesh or Italy.

[33] This application for judicial review is therefore dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. This application for judicial review is dismissed; and

2. There is no question of general importance to certify.

"André F.J. Scott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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