Federal Court  Cour fédérale

Date: 20120906

Docket: IMM-1121-12

Citation: 2012 FC 1055

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 6, 2012

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

BRIAN ATHELBERT LOUIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Brian Athelbert Louis (applicant), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), for judicial review of the negative decision of a Pre-Removal Risk Assessment (PRRA) officer, rendered on January 5, 2012. Essentially, the applicant contends that the PRRA officer erred in her assessment of the consequences of his particular medical condition (he has been diagnosed as a paranoid

schizophrenic and is currently under the protection of the Public Curator of Quebec) on his life and safety, if he were to be removed from Canada.

[2] For the reasons that follow, I am of the view that it is not for the Court to intervene by substituting its own assessment of the evidence for that of the PRRA officer.

Factual and Procedural Background

[3] The applicant is a citizen of the Republic de Trinidad and Tobago and has been living in Canada as a permanent resident since February 1984. Starting in 1987, the applicant began to run afoul of the law; his criminal record includes convictions for breaking and entering, mischief, assault with a weapon, failure to comply, possession of a break-in instrument, theft, assault and failure to appear.

[4] On October 14, 2003, the Public Curator of Quebec was appointed tutor to property and to the person of the applicant pursuant to a judgment of the Superior Court of Quebec. Due to the applicant's psychiatric condition, it was recognized that he was in need of protection and that he has a partial inability to care for himself, to exercise his civil rights and to administer his property.

[5] On February 21, 2008, the applicant was declared inadmissible on grounds of serious criminality under paragraph 36(1)(*a*) of the IRPA and a deportation order was issued against him. On March 25, 2011, the Immigration Appeal Division ruled that his appeal of the deportation order had been abandoned, given that the applicant had failed to appear at the hearing. He therefore lost his permanent resident status March 25, 2011.

[6] On December 2, 2011, the applicant submitted a PRRA application when he was in detention at the Bordeaux prison, in Montréal. The application was dismissed on January 5, 2012, and a deportation order was issued for February 9, 2012.

[7] On February 2, 2012, the applicant asked the Canada Border Services Agency (CBSA) to stay his removal, which was scheduled for February 9, 2012. On February 3, 2012, his application for an administrative stay was dismissed, the CBSA officer having determined that the applicant's particular circumstances did not warrant a deferral of his removal. The applicant filed an application with this Court for leave and judicial review of that last decision (Court File No. IMM-1122-12) and, at the same time, asked this Court to stay his removal.

[8] On February 9, 2012, Justice Boivin granted this request pending the Court's decision with respect to the present application for leave and judicial review, as well as with regard to the application for leave and judicial review of the CBSA's decision.

Decision under review

[9] The PRRA officer properly identified the issue that was before her, namely, whether the removal of the applicant to Trinidad and Tobago would expose him to a risk of persecution by reason of the fact that he is a person with mental illness, or whether there are serious grounds to believe he would personally be subjected to torture within the meaning of Article 1 of the Convention Against Torture or, on a balance of evidence, that the applicant would personally face a

risk to his life or a risk of cruel and unusual treatment or punishment within the meaning of sections 96 and 97 of the IRPA.

[10] The PRRA officer determined that a mental illness such as schizophrenia was a personal characteristic that cannot be remedied or changed, such that persons afflicted with this illness may constitute a particular social group within the meaning of the Geneva Convention. However, following an analysis of the documentary evidence filed by the applicant, on the specific circumstances faced by persons with disabilities in Trinidad and Tobago (United States, April 8, 2011, Department of State. "Trinidad and Tobago": *Country Reports on Human Rights Practices for 2010*, available in the National Documentation Package on Trinidad and Tobago, August 31, 2011, Tab 2.1.), the PRRA officer concluded that the applicant would not be exposed [TRANSLATION] "to more than a mere possibility of persecution". The PRRA officer noted that despite the discrimination and lack of opportunity facing persons with disabilities in Trinidad and Tobago, the documentary evidence shows that efforts have been made by the Trinidadian government, with respect to financial support and access to services, to counter such discrimination.

[11] The assessment of the documentary evidence on this subject constitutes, for all practical purposes, the cornerstone of the impugned decision. The PRRA officer acknowledged that mental illness may be considered to be a handicap and that those who are affected by it may face discrimination. However, she noted that neither the aforementioned report, nor the other documents contained in the National Package (*Amnesty International Annual Report 2011* – Trinidad and Tobago, May 13, 2011 and Freedom House, *Freedom in the World 2011* – Trinidad and Tobago,

August 16, 2011) specifically mention persons with mental illness being exposed to persecution or ill treatment. The PRRA officer noted that:

> [TRANSLATION]
>
> … given his prolonged absence from the country and his mental health issues, I acknowledge that it is likely that the applicant will face integration difficulties upon his return to Trinidad and Tobago. However, the objective evidence before me does not support a finding that the treatment he would receive would amount to a violation of his fundamental human rights, or would be serious or systematic [sic]. The evidence does not lead me to conclude that, even if considered cumulatively, such treatment would not constitute persecution. Although I accept that the applicant will likely face discrimination due to his mental illness, relying on the objective documentation on the conditions in Trinidad and Tobago, I cannot conclude that he would be exposed to more than a mere possibility of persecution.
>
> Similarly, I am of the view that the objective documentation does not lead to the conclusion that the treatment reserved for those with physical or mental disabilities represents a personalized risk to life, a risk of cruel and unusual treatment or punishment, or a risk of torture.

[12] Moreover, the PRRA officer cited a report from the World Health Organization that noted that the Republic of Trinidad and Tobago has a well established healthcare system that provides mental heath care throughout the country, and is completely covered by the government as part of its social protection system (World Health Organisation. WHO-AIMS Report on Mental Health System in the Republic of Trinidad and Tobago, 2007). She added that according to the government of Trinidad and Tobago's official website, it also provides social assistance that covers people who are incapable of working due to a medical or mental condition (See official website of government of Trinidad and Tobago, "Services for Citizens: Social Assistance", "Services for Citizens: Disability Assistance").

Issue

[13] In light of the parties' written submissions, the only issue in this case is whether the PRRA officer committed a reviewable error by determining that the documentary evidence in the record did not support a finding that there was a risk of persecution or any risk to the life or safety of the applicant.

[14] In his memorandum the applicant merely submits that the impugned decision is also tainted by an error in law without any further explanations as to what that error might be. In response to the Court's question at the hearing, counsel for the applicant acknowledged that her client's application for judicial review raised no error of law.

Applicable standard of review

[15] The standard of review applicable to decisions of a PRRA officer differs according to the nature of the issues raised.

[16] The standard of review applicable to decisions of a PRRA officer with respect to his or her assessment of the evidence is reasonableness, such that "the Court's role is not to substitute its own appreciation for that of administrative decision makers and that it must show deference to their weighing of the evidence and assessment of credibility. The standard of review that applies to findings of administrative decision makers is also reasonableness, and the Court will intervene only where a finding of fact is erroneous and made in a perverse or capricious manner or where a decision was made without regard for the evidence." (*Andrade v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1074 at paragraph 23).

[17] An analysis of reasonableness is concerned 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." In other words, the Court's intervention should be limited to cases in which it has been demonstrated that the impugned decision does not fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47 (*Dunsmuir*) and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339).

Analysis

[18] The applicant submits that the PRRA officer rendered a contradictory and unreasonable decision when she concluded, on the one hand, that there was no objective evidence establishing that the applicant would be exposed to anything more than a mere possibility of persecution, while acknowledging, on the other hand, that there was discrimination against persons with disabilities and, at the same time, noting that the applicant may face integration difficulties upon returning to his country. According to the applicant, such a finding trivializes the effects and hardship likely to be caused by his particular medical condition.

[19] The respondent argues that no matter what the general situation of persons with disabilities in his country might be, the relevant issue for the PRRA officer was whether the applicant's particular situation would cause him any personalized risk if he were to return to his country.

[20] At the hearing before the Court, the applicant's counsel summed up her client's position as follows: the applicant would face a personalized risk of persecution if he were to return to Trinidad and Tobago because that country does not offer a public curatorship comparable to the one that exists in Quebec. She nonetheless had to acknowledge that no evidence to that effect had been presented to the PRRA officer.

[21] The respondent, for his part, submits that, as with an application for permanent residence on humanitarian and compassionate grounds, a PRRA application is an exceptional measure (*Sani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 913 at paragraph 34, [2008] FCJ No 1144). He suggests that the Court take into account the fact that the risks and hardship the applicant would face in Trinidad and Tobago due to his medical condition do not differ greatly from those he would face in Canada (*Gardner v Canada (Minister of Citizenship and Immigration)*, 2011 FC 895 at paragraph 41, [2011] FCJ 1119).

[22] The respondent further adds that the fact that the applicant "disagrees with the findings of the PRRA officer does not render the PRRA officer's decision unreasonable." (*Abdollahzadeh v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1310 at paragraph 29, [2007] FCJ 1703).

[23] Having considered all of the evidence in the record and the parties' submissions, I am of the opinion that the applicant's position amounts to a mere disagreement with the manner in which the PRRA officer assessed and analyzed the evidence, and with her findings.

[24] I see nothing contradictory or unreasonable in the PRRA officer's analysis. The analysis is clear, transparent and intelligible. The PRRA officer did not deny that persons with disabilities might face some discrimination in Trinidad and Tobago. However, after a comprehensive and thorough review of the documentary evidence, she found that:

- The discrimination was not a violation of fundamental human rights, nor was it of a serious or systematic nature so as to constitute *persecution*; and
- There was insufficient evidence to establish that the applicant would *personally* face discrimination that rises to the level of persecution.

[25] According to the case law of this Court, the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* by the UN High Commissioner for Refugees (Reedited, Geneva, January 1992) must serve as a reference for determining what constitutes persecution within the meaning of section 96 of the IRPA. This Handbook sets out that adverse factors (e.g. a general atmosphere of insecurity in the country of origin) combined with various measures such as discrimination, may instil a fear of persecution in an applicant on "cumulative grounds" (paragraph 53 of the Handbook). It also states that discrimination may amount to persecution when "measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned" (paragraph 54 of the Handbook) (see, *inter alia*, *Gorzsas v Canada (Minister of Citizenship and Immigration)*, 2009 FC 458 at paragraphs 33-35, [2009] FCJ 561 and *Bors v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1004 at paragraph 75, [2010] FCJ 1242).

[26] Taking into account these criteria and having regard to the evidence in the record, I find the PRRA officer's finding that, even considered cumulatively, the discriminatory practices described in the documentary evidence are far from constituting persecution, to be reasonable. For a better understanding of the foregoing, I shall reproduce the relevant excerpt from the report submitted by the applicant (available only in English):

[27] Moreover, sections 96 and 97 of the IRPA require the alleged risk to be personalized, that is to say, that it applies specifically to the applicant (*Raza v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1385 at paragraph 29, [2006] FCJ 1779). Although evidence relating to persons in circumstances similar to those of the applicant may lead to the conclusion that the applicant has a well-founded fear of persecution within the meaning of sections 96 and 97 of the IRPA, the documentary evidence in this case does not establish the existence of such persecution and does not specifically concern persons with mental illness. Potential difficulties of integration the applicant might experience in his country would, in and of themselves, be personalized. However, the PRRA officer reasonably found that such difficulties are not akin to persecution and are not sufficient to support a PRRA application.

[28] Lastly, the officer determined that even if one were to acknowledge the existence of a risk to the applicant, for the purposes of sections 96 and 97 of the IRPA, that risk does not constitute, on a balance of probabilities, more than a mere possibility of persecution. Establishing a risk of return is largely a question of fact within the PRRA officer's discretion. This Court should not substitute its own analysis unless the PRRA officer made findings of fact in a perverse and capricious manner or without regard for the evidence before her (*Sidhu v Canada (Minister of Citizenship and*

Immigration), 2004 FC 39 at paragraphs 15-17, [2004] FCJ 30; *Diallo v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1063 at paragraph 13, [2007] FCJ 1385; *Figurado v Canada (Solicitor General)*, 2005 FC 347 at paragraph 51, [2005] FCJ 458). That is clearly not the case with the decision under review.

[29] For the foregoing reasons, the application for judicial review is dismissed. The parties did not propose any question for certification and none arises in this matter.

JUDGMENT

THE COURT ORDERS AND ADJUDGES THAT:

1. The present application for judicial review is dismissed.

2. No questions for certification arise from this matter.

"Jocelyne Gagné"
Judge

Certified true translation
Sebastian Desbarats, Translator