Federal Court  Cour fédérale

Date: 20141218

Docket: IMM-3904-13

Citation: 2014 FC 1217

Ottawa, Ontario, December 18, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

RAFE HOSNY TAHA SHAKIBAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Court finds that the Pre-Removal Risk Assessment [PRRA] officer's decision was reasonable and this application must therefore be dismissed.

Background

[2] The applicant is a citizen of Egypt. Notwithstanding that his father is an Imam, the applicant stopped practicing Islam and spoke out against Islam in front of some individuals. He

says that he was subsequently labeled a non-believer and an apostate. He states that he fears being killed in Egypt.

[3] The applicant entered Canada on January 21, 1998, on a Student Visa, although he never studied. He filed a claim for refugee protection six years later in July 2004. This claim was denied on April 26, 2005, and leave for judicial review of that decision was denied by this Court.

[4] The applicant's PRRA application was denied on March 16, 2009. This Court dismissed an application to review that decision on November 18, 2009. The applicant filed a second PRRA application on May 21, 2009. It too was denied and that denial is the subject of this application.

[5] The basis of the PRRA application was the applicant's claim that he was at risk in Egypt as a consequence of being an apostate and having spoken out against Islam.

[6] The PRRA officer considered documents submitted by the applicant including his counsel's observations dated May 14, 2009, and an expert opinion by an Egyptian Reverend on persecution in Egypt dated May 11, 2009. Country condition reports from 2004 to 2009 were also submitted, but only documents dated after the PRRA rejection of March 16, 2009 were considered.

[7] The PRRA officer concluded that the applicant had failed to demonstrate that there was more than a mere possibility that he has a well-founded fear of persecution or that he was

personally subject to danger, torture, risk of life, risk of cruel and unusual treatment or punishment.

[8] In assessing the situation of individuals who criticize Islam in Egypt, the PRRA officer relied on US Department of State reports dated July 30, 2012 and April 19, 2013, and a Freedom House Report dated February 1, 2013. The PRRA officer also used two Immigration and Refugee Board decisions from 2006 to conclude that Canada does not reveal information to the home country of failed refugee claimants and there have not been any reported cases to the Canadian Embassy of failed refugee claimants being detained or tortured after being returned to Egypt.

[9] The PRRA officer concluded that while there is objective evidence that Christians face challenges in Egypt, he found that the applicant had not shown that he will be persecuted or at risk because he is not a Christian (he is a "secular Muslim" or former Muslim), nor had he produced evidence that private critics of Islam face the same challenges as Christians or outspoken critics of Islam.

Issue

[10] The applicant raises a single issue: Whether "the PRRA officer erred at law by failing to assess the PRRA application as a 'sur place' risk application, given the sweeping and significant changes in Egypt in 2012, and the significant changes in Egypt in 2012, and the significant amount of uncertainty, currently, vis-à-vis current State agents, central State control, and the treatment of those returning to the country from the West, the applicant having been absent from

Egypt since 1998, and is exposed to being perceived to be an opponent of the current regime; particularly in the face of his evidence that he was openly critical of Islam."

Analysis

[11] The applicant's principal submission is that the PRRA officer should have considered the PRRA application *sur place*, given the changes to the situation in Egypt and the fact that the applicant has been in Canada since the Egyptian revolution and election. Broadly speaking, a Muslim Brotherhood government was elected in Egypt in June 2012, while the PRRA officer was in the process of writing the decision. The applicant argues that this materially changed the PRRA analysis given that the basis for the applicant's claim is his criticism of Islam and Muslims. As such, he submits that the PRRA application should have been considered *sur place*.

[12] It is not disputed that the applicant did not articulate the *sur place* claim by updating his PRRA submissions when the election happened. The Minister submits that the onus is on the applicant to provide evidence in support of his claim: *Corona v Canada (Minister of Citizenship and Immigration)*, 2012 FC 759; *Ormankaya v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1089; and *Marte v Canada (Minister of Citizenship and Immigration)*, 2010 FC 930.

[13] In addition to the risk the applicant alleges on the basis of religion, he also asserts that he will face persecution because he has been in Canada for so long, including during the 2011 Egyptian revolution. He asserts that this will lead others to believe that he is a supporter of the Mubarak regime. I agree with the Minister that this submission is without merit because the

applicant made his claim for protection while Mubarak was in power and there is a paucity of evidence to support the allegation. It is mere speculation.

[14] As to the alleged *sur place* claim, this Court has held that the onus to advance such a claim rests with the applicant. As was stated by Justice Legacé in *Sani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 913: "[T]he applicant not only should have alleged that he was a 'refugee sur place,' but also should have filed evidence supporting a finding by the PRRA officer that he should be considered as a 'refugee sur place,' which he did not."

[15] In any event, even if the PRRA officer had done the examination now suggested, there is nothing in the record before the officer or this Court that points to any different or increased risk to this applicant after the election of Mr. Morsi. Accordingly, there is nothing to suggest that had a *sur place* PRRA analysis been done, the result would have been different.

[16] Neither party proposed a question for certification nor is there one.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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