Federal Court  Cour fédérale

Date: 20150213

Docket: IMM-4863-14

Citation: 2015 FC 183

Vancouver, British Columbia, February 13, 2015

PRESENT: The Honourable Mr. Justice S. Noël

BETWEEN:

GILBERTO MICOLTA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for leave to commence an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of Senior Immigration Officer D. Takhar [the PRRA Officer] of Citizenship and Immigration Canada, dated May 26, 2014, which rejected the Pre-Removal Risk Assessment [PRRA application] of Gilberto Micolta, the Applicant.

II. Facts

[2] The Applicant is a citizen of Colombia. He made his way to Seattle in the United States as a stowaway in May 2009.

[3] He entered Canada on July 4, 2009, and made a refugee claim on July 6, 2009, which was denied on November 8, 2012, by the Refugee Protection Division [RPD]. The Applicant's application for leave and judicial review of the RPD decision was denied on March 5, 2013.

[4] A deferral of removal order was granted and the Applicant made a PRRA application in January 2014, which was refused in May 2014. This is the decision under review.

III. Contested Decision

[5] The PRRA Officer states that the alleged risk submitted by the Applicant is materially the same as was presented to the RPD, namely that the Applicant faces a personalized risk of being killed by members of the *Fuerzas Revolucionarias de Colombia* [the FARC] if he is to return to Colombia and that there is no recourse to state protection for someone in the Applicant's position.

[6] The PRRA Officer evaluates the events the Applicant noted in his affidavit as having taken place since April 2013 along with letters submitted in support of his PRRA application and finds that his submissions are insufficient to connect the killing of Juan, the Applicant's nephew, to the Applicant's fear of the FARC. The PRRA Officer also evaluates newspaper articles

submitted by Applicant. Again, the killings listed in those articles do not make any mention of the aggressors being members of the FARC. There is also insufficient evidence to overcome the RPD's finding of state protection in Colombia.

[7] The PRRA Officer further finds that the three letters submitted in relation to the Applicant's mental health are simply a continuation of the facts presented to the RPD. The letters therefore do not meet the new evidence criteria of subsection 113(a) of IRPA.

[8] The PRRA Officer concludes that the Applicant, if returned to Colombia, faces no more than a mere possibility of persecution as described in section 96 of IRPA and that the Applicant would not likely be at risk of torture or likely to face a risk to his life or cruel and unusual treatment or punishment pursuant to section 97 of IRPA.

IV. Parties' Submissions

[9] The Applicant submits that the PRRA Officer made a veiled credibility finding and should have held a hearing as the PRRA Officer had doubts as to the evidence presented by the Applicant. The PRRA Officer also erred in failing to address the allegations made before the RPD in light of the new evidence or to interpret the new evidence in light of the Applicant's history. The Respondent retorts by arguing that no oral hearing was required because the Applicant's evidence is not enough to overcome the RPD findings.

[10] The Applicant further argues that the PRRA Officer erred in excluding the medical letters based on the test set out in *Elezi v Canada (Minister of Citizenship and Immigration)*, 2007 FC

240 [*Elezi*] and *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]. The Respondent, on the other hand, states that the PRRA Officer assessed the Applicant's mental health along with his vulnerability as an Afro-Colombian and properly concluded that both had been considered by the RPD. The recent evidence provided did not describe any material change to the Applicant's condition.

[11] Finally, the Applicant submits that the PRRA Officer's conclusion that the Applicant had not rebutted the findings of the RPD that he lacked subjective fear or rebutted the presumption of state protection is unreasonable since he presented new evidence regarding the murder of people close to him and the disappearance of his son. The Respondent argues, for his part, that the Applicant never sought state protection in Colombia.

V. Issues

[12] I have reviewed the parties' record and respective submissions and state the issues as follow:

- Did the PRRA Officer err in not holding an oral hearing?
- Did the PRRA Officer err in denying the PRRA application?

VI. Standard of Review

[13] The standard of review to be applied to the question of whether or not a hearing ought to have taken place is a question of procedural fairness and should be reviewed on the correctness standard (*Ahmad v Canada (Minister of Citizenship and Immigration)*, 2012 FC 89 at para 18;

Lai v Canada (Minister of Citizenship and Immigration), 2007 FC 361 at para 55). The question as to whether or not the PRRA decision is reasonable is a question of mixed fact and law and should be reviewed on the reasonableness standard. The Court shall only intervene if it concludes that the decision is unreasonable, and falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47).

VII. Analysis

A. *Did the PRRA Officer err in not holding an oral hearing?*

[14] The Applicant first submits that the PRRA Officer should have held an oral hearing and that the PRRA Officer made a veiled credibility finding. Paragraph 113(b) of IRPA clearly establishes that an oral hearing is to be held only in exceptional circumstances. The relevant factors to be considered are found in section 167 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [the Regulations]. The factors set out in section 167 of the Regulations are:

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.

[15] In the case at bar, the PRRA Officer evaluated all of the evidence provided by the Applicant and found that it was insufficient to overcome the RPD findings. No negative credibility findings were made. The PRRA thus did not err in not conducting an oral hearing. Indeed, the PRRA Officer properly considered the affidavit of Jairo and the letter provided by the Applicant's sister. The PRRA Officer discussed how both of these documents do not make any reference to the FARC or to any information connecting the incidents discussed in those documents to the Applicant's fear of the FARC. Moreover, the PRRA Officer noted that these individuals also have an interest in the outcome of the Applicant's PRRA application and are not objective sources (Applicant's Record, page 11). Thus, the PRRA Officer properly explained why it afforded little weight to these documents (*Sayed v Canada (Minister of Citizenship and Immigration)*, 2010 FC 796 at para 24 [*Sayed*]). As for the newspaper articles and the death certificates provided by the Applicant, the PRRA Officer properly concluded that these documents do not connect the alleged murders to the FARC. The PRRA Officer also analysed the information provided regarding the Applicant's son's situation and adequately concluded that the evidence provided is not enough to overcome the RPD's finding of state protection in Colombia. With regard to the Applicant's mental health supporting documentation, again, the PRRA Officer assessed the letters and concluded that they reiterate the same information presented before the RPD. Contrary to the facts set out in *Lopez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 464 [*Lopez*], cited by the Applicant in support of his position, the PRRA Officer had more than only the Applicant's sworn affidavit in order to make his decision.

[16] Furthermore, the PRRA Officer evaluated the information provided in the Applicant's affidavit in parallel with all of the other documents submitted by the Applicant, such as the death certificates, the affidavit of Jairo, the letter from the Applicant's sister and the newspaper articles. The PRRA Officer relied on the entirety of the documentation provided and its content and concluded that there was insufficient information to rebut any of the issues raised by the RPD (AR, page 193 at para 25). The PRRA Officer considered each piece of evidence and document presented in support of the PRRA application along with publicly available documentation concerning the country conditions in Colombia before coming to his conclusion to deny the PRRA application. Therefore, the PRRA Officer did not make a veiled credibility finding and there was therefore no need for an oral hearing. The intervention of this Court is not warranted.

B. *Did the PRRA Officer err in denying the Applicant's PRRA application?*

[17] A PRRA application by a failed refugee claimant is not an appeal or a reconsideration of the decision of the RPD to reject a claim for refugee protection (*Raza supra* at para 12; *Sayed supra* at para 37). That being said, a PRRA application may require consideration of some or all of the same factual and legal issues as a claim for refuge protection (*Raza supra* at para 12*)*. Paragraph 113(a) of IRPA is "based on the premise that a negative refugee determination by the RPD must be respected by the PRRA Officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD" (*Ibid* at para 13). A PRRA Officer may properly reject evidence that addresses the same risk issue considered by the RPD if it cannot prove that the relevant facts as of the date of the PRRA application are materially different from the facts as found by the RPD (*Ibid* at para 17).

[18] In the case at bar, the PRRA Officer concluded that the letters regarding the Applicant's mental health and his submissions of his vulnerability as an Afro-Columbian are essentially a repetition of the same information that was before the RPD. After reviewing the medical letters and the documentation pertaining to Afro-Colombians, I find the PRRA Officer's conclusion to reject those documents as new evidence reasonable. The medical letters reiterate the same concerns that were presented and evaluated by the RPD (AR, pages 78-79, 80, 181-184) and the documentation regarding Afro-Colombians predates the RPD decision and was also properly considered by the RPD. The Applicant did not demonstrate that his mental state was inadequately assessed by the RPD or that his vulnerability as an Afro-Colombian had not been properly evaluated before the RPD. The PRRA decision is thus reasonable.

[19] With regard to state protection, the documents presented by the Applicant and analysed by the PRRA Officer did not demonstrate that state protection in Colombia would not be available to the Applicant. Indeed, the only information regarding state protection was presented via the Applicant's son's request for police protection and letters provided explaining that his son had to leave Buenaventura because of threats from violent groups. There is even evidence indicating that the son of the Applicant sought state protection and that the request by police was that "the necessary actions be taken to provide police protection and avoid future risk to the safety…" of the son (Tribunal Record, page 119). The information provided did not demonstrate that the Applicant's son had exhausted all means of state protection or that there was a lack of interest or action by the authorities in Colombia. To the contrary, the newspaper articles presented by the Applicant even mention that the authorities are conducting

investigations with regard to the murders they discuss (AR, pages 54, 63, 70). No intervention from this Court is warranted.

VIII. Conclusion

[20] The PRRA Officer did not need to hold an oral hearing as there were no circumstances justifying holding an oral hearing. Moreover, the decision to reject the Applicant's PRRA application is reasonable since the evidence presented by the Applicant is essentially a continuation of the evidence presented before the RPD. There is no need for this Court to intervene.

[21] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the PRRA Officer's decision dated May 26, 2014, is dismissed.

2. No serious question of general importance is certified.

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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