Federal Court  Cour fédérale

Date: 20170126

Docket: IMM-2546-16

Citation: 2017 FC 100

Ottawa, Ontario, January 26, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

SIMONI GIORGANASHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Simoni Giorganashvili, seeks judicial review of a decision rejecting his application for a Pre-Removal Risk Assessment [PRRA], made by a Senior Immigration Officer [PRRA Officer] on April 13, 2016. The PRRA Officer determined that the Applicant had failed to establish that he would be at risk of persecution or torture, risk to life, or risk of cruel and unusual treatment or punishment if he returned to Georgia, his country of origin. The PRRA Officer also found that the Applicant had failed to rebut the presumption of state protection.

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

I. Background

[3] The Applicant came to Canada from the United States on December 18, 2008 and sought refugee protection on January 13, 2009. In November 2010, the Refugee Protection Division [RPD] rejected his claim on the basis that a viable and accessible internal flight alternative was available to the Applicant in Georgia. The Applicant did not seek judicial review of the RPD's decision.

[4] In February 2016, the Applicant submitted a PRRA application, alleging that while he lived in Georgia, he was subjected to threats and physical harm at the hands of a powerful and influential man, who accused the Applicant of stealing a large sum of money from him. The Applicant alleges that since the refusal of his refugee claim, the individual has continued to inflict harm on the Applicant’s family members and is responsible for his father’s death in October 2015. This individual is now employed by the Ministry of Internal Affairs [MIA] of Georgia as head of the Investigation Division for a specific region of Georgia.

[5] In support of his PRRA application, the Applicant submitted a number of documents, including letters from the MIA, his father's health and death certificates, and notarized statements from two (2) neighbours and the Applicant’s mother providing eyewitness accounts of the events that led to the death of the Applicant's father.

[6] The PRRA Officer rejected the Applicant’s PRRA application on April 13, 2016.

II. The PRRA decision

[7] The PRRA Officer began by setting out the Applicant's background information and new evidence and provided an overview of the RPD's decision. The PRRA Officer then proceeded to review country conditions in Georgia, noting that there are procedures in place for reporting a crime to the authorities and seeking additional assistance from other organizations that oversee the activities and actions of the state police and the MIA.

[8] Under the heading "Analysis and Findings", the PRRA Officer then considered the Applicant's documents. The PRRA Officer first noted that several of the Applicant's documents, including the original health certificate of the Applicant's father, had identical markings on the right side of the page. The PRRA Officer questioned why an original official document would have the same markings as the other documents produced by the translator and notary public. He also questioned why the health certificate would name the alleged perpetrator responsible for shooting the Applicant's father and how the physician who signed the certificate would have been apprised of this information. The PRRA Officer also noted that the alleged perpetrator had not been identified as the individual responsible for the death of the Applicant's father on his death certificate or in the letter that the Applicant's mother received from the MIA, informing her that the homicide investigation into her husband's death had been dismissed. As a result, the PRRA Officer gave the health certificate low probative weight as objective evidence to prove that the individual feared by the Applicant was responsible for his father's death and that the Applicant would face a forward-looking risk upon his return to Georgia.

[9] The PRRA Officer then proceeded to state that he accepted that the individual feared by the Applicant was now working as the head of the Investigation Division of the MIA in a specific region of Georgia, that a homicide investigation into the death of the Applicant's father was dismissed for insufficient evidence and that the Applicant's father died on October 21, 2015 in Georgia. The PRRA Officer noted, however, that no official police report detailing the death of the Applicant's father had been adduced as corroborating evidence.

[10] The PRRA Officer also considered the three (3) notarized eyewitness accounts of the death of the Applicant's father and noted that the eyewitnesses were two (2) neighbours and the Applicant's mother. He further noted that all three (3) eyewitness accounts stated that two (2) individuals, one of whom was identified as the individual feared by the Applicant, approached the home of the Applicant's father and physically assaulted him after he opened the door. All three (3) witnesses identified the individual feared by the Applicant as the person who shot the Applicant's father after the physical beating. The PRRA Officer assigned the witness accounts little probative value because the witnesses all knew the Applicant's father and had a vested interest in the matter, which detracted from their objectivity.

[11] After considering the Applicant's documents, the PRRA Officer found that he was unable to conclude that the individual feared by the Applicant was still interested in harming him, or that he was responsible for the death of the Applicant's father.

[12] On the issue of state protection, the PRRA Officer noted that the Applicant had approached the authorities when he was living in Georgia but that the police tore up his

complaint. The PRRA Officer found that the Applicant had failed to rebut the presumption of state protection because he had not approached organizations such as the General Inspection Department, the Prosecutor General, or the Public Defender's Office, considered to be effective, to seek additional assistance. The PRRA Officer found that the Applicant had adduced little objective and corroborative evidence to show that protection from these organizations was ineffective.

III. Analysis

[13] The Applicant submits that the PRRA Officer's assessment of the Applicant's risk is unreasonable and that he erred in his analysis of state protection. The Applicant contends that the PRRA Officer erred in assigning little probative weight to the notarized eyewitness statements from his mother and her neighbours simply because they had a vested interest in the matter. The Applicant also argues that in conducting both his assessment of risk and state protection analysis, the PRRA Officer failed to consider that the primary agent of persecution is now employed with the MIA in Georgia.

[14] The Respondent submits that the PRRA Officer's findings were reasonable. The PRRA Officer conducted a thorough and proper analysis of the Applicant's PRRA submissions and supporting documents. The Respondent argues that the PRRA Officer reasonably concluded that the three (3) notarized eyewitness statements could have been independently corroborated from police sources or the MIA, but instead the independent sources were silent on the identity of the person allegedly responsible for the death of the Applicant's father.

[15] The determinative issue in this application for judicial review is the PRRA Officer's assessment of the evidence.

[16] The standard of review for a PRRA Officer's assessment of the evidence is reasonableness (*Kulanayagam v Canada (Citizenship and Immigration)*, 2015 FC 101 at para 21; *Vijayaratnam v Canada (Citizenship and Immigration)*, 2015 FC 48 at para 24).

[17] When reviewing a decision on the standard of reasonableness, the Court must consider whether the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). Deference is owed to the decision-maker. While there might be more than one reasonable outcome, "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[18] In my view, the PRRA Officer's decision to assign little probative value to the three (3) notarized eyewitness statements from the Applicant's mother and her two (2) neighbours was unreasonable. The PRRA Officer discounted this evidence on the sole basis that the witnesses knew the Applicant's father and had "a vested interest in the matter".

[19] This Court has repeatedly stated that rejecting evidence on the sole basis that it emanates from family members or individuals connected to an applicant is an error (*Tabatadze v Canada*

(Citizenship and Immigration), 2016 FC 24 at paras 4-6; *Murillo Taborda v Canada (Citizenship and Immigration)*, 2013 FC 957 at paras 26, 29; *Cruz Ugalde v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 458 at paras 25-28).

[20] While I recognize that significant deference is owed to a decision-maker in the assessment of evidence and the determination of its probative value, the PRRA Officer in this case provided no other reason for assigning low probative value to the three (3) notarized eyewitness statements.

[21] Moreover, I am concerned that the decision to discount the notarized eyewitness statements may have impacted the PRRA Officer's assessment of risk. In his reasons, the PRRA Officer noted that a homicide investigation into the death of the Applicant's father appeared to have been dismissed due to the insufficiency of evidence. He further noted that the Applicant had not adduced a police report detailing the death of the Applicant's father as corroborative evidence. After stating that he gave little probative value to the notarized eyewitness statements because of the witnesses' vested interest in the matter, the PRRA Officer found that he was unable to conclude, given the evidence before him, that the individual feared by the Applicant was still interested in harming him or that the individual was responsible for the death of the Applicant's father. If the PRRA Officer had properly considered and assessed the notarized eyewitness statements, his conclusion might have been different as the three (3) statements identified the individual feared by the Applicant as the person allegedly responsible for the death of the Applicant's father.

[22] It is possible that the PRRA Officer would have come to the same conclusion regarding the probative value of the statements. However, in the absence of any analysis of the statements by the PRRA Officer, the Court cannot presume that the outcome would have been the same.

[23] I am also concerned that the PRRA Officer's failure to properly assess the probative value of the three (3) notarized eyewitness statements could have impacted the PRRA Officer's assessment of state protection, as his analysis focused on the Applicant's experiences while living in Georgia. The analysis does not address the issue of state protection in the context of the alleged perpetrator now being an agent of the state.

[24] I note that the PRRA Officer included excerpts in his decision from the USDOS *Country Reports on Human Rights Practices for 2014 – Georgia*, which inform of the existence of external bodies that oversee the MIA. However, this information is found in the section preceding the PRRA Officer's analysis and findings. The PRRA Officer's analysis does not address the issue of state protection in the context of the Applicant's current allegations, notably that: 1) the individual he fears continues to inflict harm on his family members and is allegedly responsible for his father's death in October 2015; 2) the individual is now employed in a senior position in the MIA as head of the Investigation Division for a specific region of Georgia; and 3) the investigation into the death of the Applicant's father was dismissed for insufficiency of evidence.

[25] I acknowledge that judicial review requires the Court to look at the decision as a whole (*Construction Labour Relations v Driver Iron Inc,* 2012 SCC 65 at para 3*; Newfoundland and*

Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at paras 14, 16*; Dunsmuir* at para 47) and that deference is owed to the PRRA Officer's decision. I also acknowledge that deference requires the Court to consider the reasons that could have been offered in support of a decision (*Dunsmuir* at para 48). However, even if read as a whole, it is not possible for me to supplement the reasons as I do not know what the decision would have been had the PRRA Officer reasonably considered and assessed the three (3) notarized eyewitness statements.

[26] As such, the decision is unreasonable and cannot be allowed to stand as it does not "fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law", as set out in *Dunsmuir*. Accordingly, the application for judicial review is allowed, the decision is set aside and the matter shall be remitted back to a different PRRA Officer for redetermination.

[27] Neither party proposed a question to certify nor does one arise.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision is set aside and the matter is remitted back to a different Pre-Removal Risk Assessment Officer for redetermination; and
3. No question is certified.

"Sylvie E. Roussel
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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