Federal Court  Cour fédérale

Date: 20170717

Docket: IMM-466-17

Citation: 2017 FC 691

Ottawa, Ontario, July 17, 2017

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

SVETLANA TITKOVA

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review by Svetlana Titkova ["Applicant"], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["*IRPA*"], of a decision made by an Backlog Reduction Officer ["Officer" or "PRRA Officer"] dated November 28, 2016, delivered January 16, 2017 ["Decision"], in which the Applicant's Pre-Removal Risk Assessment ["PRRA"] was denied.

[2] The Applicant is a 76-year old female Jehovah's Witness citizen of Russia. Her only child, a 50-year-old daughter ["the daughter"], is a citizen of Canada. In 2011, while the Applicant was in Canada (she travelled back and forth on a multiple-access visa from Russia to Canada), the daughter told the Applicant that she had been sexually abused by the Applicant' husband ["Husband"] from 1974-1978, when the family lived in Russia. The Applicant alleges that she then returned to Russia in May, 2011and told her Husband, who still lives in Russia that she knew of the sexual abuse. He became angry and assaulted her necessitating medical treatment. She says that the police in Russia were unwilling to provide her with protection following this incident.

[3] Thus, the Applicant returned to Canada where she made a refugee claim on June 7, 2011. In her refugee claim she only alleged spousal abuse, although she stated she was a Jehovah's Witness.

[4] On January 13, 2014, her refugee claim was denied with a finding of no credible basis under subsection 107(2) of the *IRPA*. The Refugee Protection Division ["RPD"] did not accept her story, finding her evasive and not forthcoming in her testimony. The RPD found that the testimony was "fraught with ambiguities, inconsistencies, contradictions and implausibilities". She sought judicial review from this Court but her application was dismissed.

[5] Faced with removal from Canada, the Applicant filed a PRRA based almost entirely on the same allegations she made to the RPD, namely spousal abuse. In addition to her lawyer's letter, the record consisted of her previous refugee protection claim, a short affidavit that appears

she filed in support of her application for judicial review, and a number of medical reports and records. The lawyer's letter said the medical records were filed to show she was more vulnerable to risk. There was no reference to her being a Jehovah's Witness in the five-page letter, although among other things it pointed to "problems with religious freedoms" in Russia and invited the Officer to read certain chapters in the National Documentation Package ["NDP"] including one entitled "Religion".

[6] The Applicant filed no material related to her being a Jehovah's Witness, except a single sentence added by hand to the copy of her previous refugee application stating: "[S]ince the rejection of my refugee protection claim by the IRB in Toronto on January 13, 2014, the situation for Jehovah's Witnesses has worsened considerably."

[7] Therefore, in addition to this one sentence, the only other new evidence filed by the Applicant with the PRRA officer were the medical reports concerning her condition in 2014 and 2015, i.e., at and after the RPD hearing.

[8] The Officer considered objective country condition evidence and determined that there was no new risk to her as a Jehovah's Witness. The PRRA was denied because the Applicant was unlikely to face a danger of torture, risk to life, or risk of cruel and unusual treatment/punishment.

[9] In terms of standard of review, in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [*Dunsmuir*], the Supreme Court of Canada explains what is required of a court reviewing on the reasonableness standard:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. 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.

[10] Questions of procedural fairness are reviewed on the correctness standard: *Canada (Citizenship and Immigration) v Khosa,* 2009 SCC 12 at para 43. In *Dunsmuir* at para 50, the Supreme Court of Canada explained what is required when conducting a review on the correctness standard:

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

[11] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron*

Inc, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[12] The Applicant says the PRRA Officer ignored her new evidence. In this respect, all she filed was her one sentence on risk to Jehovah's Witnesses, plus the medical information.

[13] The PRRA Officer noted that, except for the new sentence alleging Jehovah's Witness risk added to her previous RPD refugee application, the risk raised on her PRRA, namely spousal abuse, was the same that she alleged at the RPD.

[14] The Officer indicated he or she had reviewed the medical information, but noted, as is the case, that a PRRA is not an appeal from a negative RPD decision and that the PRRA process is to assess new risk developments between the RPD hearing and the removal date. In my view, the Officer's consideration of the medical evidence was reasonable in this regard because none of the medical material related to why she was at risk as a Jehovah's Witness.

[15] As in many if not most PRRA decisions, the Officer referred to and quoted from the RPD's negative credibility assessment. Three fairly lengthy paragraphs were quoted. While the Applicant suggests this put the Applicant's credibility in question, I am unable to come to that conclusion. The Applicant says only the first and last of the three paragraphs should have been quoted. In my view, there is no merit to the argument that the PRRA Officer put the Applicant's credibility in issue. Nowhere in the PRRA decision is there any reference to the credibility of the

Applicant, expressed or implied. I am not persuaded that I should infer into it any such finding. PRRA officers are entitled to refer to any finding made by the RPD.

[16] Since no "serious issue" concerning the Applicant's credibility was in issue at the PRRA, there is no merit to the Applicant's contention that the Officer acted unreasonably or contrary to law in not convoking an oral hearing. Nor are either of the other two components of the three cumulative provisions of section 167 of the *Immigration and Refugee Protection Regulations, SOR/2002-227* satisfied: I am not persuaded that there was "evidence central to the decision with respect to the application for protection that should be the subject of an oral hearing"; therefore, I am unable to conclude that such evidence, if accepted, "would justify allowing the application for protection".

[17] The PRRA Officer examined the changes relating to Jehovah's Witnesses in Russia since the RPD decision. While noting that the situation was worsening, problematic, and far from ideal, the Officer concluded the Applicant had not submitted "sufficient evidence" of personalized risk. This finding is supported by the record; while the burden was on her, the Applicant provided no evidence of personalized risk arising from her being a Jehovah's Witness. The Applicant failed to show that she was previously targeted for her religious beliefs or why she had not presented any such evidence at her RPD hearing. Therefore, this finding by the Officer is supported by the record.

[18] Having reviewed country condition information, the PRRA Officer concluded there was "insufficient evidence" showing a change in country conditions since the Applicant's failed

refugee claim. I was pointed to no conflicting evidence in the NDP or elsewhere, nor to any evidence in relation to the risk in Russia to Jehovah's Witnesses that was overlooked or not considered by the Officer. This finding by the Officer is justified on the record.

[19] The entire PRRA analysis on risk concerning the Applicant being a Jehovah's Witness was based on country condition documents. Included in the country condition documents relied upon by the Officer was certain extrinsic evidence that the PRRA Officer did not share with the Applicant before rejecting her application. The Applicant says she should have been given this documentation to comment on it and that this use by the Officer without notice constitutes breach of procedural fairness.

[20] With respect, I am unable to agree. The Federal Court of Appeal held in 1999 that "such documents are 'extrinsic evidence' and must be disclosed by the Officer only if they are novel and significant and demonstrate changes in general country conditions that may affect the decision": *Nadarajah v. Canada (Minister of Citizenship and Immigration)*, A-434-96, (1999), 237 N.R. 15 (F.C.A.). The information relied upon by the Officer meets neither condition. Indeed, the first of the two articles is from 2015 and concerns laws negatively affecting Jehovah's Witnesses enacted by Russia in 2002 and 2007, as well as country conditions. The second is dated July 11, 2016, a few days after the lawyer's letter; however its contents are not novel and address country conditions.

[21] The Applicant criticized an observation by the PRRA Officer that the "[A]pplicant has provided little evidence to show that she could not have presented such testimony at the time of

her refugee application." As a statement of fact, this observation is accurate. In my view, the Officer is simply noting the Applicant did not allege risk as a Jehovah's Witness at the RPD in 2013-2014, but raised it in 2016 at the PRRA. Given that Russia's laws in that regard were enacted in 2002 and 2007, I am unable to criticize the Officer for considering that an explanation was reasonably called for.

[22] Taking the decision as an organic whole, and having found there was no procedural unfairness, I have concluded that the PRRA Officer's decision is justified, transparent, and intelligible. Moreover, the PRRA Officer's decision meets the further *Dunsmuir* test in that it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Therefore judicial review must be dismissed.

[23] Neither party proposed a question of general importance for certification to the Federal Court of Appeal, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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