

Federal Court



Cour fédérale

Date: 20171221

Docket: IMM-2660-17

Citation: 2017 FC 1180

Ottawa, Ontario, December 21, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

SABRINA KEZIA LIONEL

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS AND
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review [Application] of a Senior Immigration Officer's [Officer] refusal of the Applicant's pre-removal risk assessment [PRRA]. For the reasons that follow, I find no reason to interfere with the Officer's decision.

II. Decision

[2] The Applicant, Sabrina Kezia Lionel, is a citizen of St. Lucia. She sought refugee status in Canada on the basis that she was bisexual and was assaulted by her boyfriend in St. Lucia. The Refugee Protection Division [RPD] found that Ms. Lionel had not established, on a balance of probabilities, either that she was bisexual or that she was assaulted by her boyfriend. The RPD dismissed her refugee claim, determining that it had no credible basis for the purposes of section 107(2) of *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] In support of her PRRA, Ms. Lionel submitted an unsworn letter, stating that (i) she had made a refugee claim in Canada due to her sexuality and feared harm if returned to St. Lucia, and (ii) the father of her son had been killed on January 8, 2017 by gunshot, along with two other people, and that it “sadden me that this have happened and is due to me” [sic].

[4] Along with her letter, Ms. Lionel provided three other pieces of evidence in support of her PRRA: (a) an article from *St. Lucia News Online*, which discussed the fatal shooting of a man named Gillan Charles and two other individuals, (b) the death certificate of Gillan Charles, and (c) a birth certificate for her son, which indicated the father was Gillan Charles and the mother was Sabrina Lionel. In her application forms, Ms. Lionel also stated that that this evidence supported her request for protection because her son’s father had been “shot due to me connection” [sic].

[5] The Officer, in the May 4, 2017 PRRA decision under review [Decision], noted the history of Ms. Lionel's failed refugee claim, and found that Ms. Lionel had not "rebutted" any of the RPD's findings, but rather that she had "restated, materially the same circumstances" she had advanced before the RPD, with some "additional information".

[6] The Officer cited section 113(a) of IRPA, which precludes an applicant from presenting new evidence on a PRRA except where the evidence arose after, or where the applicant could not have reasonably been expected to provide it before, the refugee claim's rejection. The Officer also cited section 161(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], which provides that a person who makes written submissions in support of a PRRA must identify how their evidence meets the requirements of section 113(a) of IRPA and how that evidence relates to them.

[7] The Officer reviewed Ms. Lionel's evidence and accepted that she had a child with Mr. Charles, and that Mr. Charles was killed. However, the Officer found that this did not constitute "evidence of new risk development" that was "personal" to Ms. Lionel, because Ms. Lionel had not explained the circumstances that had led to the shooting, and had merely asserted that the shooting occurred because of her. The Officer noted that the post from *St. Lucia News Online* provided no context and that no police report or investigation had been provided.

[8] The Officer concluded that Ms. Lionel had provided no objective evidence linking her in any way to the shooting, and that she was therefore neither a Convention refugee nor a person in need of protection for the purposes of sections 96 and 97 of IRPA.

III. Issues and Standard of Review

[9] Ms. Lionel's Application raises two issues: (i) whether the Officer unreasonably dealt with her evidence, or unreasonably found that her evidence did not constitute "evidence of a new risk development", and (ii) whether the Officer should have afforded Ms. Lionel an oral hearing.

[10] As held at paragraphs 19 and 21 of *Kulanayagam v Canada (Citizenship and Immigration)*, 2015 FC 101 [*Kulanayagam*], a PRRA officer's rejection of evidence on the grounds that it is not "new" evidence and findings of fact based on the evidence submitted, are reviewable on a reasonableness standard.

[11] Ms. Lionel submits that the decision to hold an oral hearing is a question of procedural fairness reviewable on a correctness standard (*Duitama Gomez v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 765 at paras 11-13). Although there is some jurisprudential divergence, I maintain the view articulated at paragraph 20 of *Kulanayagam* that a PRRA officer's decision not to conduct an oral hearing attracts a reasonableness standard of review (also accepted in *AB v Canada (Citizenship and Immigration)*, 2017 FC 629 at para 15; *Balogh v Canada (Citizenship and Immigration)*, 2017 FC 654 at para 23; *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 20 [*Ikeji*]).

IV. Analysis

A. *New Evidence*

[12] As set out above, Ms. Lionel submitted four pieces of evidence on her PRRA: her own statement, the *St. Lucia News Online* article, Mr. Charles' death certificate, and her son's birth certificate. She now raises several points with respect to the Officer's treatment of her evidence.

[13] First, relying on *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] and *Cech v Canada (Citizenship and Immigration)*, 2016 FC 1312 [*Cech*] (at paras 23-24), Ms. Lionel submits that the Officer unreasonably rejected her evidence simply because it went to the same risks considered by the RPD or that, in the alternative, it is not clear from the Decision why the evidence was rejected (*Cech* at para 20).

[14] Ms. Lionel then argues that, because Mr. Charles' shooting occurred after her failed RPD claim, the Officer unreasonably found that her evidence did not constitute "evidence of a new risk development".

[15] Finally, she submits that by finding she had submitted no "objective" evidence linking her to the shooting, the Officer imposed a new burden of proof on Ms. Lionel not recognized in the jurisprudence.

[16] I do not accept any of Ms. Lionel's arguments with respect to new evidence. Each argument, in my view, attacks the Decision's form and not its substance.

[17] First, I do not agree that the Officer imposed a novel burden upon Ms. Lionel in referencing the lack of objective evidence furnished. Ms. Lionel's burden of proof was on the balance of probabilities. Nothing in the Decision's language provides a basis for concluding that a different burden of proof was applied (see *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 903 at paras 9-12 [*Ferguson*]).

[18] Second, the Officer clearly dealt with and considered the evidence submitted by Ms. Lionel, regardless of the Officer's statement that the evidence was not "evidence of a new risk development". The Officer expressly accepted that Mr. Charles was the father of Ms. Lionel's son and that he had been shot and killed on January 8, 2017, but concluded that Ms. Lionel had not established a connection between herself and the shooting. The article from *St. Lucia News Online* corroborated the shooting but provided no context. Indeed, Ms. Lionel's own letter stated that the shooting was "due to" her, but not how the shooting was a consequence of, or itself evidence of, her sexual orientation.

[19] Third, I do not agree that the Officer unreasonably rejected any of Ms. Lionel's evidence on the sole basis that it went to the same risks dismissed by the RPD. A PRRA is neither an appeal nor a reconsideration of a failed refugee claim, and a PRRA officer must respect a negative refugee determination unless there is new evidence that might have affected the outcome of the RPD hearing (*Raza* at paras 12-13). Ms. Lionel stated in her letter that her sexual orientation put her at risk of harm in St. Lucia. This was the same allegation that the RPD did not accept, and it was open to the Officer to determine that Ms. Lionel had not, through her statement or any of her other evidence, rebutted the RPD's findings on this point.

[20] Contrary to Ms. Lionel's suggestions, the Officer's decision did not run afoul of *Raza* — rather, it was consistent with it. Nor do I think that *Cech* assists Ms. Lionel. In that case, the officer “hedged all bets” in rejecting the evidence, which had been plentiful (*Cech* at para 20). In the circumstances of this case, the Officer's reasons for denying Ms. Lionel's PRRA are much more transparent and, as conceded by counsel at the hearing of this Application, the evidence provided by Ms. Lionel to the Officer was very thin at best.

[21] Ms. Lionel takes issue with the Officer's treatment of her evidence, but I conclude that the Officer simply did as much as could be done with it (see *Eruabor v Canada (Citizenship and Immigration)*, 2008 FC 378 at para 8). The Officer could only work with what was provided. I agree with Ms. Lionel that the Decision was not perfect, but it still hit all relevant points in a reasonable manner.

B. *Oral Hearing and Credibility*

[22] Ms. Lionel submits that a PRRA officer must hold an oral hearing whenever the evidence raises a serious issue of the applicant's credibility, in keeping with section 167 of the Regulations. More specifically, she argues that an oral hearing is required where a full and complete acceptance of the applicant's version of events would have resulted in a positive decision, relying on *Negm v Canada (Citizenship and Immigration)*, 2015 FC 272 at para 36.

[23] Ms. Lionel submits that she provided credible evidence on her PRRA showing that Mr. Charles was killed, which, coupled with her own statement that he was killed “due to” her, ought

to have led to a determination in her favour — unless the Officer disbelieved her statement, in which case an oral hearing was required.

[24] I disagree. The basis of the Officer’s decision was a lack, or insufficiency, of evidence, not a finding that Ms. Lionel was not credible. The Officer wrote:

I do not find, however, that this constitutes evidence of a new risk development which is personal to the applicant and which has arisen since the date of the Board’s decision [...] In light of the foregoing and as no other objective evidence has been provided, I find that the applicant is not a Convention refugee [...] nor person in need of protection [...]

[25] A finding of insufficient evidence can be difficult to distinguish from a finding of credibility (*Ikeji* at para 27). In this case, it is not. Rather, it is clear that the Officer based the Decision on insufficient evidence, rather than an explicit, implicit, or otherwise “veiled” credibility finding. An oral hearing was therefore not required.

[26] The Officer’s statement that Ms. Lionel did not present any “objective” evidence linking her to the shooting does not, on its own, amount to a credibility finding (see *Kahsay v Canada (Citizenship and Immigration)*, 2017 FC 116 at para 20). Contrary to Ms. Lionel’s submissions, she did not state in her letter to the Officer that Mr. Charles was killed due to her sexuality. Her letter and application forms merely state that the shooting was “due to her”. The Officer’s analysis appropriately finds that Ms. Lionel’s statement was insufficient to support a connection of any kind between herself and Mr. Charles’ death, whether on the basis of her sexuality or otherwise (see *Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 at para 26).

[27] Indeed, this case shares similarities with *Ferguson*, where Justice Zinn explained:

34 It is also my view that there is nothing in the officer's decision under review which would indicate that any part of it was based on the Applicant's credibility. The officer neither believes nor disbelieves that the Applicant is lesbian - he is unconvinced. He states that there is insufficient objective evidence to establish that she is lesbian. In short, he found that there was some evidence - the statement of counsel - but that it was insufficient to prove, on the balance of probabilities, that Ms. Ferguson was lesbian. In my view, that determination does not bring into question the Applicant's credibility.

[28] *Ferguson* was followed by this Court in the recent decision *Ikeji*, in which Justice Strickland relied upon the lack of detail in the applicant's affidavit to distinguish between "veiled credibility" and "insufficient evidence" findings (at paras 33-34).

[29] To conclude this second issue, Ms. Lionel's position is ultimately that her bare statement that Mr. Charles' shooting was "due to" her, put her credibility at play. However, Ms. Lionel's statement was insufficient evidence of either her own credibility or of any connection between herself and Mr. Charles' shooting. The Decision was based on insufficient evidence, not credibility, and it was therefore reasonable for the Officer to not hold an oral hearing.

[30] Accordingly, the Application is dismissed. No questions for certification were proposed and none arise.

JUDGMENT in IMM-2660-17

THIS COURT'S JUDGMENT is that this application is dismissed. No question for certification was proposed, and none arose.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2660-17

STYLE OF CAUSE: SABRINA KEZIA LIONEL v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS AND THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 19, 2017

JUDGMENT AND REASONS: DINER J.

DATED: DECEMBER 21, 2017

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