Federal Court  Cour fédérale

Date: 20190514

Docket: IMM-1393-18

Citation: 2019 FC 705

Ottawa, Ontario, May 14, 2019

PRESENT: Mr. Justice Norris

BETWEEN:

ALBERMY ALEXIS SALA DEL ROSARIO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Albermy Alexis Sala del Rosario, was born in the Dominican Republic. He moved to the United States in 2000 at the age of 18. In March 2014, he was arrested in Jersey City, New Jersey, and charged with several offences relating to trafficking cocaine. He was offered a deal: help catch some other drug dealers and all his charges would be dropped. He says he kept up his end of the bargain. However, he became known in the community as an informant. He was told that the Latin Kings, a Puerto Rican street gang in New York, had put a

contract out on his life. The authorities would not help him. Fearing for his life if he went to prison, in November 2015 the applicant jumped bail and fled to the Dominican Republic. According to the applicant, his troubles followed him there. Suspicious people kept driving by his house. In September 2016, someone fired a bullet through his front door. In December 2016, a neighbour was shot and killed. The applicant says the neighbour was mistaken for him.

[2] The applicant arrived in Canada in August 2017 with the stated purpose of visiting his brother for a week. However, a report was prepared under section 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] on the basis of the applicant's admission to having a criminal record in the United States. The Immigration Division of the Immigration and Refugee Board of Canada ultimately determined that the applicant was inadmissible due to serious criminality under section 36(1)(b) of the *IRPA* because of his U.S. criminal convictions. The applicant was ordered deported in November 2017.

[3] On December 7, 2017, the applicant was notified that he was eligible to apply for a Pre-Removal Risk Assessment [PRRA] under section 112(1) of the *IRPA*. The application was eventually completed in February 2018. The applicant contended that the events in the Dominican Republic demonstrated that he was at risk if he returned there. In a decision dated March 8, 2018, a Senior Immigration Officer denied the application.

[4] The applicant now applies for judicial review of this decision under section 72(1) of the *IRPA*. He contends that the PRRA officer should have convoked a hearing before deciding the

application. He also contends that the officer's determination that he did not face more than a generalized risk of violence in the Dominican Republic is unreasonable.

[5] The applicant submitted the following documentary evidence in support of his PRRA application:

- A police report and photographs regarding the shooting in front of the applicant's home in the Dominican Republic on September 11, 2016;
- A transcript of a news report regarding a murder on December 25, 2016, which occurred a few houses away from the applicant's home;
- Transcripts of video dated March 19, 2017 in which residents of Boca Chica (the neighbourhood where the applicant lived) complained about violence and shootings in their neighbourhood. The applicant is one of the individuals interviewed on camera;
- An unsworn narrative statement from the applicant; and
- Country condition evidence about gun crime and gang violence in the Dominican Republic.

[6] There were understandable difficulties in compiling the necessary materials to support the PRRA application. Counsel for the applicant had to request several extensions of the deadline to complete her submissions but they were all granted.

[7] In written submissions in support of the PRRA application, counsel for the applicant stated that "[t]he New Jersey gang had reached out to a connected gang in the Dominican Republic to kill [the applicant]" and that all of the applicant's troubles "stemmed from his agreement to cooperate with the police." No direct evidence to support these claims was provided.

[8] The applicant did not request a hearing.

[9] The officer determined that the applicant was eligible to have his PRRA application assessed under both sections 96 and 97 of the *IRPA*. However, the focus of the officer's analysis was section 97 of the *IRPA*. The applicant does not suggest this was an error.

[10] The officer rejected the application on the basis of the insufficiency of the evidence. In particular, the officer found there was "little evidence" demonstrating on a balance of probabilities that the incidents in the Dominican Republic cited by the applicant "are directly related to his alleged deal with the American authorities." Further, the officer found there was "little evidence demonstrating the fears faced by the applicant in the Dominican Republic are personalized." The officer acknowledged the high levels of criminality and the prevalence of contract killings in the Dominican Republic related to "settling scores" in connection with drug trafficking. However, the officer found that the applicant only faced a risk of being a victim of generalized crime and not personalized gang violence. Having determined that the applicant did not face persecution based on any *Convention* ground under section 96 or personalized risks under section 97, the officer rejected the PRRA application.

[11] The applicant contends that the officer's decision turns on veiled credibility findings and, as a result, it breached procedural fairness to reject his PRRA application without first providing him with a hearing. It is not necessary to engage in an elaborate analysis of the standard of review applicable to this issue to resolve it in this case. If the officer did in fact make credibility findings (whether expressly or implicitly), there would be no question that the procedure

followed was not fair, having regard to all the circumstances, including the statutory framework, the nature of the substantive rights involved, and the consequences of the decision for the applicant. This would be because the applicant did not know the case he had to meet or have a full and fair chance to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54 and 56; *Tekie v Canada (Citizenship and Immigration)*, 2005 FC 27 at para 16; *AB v Canada (Citizenship and Immigration)*, 2019 FC 165 at paras 23-24). In my view, however, the officer made no such findings.

[12] The officer appears to have accepted that the applicant had made a deal with the authorities in New Jersey. The PRRA application failed because, in the officer's view, the applicant did not provide sufficient evidence to establish, on a balance of probabilities, that the incidents in the Dominican Republic were connected to the events in New Jersey as opposed to simply being instances of the violent crime that was prevalent in the Dominican Republic in general and in the applicant's neighbourhood in particular.

[13] The applicant claims that he was targeted in the Dominican Republic because of the events in New Jersey but, on its face, the evidence in support of this link was weak at best. For example, the applicant states that he had been warned by people at work and by neighbours in the Dominican Republic "that people from a New York gang" were looking for him yet he does not otherwise identify these colleagues or neighbours or explain how they acquired this critical piece of information. Similarly, the applicant states that "the police" in the Dominican Republic had told him that his neighbour was shot in a case of mistaken identity and that he was the intended target but he offers nothing to explain how they reached this conclusion. The applicant

had the burden of presenting sufficient evidence to the PRRA officer (*Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913 at para 6). The officer found that any suggested link between the events in New Jersey and the events in the Dominican Republic was speculative. On the record before the officer, this conclusion can be reached without having to draw any adverse conclusions about the applicant's credibility.

[14] With respect to the substance of the PRRA officer's decision, it is well-established that it is reviewed on a reasonableness standard (*Dhrumu v Canada (Citizenship and Immigration)*, 2011 FC 172 at para 17; *Reeves v Canada (Citizenship and Immigration)*, 2017 FC 12 at para 7; *Haq v Canada (Citizenship and Immigration)*, 2016 FC 370 at para 15). The reviewing court must show deference to the officer's decision. It examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "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*]). These criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

[15] I am satisfied that the officer's decision satisfies the *Dunsmuir* criteria. The reasons are transparent and intelligible and the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law. In particular, it was altogether reasonable for the officer to conclude that, in the absence of sufficient evidence of a link between the events in New Jersey and the events in the Dominican Republic, the applicant had failed to establish on a balance of probabilities that he was personally at risk, as is required to engage section 97 of the *IRPA*. There is, therefore, no basis for me to interfere with the decision.

[16] The applicant filed an affidavit in support of this application for judicial review which in some respects adds to the information that was before the PRRA officer. Counsel for the respondent did not object to the admissibility of this affidavit, aptly describing it as really just a more polished account of the applicant's case as it had been presented to the PRRA officer. The information in the affidavit does not alter my conclusion that it was not unreasonable for the officer to deny the PRRA application on the basis of a lack of sufficient evidence linking the events in the Dominican Republic with the events in New Jersey.

[17] For these reasons, the application for judicial review is dismissed. The parties did not suggest any questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

[18] Finally, in his Application for Leave and Judicial Review, the applicant named both the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness as respondents. In a judicial review of a denial of a PRRA application, the proper

respondent is the Minister of Citizenship and Immigration since he is the Minister who is responsible for the administration of the *IRPA* in respect of the matter for which judicial review is sought (see *IRPA*, ss 4(1) and (2) and *Federal Courts Citizenship, Immigration and Refugee Protection* Rules, SOR/93-22, s 5(2)(b)). Accordingly, the style of cause will be amended to remove the Minister of Public Safety and Emergency Preparedness as a respondent.

JUDGMENT IN IMM-1393-18

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to remove the Minister of Public Safety and Emergency Preparedness as a respondent.
2. The application for judicial review is dismissed.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1393-18
STYLE OF CAUSE:	ALBERMY ALEXIS SALA DEL ROSARIO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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