Date: 20070801

Docket: IMM-558-07

Citation: 2007 FC 810

Ottawa, Ontario, the 1st day of August 2007

PRESENT: THE HONOURABLE MR. JUSTICE MAX M. TEITELBAUM

BETWEEN:

RUSUDAN MIKIANI & LEVANI OSASHVILI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision by a PRRA Officer, dated January 10, 2007, rejecting the applicants' application for a pre-removal risk assessment (PRRA).

FACTS

[2] The applicants are citizens of Georgia. The principal applicant's ethnicity is mixed, being half Georgian and half Abkhazian. She is the mother of two children, both of whom are also included in this application.

[3] On April 24, 2003, the applicants arrived at the Canadian border in Lacolle, from the United States, in order to claim refugee status, having travelled with forged passports. The principal applicant claimed a fear of persecution by reason of her dual Abkhazian-Georgian ethnicity in that it was difficult for her to find employment because of her ethnic background. The applicants also claimed a fear of persecution by reason of the principal applicant's political involvement in the Round Table-Free Georgia Party (Zviadists). Their claim was rejected by the Refugee Protection Division (RPD) for reasons of credibility.

[4] After having heard their application for judicial review, Mr. Justice Pinard dismissed it on September 28, 2005. He found that intervention in the RPD's decision was not warranted.

[5] The PRRA application was received by CIC on October 4, 2006. In it, the applicant referred to the risks of returning to Georgia by reason of her dual ethnicity and to her fear of persecution for political reasons. She also claimed that because of Georgia's current economic situation, her single-parent status and her ethnic background, it was difficult for her to find employment and support herself and her children.

[6] On March 16, 2007, the Court declined to hear the stay motion submitted by the applicants.

IMPUGNED DECISION

[7] In his decision of January 10, 2007, the PRRA Officer found that the application, although it was a different submission, dealt with the same risks and facts submitted to and assessed by the RPD. The PRRA Officer also found that the applicants would not be subjected to a danger of torture or persecution or to a risk of cruel or unusual punishment or to a risk to their lives were they to be removed to Georgia.

PARTIES' SUBMISSIONS

Applicants

[8] The applicants' principal argument is that the PRRA Officer did not consider the documentation submitted to him about the situation in Georgia for Abkhazians, and therefore did not consider the risks presented by the applicants, and, moreover, did not give reasons for why he had accepted or rejected certain pieces of evidence. Indeed, that is the applicants' principal argument.

Respondent

[9] The respondent's principal argument is that the PRRA Officer did not make an error since he found that the applicants were essentially claiming the same risks and facts as they had before the RPD, and he could not find otherwise. Moreover, the respondent maintains that the PRRA Officer

did take into account the documentation submitted by the applicants in his risk analysis, along with finding that this documentation did not establish that the applicants would face any risks.

ISSUE

[10] Did the PRRA Officer make an error warranting the intervention of the Court?

STANDARD OF REVIEW

[11] In general, decisions by PRRA Officers must be given a great deal of deference. If there is nothing unreasonable about the PRRA Officer's decision, there is no serious issue. In *Kandiah v. Canada (Solicitor General)*, 2005 FC 1057, [2005] F.C.J. No. 1307 (QL) at paragraph 6, Mr. Justice Dawson explains the appropriate standard of review:

> As to the appropriate standard of review to be applied to a decision of a PRRA officer, in *Kim v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 540, Mr. Justice Mosley, after conducting a pragmatic and functional analysis, concluded "the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness". Mr. Justice Mosley also endorsed the finding of Mr. Justice Martineau in *Figurado v. Canada (Solicitor General)*, [2005] F.C.J. No. 458, that the appropriate standard of review for the decision of a PRRA officer is reasonableness *simpliciter* when the decision is considered "globally and as a whole". This jurisprudence was followed by Madam Justice Layden-Stevenson in *Nadarajah v. Canada (Solicitor General)*, [2005] F.C.J. No. 895 at paragraph 13. For the reasons given by my colleagues, I accept this to be an accurate statement of the applicable standard of review.

[12] In this case, I am going employ the standard of reasonableness *simpliciter* since the decision has been considered globally and as a whole.

ANALYSIS

Did the PRRA Officer make an error warranting the intervention of the Court?

[13] The applicants argue that the PRRA Officer did not consider the documentation submitted to him about the situation in Georgia for Abkhazians, and therefore did not consider the risks presented by the applicants. The applicants also argue that the PRRA Officer adopted the RPD decision as his own without conducting an assessment of the risks.

[14] First of all, the PRRA Officer first considered the RPD decision and, during the PRRA, found that the PRRA application was based on the same risks and facts as those presented by the applicants to the RPD. In such a case, a PRRA Officer may reach the same conclusions as the RPD:

> 14 PRRA officers are not bound by the conclusions reached by the RPD. However, when the evidence before the PRRA officer is essentially the same as that before the RPD, it is reasonable for the PRRA officer to reach the same conclusions (see *Klais v. Minister of Citizenship and Immigration)*, 2004 FC 783 at paragraph 11). In addition, PRRA officers do not sit on appeal or judicial review and therefore may rely on conclusions reached by the RPD when there is no new evidence (see *Jacques v. Canada (Solicitor General*), [2004] F.C. 1481).

(See *Isomi v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1753 (QL)).

[15] In my opinion, the applicants submitted the same risks and facts as those presented to the RPD. Therefore, the Officer did not err in this respect.

[16] Second, with regard to the applicants' argument that the PRRA Officer did not take into account the documentary evidence submitted by the applicants relating to the risks and did not give reasons for why he had accepted or rejected certain pieces of evidence, I am of the opinion that the PRRA Officer did not err in this respect either.

[17] Unless the contrary is shown by the applicant, a PRRA Officer is assumed to have considered all the evidence presented to him (*Florea v. Canada (M.E.I.)*, [1993] F.C.J. No. 598 (QL); *Houssou v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1375, [2006] F.C.J. No. 1730 (QL)).

[18] In his decision, the Officer referred to the documentation that he had considered. Furthermore, according to settled caselaw, notwithstanding the submission of fresh documentary evidence, the applicants must establish an individualized risk (*Ahmad v. Canada (M.C.I.)*, [2004] F.C.J. No. 995 (QL); *Jarada v. Canada (Minister Citizenship and Immigration)*, 2005 FC 409, [2005] F.C.J. No. 506 (F.C.) (QL); *Ould v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 83, [2007] F.C.J. No. 103 (QL)).

[19] The Officer twice indicated that the documentary evidence filed by the applicants did not allow him to find that there were changes in the situation in Georgia constituting fresh evidence that would enable him to find differently than the RPD or that the applicants would face an individualized risk.

[20] Accordingly, I am of the opinion that the PRRA Officer’s decision, considered globally and as a whole, was not unreasonable.

[21] Moreover, according to the evidence in the file, it is possible that the applicants could be the subjects of discrimination if they had to be returned to Georgia, but nothing confirms the possibility of persecution.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question was submitted to be certified.

"Max M. Teitelbaum"
Deputy Judge

Certified true translation
Gwendolyn May, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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