Date: 20071016

Docket: IMM-1426-07

Citation: 2007 FC 1055

Ottawa, Ontario, October 16, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ASHLEY FRANCISCO RODRIGUES

Applicant(s)

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent(s)

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Ashley Francisco Rodrigues challenging a pre-removal risk assessment (PRRA) made on March 11, 2007.

Background

[2] Mr. Rodrigues was born in Kuwait in 1983 but because his father is an Indian citizen he, too, is an Indian national. Mr. Rodriguez has lived only briefly in India where he attended boarding school and for the most part, he was raised in Kuwait. The Rodrigues family is Christian and

Mr. Rodrigues' only language is English. Mr. Rodrigues and his family were landed in Canada as permanent residents in June 1997.

[3] On January 18, 2002, Mr. Rodrigues was convicted of attempted break and enter with intent and possession of stolen property. He was sentenced to a conditional sentence of four months followed by probation. Because of this conviction, he was ordered deported and a subsequent appeal to the Immigration Appeal Division (IAD) for a stay was denied. Apparently that decision is the subject of a separate application for judicial review.

[4] In 2006, Mr. Rodrigues was convicted of aggravated assault and possession of a dangerous weapon. For this crime, he was sentenced to a period of incarceration of two years followed by probation. When this application was argued before me, Mr. Rodrigues was still serving his jail sentence.

[5] On February 8, 2007, Mr. Rodrigues applied for a PRRA. His claim to protection was outlined in a detailed written submission which included the following summary of his risk concerns:

> There is ample documentary evidence, showing numerous violent attacks on Christians in India. The religious violence is not abating and police investigations are inadequate. Christians are persecuted, discriminated against and ostracized in India.
>
> The risks to the Applicant is further heightened as he is a complete outsider to India and this factor will draw attention to him. He is Caucasian, Christian, speaks only English, has no family, friends or connections in India, and is unfamiliar with customs and culture in India. He will not be able to function there. He will be perceived as

> an outsider, and his Christian faith will make him a target of persecution, harassment, ostracism and attacks. Religious intolerance is widely practiced in India and violence against Christians continues unabated.
>
> Ashley Rodrigues lived in India only for a few years as a child – during the Gulf war. He lived in a boarding school, where only English was spoken and where he was not allowed to leave the school premises. The school was guarded and isolated. During that brief time in India, the Applicant could not and did not assimilate values, culture and language of India. The Applicant was born in Kuwait. He is 23 years old and lived half of his life in Kuwait and the remaining years in Canada. His only tie to India is his Indian citizenship obtained due to the citizenship of his father at his birth. The Applicant will not be able to function in India, will stand out as an outsider, will have no means of supporting himself and no prospects for the future. He is terrified that he will be subject to attacks due to his Christian faith and Western values. He fears that his safety will be jeopardized and that his life will be at risk.

[6] In addition to his personal concerns, Mr. Rodrigues submitted considerable country condition evidence which described the risk situation in India for members of the Christian minority. That material referred to instances of violence directed at Christians carried out mostly by Hindu extremists including situations where the state response was inadequate.

The PRRA Decision

[7] After referencing a number of country condition reports describing the risk situation in India for members of the Christian faith, the PRRA Officer concluded that Mr. Rodrigues had failed to rebut the presumption of state protection in India. The PRRA decision also contains the following conclusion:

> With respect to the particular circumstances of the applicant, I have taken into consideration his particular profile specifically as a

> Caucasian Christian. Nevertheless, based on the above documentary evidence, I am not satisfied that there is sufficient evidence before me to indicate that Caucasians would not benefit from the state protection that is available to Christians of other ethnicities.
>
> Indeed, I am aware that the applicant does not have a home or family network in India, and that finding employment may be difficult as he only speaks English. I am sympathetic to the above but note that such considerations fall under an application under humanitarian and compassionate grounds. Still, I do note that according to the World Factbook, English enjoys associate status but is the most important language for national, political, and commercial communication.
>
> In addition, I have read counsel's reference to how the applicant would experience immense psychological stress upon a removal to India. I note that I have considered the above assertion, but I do not find sufficient details presented related to the degree of psychological difficulty the applicant would face. In this respect I note that there is little medical evidence in the form of a letter from a licensed psychologist or other medical professional to indicate such.
>
> Accordingly, based on the totality of the evidence before me, I do not find that the applicant would face more than a mere possibility of persecution under section 96 of IRPA. I also do not find it likely that the applicant would face a risk of torture, risk to life, or a risk of cruel and unusual punishment as described in paragraphs 97(1)(a) and (b) of IRPA in India.

Issues

[8] (a) Did the PRRA Officer fetter his discretion by relying upon or by adopting a United Kingdom Home Office Report as the basis for his state protection finding?

(b) Did the PRRA Officer err by being unduly selective in his assessment of the country condition evidence?

(c) Did the PRRA Officer err in concluding that the evidence before him was insufficient to engage section 7 of the *Canadian Charter of Rights and Freedoms* (Charter)?

Analysis

[9] The first and third issues noted above involve questions of fairness and law respectively for which the standard of review is correctness: see *Benitez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 461, [2006] F.C.J. No. 631 at para. 44. The second issue is purely evidentiary in nature for which the standard of review is patent unreasonableness: see *Mugesera v. Canada (Minister of Citizenship and Immigration)* 2005 SCC 41, [2005] S.C.J. No. 39 at para. 38.

Fettering

[10] Counsel for Mr. Rodrigues criticized the PRRA Officer's reliance upon a portion of a report prepared by the United Kingdom Home Office which evaluated the general, political and human rights situation in India. That report, titled "Home Office Operational Guidance Note – India" (OGN Report), states that it should be read in conjunction with the Home Office Country of Origin Report for India (COI Report).

[11] Mr. Rodrigues is not concerned with the OGN Report per se but rather with the PRRA Officer's adoption of the following passage from it:

> Those experiencing religious intolerance can reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided. As evidenced by the NHRC findings in respect to the extreme violence in February 2002

> in Gujarat, there is monitoring, investigation and redress for those who are victim to religious violence even in the most extreme circumstances. As detailed, perpetrators of religious violence even in the most extreme circumstances. As detailed, perpetrators of religious against Christians, Muslims and Hindus have been prosecuted for their actions.

[12] It was strenuously argued by Mr. Waldman that the above statement represents a legal conclusion that state protection is available in India for members of religious minorities. By relying upon such a conclusion, the PRRA Officer is said to have fettered his judgment in the sense that this was the very issue which he was legally obliged to answer based on the factual evidence before him.

[13] There is nothing in the PRRA decision to suggest that the Officer considered himself to be bound to adopt the findings in the OGN Report and, indeed, that document does not purport to be a mandatory direction to asylum officers in the United Kingdom. Instead, the Report advises that asylum claims should be considered on an individual basis. The OGN Report also draws upon information from numerous source documents including material from Amnesty International, Human Rights Watch, the United States Department of State, various news organizations and the United Kingdom Home Office. There is nothing to indicate that OGN reports from the United Kingdom are inherently unreliable and, in fact, their utilization as immigration reference documents is not uncommon in Canada: see, for example, *Figurado v. Canada (Minister of Citizenship and Immigration)* 2005 FC 347, [2005] F.C.J. No. 458. at para 54.

[14] I also do not agree that the manner in which the OGN Report was used in this instance constitutes a fettering of the PRRA Officer's duty to determine if state protection was available to

Mr. Rodrigues. When viewed in context, the impugned passage is nothing more than a distillation of other information considered and accepted by the PRRA Officer. While acknowledging that "conditions relating to religious intolerance are far from ideal in India", the Officer independently concluded that Mr. Rodrigues had failed to rebut the presumption of state protection.

[15] The above conclusion was not made in isolation. The PRRA Officer noted the secular, democratic traditions and institutions in India as well as the generally prevailing respect there for religious freedom. The PRRA Officer relied upon several source documents including two United States Department of State Reports to support the following findings:

- India has a stable, longstanding multi-party federal parliamentary democracy;
- India has free and fair elections;
- The Indian Government is generally effective in controlling its security forces;
- Christians, as the second largest religious minority in India, can carry out their practices without interference from the authorities including the establishment of religious schools and the dissemination of religious information;
- The imposition of Hindu-based government policy is subject to judicial review; and
- The National Commission for Minorities and the National Human Rights Commission operate to protect the rights of minorities and human rights generally.

[16] It is clear that the PRRA Officer accepted the United States Department of State Religious Freedom Report for India (2006) as an authoritative reference. In addition to the passages expressly relied upon, other passages from that Report supported the thesis that state protection for religious

minorities was available in India. While the authors of that Report recognized that religious intolerance and violence were serious problems in India, they found that the generally prevailing condition was that of “peaceful co-existence”. The Report also observed that attacks against Christians were more prevalent in certain parts of the country (eg. Gujarat) and often were directed at those who were attempting to convert Hindus to Christianity. The new national government was reported to have tightened legislative control over communal violence including the granting of increased investigative authority to the Human Rights Commission. A more aggressive policy of prosecuting those responsible for religiously motivated attacks had also been instituted. The Report went on to observe that, during 2005, the communal situation in India, by and large, remained under control.

[17] It is clear that the PRRA Officer in this case relied upon a number of trustworthy sources in reaching his conclusion that state protection was available to Mr. Rodrigues in India. I am not persuaded that he subordinated his judgment on state protection to the views expressed in the OGN Report, nor do I agree that the passage challenged by Mr. Rodrigues represents a conclusion on an issue of law. Rather, it seems to me to represent a factual conclusion supported by a considerable amount of evidence that victims of religious intolerance could generally seek effective protection and redress from the Indian authorities. This was a reasonable conclusion to draw from the available evidence.

The Evidence Issue

[18] Mr. Rodrigues also complains that the PRRA Officer erred by ignoring and misconstruing evidence and by being unreasonably selective in the evidence he adopted to support his state protection conclusion.

[19] There is no question that the PRRA Officer had a considerable amount of evidence before him that Christians were frequently victimized by Hindu extremists in India and that the Indian police were sometimes not responsive. This evidence, however, was not ignored and, in fact, the PRRA decision contains a fairly representative sampling of the country condition reports which confirm the extent of the problem. It is, of course, unnecessary for a PRRA officer to refer to every documentary reference that was placed before him. In this case, I am satisfied, from the materials cited, that the Officer clearly understood the scope of the risk faced by Christians in India.

[20] Much of the evidence relied upon by Mr. Rodrigues was anecdotal and in the broader context it was found insufficient to overcome the generally favourable state protection environment that the PRRA Officer had recognized. The evidence confirming instances of violence directed at Christians had to be considered in the overall context of a country with a population exceeding one billion people and where over twenty million citizens are Christians. Other evidence before the PRRA Officer established that the risk faced by Christians was substantially less in certain parts of the country and, in some places, Christians represented the majority of the population. Also, some of the evidence relied upon by Mr. Rodrigues on the issue of risk was out of date and had been supplanted by evidence of an improved post-election risk environment.

[21] It is also of some contextual relevance that Mr. Rodrigues tendered no evidence to the PRRA Officer as to the extent, if at all, that he was a practicing Christian. This was of some potential significance because many of the documented examples of religious intolerance in India involved church leaders and others who were active in the conversion of Hindus. If Mr. Rodrigues had abandoned any adherence to Christianity, the degree of risk he faced, such as it was, would have been substantially diminished. Indeed, against the backdrop of the evidence of Mr. Rodrigues' history of serious criminality and incarceration, his assertion of risk based on a Christian identity seems rather incongruous particularly in the absence of competing evidence attesting to his adherence to the faith and its practices.

[22] On this issue, I agree completely with counsel for the Respondent that the exercise urged upon the Court on behalf of Mr. Rodrigues involves a reweighing of the evidence of risk and that is not the function of the Court on judicial review. Even if it was within my mandate to embark upon a reassessment of this evidence, I would not have come to a decision any different from that reached by the PRRA Officer.

The Charter Issue

[23] Mr. Rodrigues contends that the PRRA Officer had a duty to consider his life, security and liberty interests under section 7 of the Charter and failed to do so. He says that his section 7 interests were engaged by the evidence he put forward concerning his "exile" to India. This evidence consisted of a statutory declaration where he asserted that he had no social, linguistic,

cultural or family ties to India and no prospects for advancement. This, he said, would cause hardship and emotional devastation. Apart from these bare assertions, no other evidence of hardship was put to the PRRA Officer.

[24] Here, too, I agree with counsel for the Respondent. The PRRA Officer did not err by observing that the hardship considerations advanced by Mr. Rodrigues were more appropriately addressed within the context of other immigration processes. The PRRA jurisdiction does not engage the kinds of humanitarian issues that Mr. Rodrigues now advances: see *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, 272 F.T.R. 62 at paragraph 70. To the extent that a person's section 7 interests may be affected by deportation, they must be examined against the panoply of options for relief that are available under the *Immigration Refugee and Protection Act, S.C. 2001, c.27, (IRPA)* and cannot be assessed in isolation: see *Powell v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 202, 339 N.R. 189 at paragraph 13 and *Canada (Minister of Citizenship and Immigration) v. Varga*, 2006 FCA 394, 357 N.R. 333 at paragraph 13. Mr. Rodrigues has had the benefit of a proceeding before the IAD. That was the appropriate forum for assessing the hardship issues which he claims the PRRA Officer should have considered.

[25] Even at that, there seems to be no inherent legal obligation to extend any humanitarian and compassionate consideration to a non-citizen who faces deportation for serious criminality: see *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] S.C.R. 539 at paragraph 47. The kinds of concerns raised by Mr. Rodrigues simply do not rise to the level

which would engage his life, liberty or security interests. He does not face any risk of torture in India and his claimed risk of persecution on religious grounds was reasonably rejected. He is not presently incarcerated on immigration grounds. Assuming, without deciding, that the PRRA Officer has a duty beyond the existing statutory mandate to address Charter issues or values,[1] there were simply no proven features associated with Mr. Rodrigues' deportation to India which would engage any section 7 rights. In simple terms, if the types of concerns expressed by Mr. Rodrigues were a bar to deportation very few foreign nationals could ever be lawfully compelled to leave.

[26] In conclusion, this application for judicial review is dismissed.

[27] Because counsel for Mr. Rodrigues expressed some interest in proposing a certified question, I will allow him seven days to do so. If he does propose a question for certification within that time, counsel for the Respondent shall have the following three days to reply.

---

[1] See *Covarrubias v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365 at paragraph 56 which suggests that there is no such duty.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

" R. L. Barnes "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1426-07
STYLE OF CAUSE:	ASHLEY FRANCISCO RODRIGUES v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO
DATE OF HEARING:	10-SEPT-2007
REASONS FOR JUDGMENT AND JUDGMENT:	BARNES J.
DATED:	October 16, 2007

APPEARANCES:

Lorne Waldman	FOR THE APPLICANT(S)
Kristina Dragaitis	FOR THE RESPONDENT(S)

SOLICITORS OF RECORD:

Lorne Waldman Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT(S)
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT(S)