Date: 20071213

Docket: IMM-4292-06

Citation: 2007 FC 1312

Ottawa, Ontario, December 13, 2007

PRESENT: The Honourable Justice Frenette

BETWEEN:

MUHAMMAD AFZAL UL HAQUE, ZARRIN AFZAL, KIRIN AFZAL, MUHAMMAD SALMAN AFZAL, MOHAMMAD NOMAN AFZAL, MOHAMMAD RAHEEL AFZAL, MUHAMMAD ADEEL AFZAL, and MOHAMMAD ANEEL AFZAL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of *the Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of the decision of a Pre-Removal Risk Assessment (PRRA) officer (the Officer) dated June 27, 2006 and received July 27, 2006, dismissing the applicants' PRRA application under section 97 of IRPA. The Officer determined that

the applicants would not be subject to risk of torture, risk to life or risk of cruel and unusual treatment if returned to Pakistan.

PRELIMINARY MOTION

[2] The Respondent's counsel, at the outset of this hearing, raised a point of law arguing that since the PRRA Officer's decision dated June 27th 2006, a subsequent PRRA decision was rendered on September 20th 2006 attaining the same conclusion, rendered the judicial review of the first decision, moot. The applicant's counsel replied that by mutual consent of the parties, it was established that the two PRRA decisions were rendered by the same Officer, based on the same facts, since no new evidence was adduced and reached the same conclusion. The applicants allege that the Officer committed the same errors. The present hearing is therefore necessary to settle the contested issues.

[3] In my view, the judicial review of the first decision is not moot since the issues raised have not yet been determined. Even if it could be considered moot, I would allow this hearing to proceed, exercising the discretion to hear this matter as authorized by *Borowski v. Canada (Attorney General)*, [1989] S.C.J. No. 14, [1989] 1 S.C.R. 342. Therefore, the motion based on mootness is dismissed.

STATEMENT OF FACTS

[4] The facts of this case are as set out in the PRRA Officer's decision. The applicants are citizens of Pakistan. The principal applicant is the father, Afzal, who is 49 years old. The remaining

applicants are the mother Zarrrin 45 years old and their 6 children; Raheel is 26, Aneel is 24, Adeel is 23, Salman is 19, Kiran is 18 and Norman is 13 years old. The parents and their three eldest children were all born in Pakistan. In 1985, the family relocated for work to the United Arab Emirates (UAE), where the youngest three children were born. As citizens of foreign workers, the children were not eligible for citizenship in that country. In 1999, the eldest son, Raheel reached the age of 18 and no longer qualified under UAE laws for a visa based on his father's employment. Raheel and his mother returned to Pakistan where they allege that members of the Mohajir Qaumi Movement (MQM) approached Raheel and tried to recruit him. The pair returned to the UAE. Unable to stay in the UAE for longer than two months, Raheel went to the United States in 2000 on a visa. That same year Aneel, who was 18 and Adeel who was 17, joined him.

[5] Shortly after arriving in US, Adeel was diagnosed with schizophrenia. Afzal, the father, applied for visas for the family to join Adeel in the US in mid 2001. The applicants allege that the visas were issued, but due to the 9-11 attacks it was not safe for Pakistan nationals to travel to the USA.

[6] In August 2003, Aneel came to Canada and claimed refugee protection. His claim was denied and this Court dismissed leave for judicial review. Also in August 2003, the parents and the three youngest children went to Pakistan to visit an ailing relative. During that visit, the applicants' alleged that Salman was kidnapped by MQM and a ransom was demanded. The applicants did not inform the police, but instead relied on a relative that negotiated Salman's release. The family then returned to the UAE before joining Raheel and Adeel who were still residing in the US. In March

2004, the family came to Canada seeking refugee protection based on their fear of the MQM. The applicants' claim was rejected and leave for judicial review was denied.

[7] In May 2006, the applicants (except Aneel) brought a motion to re-open their refugee claim based on the decision in *Thamotharem* v. *Canada (M.C.I)*, 2006 FC 16. The Refugee Protection Division will not deal with this motion until after the Federal Court of Appeal has ruled on the *Thamotharem* appeal.

[8] In March 2006, the applicants submitted their PRRA applications, asking that all eight family members' applications be considered together. The basis for the PRRA applications was the following: (i) fear of MQM recruitment, (ii) medical conditions of Raheel and Aneel and the availability of treatment in Pakistan, and (iii) the difficulties experienced by the family. By decision dated June 27, 2006 and communicated to the applicants on July 27, 2006, the Officer refused the applications. This is the judicial review of the Officer's decision.

[9] This Court has already dismissed the applicants' motion to stay the execution of the removal order. In fact, the applicants with the exception of Afzal and Aneel, left Canada on September 12, 2006 and returned to Pakistan. Prior to their departure, a second PRRA application was submitted, and was refused on September 20, 2006. Afzal and Aneel are scheduled to be removed at a later date as Aneel must remain in Canada due to outstanding charges of sexual assault and criminal harassment.

DECISION UNDER REVIEW

[10] The Officer began their analysis by stating that state protection was the determinative issue in the assessment. The Officer perused the documentary evidence and gave particular consideration to the political, judicial, and legal systems in place in Pakistan. The Officer also considered the documentary evidence on the MQM and its actions in Pakistan. The Officer gave the applicants' documentary evidence, such as letters from relatives, little weight as they were from a party that was not disinterested. Moreover, the Officer stated that the descriptions of country conditions in the applicants' documentary evidence were not supported by the objective data found in the research. In the end, the Officer gave more weight to the information found in the objective country reports. The Officer found the objective documentary evidence did not support the applicants' alleged fear of risk from the MQM. Moreover, the Officer found that adequate state protection was available to the applicants' as they would have access to the due process of the law.

[11] As to the question of adequate medical attention for two of the sons, Aneel who was diagnosed as Bipolar and Adeel who was diagnosed as paranoid Schizophrenia, the Officer reviewed the letters from their doctors and articles provided by the applicants on psychological disorders in Pakistan. The Officer noted that some of the articles provided by the applicants referenced the diagnosis and treatment of patients in remote areas of the country, while the applicants live in a large city, Karachi. The Officer stated that the documentary evidence when read in its entirety showed that Pakistan had extensive public and private health facilities available. The Officer also noted that in any event pursuant to section 97(1)(b)(iv) of IRPA, "the risk is not caused by the inability of that country to provide adequate health or medical care."

[12] In conclusion, the Officer found that there was no more than a mere possibility that the applicants would be subjected to persecution should they return to Pakistan.

ISSUES

[13] (a) What is the appropriate standard of review?

(b) Did the officer err in failing to consider the best interests of the children?

(c) Did the officer err in finding that adequate state protection existed in Pakistan?

(d) Did the officer err in their consideration of the evidence regarding Aneel's PRRA application?

ANALYSIS

(a) What is the appropriate standard of review?

[14] In *Kim* v. *Canada (M.C.I.)*, 2005 FC 437 at paragraphs 8 to 22, Justice Mosley did a comprehensive application of the pragmatic and functional approach to the decisions of PRRA officers. At paragraph 19, Justice Mosley found:

> Combining and balancing all of these factors, I conclude that in the judicial review of PRRA decisions the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonable simpliciter, and for questions of law, correctness.

As such, the overall decision of the Officer, being one of mixed law and fact, is reviewable on the standard of reasonableness *simpliciter*. The PRRA Officer's finding with regards to state protection is fact specific and is reviewable on a standard of patent unreasonableness.

(b) Did the officer err in failing to consider the best interests of the children?

[15] The applicants submitted that the Officer committed a reviewable error by failing to consider the best interest of the children involved. In making this submission, the applicants relied on *Seguel* v. *Canada (Solicitor General)*, [2004] F.C.J. No. 1182, *Gonzalez* v. *Canada (M.C.I.)*, [2002] F.C.J. No. 671, and *Wu* v. *Canada (M.C.I.)*, [2002] F.C.J. No. 721 for the proposition that during a PRRA decision the best interest of the child has to be assessed.

[16] The respondent on the other hand submitted that it is well established that removal officers are not required to consider Humanitarian and Compassionate (H&C) grounds such as the best interest of the child as that responsibility is reserved for H&C officers. The respondent relied on a number of cases including *Varga v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394, [2006] F.C.J. No. 1828, *Sherzazy* v. *Canada (M.C.I.)*, [2005] F.C.J. No. 638, *Alabadley* v. *MCI*, 2006 FC 716, *El Ouardi* v. *Canada (M.C.I.)*, 2005 FCA 42, and *Kim* v. *Canada (M.C.I.)*, 2005 FC 437. In *Sherzady*, Justice Shore wrote "[T]here is simply no basis in the clear legislative language to suggest that a PRRA officer, on an applicant's request, is also meant to take on the role of an H&C officer".

[17] Having reviewed both parties' submissions and the relevant jurisprudence, I agree with the respondent; in the present case the Officer was not obliged to consider the best interests of the applicant children as a determinative factor in the present decision.

[18] In *Sherzady* v. *Canada (M.C.I.)* above, Justice Shore dealt with the same issue. At paragraphs 14 to 16 the Court held:

> [The applicant] argues that the PRRA officer did not address any humanitarian and compassionate (H&C) considerations and failed to consider the interests of [the applicant]'s Canadian son. The Court agrees with the Respondent that the PRRA officer was not obliged to consider the H&C factors raised by [the applicant].
>
> [The applicant] made an application for a PRRA assessment. The scheme for assessing a PRRA application under IRPA and the related Regulations is clear. A PRRA assessment is designed to assess risk, in this case the risk based on the factors set out in section 97 of IRPA (subparagraph 113(d) of IRPA). There is simply no basis in the clear legislative language to suggest that a PRRA officer, on an applicant's request, is also meant to take on the role of an H&C officer.
>
> There is a separate H&C consideration process in place, for which [the applicant] would have been free to apply. The H&C regime is provided for in paragraph 25(1) of IRPA as follows: […].

In *Varga*, above, a Federal Court of appeal decisions, dealt with an application for judicial review of a PRRA decision, where the Court stated that the negative PRRA decision had to be upheld even if the officer failed to consider the best interests of the children.

[19] In my opinion, the principle articulated in *Sherzady* above, applies to the case at bar. The cases relied on by the applicant can be distinguished from *Sherzady* above in that they are not judicial reviews of a PRRA decision, but yet applications and motions for stays of a removal order. Thus, although they comment on the issue, the ultimate question to be determined in those cases

was not whether a PRRA officer had to consider the best interest of the child, but whether a stay of the removal order was warranted.

[20] The applicants herein have not applied for an H&C application under section 25(1) of IRPA. There is no evidence on the record as to why they have chosen not to do so. An H&C application conducted by an H&C officer is the appropriate stage in the process for the assessment of the best interests of the children involved.

[21] In light of my above findings, I conclude that there was no reviewable error on this ground.

(c) Did the officer err in finding that adequate state protection existed in Pakistan?

[22] The applicants submitted that the Officer's finding that there existed adequate state protection in Pakistan was patently unreasonable. In particular, the applicants submitted that the 2005 US DOS report, upon which the Officer relied, does not support the conclusion of adequate state protection.

[23] The respondent submitted that the Officer's determination on state protection is owed significant deference and that the Court's intervention is not warranted in this case.

[24] The Officer's consideration of state protection occupies the better part of the decision. The Officer began by noting the high burden required to rebut state protection: "there is a presumption that the state is capable of protection its citizens. State protection is presumed to exist in the absence

of clear and convincing evidence to the contrary." After a thorough consideration of the political situation in Pakistan, the Officer considered the judicial system. The officer noted that while the Constitution provides for freedom of religion, in practice there are restrictions. The Officer also stated that the right of a person in the judicial system differ depending on their religion. The Officer then considered the MQM and mentioned that the IRB request for information to the Human Rights Commission of Pakistan which indicated that Mohajirs could live in most cities and suffered only occasional social discrimination. The Officer went on to consider the applicants' submission that the police would not arrest members of the MQM because of their power and stated that this submission was not supported in the documentation. In closing, the Officer stated: "The documentary evidence indicates that there have been incidences where the police have acted independently however these actions have been investigated and prosecutions do occur. The applicant has recourse to a police system that if not perfect is adequate." Pakistan is considered a functioning democracy. It could be argued that the efficiency of the system is not perfect and gives rise to criticism. Police actions can be excessive but state protection exists even if not perfect or adequate.

[25] In my opinion, there is nothing patently unreasonable about the Officer's decision on state protection. The Officer on numerous occasions made mention of problems in the system, but in the end found that overall the documentary evidence supported the conclusion that adequate state protection existed. As stated in *Ahmed* above at paragraph 5:

> Decisions of PRRA officers are to be given significant deference. Where there is nothing unreasonable in the PRRA decisions, there will be no serious issue. In this case, the PRRA officer clearly considered the applicants'

> submissions as well as the recent documentary evidence with respect of ongoing human rights abuses in Pakistan. What the applicants are asking the Court to do is re-weigh the evidence that was before the PRRA officer. While the Applicants may not agree with the PRRA decision, they have not demonstrated that it was arguably perverse or patently unreasonable.

(d) Did the officer err in their consideration of the evidence regarding Aneel's PRRA application?

[26] The applicants submitted that the Officer failed to consider all the evidence in relation to Aneel's PRRA application. Specifically, the applicants take issue with the Officer's consideration of the submissions and evidence put before them by the applicants regarding treatment of persons with psychiatric conditions in Pakistan.

[27] The respondent submitted that Aneel's PRRA submissions, which were made by his father, are in substance a repeat of the family's PRRA submissions. As the Officer dealt with all three of the issues raised by the family in their PRRA application, no reviewable error was committed.

[28] To start, I would note that the grounds for Aneel's PRRA application were essentially the same as those upon which the rest of the family relied. In fact, the written submissions portion of Aneel's PRRA application was written by his father. Aneel wrote at the start of his PRRA submissions:

> I came to Canada separately from my family but my refugee case is inextricably linked with that of my father's. Our files have also been merged by the PRRA officer who dealt with my father's case earlier. The ordeal we face applies to all members of our family. We stand and fall

> together. I therefore grant my father this opportunity to make submission in my behalf.

[29] The portion of the decision where the Officer addresses the documents provided by the applicants' regarding treatment for Aneel (and his brother Adeel) reads as follows:

> The applicant has submitted that the boys would not be able to get medical attention in Pakistan. I have read the articles submitted by the applicant's on the case of psychological disorders in Pakistan. I note that some of this material references the diagnosis and treatment of patients in remote areas of the country. Documentary evidence when read in its entirety show that Pakistan does have an extensive health facilities available. Wikipedia list major hospitals in the provinces of Punjab, Sindh, NWFP and Balochistan as well as, in the capital region of Islamabad totalling over one hundred institutions. Karachi (the applicant's birth place) lists over twenty institutions. There are public as well as private health care institutions available. The documentary evidence when read in its entirety does not support the principal applicant's submission that health care would not be available.

[30] In my opinion, there is no reviewable error in the Officer's consideration of this evidence. It is obvious by the above extract of the decision that the Officer considered all the evidence before them. The fact that the Officer chose to note certain facts from the documentary evidence provided and not others does not amount to a reviewable error in this case. The Officer's overall finding that the documentary evidence in its entirety did not support the applicants submission that health care was unavailable in Pakistan was reasonable. The PRRA Officer had ample evidence from which she could reasonably support her conclusions.

[31] The applicants reside in Karachi, a city which has over twenty public medical institutions which includes mental medical facilities. There are also private health care institutions available.

The argument that the level of health care in psychiatric hospitals in Pakistan is not comparable to the level in Canada, is not a valid reason in itself to justify a claim in a PRRA decision.

[32] All of these facts of the medical problems were thoroughly examined by the PRRA Officer. Furthermore, at the PRRA level, the application of section 97(1)(b)(iv) of the *IRPA* which states "The risk is not caused by the inability of that country to provide adequate health in medical care"

[33] As an overview of all of the issues raised, in my opinion, the applicants are asking this Court to reweigh the evidence before the Officer. This is not the role of this Court.

[34] Therefore, I find that that there is no reviewable error in the PRRA decision that would justify a judicial review.

CONCLUSION

[35] Therefore, for all of the above reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

The application for judicial review is dismissed and the style of cause is amended by removing the Minister of Public Safety and Emergency Preparedness and adding The Minister of Citizenship and Immigration.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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