Date: 20080220

Docket: IMM-1891-07

Citation: 2008 FC 222

Toronto, Ontario, February 20, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

WALTER DOS REIS LIMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male citizen of Brazil. He entered Canada and made a claim for refugee status which claim was denied by the Refugee Protection Division. An application for leave to seek judicial review was dismissed. The Applicant made an application for permanent residence under Humanitarian and Compassionate grounds which was denied. Leave to seek judicial review of that decision was denied. In October 2006, the Applicant submitted a Pre-Removal Risk Assessment application (PRRA) and, by letter dated 19 March 2007 was advised that his application

for protection was rejected. Leave was granted to seek judicial review of that decision which is the present proceeding. For the reasons that follow, I find that the application is dismissed.

[2] The Applicant describes himself as an Afro-Brazilian. The evidence shows that about 45% of Brazilians can make that claim. The Applicant came to Canada in July 2002 leaving his wife and two children behind in Brazil. His claim for fearing return to Brazil does not rest upon circumstances particular to him but a more generalized claim of human rights violations, violence and discrimination in Brazil particularly in respect of Afro-Brazilians. The specific issues raised in this judicial review are set out in the Applicant's counsel's Memorandum as follows:

> *It is respectfully submitted that there are four issues in this application, the particulars of which are as follows:*
>
> *(a) The Pre-Removal Risk Assessment Officer, R. North, ("Officer"), erred at law by failing to assess the circumstances of those similarly-situated to the applicant, and the fact that generalized country conditions can indeed constitute a risk to the applicant without adequate "state protection" if returned to Brazil;*
>
> *(b) The Officer erred at law by relying on determinative extrinsic evidence without the applicant's knowledge and without affording the applicant an opportunity to comment on it;*
>
> *(c) The Officer erred at law by waiting over one month to notify the applicant of the refusal of his PRRA, and then provide him with merely 3 weeks to make all suitable arrangements to depart Canada;*
>
> *(d) The Officer erred at law by processing the applicant's PRRA at the PRRA Unit in Vancouver, British Columbia, unbeknownst to the applicant.*

[3] Applicant's counsel abandoned issues c) and d) at the hearing.

STANDARD OF REVIEW

[4] The Applicant submits and the Respondents do not contest that the applicable standard of review in a case where there are questions of mixed fact and law is that of reasonableness *simpliciter*. Justice O'Keefe in *Pruma v. Canada (MCI)*, 2005 FC 805 at paragraph 9 in a similar circumstance agreed that a determination as to whether certain circumstances amounted to persecution was a question of mixed fact and law and should be reviewed on a standard of reasonableness *simpliciter*.

ISSUE (a) SIMILAR FACT CIRCUMSTANCES

[5] The first issue raised by the Applicant is whether the PRRA officer's mind was directed to the correct factors and, in particular, whether generalized country conditions can constitute a risk and whether state protection was adequate.

[6] The Applicant argues that the PRRA officer while having regard to section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) failed to give adequate consideration to section 96 of the Act or to make an adequate distinction between the requirements of sections 96 and 97 in the Reasons. Counsel places reliance on the decision of the Federal Court of Appeal in *Salibian v. Canada (MCI)*, [1980] 3 F.C. 250 at paragraphs 258 and 259 as repeated in *Fi v. Canada (MCI)*, 2006 FC 1125 at paragraph 16:

> ***16*** *Therefore, a refugee claim that arises in a context of widespread violence in a given country must meet the same conditions as any other claim. The content of those conditions is no different for such a claim, nor is the claim subject to extra requirements or disqualifications. Unlike section 97 of the IRPA, there is no requirement under section 96 of the IRPA that the*

> *applicant show that his fear of persecution is "personalized" if he can otherwise demonstrate that it is "felt by a group with which he is associated, or, even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]" (Salibian, above, at page 258).*

[7] In the present case there was no substantial evidence put before the PRRA officer that would have allowed a reasonable conclusion that the Applicant has or would face a broadly based harassment or abuse or even a specific harassment or abuse unique to himself. The PRRA officer made reasonable findings that whatever discrimination that may exist in Brazil against Afro-Brazilians, that discrimination does not rise to the level of persecution. The officer found, for instance:

> *Given that the applicant has brought forward little evidence of his being subject to persecution because he is Afro-Brazilian, I find that the applicant has failed to show that the discrimination he has experienced in Brazil rises to the level of persecution. Furthermore, given that the risk of criminal violence in Brazil appears to be shared by all its citizens, I find that the applicant has failed to connect these circumstances in Brazil to Convention grounds. For these reasons, I do not find the applicant described under section 96 of the Immigration and Refugee Protection Act.*

[8] As to whether Brazil can offer adequate protection for its citizens. The officer found:

> *My reading of the evidence in the USDOS and BBC news reports (especially the May 2006 BBC report provided by the applicant) is that the Brazilian authorities are having a tough time dealing with a very high rate of crime but they have not given up nor have they abandoned areas of their country to lawlessness: in other words, state protection in Brazil is far from perfect but it is present. Two BBC news reports (December 2006, January 2007) document the efforts by the authorities to arrest and prosecute corrupt police and the drug gang members themselves and the third report (February 2007) shows that the authorities can provide security for very large events such as the Rio carnival. I find that the testimony brought*

> *forward by the applicant contains little evidence to contradict that assessment.*

[9] The jurisprudence establishes that state protection need not be perfect, provided it is adequate (*Zalzana v. Canada (Minister of Employment and Immigration)* (1991), 126 N.R. 126 (F. C.A.)).

[10] I find that the PRRA officer's findings on the evidence were reasonable even if the officer did not always clearly and explicitly ascribe his findings on the evidence to one or other of the criteria of sections 96 or 97 and its subsections.

ISSUE (b) EXTRINSIC EVIDENCE

[11] The second issue raised by the Applicant is whether the PRRA officer made improper use of extrinsic evidence. I am aware that this issue was relied upon by Justice O'Keefe who stayed the removal of the Applicant from Canada pending the determination of this judicial review. The fact that Justice O'Keefe considered this matter to be sufficient to support the stay of removal does not constitute a determination of the issue or a finding that is binding in respect of the issue, it simply means that the lower threshold applicable on stay applications had been met. On this actual review the Court must consider the matter afresh.

[12] The materials referred by the PRRA officer are listed at the end of the decision. They consist of publicly available documents commonly used in proceedings of this sort. Referred to are an Amnesty International World Report, British Broadcasting Corporation website reports (BBC), a

Foreign Affairs and International Trade Canada *Travel Report*, a Human Rights Watch *Country Summary* and United States Department of State *Country Reports on Human Rights Protection.*

[13] A PRRA officer has a duty to consult the most recent sources of information and is not limited to materials furnished by the Applicant (*Hassaballa v. Canada (MCI)*, 2007 FC 489 per Blais J. at paragraph 39). An officer is not obliged to disclose, prior to making a decision, all the information consulted where the information consists of commonly consulted public information as opposed to novel and significant information which may affect the disposition of the matter (*Mancia v. Canada (MCI)*, [1998] 3 F.C. 461 (C.A.) per Decary JA. at paragraph 22).

[14] Counsel for the Applicant specifically objected to the PRRA officer's references to three BBC website reports occurring after the Applicant had made its submissions. I find that those reports do not meet the criteria established in *Mancia supra*. First, the BBC reports are of the same type of BBC reports referred to by the Applicant himself who, through his counsel, made submissions to the Officer. It is not surprising, therefore, that the officer would continue to have regard to such reports.

[15] Second, the information in the reports is confirmatory of the conclusions arrived by the officer based on other evidence, namely that police protection was adequate. The information is not novel or of such significance as would affect the disposition of the matter.

CONCLUSION

[16] The application is dismissed. The Counsel for the parties agreed that there is no question for certification. There is no Order as to costs.

JUDGMENT

THIS COURT ADJUDGES that :

1. The application is dismissed;

2. There is no question for certification;

3. There is no order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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