Date: 20080730

Docket: IMM-5318-07

Citation: 2008 FC 910

Montréal, Quebec, July 30, 2008

PRESENT: The Honourable Mr. Justice Maurice E. Lagacé

BETWEEN:

RADIK ANANYAN and
SIMA KHACHOYAN

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by the applicants for judicial review under section 72(1) of the *Immigration and Refugee Protection Act* (the Act), of a negative decision dated October 31, 2007, by a pre-removal risk assessment officer (PRRA officer).

I. Facts

[2] The applicants, both Armenian citizens, say that they fear the Armenian authorities because the applicant Radik Ananyan acquired knowledge about corruption in this country while working as an engineer for the Armenian government.

[3] When he denounced the corruption, Mr. Ananyan was demoted and lost his apartment. His family left Armenia to settle in Bulgaria, where he joined them in 1993. Harassed in Bulgaria, the applicants left in 1999 for Russia where one of their sons lived.

[4] Ms. Khachoyan returned to Armenia in 2003 to be closer to her father, and the applicant joined her in July 2004. After receiving threats, the applicants left their country and arrived in Canada on October 25, 2004, with visitors visas; they claimed refugee protection on October 29, 2004.

[5] That claim was dismissed on November 25, 2005, because the applicants were found to be not credible and failed to prove their allegations. On March 15, 2006, the Court refused to grant leave to apply for judicial review of the negative decision denying their refugee claim.

[6] The applicants subsequently applied for permanent residence based on humanitarian and compassionate grounds and filed the application in Canada, rather than abroad. An immigration officer denied this application on October 31, 2007.

[7] On November 10, 2006, the applicants also filed an application for a pre-removal risk assessment (PRRA), and relied on the same risks and events described in their refugee claim, with the addition, however, of one piece of evidence. The evidence consisted of a notification addressed to them dated August 14, 2006, which apparently came from the Internal Security Department of

the Ministry of Internal Affairs of the Republic of Armenia; the notification indicated that this authority had enough information to initiate criminal proceedings against them for defaming the Armenian president and his government in their claims for refugee protection and permanent residence in Canada. The notification reads as follows:

> Republic of Armenia
> Ministry of Internal Affairs
> Internal Security Department
> 130 Nalbandyan ave.
> City of Erevan 377025
>
> 14.08.2006
>
> TO: Ananyan, Sima Khachoyan
> Residing at 4 Sayat-Nova ave. # 27
> City of Erevan, Republic of Armenia
>
> NOTIFICATION
>
> On August 28, 2006 at 10 am along with your passports you must present yourself at the Investigation Department of the Ministry of Internal Affairs of Republic of Armenia for an interview with colonel Nagapetyan.
> We also inform you that the investigation department gathered all the necessary information in order to initiate a criminal procedure against you. According to our investigation, you being in Canada slandered our president, our government in order to become a permanent resident of Canada as a convention refugee.
> At the interview you can confirm or refuse the evidences, which are being in the possession of our department.
> If you failed to appear for the interview you will be obliged to be present mandatory and criminal charges can be laid against you.
>
> Colonel: Nagapetyan A.
> Signature: signed
> Round Seal is applied
> (Translated from the Armenian language)

[8] Despite accepting this new evidence, the PRRA officer determined that the applicants had still not discharged their evidentiary burden and had still not established that they would be

personally at risk should they return to Armenia; consequently, the officer dismissed their PRRA application. This negative PRRA decision is the subject of this application for judicial review.

II. Issues

[9] This case raises two issues:

a. Did the PRRA officer err by giving no weight to the notice sent by the Armenian authorities to the applicants?

b. Did the PRRA officer err by choosing not to hear the applicants despite the existence of new evidence relating to the factors set out in sections 96 and 97 of the Act?

III. Standard of review

[10] The appropriate standard of review for decisions of PRRA officers is correctness for questions of law outside the tribunal's jurisdiction and reasonableness for questions of fact (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL)). Procedural fairness and natural justice are subject to the correctness standard.

IV. Analysis

[11] The PRRA officer did not doubt the authenticity of the notification issued by the Armenian Ministry of Internal Affairs, and if he did, he did not mention it. Although he wondered very briefly about the circumstances that led to the Armenian authorities being informed of the applicants' applications for refugee and permanent resident status, the PRRA officer did not pursue this thought and did not try to obtain more information as to how important this evidence was for the applicants.

[12] However, the PRRA officer acknowledged in his decision that this notification was new evidence within the meaning of the Act. Why did he not assess this new evidence on its merits? Not by requiring additional evidence about Armenia's treatment of other Armenian nationals who have claimed refugee status abroad, but rather by assessing the applicants' personal fears about the risks, treatment and punishment indicated by the Armenian authorities' notification; it appears *prima facie* that the applicants would be subjected to such risks, treatment and punishment should they be forced to return to their country of origin.

[13] Without giving reasons, the PRRA officer assigned very little weight to the new evidence, despite its obvious importance to the applicants because, to a certain extent, it corroborated the fear that they were describing.

[14] It is not sufficient for the PRRA officer to say that he [TRANSLATION] "gave very little weight to the notification that was submitted" and issued by the Armenian authorities. A reason must be given, especially because this was important new evidence for the applicants, the only evidence that could really corroborate the applicants' fear in an objective manner. Given that the immigration officer did not assess the authenticity of the document, it must be considered genuine, unless there is reason to doubt its authenticity, which is not indicated in the decision. This principle is even more relevant in this case because the document on its face appears to come from an official source (*Sitoo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1513 at paragraph 12).

[15] The applicants are entitled to know why the PRRA officer attached no importance to this document, presented under the official seal of the Armenian authorities, which targets them personally. Why would it be more useful and persuasive to establish that other Armenian nationals in similar circumstances have suffered the same fate? By diminishing the importance of this new evidence to the point of assigning it no probative value and without saying why, and by requiring additional evidence that was irrelevant to the applicants' personal situation, the PRRA officer made an unreasonable error warranting the intervention of this Court. The officer failed to appropriately consider the new evidence about the risks that the applicants would be personally subjected to, and this failure results in the decision being set aside.

[16] The applicants are asking this Court to re-assess the evidence, but that is not its role on an application for judicial review.

[17] Given the determination on the first issue, the Court sees no need to rule on the second issue, i.e., whether the PRRA officer was required to hold a hearing as a result of the new evidence that was related to the factors set out in sections 96 and 97 of the Act. Could this perhaps be a factor that falls within section 167, to be considered in deciding whether a hearing is required or not, to the extent that an applicant's credibility or the authenticity of evidence is being challenged?

[18] It will be up to another PRRA officer to answer that question and to decide on the procedure to be followed, that, in his or her view, would be useful. The Court sees no need to rule on this issue, other than to note that, in general, the officer dealing with a PRRA application does not

generally hold a hearing but may do so in exceptional circumstances when all the conditions set out in section 167 of the Act are met.

[19] Given the error made by the PRRA officer in considering the new evidence, his decision will be set aside. The parties did not submit a question of general interest for certification, and the Court itself does not see one.

JUDGMENT

FOR THESE REASONS, THE COURT:

ALLOWS the application for judicial review,

SETS ASIDE the PRRA decision dated October 31, 2007, and

REMITS the application for redetermination by a different immigration officer.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5318-07
STYLE OF CAUSE:	RADIK ANANYAN ET AL. v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	July 9, 2008
REASONS FOR JUDGMENT AND JUDGMENT BY:	LAGACÉ D.J.
DATED:	July 30, 2008

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