Date: 20080911

Docket: IMM-420-08

Citation: 2008 FC 1016

Ottawa, Ontario, September 11 2008

PRESENT: THE HONOURABLE MR. JUSTICE SHORE

BETWEEN:

MONOARA BEGUM

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] [20] In any event, if the principles applicable to the judicial review of an administrative decision like the one involved here provide for a certain verification by the Court of the basis on which the suspicion required for the exercise of the power arose, that verification ought to be quite deferential. The Court is not called upon to say if it agrees with the decision-maker's appreciation of the facts he had before him, its role is not to make sure that this appreciation was correct. The power to make the decision is not the power of the Court but of the decision-maker. The Court is simply called upon to verify if the decision-maker's suspicion can find some support in the evidence since it is only when such support does not exist and the suspicion appears irrational that there will be an abuse of power . . .

[Emphasis added.]

(Justice Louis Marceau of the Federal Court of Appeal commenting in *Kohl v. Canada (Department of Agriculture)* (1995), 99 F.T.R. 319, [1995] F.C.J. No. 1076 (QL), on the Court's role on review of a decision.)

II. Judicial Proceeding

[2] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision dated December 14, 2007, dismissing the application for a pre-removal risk assessment (PRRA).

III. Facts

[3] The applicant, Monoara Begum, was born on February 21, 1968, and is a citizen of Bangladesh.

[4] Monoara Begum states that she joined the Awami League (AL) political party on January 21, 1977. Within this party, she performed as a singer at various events and because of this she allegedly became a political target of the party's opponents.

[5] She alleges that several members of her family were also active within the AL. She also alleges that members of the Bangladesh Jatiya Party (BJP) harassed her. They then allegedly tortured her and hit her and the police did not do anything because this party was in power.

[6] In June 1988, the head of the BJD, Momen Miah, allegedly abducted Monoara Begum from her home and forced her to marry him. After her forced marriage on June 9, 1998, she says that Mr. Miah began to torture her and abuse her. Once again, the police did nothing.

[7] In 1991, the Bangladesh Nationalist Party (BNP) came into power in Bangladesh. Mr. Miah changed political parties and joined the BNP. Monoara Begum alleges that around this period Shalina Begum pressured Mr. Miah to get a divorce or to obtain permission to have a second wife.

[8] In 1996, the AL came to power in turn and Mr. Miah was arrested. However, with the Monoara Begum's help, he managed to be released on January 21, 1997.

[9] Later, in January 2001, Mr. Miah tried to marry Shalina Begum and, in March of the same year, friends of Shaline Begum allegedly beat and tied up Monoara Begum, intending to throw her, bound, into the Meghna River. However, local residents allegedly managed to save Monoara Begum. After this, Monoara Begum filed a complaint with the police, but the police did not do anything.

[10] The BNP wrongdoers allegedly threatened Monoara Begum's brother to have him withdraw his complaint or be killed. Further, they also allegedly threatened to kill Monoara Begum. She then decided that she would go into hiding. She learned afterward that the police were looking for her because she had been accused of stealing money from the home of Mr. Miah.

[11] In June 2001, friends and wrongdoers went to Monoara Begum's family home. When they did not find her there, they set the house on fire and it was then that Monoara Begum decided she had to leave the country.

[12] Monoara Begum left Bangladesh on November 28, 2001.

[13] She alleges that she arrived in Canada on December 3, 2001. She had allegedly been admitted to the country with a Bangladeshi passport issued in someone else's name. On February 7, 2002, she reported to the office of Citizenship and Immigration Canada in Montréal to apply for refugee protection.

[14] Afterward, on November 17, 2002 and February 21, 2003, her refugee claim was heard by the Refugee Protection Division (RPD). The RPD determined that there were a number of inconsistencies in her testimony and that this tainted her credibility. Accordingly, it refused the claim on March 14, 2003.

[15] Also, on July 21, 2006, Monoara Begum filed an application based on humanitarian and compassionate considerations (CH) with risks and this application is part of a distinct assessment.

[16] Then on June 18, 2007, Monoara Begum was offered the PRRA. She submitted her competed application on July 3, 2007, with supporting written submissions. On July 16, 2007, she added additional documents in support of her PRRA application. The application was based on her fear of persecution by her in-laws on returning to Bangladesh and the fact that she would not benefit from State protection when that occurred. In fact, being of the Muslim faith, she alleges that she will

face domestic violence at the hands of her ex-husband as well as from members of her own family who have very strict social values.

[17] Further, she relies on the fact that one Murul Islam marred her reputation by showing photos and spreading false rumours during her visit to Bangladesh in 2006. This humiliated Monoara Begum's family. Further, she was rejected by her family members and she states that she would have to hide from them in order to protect her life if she were to return to Bangladesh.

IV. The decision impugned by this judicial review

[18] On December 14, 2007, the PRRA officer dismissed Monoara Begum's application, finding that she would not be at risk if she were to return to Bangladesh.

[19] In his notes, the PRRA officer emphasized the situation in the country as well as the nature of the personalized risk for Monoara Begum, with particular emphasis on marital status, as she is a divorced woman.

[20] In regard to the situation in the country, the PRRA officer notes that, despite the problems arising from the current political situation, there have not been any significant changes since the RPD's refusal which could alone amount to new evidence regarding the conditions of the country. Accordingly, he determined that these changes did not represent for Monoara Begum a personal risk that would justify the need to afford her specific protection.

[21] In regard to the personalized risk, the PRRA officer determined that Monoara Begum did not adduce probative evidence supporting the existence of a personalized risk. He determined, accordingly, that Monoara Begum had not discharged the burden of establishing that she was in fact targeted in Bangladesh for the reasons raised.

[22] The officer also took into account the general documentary evidence regarding the situation of women and, more specifically, of divorced women in Bangladesh. He points out that the evidence establishes that divorce is widespread in Bangladesh, in rural areas and even more so in urban areas. The PRRA officer points out that discrimination against women in Bangladesh varies considerably with social environment and social class origin, noting that the situation in urban centres was more propitious. Accordingly, he determined that it would be to Monoara Begum's advantage to live in a large city like Dacca, where indeed she lived for several months before she left for Canada.

V. Issue

[23] Was the PRRA officer's decision based on an erroneous finding of fact or did he fail to take into account the evidence before him?

VI. Analysis

Standard of review

[24] In *Barzegaran v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 681, Justice Edmond P. Blanchard decided the appropriate standard of review for a PRRA decision:

[15] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada found that there should be only two standards of review: correctness and reasonableness. The Court indicated that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law (see *Dunsmuir* at paragraph 50). When applying the correctness standard, a reviewing court will not show deference to the decision-maker's reasoning process; it will rather undertake its own analysis to decide whether the decision is correct.

[16] The Supreme Court also indicated that, in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir* at paragraph 47).

[17] Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law (see *Dunsmuir* at paragraph 54). The following factors will determine whether deference ought to be given to a tribunal: whether there is a privative clause, whether the decision-maker has special expertise in a discrete and special administrative regime and what the nature of the question of law is (see *Dunsmuir* at paragraph 55).

[18] Using the pragmatic and functional approach, the Supreme Court of Canada determined in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39 (QL) at paragraphs 57--62, that the appropriate standard of review for H&C applications is reasonableness *simpliciter*.

[19] In this case, the Act does not contain a privative clause. Although it does provide a possible recourse to judicial review, it cannot be done without leave of the Federal Court. As for the decision-maker's expertise, in this case, the decision-maker is the Minister of Citizenship and Immigration or her delegate. The Minister has some expertise relative to courts in immigration matters, particularly with respect to when exemptions should be granted from the requirements that normally apply. This is a factor militating in favour of deference. Finally, on the nature of the problem in question, the decision about whether to grant an H&C exemption involves a considerable appreciation of the facts of the person's case, and is not one which involves the application or interpretation of definitive legal rules. Given the highly discretionary and fact-based nature of this decision, this is a factor militating in favour of deference.

[20] For these reasons, I am of the opinion that the standard of review applicable in this case is reasonableness.

[25] Accordingly, the standard of review to apply in this case is that of reasonableness.

Was the PRRA officer's decision based on an erroneous finding of fact or without taking into account the evidence before him?

[26] Monoara Begum claims that the PRRA officer erred in disregarding the documentary evidence regarding the condition of women in Bangladesh and regarding the facts which occurred after the RPD decision.

[27] Despite the fact that the documentary evidence reports that divorced women could face discrimination and persecution from the general population of Bangladesh, the PRRA officer emphasized that there was no probative evidence establishing that all divorced women would be targets for systematic persecution.

[28] The PRRA officer also points out that discrimination toward women varies considerably according to social environment and social class origin.

[29] With regard to the violence that Monoara Begum allegedly suffered at the hands of her ex-husband, the RPD points out:

> Concerning the evidence with regards to the marriage of the claimant to Momen Miah, I also find the evidence contains important inconsistencies.
>
> …
>
> I also found the alleged details of the abuse the claimant suffered to be inconsistent.
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> …
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> Her inconsistency and inability to recount instances on [the times her husband tried to kill her] rendered her testimony untrustworthy and further undermined her credibility.

> …
>
> I found the claimant's testimony at this point to resemble someone who was adding or making things up as she went in response to specific questions, rather than giving details that she was aware of prior to the prompting…
>
> After reviewing all of the evidence adduced, I am not satisfied that I know the real reasons the claimant left her country. The evidence before me does not establish the key factual elements of her alleged fear, on the balance of probabilities. The evidence shows that both she and her husband had the right to divorce, according to articles 18 and 19 of the Nikah Nama. The evidence shows that she was not involved in political activities when she married her husband. The evidence of abuse is inconsistent and does not credibly establish the claimant as an abused woman. Because the claimant has failed to establish the key factual elements of her claim on the balance of probabilities, with credible and trustworthy evidence, I find that she has not established that there is more than a mere possibility that she would be at risk of persecution, torture, death, or cruel and unusual treatment or punishment if she were to return to Bangladesh.
>
> For these reasons, I find that the claimant is not a "Convention refugee" or a "person in need of protection", and I therefore reject her claim to refugee protection.

(RPD decision pages 5-9.)

[30] Since the RPD made its negative finding, Monoara Begum points out that a Mr. Montu allegedly took photos of her and spread false rumours about her. On that point, she filed an affidavit of Murul Islam corroborating the facts she is alleging. She also adds that her family and society would not accept her if she were to return to Bangladesh.

[31] The PRRA officer, however, observes that it was not established in a probative manner that Mr. Islam had personal knowledge of the facts that he was reporting. His reasons for this finding included that there was no probative evidence filed to support the allegations that he made and that the statement was drafted in general terms and was not very specific.

[32] Accordingly, he assigned little probative value to this document and found that Monoara Begum had written facts and alleged risks without probative evidence to support the existence of a personalized risk. On this basis, he dismissed the claim because Monoara Begum did not satisfy the burden of establishing that she was in fact targeted in Bangladesh for the reasons given.

VII. Conclusion

[33] In *Kohl, supra,* Justice Marceau of the Federal Court of Appeal identifies the role that must be played by the Court in reviewing a decision:

> [20] In any event, if the principles applicable to the judicial review of an administrative decision like the one involved here provide for a certain verification by the Court of the basis on which the suspicion required for the exercise of the power arose, that verification ought to be quite deferential. The Court is not called upon to say if it agrees with the decision-maker's appreciation of the facts he had before him, its role is not to make sure that this appreciation was correct. The power to make the decision is not the power of the Court but of the decision-maker. The Court is simply called upon to verify if the decision-maker's suspicion can find some support in the evidence since it is only when such support does not exist and the suspicion appears irrational that there will be an abuse of power . . .
>
> [Emphasis added.]

[34] Further, Justice Luc Martineau noted in his decision in *Tuhin, supra*:

> [4] The onus is on the applicant to submit evidence from a reliable and objective source, and the PRRA Officer has no obligation before making her decision to bring to the applicant’s attention insufficiencies in the evidence. Moreover, the weight and credibility of the evidence depends exclusively upon the PRRA Officer’s assessment. The reasons given in the decision for excluding the evidence submitted by the applicant or for giving it little probative value are not capricious or arbitrary, and appear to me to be reasonable in the circumstances.
>
> [5] In this case, the application for protection essentially raised the same allegations of risk that were previously raised before the IRB, and the PRRA Officer cannot be reproached for arbitrarily excluding evidence that had already

> been submitted to the IRB. With regard to the new pieces of evidence introduced by the applicant, the PRRA Officer clearly explained why these were not probative or conclusive in the circumstances. Her finding that there was no possibility of serious risk is based firmly on the documentary evidence and takes into account the changes in the political climate in Bangladesh. The BNP was elected in October 2001, replacing the Awami League (AL), which had been in power since 1996. In addition, the Public Safety Act, under which, according to the applicant, there was a warrant for his arrest, has been repealed. Moreover, the applicant does not explain specifically why the police of the present government would be currently seeking his arrest, and his allegations of fear of assault by AL "goons" seems purely gratuitous in the absence of credible and reliable evidence. Considering the problems of credibility previously raised by the IRB, the PRRA Officer could exclude or grant little value to the new pieces evidence submitted by the applicant, which appear to me to be unreliable and based on hearsay or supplied by non independent sources.

[35] Accordingly, this Court must exercise great deference in regards to the determination of the PRRA officer as well as the RPD; they were able to decide on the facts that were before them.

[36] For all of these reasons, this application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that:

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

Certified true translation

Kelley Harvey, BA, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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