Date: 20090528

Docket: IMM-5069-08

Citation: 2009 FC 551

Ottawa, Ontario, this 28th day of May 2009

PRESENT: The Honourable Orville Frenette

BETWEEN:

DEENANAUTH JAGGARNATH
JASSOMATTIE JAGGARNATH
TANUSHA ALISHA JAGGERNATH
SAIEESHA AHLIYA JAGGARNATH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application to obtain leave to commence a judicial review application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") of a decision by a Pre-Removal Risk Assessment ("PRRA") officer, rendered on October 16, 2008,

wherein the officer determined that the applicants were not persons in need of protection. Because I granted a stay of execution of the deportation order on December 3, 2008, I believe necessary to write the reasons why I must refuse leave in this case.

The Background Facts

[2] The adult applicants are husband and wife, parents of the two minor applicants. They are citizens of Guyana who came to Canada on March 16, 2006, without visas. Their refugee claim was dismissed on December 7, 2007 and their application for PRRA was the basis of a negative decision on October 16, 2008.

The Stay Decision

[3] I granted a stay of removal because I believed the PRRA officer's decision on evidence of danger in Guyana was highly debatable.

The Test for Leave Authorizing Judicial Review

[4] As enunciated in subsection 72(1) of the Act, judicial review commences when leave is granted. The only test to consider is whether the applicant raises a "fairly arguable case" on serious questions to be determined (*Bains v. Minister of Employment and Immigration* (1990), 47 Admin. L.R. 317, 109 N.R. 239, paragraph 1 (F.C.A.)).

[5] The applicants believe that my findings at the stay level meet the test for leave. The respondent pleads that the tests at the stay level and at the leave one, are not identical. The test for a

stay is whether “a serious issue is raised which is not frivolous or vexatious”. The test for leave is higher, since it requires the raising of “a serious issue which presents a fairly arguable case” (*Bains*, *supra*; *Brown v. Minister of Citizenship and Immigration*, 2006 FC 1250, paragraph 5; *Streanga v. Minister of Citizenship and Immigration*, 2007 FC 792, paragraphs 7 and 9).

[6] The applicants claim they meet the required test because they fear persecution pursuant to section 96 of the Act or risk to their life or to a risk of cruel and unusual punishment pursuant to section 97 of the Act. They claim to belong to a particular group *i.e.* as Guyanese nationals who return to Guyana after years abroad, who are the targets of crime in Guyana, if returned. The applicants draw support from general documentation and a Department of Foreign Affairs and International Trade (“DFAIT”) travel report to Guyana which warned Canadians to “exercise a high degree of caution”.

[7] The respondent submits that the PRRA officer examined and analyzed the documentary evidence, the DFAIT 2008 report and the affidavit of the male applicant that was almost killed by a gang still active in Guyana. The respondent pleads that the PRRA officer’s decision is entitled to significant deference according to the latest Supreme Court of Canada decisions on this point (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 and *Minister of Citizenship and Immigration v. Khosa*, 2009 SCC 12). The respondent also reminds this Court that the weight of evidence and assessment of evidence is solely within the officer’s domain and courts cannot simply re-weigh the evidence unless there are gross errors or perverse findings of facts (*Dunsmuir*, *supra* and *Suresh v. Canada (M.C.I.)*, [2002] 1 S.C.R. 3).

Analysis

[8] The PRRA officer, in a well reasoned nine-page written decision, canvassed most if not all the same submissions that the applicants are now raising. He discussed the applicants' fear of members of the Phantom gang, lack of state protection in Guyana, high rate of crime and the fact that Canadians, tourists or returning Guyanese were "favourite targets for criminals". He also referred to random execution-style killings being carried out.

[9] The PRRA officer refers to the DFAIT travel report warning Canadians of the dangers in Guyana, but it does not go so far as to warn Canadians not to vacation in Guyana. He also referred to current documentary evidence that shows that a multiparty democratic government is in power which seriously attempts to maintain law and order but is curtailed by acute budgetary constraints. The PRRA officer notes that "[i]n the absence of evidence to the contrary, the state is presumed to make efforts to protect its citizenry".

[10] The PRRA officer concluded from the evidence that the applicants faced a mere possibility of risk of persecution and "less than likely not" would face risk to their lives or cruel and unusual punishment if returned to Guyana. Finally, contrary to what the applicants assert, the PRRA officer was aware of the DFAIT travel report and mentioned it in his decision.

[11] The applicants have therefore not satisfied the obligation to demonstrate that the situation has worsened since the decision of October 16, 2008 (*Traore v. Minister of Citizenship and Immigration*, 2005 FC 1647; *Cupid v. Minister of Citizenship and Immigration*, 2007 FC 176).

[12] In my view, the PRRA officer's decision based upon findings of fact is reasonable and falls well within the limits prescribed in *Dunsmuir*, *supra* and this Court cannot intervene.

[13] Finally, the Supreme Court of Canada's decision in *Khosa*, *supra*, was rendered on March 6, 2009, *i.e.* after the PRRA decision of October 16, 2008 and my stay decision of December 3, 2008. *Khosa*, at paragraph 89, reiterates that reviewing courts must show deference to administrative decision makers in questions of fact and on questions of mixed fact and law.

[14] Considering the above reasons, the applicants have not satisfied the test for leave. Therefore, the application for leave is denied.

ORDER

THIS COURT ORDERS THAT:

The application for leave and for judicial review of the decision of a Pre-Removal Risk Assessment officer, rendered on October 16, 2008, wherein the officer determined the applicants were not persons in need of protection, is dismissed.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-5069-08
STYLE OF CAUSE:	DEENANAUTH JAGGARNATH, JASSOMATTIE JAGGARNATH, TANUSHA ALISHA JAGGERNATH, SAIEESHA AHLIYA JAGGARNATH v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

APPLICATION DEALT WITH IN WRITING

REASONS FOR ORDER AND ORDER:	The Honourable Orville Frenette, Deputy Judge
DATED:	May 28, 2009

	THE APPLICANTS ON THEIR OWN BEHALF
Mr. Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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