Federal Court  Cour fédérale

Date: 20100312

Docket: IMM-3963-09

Citation: 2010 FC 285

Ottawa, Ontario, March 12, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

JANE DOE, KATE DOE, BILLY DOE, JIM DOE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision (the decision) of a Pre-Removal Risk Officer (the Officer) rejecting the Applicants' application for protection under a Pre-Removal Risk Assessment (PRAA), dated March 14, 2009.

[2] For the reasons set out below the application is dismissed.

I. Background

[3] The principle Applicant (the Applicant) is a 46-year old citizen of a European Union (EU) country. The Applicant has four children under the age of 15, three who are citizens of the EU country and one who was born in Canada. The three children born in the EU country are parties to this Application. The Applicants are all Muslim.

[4] The Applicants fled the EU country and came to Canada in 2004. At the time, the Applicant was fleeing a situation of sexual violence. In the summer of 2004, the Applicants made a claim for refugee protection which was rejected in 2005 and the Applicants returned to their EU country. Upon her return to the EU country, the Applicant was again harassed by the same person. The Applicant began to have mental difficulties and consulted both a psychiatrist and a religious leader in her community. At this time, the Applicant and her husband divorced.

[5] In July 2007, the Applicant and her children returned to Canada. The Applicants made a Pre Removal Risk Assessment application (PRRA) and retained the services of a lawyer, Ms. Rwigamba, to assist with the PRRA. In February 2008, the Applicants terminated their relationship with the lawyer. The Applicant states that beyond communication with regard to fees and some silent calls from the lawyer's office, she did not hear from the lawyer again.

[6] On February 19, 2009, unknown to the Applicants, the Officer assessing their PRRA application sent Ms. Rwigamba a letter requesting further information from the Applicant, with a

deadline for receiving the information of March 6, 2009 (the request). The information requested was with regard to the fact that the Applicants were citizens of a EU country and therefore had a viable Internal Flight Alternative (IFA) as they could reside in any EU nation. This letter was not forwarded to the Applicants and the Applicants did not become aware of the request until after the PRRA decision was made.

[7] By a decision dated March 14, 2009, the Officer refused the Applicants' PRRA application.

[8] It was not until August 24, 2009, when the Applicant was provided with the reasons for the decision in the form of the Officer's notes, that the Applicants became aware of the request for further information.

II. Issue

[9] The Applicants raise the following issue in this matter: were they denied procedural fairness by not being notified that further evidence was requested?

III. Standard of Review

[10] The issue in this matter is that of procedural fairness and will be assessed on the standard of correctness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339).

IV. Analysis

[11] The Applicants argue that by not addressing the request letter to the Applicant, the Officer breached their right to procedural fairness in that it affected the Applicants' ability to participate in a meaningful way in the decision making process. It is their position that as they were not aware of the request, they were not able to participate in the decision making process by responding to it.

[12] The Respondent argues that the onus is on the Applicants to ensure their PRRA file is updated. At the time their PRRA application was submitted they included a signed form indicating that Ms. Rwigamba was their counsel of record. The Applicant subsequently fired Ms. Rwigamba, but neglected to notify the Respondent of this change for more than a year. It is the Respondent's position that having failed to update their file; the Applicants now seek to benefit from their own imprudence.

[13] The Applicant supports there position with two cases: *Acosta v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 20; 85 A.C.W.S. (3d) 405 and *Pramauntanyath v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 174; 39 Imm. L.R. (3d) 243.

[14] In *Acosta*, a letter permitting more information to be submitted to CIC was sent to the principle Applicant's co-applicant spouse in error. Justice Barbara Reed set the decision aside as the letter should have been sent to the principle Applicant.

[15] I distinguish *Acosta* from the case at bar. In *Acosta*, Justice Reed ultimately decided to give the Applicant the benefit of the doubt because of the considerable confusion that existed as a result of the letter being sent to her spouse in the Philippines. While not stated directly, Justice Reed's reasons imply that she did not find that the Applicant was at fault for the letter being sent to the wrong party. In this case, the Applicants did not inform the Officer that they had terminated their relationship with the lawyer of record.

[16] In *Pramauntanyath*, above, the PRRA Officer requested that the Applicant make submissions on a specific issue. Once the reasons where released, it was apparent that the Applicant's submissions on the issue had not been considered. Justice Anne Mactavish held that even though the decision of the immigration officer may have been appropriate in light of the information in the file, the intervening actions of a third party prevented the Applicant from having his case determined on the full record. Justice Mactavish determined that this was a denial of natural justice that warranted the intervention of the Court. At paragraph 27, Justice Mactavish stated:

> 27 […] The burden is on an applicant to ensure that all relevant information is submitted within the appropriate time frames. What occurred in this case appears to be an exceptional situation, as neither counsel was able to direct me to a similar case. These exceptional circumstances, specifically the blamelessness of the applicant, justify the Court's intervention here.
>
> [Emphasis added]

[17] It is well established that that an applicant bears the burden of supplying all of the documentation necessary to support their claim and that an officer is not required to request updated

information (see *Zambrano v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 481; 326 F.T.R. 174; *Melchor v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1327; 39 Imm. L.R. (3d) 79).

[18] I also note that the Court has previously found that the negligence of counsel should not cause an applicant, who has acted with care, to suffer (see *Gulishvili v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1200; 225 F.T.R. 248).

[19] The Applicants argue that they are blameless in this matter and therefore fit within the case law cited above. I do not agree. The Applicants were responsible for updating the information on file with Citizenship and Immigration Canada. If they had done so, the request would have been sent to them as opposed to their former Counsel. The case law above refers to the Court intervening when the Applicant is blameless (*Pramauntanyath*, above) or has acted with care (*Gulishvili*, above). That cannot be said of the Applicants in this matter.

[20] I note that the Record contains no information from Ms. Rwigamba and I confine my decision and reasons to this matter.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. this application for judicial review is dismissed; and

2. there is no order as to costs.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-3963-09**
STYLE OF CAUSE:	**JANE DOE ET AL. v. MCI**
PLACE OF HEARING:	**OTTAWA**
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APPEARANCES:

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