Federal Court  Cour fédérale

Date: 20110629

Docket: IMM-6678-10

Citation: 2011 FC 793

Ottawa, Ontario, June 29, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

KEMEL HAZIME

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of a decision of Pre-removal Risk Assessment (PRRA) Officer A. Dello (the Officer) dated October 28, 2010, wherein the Officer refused the Applicant's PRRA application. The Officer determined that, based on the evidence, state protection would be forthcoming in Venezuela.

[2] Based on the reasons that follow, the application is allowed.

I. Background

A. *Factual Background*

[3] The Applicant, Kemel Hazime, is a Venezuelan citizen of Lebanese descent. He was born in Venezuela on January 22, 1985. When he was six, his family moved back to Lebanon to escape the discrimination they allegedly faced as Arabs in Venezuela. In 1995, the family fled Lebanon for the United States where they lived without status until 2003. At that point the Applicant's family entered Canada and made a refugee claim against Lebanon. The family's refugee claim was dismissed in 2004 and their PRRA application was refused in 2005. However, the Applicant and his family successfully became permanent residents in 2006 on humanitarian and compassionate (H&C) grounds. The other members of the Applicant's family are now Canadian citizens.

[4] In August 2009, the Applicant was convicted of conspiracy to commit an indictable offence, namely exporting a controlled substance and trafficking. He was sentenced to four years in prison, but was paroled after serving only 1 and a half years. Nevertheless, he lost his permanent resident status due to serious criminality and a deportation order was issued in February 2010.

B. *Impugned Decision*

[5] The Applicant submitted an application for a PRRA. He feared returning to Venezuela for three reasons: 1) Arabs in Venezuela are routinely targeted because they are perceived to be wealthy; 2) Returnees from first world countries such as Canada are targeted since they are perceived as having accumulated wealth; 3) The Applicant would be unable to protect himself in the violent conditions of Venezuela as someone who has minimal ties to the country, not having been there in over 20 years and not fluent in the dominant language.

[6] The Officer listed the submissions received as part of the application, which included a statement prepared by counsel, a declaration by the Applicant's father, a copy of a National Parole Board decision, copies of travel advisories for Venezuela and four articles about kidnappings in Venezuela. The Officer then stated that she has read the Applicant's submissions and conducted independent research. She found that there was insufficient evidence to show that the Applicant was at risk under section 97 of the *IRPA*.

[7] The Officer acknowledged that the Applicant was concerned that he would be targeted due to his perceived wealth, but found that the determinative issue was whether state protection would be forthcoming. The Officer then quoted the U.S. Department of State Country Report on Human Rights Practices at length. The Officer concluded that while state protection in Venezuela "may not be unfailingly successful as evidenced above; however it is sufficient that the state makes serious efforts to protect its citizens." The Officer determined that the Applicant would not likely be at risk

of torture, or likely to face a risk of cruel and unusual treatment or punishment as described in section 97 of the *IRPA*.

II. Issue

[8] Was the Officer's state protection finding reasonable?

III. Standard of Review

[9] The appropriate standard of review to apply to findings of fact, or mixed fact and law in a PRRA decision is reasonableness (*Hnatusko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 18 at para 25). Judicial deference to the decision is appropriate where the decision demonstrates justification, transparency and intelligibility within the decision-making process, and where the outcome falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

IV. Argument and Analysis

A. *Was the Officer's State Protection Finding Reasonable?*

[10] The Applicant submits that the Officer's decision is flawed in a number of ways: the Officer misunderstood and misapplied the test for state protection; the decision is inconsistent with

the evidence; the Officer ignored relevant documentary and personal evidence; and finally, the reasons are inadequate. The Respondent maintains that the Applicant only disagrees with the outcome and seeks to have this Court reweigh the evidence.

[11] Having reviewed the record and the decision, I find that the Officer's reasons do not adequately explain her decision. On its face, the decision is inconsistent with the documentary evidence the Officer herself chose to excerpt in the reasons. There is no meaningful analysis of the Applicant's specific fears, nor is there anything to indicate that the Officer appreciated the documentary evidence submitted to corroborate the objective basis of those fears. On the basis of these failings, the decision ought to be remitted back to a different decision-maker.

[12] The Officer concluded that Venezuela is a democratic country with institutions, infrastructures and legislative tools common to most free and democratic countries. The mere fact of the existence of an independent judiciary, police force, army and other administrative institutions was taken to indicate that the state is willing and able to protect its citizens. These conclusory remarks, however, are not consonant with the nearly three pages of bullet points the Officer chose to excerpt from the U.S. Department of State Country Report on Human Rights Practices.

[13] For instance, the report indicates that although Venezuela is a constitutional democracy,

> Politicization of the judiciary and official harassment and intimidation of the political opposition and the media intensified during the year. The following human rights problems were reported by the nongovernmental organization (NGO) community, the media, and in some cases the government itself: unlawful killings, including summary executions of criminal suspects; widespread criminal kidnappings for ransom; prison uprisings resulting from harsh prison conditions; arbitrary arrests and detentions; corruption and impunity

> in police forces; a corrupt, inefficient, and politicized judicial system characterized by trial delays and violations of due process; political prisoners and selective prosecution for political purposes; infringement of citizens' privacy rights by security forces; government closure of radio and television stations and threats to close others; government attacks on public demonstrators; systemic discrimination based on political grounds; considerable corruption at all levels of government; threats and attacks against domestic NGO's; violence against women; inadequate juvenile detention centres; trafficking in persons; and restrictions on workers' right of association.
>
> […]
>
> Media frequently reported the public perception of collaboration between police and kidnappers. […]
>
> […]
>
> Corruption was a major problem in all police forces, whose members were generally poorly paid and minimally trained. Impunity for corruption, brutality, and other acts of violence were major problems explicitly acknowledged by some government officials.
>
> […]
>
> While the constitution provides for an independent judiciary, judicial independence remained compromised according to many observers, and there were allegations of corruption and political influence, particularly from the Prosecutor General's Office.
>
> […]

[14] The Officer does not explain why she decided that there is an independent judiciary, when the previous excerpt specifically mentioned that judicial independence was compromised. The paragraph following the documentary excerpt is comprised of the Officer's conclusions, but it is completely devoid of any meaningful analysis.

[15] The Officer acknowledged that the documentary evidence suggested that state protection may not be unfailingly successful, but explained that it is sufficient that the state makes serious efforts to protect its citizens. The Officer does not expand on what serious efforts Venezuela is making. From the excerpted country conditions document, I see that a National Prevention Council for Citizen Security has been established and that some local police forces offered human rights training. I can only presume these are the efforts the Officer refers to, however, she does not point to them, nor does she explain why she weighed those factors in preference over the factors that suggest, on their face, that state protection is neither forthcoming nor adequate. Furthermore, this Court has accepted that an Officer must consider the actual impact of "serious efforts" at the operational level in assessing whether the state can offer adequate, but not perfect, protection (*JNJ v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 1088 at para 26).

[16] The decision also lacks any engagement with the specific set of risks feared by the Applicant. The Officer found that state protection was determinative in this case. That is fine, but in undertaking that analysis the Officer was also required to consider the availability of state protection for someone in the position the Applicant alleges he would be in. In the present matter, that is someone who is of Arab descent who is a foreigner or a new-comer to Venezuela. The decision completely lacks any engagement with this particular factual matrix.

[17] Of course, as the Respondent argues, the onus was on the Applicant to rebut the presumption of state protection, and the Officer is not obliged to mention specific passages of the Applicant's material. I agree with Justice Judith Snider's statement at para 15 of *Arias v Canada (Minister of Citizenship and Immigration)*, 2011 FC 437 that the PRRA Officer must simply

provide an adequate explanation of the basis upon which the decision was reached. However, the Officer was obliged to make obvious through her reasons that she considered the documentary and personal evidence proffered to support the Applicant's case and contradicting her own conclusion. The presumption that the decision-maker has considered all of the evidence is a rebuttable one (*Kaybaki v Canada (Solicitor General of Canada)*, 2004 FC 32, 128 ACWS (3d) 784 at para 5; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, 83 ACWS (3d) 264).

[18] The Applicant's father swore an affidavit attesting to the difficulty he experienced accessing state protection as a person of Arab descent when he lived in Venezuela. He specifically noted:

> The police force would not assist me in Venezuela. It is well known that the police force is corrupt, but their harassment of Arabs is even greater than their harassment of other citizens. Police were known to kidnap Arabs for ransom. Police often ask for bribes from Arabs and stop and harass us random. (Application record pg 47).

[19] Although that experience was many years ago, the Applicant also provided current newspaper articles reporting the kidnappings and killings of people of Lebanese origin in Venezuela. Additionally, the Applicant argued that he would be akin to a tourist in Venezuela and provided evidence showing that specific risks are faced by tourists, including difficulty accessing police services in English (Application record pg 61). It was up to the Officer to evaluate the quality of the evidence and weigh it against the other available country conditions evidence as she saw fit. But the reasons need to show that such an exercise occurred, and as they stand, they do not.

[20] The reasons are not sufficiently cogent or intelligible. The decision is unreasonable. This application for judicial review is allowed.

V. Conclusion

[21] In consideration of the above conclusions, this application for judicial review is allowed.

[22] No question to be certified was proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
Asha Gafar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lorne Waldman Waldman & Associates Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General Canada	FOR THE RESPONDENT