Federal Court  Cour fédérale

Date: 20120308

Docket: IMM-6410-11

Citation: 2012 FC 298

Toronto, Ontario, March 8, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

IMAN MUSA AND
MAJIDA MUGRABI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of and to set aside a decision of a Pre-Removal Risk Assessment (PRRA) Officer dated August 9, 2011 wherein it was determined that the Applicants would not be at risk if they were to return to Israel. For the reasons that follow, I will allow the application.

[2] The Applicants are two Arab muslim women who are citizens of Israel. They are in a lesbian relationship. They claimed refugee protection in Canada. That claim was rejected. They

applied for a pre-removal risk assessment. It is important to note that the application was in the English language and in response to the question at the top of the first page: *"Language you prefer for correspondence and service"* they checked the box *"English"*. They filed evidence including a letter written by both of them to which is attached an Arabic language newspaper report with an English language translation relating to a confession by a cousin of one of them, to an "honour killing" of his sister twelve years ago.

[3] The Applicants, in their letter, wrote, *inter alia*:

> *The situation we are facing now, is that if we go back home, we are at risk of being KILLED. Same sex relationships are not permitted or accepted in all Arabic countries. There are many stories about honor killing and we are victims of this. We have a same sex relationship, which is forbidden back home and we have dishonoured our families by running away to try and start a life with each other.*
>
> *Honor killing is a murder by families on a family member who have brought shame to the family. We have searched many articles and it turns out that In Majida Mugrabi's family, he cousin Youssef Mugrabi has killed his own sister on the grounds of killing. However, there are many situations of honor killing/family killing in Israel. We have done our research and have attached the Arabic and English Google translation of the articles about Youssef Mugrabi, and other unfortunate Israel killings based on honor for the family. We don't like to bring religion into it; however, we feel it maybe necessary to save our lives. As Muslim women, we don't have any rights in our families, and the fact that we are lesbians does not help. Majida's grandfather is a sheikh, and has repeatedly threatened to kill her. Iman's brother has threatened to kill her if she does not leave her lesbian relationship and marry a male. There are several police complaints regarding the threats of her brother.*
>
> *If we go back to Israel, we will be killed.*
>
> . . .

[4] The record also shows that the Officer had available a number of country reports, all in English, detailing, among other things, the heightened risk to which Arab lesbians are exposed in Israel.

[5] The Officer provided a letter addressed to the Applicants, dated August 9, 2011 in which they were informed that their PRRA application had been rejected. The letter was in the English language essentially on a pre-printed form. An "X" was placed opposite the following paragraph:

> *[X] No new evidence, which arose after the rejection of your claim at the Immigration and Refugee Board or after the rejection of your PRRA application, or that was not normally accessible, or that you could not reasonably have been expected in the circumstances to have presented, at the time of rejection, was presented in support of your application.*

[6] The reasons for the decision were attached to the letter. Much of those reasons were on a printed form familiar to many lawyers and others practicing in the immigration and refugee field. However, the form and the typewritten narrative were entirely in the French language. I repeat one of the paragraphs:

> *Les demandeures n'ont pas fourni de nouveaux éléments de preuves selon les critères requis par 113 a). En effet, tous les articles fournis sont datés d'avant la décision de la SPR. Et le rapport de police qui a été soumis, faisait déjà parti de la liste de documents ayant été remis à la SPR. Les demandeures n'ont pas fourni d'explications sur les raisons pour lesquelles elles n'ont pas pu fournir les articles à la SPR, par conséquent, je n'ai pas de raisons de croire que ceux-ci n'étaient pas normalement accessibles au moment du rejet, ni qu'il n'était pas raisonnable de s'attendre à ce que les demandeures les aient présentés.*

[7] The Applicants received this decision on September 13, 2011. The next day, September 14, 2011, Applicants' counsel made a request that the Applicants be provided a copy of the reasons in the English language. A translation was made by Citizenship and Immigration Canada and sent to the Applicants' lawyer on October 11, 2011.

[8] The present application for leave, meanwhile, had been filed with the Court, in English, on September 19, 2011. The Applicants filed a motion for a stay of removal on September 28, 2011. On October 4, 2011 this Court granted an Order staying the removal. All of this occurred before the English language version of the reasons was sent to the Applicants' lawyer.

[9] On December 13, 2011 leave was granted to permit the Applicants to pursue this judicial review. I heard the matter on March 7, 2012.

[10] The Applicants have raised a number of grounds for judicial review. It is necessary to refer only to two of them.

[11] The first ground is whether the Applicants were entitled to receive the reasons for the decision, in the first instance, in the English language. In this respect the Applicants Counsel argues that the Applicants should be entitled to receive the decision in the official language of their choice so as to be able to understand it and instruct their lawyers properly. Similarly, their lawyers should be able to understand it properly. A more nuanced argument was made by applicants' Counsel but only in reply in the oral argument before me. It was to the effect that, given that the evidence, the argument and all correspondence was in the English language, the Applicants, and their lawyer,

should feel assured that the decision-maker understood that language including its complexities and nuances, sufficiently well so as to make a proper decision. It would be expected that if the decision-maker was fluent in English, that the reasons for the decision should have been produced in the first instance, in English.

[12] The *Official Languages Act*, RSC 1985, c.31 (4th Supp.) guaranties that any member of the public has the right to communicate with and receive available services from federal institutions, where there is significant demand, in either official language. I repeat sections 21 and 22:

Rights relating to language of communication	*Droits en matière de communication*
21. *Any member of the public in Canada has the right to communicate with and to receive available services from federal institutions in accordance with this Part.*	***21.*** *Le public a, au Canada, le droit de communiquer avec les institutions fédérales et d'en recevoir les services conformément à la présente partie.*
Marginal note: Where communications and services must be in both official languages	*Note marginale : Langues des communications et services*
22. *Every federal institution has the duty to ensure that any member of the public can communicate with and obtain available services from its head or central office in either official language, and has the same duty with respect to any of its other offices or facilities*	***22.*** *Il incombe aux institutions fédérales de veiller à ce que le public puisse communiquer avec leur siège ou leur administration centrale, et en recevoir les services, dans l'une ou l'autre des langues officielles. Cette obligation vaut également pour leurs bureaux — auxquels sont assimilés, pour l'application de la présente partie, tous autres lieux où ces institutions offrent des services — situés soit dans la région de la capitale nationale, soit là où,*
*(*a*) within the National Capital Region; or*	
*(*b*) in Canada or elsewhere,*	

where there is significant demand for communications with and services from that office or facility in that language.	*au Canada comme à l'étranger, l'emploi de cette langue fait l'objet d'une demande importante.*

[13] The decision of Justice Frederick Gibson of this Court in *Thompson v Canada (Minister of Citizenship and Immigration)*, 2009 FC 867 is instructive. He held that where a translation is provided in a timely fashion such that there is no prejudice to a party then there is no breach of a *Charter* right. He wrote at paragraphs 8 and 9:

> ***8*** *Subsections 19(1) and 20(1) of the* Canadian Charter of Rights and Freedoms *establish rights before courts created by Parliament, such as this Court, for persons to be heard and dealt with in either official language. They also create rights for members of the public in Canada who deal with institutions of the Government of Canada to conduct those dealings, with certain limitations, in the official language of their choice and to receive communications from those institutions in the language of their choice. With relation to government institutions, the provisions provide no stipulation as to the time within which communications in the official language of the member of the public's choice must be provided. Thus, I take it as implied that, where applicable, government institutions must provide communications within a "reasonable" time of the request for the provision of the communication in a particular official language or, put another way, within a time that results in no prejudice to the individual seeking the communication.*
>
> ***9*** *On the facts of this matter, while the delay in providing the notes to file with respect to the decision here under review was, perhaps, inordinate, I find that it resulted in no prejudice to the Applicant.*

[14] In *Sztern v Canada (Attorney General)*, 2010 FC 181 Justice Boivin considered the *Official Languages Act*, *supra.* He found that, in the particular circumstances of the case before him, no prejudice had been shown. He wrote at paragraphs 69 to 73:

69 *The applicants also argue that the Delegate contravened and offended the Act, the* Charter *and the* Official Languages Act*, 1985, c. 31 (4th Supp.), by not immediately providing an English translated version of his decision dated December 15, 2008. The English translated version of the Delegate's decision was e-mailed to the applicant, Henry Sztern, on February 3, 2009. Mr. Sztern submits that the English version of the decision is not properly translated as many statements appear to be literally translated, resulting in nonsensical statements in English. The applicant submits the English translation was delivered too late for the appeal process to be initiated and it is of little value as a legible and understandable document. The applicant also argues that there was no interpreter available during his English testimony and during the English examinations and cross-examinations.*

70 *It is worth nothing that on April 3, 2007, Henry Sztern filed a motion requesting the services of an interpreter and the Delegate rejected this request on October 2, 2007. The Delegate found that section 14 of the* Charter *did not apply to the case at bar and that Henry Sztern had not established he did not have knowledge of French.*

71 *Furthermore, this very same issue had been previously decided by the Superior Court of Quebec and the Quebec Court of Appeal on April 16, 2007 (see Affidavit of Sylvie Laperrière sworn March 13, 2009 at Exhibit SL-11, pp. 2494-2498 of the respondent's Record).*

72 *On the basis of this evidence, the Court finds that Henry Sztern had sufficient knowledge of French to file his application for judicial review pursuant to subsection 18.1(2) of the* Federal Courts Act*, R.S., 1985, c. F-7 and there has not been a breach of procedural fairness. There is no evidence on file that Henry Sztern made a specific request to the Delegate prior or during the disciplinary hearing for the decision to be rendered or translated in English. To the contrary, the evidence demonstrates that the Delegate issued his decision in French on December 15, 2008 and a request for a translation was sent to the Delegate on December 21, 2008, six days after the decision was rendered. The Delegate followed-up on the request and a translation of the decision was obtained by the applicants on February 3, 2009. In the present circumstances, the Court finds this was an acceptable delay. The applicants filed this application for judicial review on January 10, 2009, within the prescribed time limit, and they have not convinced the Court that they suffered any prejudice on this point.*

> ***73*** *The Court also notes that in spite of a ruling from the Delegate rejecting the request for translation, the respondent nonetheless made arrangements upon its own initiative during the disciplinary hearing before the Delegate to provide an interpreter to translate the testimonies rendered in French for Henry Sztern (see Sylvie Laperrière's affidavit at paragraph 41). Most of the disciplinary hearing was conducted in English and the testimonies rendered in French were translated by an interpreter provided by the respondent for Henry Sztern. The Court is of the view that the applicants' claims on this point are unfounded.*

[15] In the case before me no prejudice has been alleged. The Applicants were able to file their Application for Leave and Judicial Review and they obtained a stay of removal; all before an English language translation was sent to their lawyer. I have no evidence, one way or the other, as to whether the Applicants or their lawyer, is fluent in French. I find, on this ground; that the Applicants have not made out any prejudice.

[16] The second issue raised by the Applicants' Counsel is that, given that all the evidence and argument was in English it was surprising to receive the reasons for decision in French. This raises a question as to whether the decision-maker competently understood the English language evidence and submissions.

[17] This argument was not raised in the Applicants' written argument and only raised by Counsel in his oral submissions in reply. The Respondent's Counsel had no opportunity to meet this argument whether by argument orally or in writing or by filing appropriate evidence. Therefore, I will disregard this argument.

[18] I pass to the next issue raised by the Applicants. Nowhere in the reasons does the Officer mention the Applicants' letter (parts of which have been set out earlier in my reasons) raising the fear that they might be killed if they return to Israel and illustrating that fear by a newspaper report that a cousin of one of the Applicants had recently confessed to an "honour killing" of his sister some twelve years earlier.

[19] The newspaper report pre-dates the Refugee Board's decision, however the letter from the Applicants, as set out earlier, states that the article was only recently discovered by them. As such, the evidence should at least have been considered under section 113 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 as interpreted by the Federal Court of Appeal in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385. It may be that the Officer would ultimately consider it of no weight or unhelpful, but it should have been considered. For this reason the matter will be sent back

[20] There is no question for certification and there is no basis for an Order as to costs.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed;

2. The matter is returned for redetermination by a different officer;

3. No question is certified; and

4. No Order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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