Federal Court Cour fédérale

Date: 20130508

Docket: IMM-6261-12

Citation: 2013 FC 481

Ottawa, Ontario, May 8, 2013

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

NOUREDDINE KHELOUFI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, an Algerian citizen, seeks judicial review of a negative decision made on December 7, 2011, by a Citizenship and Immigration Canada [CIC] officer [PRRA officer], refusing his application for a pre-removal risk assessment [PRRA] pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

Background

[2] The applicant entered Canada with a forged French passport on June 8, 2001, after having made two unsuccessful claims for refugee protection in Italy and in the United Kingdom. Upon

arrival in Canada, the applicant sought refugee protection on the basis that, as a member of the *Association Cinéma Œil*, he was threatened on several occasions and had a well-founded fear of persecution at the hands of members of the *Groupe Islamique Armée*. That claim was rejected by a decision of the Refugee Protection Division [RPD] on June 8, 2004, mainly for credibility issues. In December of 2004, the applicant made an application for permanent residence based on humanitarian and companionate grounds, which was also dismissed on July 23, 2007.

[3] The applicant's removal was submitted for a PRRA on March 3, 2011, on the grounds that since the rejection of his refugee claim, the applicant converted from Islam to Christianity and was baptized in April 2011, and that he "fears persecution on the basis of his religion as well as on the basis of his status as a returning asylum seeker who would be perceived as having links with extremists/terrorist organizations/individuals." (Applicant's Submissions in Support of his PRRA Application, Applicant's Record, p. 35). In fact, in his affidavit submitted to the PRRA officer, the applicant stated that shortly after his arrival in Canada, he was contacted and investigated on two occasions by the RCMP, in October 2001 and later in 2002. The purpose of these investigations was to ascertain whether the applicant was involved with an extremist suspect of Libyan nationality. In his affidavit, the applicant also referred to an interview he had with the Canadian Security Intelligence Services [CSIS] in the initial phases of his refugee determination process. Neither the applicant's record not the PRRA officer's written reasons contain further information regarding the investigation of the applicant by Canadian authorities.

[4] The Respondent has filed a February 6, 2003 report by CSIS, containing notes of this interview, which was conducted as part of the Front End Screening of Refugees Program of the CIC (Affidavit of Francine Lauzé, Exhibit D).

[5] As a preliminary determination, I find that, for two main reasons, these notes cannot and should not be considered by the Court for the purposes of this judicial review. Firstly, it is trite law that judicial review of any administrative decision should proceed on the basis of the evidentiary record that was before the decision-maker and the CSIS report was not part of the tribunal's record when the matter was first decided by the PRRA officer (*McFadyen v Canada (Attorney General)*, 2005 FCA 360 at para 15; *Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1357 at para 5; *Nyoka v Canada (Minister of Citizenship and Immigration)*, 2008 FC 568 at para 17). Secondly, both grounds of review raised by the applicant in this case are related to his conversion to Christianity and not to his assertion that he would be presumed to be a terrorist by the Algerian security forces or other authorities if he were to return to his country. In fact, the applicant's counsel abandoned the latter argument at the hearing before the Court.

[6] Furthermore, it is well established that the risk assessment to be carried out at the PRRA stage is not to be a reconsideration of the RPD's decision, but is instead limited to an evaluation of new evidence that either arose after the applicant's refugee hearing or was not previously reasonably available to the applicant (*Hausleitner v Canada (Minister of Citizenship and Immigration)*, 2005 FC 641 at para 26). Consequently, in this case, the PRRA officer correctly applied the standard for the reception of new evidence and essentially dealt with the applicant's new allegations, namely the evidence of his recent conversion to Christianity and the general documentation on the treatment of

non-Muslims and failed asylum seekers in Algeria.

PRRA Officer's Decision

[7] The PRRA officer examined the documentary evidence in relative detail and determined that the applicant would not be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if he were to return to Algeria, stating that:

> I have noted that the applicant had provided documents concerning his baptism and initiation to the Christian religion. Based on the evidence provided by the applicant I am satisfied that he was baptised. The applicant has not demonstrated involvement in Church activities beyond the activities conducted for his conversion. All of the articles regarding the practice of non-Muslim religions make reference to the illegal practice in a place of worship that has not been registered, on the proselytizing of Muslims to non-Islamic religions.
>
> Based on the documentation provided by the applicant he would not be personally at risk for practicing his religion in Algeria and would be able to freely practice his Christian faith in the registered churches. In other words, the applicant would not be at risk of persecution based on his religion, nor would he face a risk to his life or cruel and unusual treatment or punishment.
>
> The applicant has also submitted that he would be at risk because he sought asylum from Algeria and for being a presumed terrorist. The evidence that the applicant has presented for these allegations are general and reflect the reality of individuals that are known refugee claimants and people that were suspected of involvement with terrorist activities. These documents do not provide proof that the applicant is sought by Algerian authorities or that he would be targeted for the aforementioned reasons. The applicant has not met the burden of proof to determine that he would personally face the said risks. As a result, the applicant would not be at a risk beyond a mere possibility.

[8] Despite the above-stated finding of lack of sufficient evidentiary basis, the PRRA officer focused on the assessment of the alleged risks from an objective point of view and found that:

> Based on the documentation consulted the applicant would not be targeted and at risk of persecution based on his religion. There are certain laws that are in place to protect the state religion Islam; however the law also includes acts protecting non-Muslim religions. The government does not condone acts of violence against the non-Muslim population. Based on the applicant's profile of young Christian Algerian man, there is no more than a mere possibility that the applicant would face persecution on the basis of religion if he returned to Algeria.
>
> The applicant has also expressed a fear of cruel and unusual treatment or punishment upon return to Algeria because he had applied for protection in Canada. The refugee claim that was submitted by the applicant is protected information and at no point during the removal process are the foreign authorities informed that an individual has made a claim in Canada. The only document that is presented to foreign embassy or consulate is the removal order, as it supports the request for a travel document, and it contains no information regarding an application for protection. Therefore, the Algerian authorities are not notified of the applicant's status and would not have been made aware of the applicant's claim.

[9] The applicant takes issue with the above findings arguing i) that the PRRA officer applied a restrictive conception of the freedom of religion and conscience and failed to consider the risk of persecution, including the imposition of penal sanctions for failure to observe Islamic laws, and ii) that the PRRA officer failed to consider the evidence of the applicant's alleged risk of punishment for mere possession of the Bible.

Issue and Applicable Standard of Review

[10] The sole issue to be decided is therefore is whether the PRRA officer erred by failing to consider relevant factual considerations in her assessment of the applicant's alleged risk on the ground of his recent conversion to Christianity. The applicant's position is that the PRRA officer unreasonably rejected the evidence provided in support of part of the risks he allegedly faced by limiting the scope of her analysis to the question of whether or not the applicant could practice his

faith in a registered church.

[11] Since *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], it is well established that the Court's role is not to substitute its own appreciation for that of administrative decision makers and that it must show deference to their weighing of the evidence and assessment of credibility (*Martinez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 798 at para 7; *Andrade v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1074 at para 23).

[12] In reviewing the PRRA officer's decision against the standard of reasonableness, the Court should not intervene unless a finding of fact is erroneous and made in a perverse or capricious manner; a decision was made without regard for the evidence (subsection 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7); or the tribunal came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir*, above, 2008 SCC 9 at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]). As the Supreme Court held in *Khosa*, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (*Khosa*, above, at para 59).

Review of the Impugned Decision

[13] A close reading of the PRRA officer's reasoning shows that the applicant's arguments amount to a simple disagreement with the manner in which all the evidence, including the objective documentary evidence, was assessed and analyzed.

[14] The PRRA officer's review and balancing of the objective evidence led her to conclude that religious minorities in Algeria, including those of Christian faith, are able to practice their religion freely and without systematic harassment. She essentially found that non-Muslims are not restricted from practicing their religion and are given equal rights, and added that acts of discrimination by extremists have been publicly criticized by the Muslim religious and political leaders of the country. The PRRA officer primarily relied on the fact that according to the 2010 International Religious Freedom Report released on November 19, 2010 by the US Department of State:

> The constitution [of the People's Democratic Republic of Algeria] provides for freedom of belief and opinion and permits citizens to establish institutions whose aims include the protection of fundamental liberties of the citizens. The constitution declares Islam the state religion and prohibits institutions from engaging in behaviour incompatible with Islamic morality. Other laws and regulations provide non-Muslims the freedom to practice their religion as long as it is in keeping with public order, morality, and respect for the rights and basic freedoms of others. The law prohibits efforts to proselytize Muslims, but it was not always enforced. Government officials asserted that the ordinance is designed to apply to non-Muslims the same constraints that the penal code imposes on Muslims.

[15] The applicant asserts that the PRRA officer's focus on his ability to practice his faith freely at a registered church led her to discount other forms of serious risk and discrimination faced by the applicant. The applicant is of the view that the fact that the Algerian authorities require general compliance with Islamic rules and conventions and, according to the objective evidence, have been found to charge non-Muslim citizens with "denigrating the dogma or precepts of Islam" for publicly breaking fast during Ramadan (*The State of the World's Human Rights*, Amnesty International, October 1, 2012, pp. 22-24 of the Tribunal's Record), equates to religious persecution and should have been found as a risk faced by the applicant. In other words, the applicant is of the view that where the evidence demonstrates state coercion of religious minorities, on pain of arrest and

prosecution, to observe the religious practices of the majority, whether the applicant is free to attend activities in a registered church is only half the question. The applicant relies on the Supreme Court's jurisprudence in *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, to argue that persecution can arise not only from being unable to practice one's religion, but also from being forced to observe the religious practices of a religion that one does not believe in.

[16] The respondent's written submissions present the issue as being one of balancing inconsistent evidence and determining the probative value of different evidentiary elements, rather that a restrictive interpretation of the scope of the freedom of religion and conscience. I agree with the respondent.

[17] In the context of a refugee claim or PRRA application, although this Court has to rely on international concepts, the question is not whether all the laws of a given country would pass the test of the Canadian courts and would be considered as compliant with Canada's constitution and its *Charter of Rights and Freedoms*. Rather the question is whether this applicant faces more than a mere possibility of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment in his country, as a result of his religious beliefs, activities or practices.

[18] The applicant has submitted evidence that he converted to Christianity in 2009 and that he was baptised in 2011. However, he did not present evidence of any religious activities outside his conversion or of his intention of being active and/or of proselytizing if he were to return to Algeria.

[19] As Justice Dubé held in *Yang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1052, at paras 72 and 73:

> "Persecution for "reason of religion" may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practice their religion or belong to a particular religious community.
>
> Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be sufficient ground."

[20] The applicant relies on the decision of this Court in *AB v Canada (Minister of Citizenship and Immigration)*, 2009 FC 325 where the applicant feared returning to Iran after having rejected Islam since arriving in Canada. There was evidence before the PRRA officer in that case that apostasy was a serious crime in Iran and that it was punishable by the death penalty. Therefore, a reasonable analysis of the evidence specific to the applicant in that case led to a conclusion that he would be facing more than a mere possibility of persecution in Iran, as a result of his religious beliefs, activities or practices.

[21] The facts of this case are different and it cannot be said that the PRRA officer ignored the applicant's personal situation, nor the documentary evidence before it.

[22] The PRRA officer explicitly rejected the evidence of mandatory and forced observance of Islamic practices and the potential use of penal sanctions against Muslim and non-Muslim citizens to assure the required observance, on the basis that such practices "do not prevent people such as the applicant to practice their faith", and concluded, as a result, that the evidence was insufficient to support that the applicant would face a risk of persecution as he claimed (PRRA officer's reasons, p. 7). That finding falls "within a range of possible, acceptable outcomes which are defensible in

respect of the facts and law," in light of the specific circumstances of the applicant (*Dunsmuir*, above, at para 47).

[23] It was open to the PRRA officer to find, based on a careful analysis of the evidence and a proper balancing of the elements contained therein, that the applicant's claim, considering the level of his religious activities, was not supported by the Amnesty International report or other confirmative evidence presented by the applicant.

[24] The officer also reasonably read down the ambit of risks faced by the applicant as a Christian convert in Algeria, by concluding that the risk of being arrested and charged for having a Bible in his possession is limited, considering the evidence that he has not engaged in religious activities outside of his conversion to Christianity and that he does not intend to engage in religious proselytizing or practice in an unregistered religious centre. This is true even if the Amnesty International 2009 report on Algeria and other documentary evidence, such as Ireland's Refugee Documentation Centre report, dated July 19, 2010, report several cases of Christian converts being arrested and prosecuted both for possession and distribution of Christian materials.

[25] For the foregoing reasons, this application for judicial review will be dismissed.

[26] Counsel for the parties did not propose a question of general importance for certification and none arises in this case.

[27] The parties requested that the style of cause be amended to reflect the correct spelling of the applicant’s name, as it is stated in his birth certificate. It will so be ordered.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question to be certified.
3. The style of cause shall be amended to reflect the correct spelling of the applicant's name, as it is stated in his birth certificate.

"Jocelyne Gagné"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6261-12
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APPEARANCES:

Me Kathleen Hadekel	FOR THE APPLICANT
Me Émilie Tremblay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Me Kathleen Hadekel Montréal (Québec)	FOR THE APPLICANT
Me Émilie Tremblay Myles J. Kirvan Deputy Attorney General of Canada Montréal (Québec)	FOR THE RESPONDENT