Federal Court Cour fédérale

Date: 20130528

Docket: IMM-2281-12

Citation: 2013 FC 560

Ottawa, Ontario, May 28, 2013

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

REUPANG CAO

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 (the Act) for judicial review of a decision by a Citizenship and Immigration Canada officer (the officer) dated January 26, 2012, wherein the applicant's pre-removal risk assessment (PRRA) application was refused.

[2] The applicant requests that the officer's decision be set aside and the application be referred back to Citizenship and Immigration Canada (CIC) for redetermination by a different officer.

Background

[3] The applicant is a citizen of the People's Republic of China. In 2001, he was sent by his parents to study in Peru. After being harassed and attacked on the basis of his Chinese nationality, he left Peru for Canada, arriving on September 24, 2004. He claimed refugee protection on October 22, 2004.

[4] The applicant was convinced by an immigration consultant to claim refugee status on the basis of Falun Gong membership. In December 2004, the applicant became a Christian of the Protestant faith. Believing that he should tell the truth, the applicant submitted a new Personal Information Form (PIF) narrative indicating his real refugee claim was based on his conversion to Christianity.

[5] The Refugee Protection Division (RPD) did not believe that the applicant had sincerely converted to Christianity and rejected his claim on March 24, 2006.

[6] The applicant submitted a PRRA application on March 16, 2011, on the basis of the difficulty he would face practising his religion in China. That application was reviewed together with his humanitarian and compassionate (H&C) application by the same officer.

Officer's Decision

[7] In a letter dated January 26, 2012, the officer informed the applicant his PRRA application had been rejected. The officer's notes serve as reasons for the decision.

[8] The officer began by summarizing the applicant's immigration history, including the RPD finding that the applicant was not credible and not a genuine Christian. The officer noted the applicant's alleged risk of harassment based on religion and living under an atheistic and repressive state.

[9] The officer noted that the applicant had not submitted any evidence in his PRRA application that would rebut the findings of the RPD.

[10] The officer recognized that the situation of Protestant Christians in China is not perfect, but noted that the Chinese government officially recognized Protestantism as a religion. While churches must be registered with the government, authorities in the provinces of the east coast, where the applicant is from, are increasingly tolerant. It is reported that the government tolerates family and friends meeting at homes to practice their religion without having to register.

[11] The officer concluded that if the applicant was a Protestant, he would, on a balance of probabilities, be able to practice his religion upon return to China within the framework prescribed by the authorities and would not face risks that would constitute unusual and undeserved or disproportionate hardship.

[12] The officer reviewed country conditions documents provided by the applicant pertaining to human rights in China generally and concluded that there was no connection between the general status of human rights and the particular risks faced by the applicant. To be recognized as a person in need of protection, the risk an applicant would face must be personalized.

[13] Therefore, the officer concluded there was not more than a mere possibility that the applicant would be persecuted and there were no serious reasons to believe the applicant would be subject to torture or a threat to his life or a risk of cruel and unusual punishment.

Issues

[14] The applicant submits the following points at issue:

1. Did the officer err in his assessment of the applicant's *sur place* claim?

2. Did the officer err by failing to consider the applicant's claim based on his father's political opposition to the Chinese government?

[15] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the officer err in denying the application?

Applicant's Written Submissions

[16] The applicant submits that the officer erred by not appreciating that the applicant's claim is a *sur place* claim and that it was possible that since the applicant's 2006 RPD hearing, the country conditions in China had worsened. This issue could have been a basis for a successful section 96 claim. While the RPD made a finding against credibility, there was ample documentary evidence capable of supporting a positive decision of that claim, yet it was not considered by the officer. A person may become a *sur place* refugee based on their own actions and not only based on changing country conditions. The European Court of Human Rights has recently held that general risks faced by the population may amount to a real risk of ill-treatment to the deportee. Therefore, the officer's failure to consider whether the applicant's activities in Canada would have consequences in China is an error of law reviewable on correctness.

[17] The applicant also submits the officer erred by failing to consider the applicant's claim based on his father's political opposition to the Chinese government. The applicant made clear in his PRRA application that he opposed the Chinese government's infringements of its citizens' human rights. The officer's finding of a generalized risk conflicts with the fact that the applicant's father was recognized as a Convention refugee by the RPD. The officer could have accessed the applicant's family information with a simple computer search. The officer made a reviewable error by failing to consider this important evidence.

Respondent's Written Submissions

[18] The respondent submits that the standard of reasonableness applies and that a PRRA application is not a re-hearing of a refugee claim. The allegations before the officer had already been considered by the RPD. The applicant failed to identify how his PRRA submissions overcame the credibility findings made by the RPD. The two issues raised in the PRRA application where his alleged religious beliefs and the human rights situation in China. Both were considered by the officer. The applicant's *sur place* claim was heard by the RPD. The country conditions evidence provided by the applicant does not make a link between his individual claim and those conditions. It is unclear how the European Court decision relied upon by the applicant supports his claim, given that it dealt with return to Somalia. The applicant's claim was properly considered.

[19] The applicant's submissions to the officer made no mention of his father's political opposition to the Chinese government or that any family member had been found to be a Convention refugee. Such status would have no effect on the applicant's PRRA application. The officer considered the country conditions evidence and reasonably found the applicant had failed to personalize the documentation.

Analysis and Decision

[20] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57, [2008] 1 SCR 190).

[21] It is trite law that the standard of review of PRRA decisions is reasonableness (see *Wang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 799, [2010] FCJ No 980 at paragraph 11; and *Aleziri v Canada (Minister of Citizenship and Immigration)*, 2009 FC 38, [2009] FCJ No 52 at paragraph 11). Similarly, issues of state protection and of the weighing, interpretation and assessment of evidence are reviewable on a reasonableness standard (see *Ipina v Canada (Minister of Citizenship and Immigration)*, 2011 FC 733, [2011] FCJ No 924 at paragraph 5; and *Oluwafemi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] FCJ No 1286 at paragraph 38).

[22] In reviewing the officer's decision on the standard of reasonableness, the Court should not intervene unless the officer 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, at paragraph 47 and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59, [2009] 1 SCR 339). As the Supreme Court held in *Khosa* above, 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 (at paragraph 59).

[23] **<u>Issue 2</u>**

<u>Did the officer err in denying the application?</u>

The officer's decision was based on the applicant's claim that he had converted to Christianity after arriving in Canada. The officer concluded there was no basis for the claim given that it had been dismissed by the RPD.

[24] While the officer did not use the term "*sur place*", the analysis in the decision clearly accepted that a genuine change in status after arrival in Canada could be the basis for a valid claim. The issue was clearly not whether a religious conversion was a legal basis for a PRRA claim, but whether the applicant's religious conversion was in fact sincere. Indeed, the officer went on to consider the persecution of Christians in China as a live issue after reciting the RPD findings, suggesting it was quite open to the applicant to prove persecution based on a new religion. The applicant's suggestion that the officer was not aware of the possibility of a *sur place* refugee claim has no basis in the record.

[25] As for the applicant's argument relating to political persecution relating to his father's beliefs, this argument was raised on judicial review for the first time and was not before the officer. It can therefore not be a basis for finding the officer's decision unreasonable.

[26] The application for judicial review is therefore dismissed.

[27] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**

25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa

residence and is unable or, by reason of that fear, unwilling to return to that country.

résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT

SOLICITORS OF RECORD

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