Federal Court  Cour fédérale

Date: 20131028

Docket: IMM-11494-12

Citation: 2013 FC 1101

Ottawa, Ontario, October 28, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

SUGUNANAYAKE JOSEPH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] On December 24, 2005 Ms Sugunanayake Joseph suffered multiple bullet wounds during an attack in which her husband, Mr Joseph Pararajasingham, a Member of Parliament in Sri Lanka, was assassinated. The couple was shot while attending Christmas Eve mass.

[2] Weeks later, Canada granted Ms Joseph a temporary residence visa in order to protect her safety; she has lived in Canada ever since. She is currently 76 years old.

[3] In 2011, the Immigration Division (ID) concluded that Ms Joseph was inadmissible to Canada because she was "a member of an organization that there are reasonable grounds to believe engages" in terrorism (s 34(1)(*f*), *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]). The ID found there were reasonable grounds to believe that Ms Joseph was a member of the Liberation Tigers of Tamil Eelam (LTTE) and issued a deportation order against her.

[4] Just after the ID rendered its decision, Ms Joseph applied for a pre-removal risk assessment (PRRA). A favourable decision would prevent her deportation. To date, no decision has been rendered on Ms Joseph's PRRA. Her application awaits an assessment by the Canada Border Services Agency (CBSA).

[5] Ms Joseph asks me issue an order of *mandamus*, which would compel Citizenship and Immigration Canada (CIC) to make a decision on her PRRA. She maintains that it is inhumane to leave her in limbo, given her fragile physical and mental health and the likelihood that she would be killed if returned to Sri Lanka.

[6] I cannot grant Ms Joseph the order she seeks. She has not met the test for *mandamus*.

II. The ID's decision

[7] The ID accepted that the meaning of "member" is broad.

[8] It reviewed the evidence relating to Ms Joseph's activities in Sri Lanka. In particular, it noted that:

- Ms Joseph's husband was a member of the Tamil National Alliance (TNA);

- The TNA acted as a proxy for a number of Tamil political parties, and urged negotiations between the LTTE and the government of Sri Lanka;

- The TNA put forward a political platform on behalf of the LTTE;

- The non-violent political objectives of the TNA corresponded with the ultimate goals of the LTTE;

- Both the TNA and LTTE sought self-determination for Tamils;

- The LTTE was known to assassinate members of parties that did not support it;

- The TNA and the LTTE were separate organizations that played different, but complementary, roles in attempting to achieve Tamil self-determination;

- By attending conferences and meetings with him and acting as his secretary, Ms Joseph supported her husband's career as a spokesperson for peace and reconciliation;

- Ms Joseph's activities indicate her support for her husband's political activities; and

- Canada has designated the LTTE as a terrorist organization.

[9] Based on those considerations, the ID found reasonable grounds to believe that Ms Joseph furthered the objectives of the LTTE and that her conduct amounted to membership in that terrorist organization. As such, she was inadmissible to Canada. Ms Joseph unsuccessfully sought leave for judicial review of the ID's decision.

III. Has Ms Joseph met the test for mandamus?

[10] Ms Joseph has not met the test for the exceptional remedy of *mandamus*. The test was set out in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA). I need not set out all the applicable factors. It suffices to note that CIC's failure to decide Ms Joseph's PRRA has not seriously prejudiced her – she cannot be removed before the PRRA is completed. While that may be a significant ongoing concern for her, it does not create an obligation on the part of CIC to process her PRRA. Her anxiety does not create an obligation on CIC to decide her application within a particular time-frame.

[11] Ms Joseph argues that CIC's conduct amounts to state-imposed stress that should give rise to a judicial remedy (citing *New Brunswick (Minister of Health and Community Services) v G (J)*, [1999] 3 SCR 46). However, in my view, administrative delay in deciding whether to grant a person a substantial benefit cannot be characterized as state-imposed stress – at least, not on the facts before me.

[12] At this point, Ms Joseph's application has been transferred to CBSA, and it appears from the record that it is being processed in accordance with the usual procedures. Understandably, applications filed by persons in custody take priority.

[13] However, I must also note that, after the ID's decision on her inadmissibility, the Supreme Court of Canada rendered its decision in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40. There, the Court emphasized that individuals should not be held responsible for crimes committed by a particular group just because they are associated with that group, or acquiesced to its objectives (at para 68).

[14] In my view, while *Ezokola* dealt with the issue of exclusion from refugee protection, the Court's concern that individuals should not be found complicit in wrongful conduct based merely on their association with a group engaged in international crimes logically extends to the issue of inadmissibility. At a minimum, to exclude a person from refugee protection there must be proof that the person knowingly or recklessly contributed in a significant way to the group's crimes or criminal purposes (at para 68). Similarly, it seems to me that to find a person inadmissible to Canada based on his or her association with a particular terrorist group, there must be evidence that the person had more than indirect contact with that group.

[15] In light of *Ezokola*, it seems highly unlikely that Ms Joseph could now be found inadmissible to Canada based on membership in a terrorist group. *Ezokola* teaches us to be wary of extending rules of complicity too far. To my mind, that includes the definition of "membership" in a

terrorist group. I doubt the ID, based on *Ezokola*, would now conclude that Ms Joseph was a "member" of the LTTE.

[16] Therefore, while I must dismiss Ms Joseph's application for *mandamus*, I would expect that her PRRA application, post *Ezokola*, could be dealt with reasonably expeditiously.

IV. Conclusion and Disposition

[17] As Ms Joseph has not met the test for an order of *mandamus*, I must dismiss her application for judicial review. No question of general importance arises.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for *mandamus* is dismissed.

2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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