Federal Court Cour fédérale

Date: 20140912

Docket: IMM-750-13

Citation: 2014 FC 867

Ottawa, Ontario, September 12, 2014

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

JASVINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision rendered by R. Gawlick, Pre-Removal Risk Assessment Officer (the Officer), rejecting the Pre-Removal Risk Assessment (PRRA) of Jasvinder Singh (the Applicant). The decision was rendered on March 9, 2011, but was only communicated to the Applicant on December 18, 2012.

[2] For the reasons that follow, I have come to the conclusion that this application for judicial review must be dismissed.

I. Facts

[3] The Applicant is an Indian citizen. He is married and has two children. He has no relatives in Canada.

[4] The Applicant alleges that his cousin Manjit was involved with smugglers. Manjit was arrested and tortured by the police in 2002 and 2003, but was released on both occasions after bribing the police. According to the Applicant, Manjit continued to be harassed, and he finally left in August 2003 without informing anyone.

[5] The Applicant mentions he reported the matter to the police, but they responded that Manjit had probably joined the smugglers. The police added both Manjit and the Applicant's names to a list of suspected militants. The police started questioning the Applicant's family.

[6] In October 2005, after the Applicant told the police he did not know anything about Manjit, he alleges he was taken to the police station and tortured. He was finally released after the police were paid a bribe.

[7] Certain militants arrested by the police confessed to having ties to the Applicant, which raised more doubts as to the Applicant's involvement with militants. His family was told that he had to report to the police station or there would be consequences.

[8] After the Applicant left for Canada, his father was arrested and tortured in order to eventually get to the Applicant.

[9] On June 9, 2006, the Refugee Protection Division (RPD) rejected the Applicant's refugee claim based on available state protection. The Applicant was granted leave on the application for judicial review, but the judicial review was ultimately dismissed by Justice Noël on February 9, 2007 (*Singh Sran v Canada (Minister of Citizenship and Immigration)*, 2007 FC 145).

[10] The Applicant then filed a PRRA application, submitting as new evidence various letters and affidavits from family members and acquaintances. The Applicant also provided copies of reports following complaints made by his father to the Punjab Human Rights Commission in Chandigarh.

[11] On March 9, 2011, the Applicant's PRRA application was dismissed, and this decision was delivered personally to the Applicant on December 18, 2012, namely 21 months after the decision was actually rendered.

[12] On January 28, 2013, the Applicant filed an application for leave and judicial review of the PRRA decision. Leave was granted on September 23, 2013 by Justice O'Keefe.

II. <u>Decision under review</u>

[13] The Officer generally concluded that it had not been determined that the Applicant would be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to India.

[14] After reviewing the facts that led to the Applicant's refugee claim and summarizing the RPD's reasons in its June 9, 2006 decision, the Officer focused on the new evidence submitted by the Applicant in his PRRA.

[15] The Officer did not accept an article dated December 2002, because there was no original, the translation was unclear and the Applicant did not explain why this article was not provided to the RPD in the first place. He indicated, however, that all remaining submissions were accepted as new evidence.

[16] First, the Officer put little weight on a letter from Des Raj Singh Dhugga dated June 26, 2008 since it did not explain how this person had knowledge of the case. The events, as related, were the same as those told to the RPD, with the exception of one contradiction which gave it less credibility.

[17] The Officer also put little weight on affidavits, dated August 2006, of the Applicant's wife, father and sister on the basis that he did not understand why they had been written in English and not in Punjabi. A stamp stating "To Take Effect Outside India" also raised a doubt

as to the validity of the affidavits. Furthermore, the Officer thought that these affidavits only restated what had been presented before the RPD. The Officer underlined, however, that the Applicant's father's affidavit mentioned that police still came to his house and tortured him, even if the Applicant was in Canada.

[18] The Officer also considered three versions of complaints made to the Punjab Human Rights Commission. He noted that the documents had different paper, typefaces and signature stamps, even though they were allegedly from the same office. The Officer found that the documents did not appear to be on official letterhead and noted that, like the affidavits, they were in English rather than Punjabi. He also found that the versions were contradictory, in that they alleged that the Applicant was wanted by the police, while stating that he was not required to appear before the police and the complaint was finally disposed of. The Officer found that these documents do not substantively address the points raised by the RPD and he was not persuaded that they are genuine documents.

[19] The Officer finally concluded that the documents, on the balance of probabilities, were fabricated by the Applicant's father or a third party in order to help the Applicant's PRRA application. He also determined that the new evidence did not establish a significant change in either general country conditions or in Mr. Singh's specific situation.

III. Issues

[20] The present application raises two issues:

A. Was there a breach of procedural fairness, considering that the Applicant was provided with the PRRA decision 21 months after it was rendered, without any opportunity to provide further evidence in the meantime?

B. Was the new evidence properly assessed by the Officer?

IV. Analysis

[21] The first issue is to be reviewed on a standard of correctness; the case law is clear that this is the standard to be applied to issues of procedural fairness: see, for example, *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43; *Ghasemzadeh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 716 at para 16; *Karami v Canada (Minister of Citizenship and Immigration)*, 2009 FC 788 at para 18. As for the assessment of the new evidence, the standard is that of reasonableness. Accordingly, the Court shall not intervene if the "decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47.

A. *The delay in communicating the decision to the Applicant*

[22] The Applicant submits that the Officer committed a breach of procedural fairness by waiting almost two years in communicating the decision to him, without cause, reason or explanation. According to the Applicant, this delay violates section 15.1 of the Protected Persons Operation Manual (Chapter PP 3), which makes clear that decisions must be rendered in a timely manner. The Applicant also relies on *Pathmanathan v Canada (Minister of Citizenship and*

Immigration), 2005 FC 6 [*Pathmanathan*], for the proposition that this delay is unreasonable because the decision no longer relies on current information. Finally, he argues that there has been a policy change of the Indian Government with respect to passport issuance and eligibility. This policy now denies the issuance of passports and passport services to persons who have sought refuge in any country from India. Since the Applicant was not aware of this policy change until some point in 2011, he was not able to provide this information to the PRRA Officer before the decision was rendered. The Applicant believes that the Respondent should have known of this policy change and should have taken it into consideration. This policy could also create, in his view, a potential risk if he were to return to India, since he has submitted a refugee claim in Canada.

[23] I agree with the Respondent that a delay in and of itself does not amount to a breach of procedural fairness; the Applicant must show that he has suffered some prejudice from that delay: see *Budh Singh Gill v Canada (Minister of Employment and Immigration)*, [1984] 2 FC 1025 at 1028-1029 (FCA); *Akthar v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 32, [1991] FCJ No 513 at para 20 (FCA); *Dacosta v Canada (Minister of Employment and Immigration)* (1993), 41 ACWS (3d) 706, [1993] FCJ No 674 at para 6 (FC); *Maraj v Canada (Minister of Employment and Immigration)* (1993), 62 FTR 256, 19 Imm LR (2d) 90 at 102 (FC); *Qazi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1667 at paras 23-24.

[24] There is no doubt that PRRA officers are expected to ensure that their assessments are reasonably current. That being said, this duty is shared with applicants; as Justice O'Reilly stated in *Pathmanathan*, above, "PRRA applicants must also bear some responsibility for ensuring that

their applications are based on present conditions" (at para 7). Section 15.1 of the Protected Persons Operation Manual (Chapter PP 3) makes it clear that a PRRA officer must consider submissions made by a PRRA applicant up to the point where the applicant is notified that a decision has been made. In the case at bar, the Applicant did not make any attempt to update his submissions or inquire about his case during the 21 month period between the date the decision was made and the date it was communicated to him.

[25] The only change in country conditions raised by the Applicant is the passport policy change, which denies passport services to all asylum seekers. He argues that it should have been taken into consideration under a PRRA assessment, since it is an illustration of potential risk. The Respondent counters that such a policy change could not impact the PRRA application since the refugee claim decision had been rendered in 2006, therefore long before the alleged policy change. This argument is without merit. The fact that the Applicant would have been affected even if the decision had been delivered to the Applicant shortly after having been made, in March 2011, does not detract from the fact that the purpose of a PRRA is to assess changes in country conditions and personal circumstances before removing a failed refugee applicant. That being said, there are two fatal flaws with the Applicant's argument.

[26] First, this evidence was not provided to the Officer. It may be that this change did not occur before the decision was made on March 9, 2011; the Applicant does not know when it came about and only asserts that it was at "some point in 2011". In any event, the Officer could not be presumed to know about this policy change or to enquire about it. An applicant is expected to know more about the risks he may face when returning to his home country than a

PRRA officer. The fact that the Canada Border Services Agency arranges the removal of persons from Canada, does not translate into any kind of obligation for PRRA officers to keep up to date with the requirements for passport renewals in every country. The burden is always on an applicant to identify a new risk and to present evidence supporting such a risk: *Bayavuge v Canada (Minister of Citizenship and Immigration)*, 2007 FC 65 at para 43; *Mandida v Canada (Minister of Citizenship and Immigration)*, 2010 FC 491 at para 30.

[27] The second problem with the Applicant's argument is that there is absolutely no evidence tending to show that asylum seekers who have gone back to India have been persecuted or visited with harsh measures by Indian authorities as a result of the new policy. The fact that a failed refugee claimant may be prevented from obtaining a new passport and from travelling abroad, does not equate with persecution on a Convention ground or with a risk to life or of cruel and unusual treatment or punishment.

[28] In the absence of any evidence demonstrating that the Applicant has been prejudiced by the delay in providing him with the PRRA decision, I am therefore unable to conclude that he has been denied procedural fairness. If the Applicant can muster such evidence, it is always open to him to seek a second PRRA and while that is pending, to request a deferral of removal or a stay of removal from this Court.

B. *The assessment of the new evidence*

[29] It is clear from the decision that the Officer did not ignore any new evidence submitted by the Applicant in support of his application. The Officer indeed assessed all new affidavits, as

well as the Applicant's father's complaint to the Human Rights Commission, and he also provided an explanation as to why the 2002 news article was not considered.

[30] The Applicant contends, however, that the Officer misconstrued the evidence. With respect to the fact that the affidavits were completed in English and not in Punjabi with an accompanying translation, he argues that it is certainly within the realm of possibility that the affiants are proficient in English and thus completed their affidavits in that language. As for the Officer's analysis surrounding the stamp reading "To Take Effect Outside India", it is clearly stated in a Response to Information Request IND102462.E from the Immigration and Refugee Board that "[a]ll Notaries are not empowered to authenticate document to take effect outside of India". The Applicant further notes that he was given no opportunity to address the Officer's concerns regarding the affidavits.

[31] I agree with the Applicant that it was unreasonable for the Officer to arrive at a conclusion as to the non-genuine character of the affidavits, based solely on the fact that they were written in English and not in Punjabi. As stated by the Applicant, English is one of India's official languages, and concluding that they should have been written in Punjabi falls outside the realm of acceptable outcomes. It was similarly unreasonable to doubt the validity of the affidavits because of the stamp. It appears from the Officer's reasons that he did not understand what the stamp stood for. As the affidavits were sworn in India, it is Indian law that is applicable. The Officer should have consulted the Response to Information Request mentioned above, which would have disabused him of any concerns with respect to the authentication of documents to take effect outside of India.

[32] That being said, I agree with the Respondent that even if the affidavits were considered genuine, they are all in relation to risks previously considered by the RPD and they mainly restate what had previously been submitted by the Applicant in his refugee claim. None of them address the RPD findings in any way whatsoever; in those circumstances, it was not unreasonable for the PRRA Officer to find that the new evidence did not overcome the findings of the RPD. As was made clear by this Court in *Perez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1380 at para 12, a PRRA application is not intended to revisit the same risk allegations considered by the RPD. Further, the Officer considered whether the new evidence showed a sufficient change in the Applicant's personal circumstances or country conditions from the evidence currently before the RPD to warrant a different decision, and found that it did not. This was the most serious defect in the affidavits identified by the PRRA Officer, and it was sufficient to dismiss the current judicial review application.

[33] Regarding the Applicant's father's complaints to the Human Rights Commission, I am of the view that it fell within the Officer's discretionary power to set aside this evidence. Indeed, the complaints do not seem to be written on official paper or to bear an official signature. There are also contradictions between these complaints, as stated by the Officer. The first one, dated July 13, 2007 (Certified Tribunal Record, p. 72), indicates that the Applicant is not being sought by the police, while the ground of the complaint is that the Applicant's father is being pressured by the police to produce his son. Interestingly, this first report indicates that the Commission has decided not to investigate the matter further, while what appears to be a second report on the complaint (Certified Tribunal Record, p. 201) mentions a *prima facie* case for scrutiny, based on the same allegations as the first report. Considering these contradictions, and bearing in mind

that it is not the Court's role to reweigh the evidence, the Officer's conclusion that they were created by the Applicant's father or by an unknown person to help Mr. Singh, falls within the range of acceptable outcomes.

V. **Conclusion**

[34] For all of the above reasons, I find that this application for judicial review must be dismissed. Even if some of the Officer's conclusions regarding the genuineness of the Applicant's family members' affidavits were unwarranted, these errors do not render the decision as a whole unreasonable. The new evidence provided by the Applicant to support the PRRA application did not refer to any new country condition or change in the Applicant's circumstances. Moreover, even if the decision was communicated to the Applicant some 21 months after it was made, the Applicant has not demonstrated that he has suffered a prejudice from this delay.

[35] Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

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

No question of general importance is certified.

"Yves de Montigny"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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