

Federal Court



Cour fédérale

Date: 20150825

Docket: IMM-1161-15

Citation: 2015 FC 1003

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 25, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

WALEED KANDEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
AND
THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is an application pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) for judicial review of a decision in which a pre-removal risk assessment (PRRA) officer refused the applicant's application for protection.

II. Facts

[2] The applicant is a 40-year-old citizen of Egypt who fears persecution in Egypt by reason of his homosexuality, his conversion to Christianity and his imputed political opinion.

[3] The applicant arrived in Canada on September 11, 2013, and an exclusion order was issued against him that same day. Thus, the applicant was unable to file a refugee protection claim with the Immigration and Refugee Board (IRB).

[4] The applicant filed a PRRA application on September 16, 2013, and that application was refused on October 17, 2013.

[5] The refusal of his PRRA application was the subject of a judicial review, which was allowed by Justice Simon Noël of the Federal Court on July 7, 2014.

[6] The applicant sent additional documents and submissions to the PRRA officer on September 5, September 22, and October 29, 2014. Among the documents submitted was a letter from the applicant's attending physician attesting to a diagnosis of post-traumatic stress and depression, and to the finding of scars from the attack on the applicant. Other additional documents submitted included an affidavit from an intervener, a psychology report, a letter from a social worker, as well as letters from five reverends and one musical director of the Presbyterian Church.

[7] A hearing was held before the PRRA officer on January 21, 2015, and it lasted the whole day.

[8] Written submissions were filed the day after the hearing in support of the applicant's fear of persecution concerning his conversion to Christianity, his sexual orientation and his imputed political opinion. The applicant also submitted additional documents describing the human rights situation in Egypt.

[9] On February 26, 2015, the PRRA application was refused. This is a judicial review of the latter decision.

III. Impugned decision

[10] Following an exhaustive analysis of the applicant's testimony and the evidence in the record, the PRRA officer found the applicant not credible:

After careful consideration of the evidence, submissions and oral testimony, I am not persuaded, on the balance of probabilities, as to the credibility of the applicant. The applicant lacked general credibility and that this lack of credibility extends to all of the applicant's testimony.

Several significant inconsistencies [were] identified in the applicant's testimony and evidence, for which a reasonable explanation was not satisfactory. The applicant demonstrated an excellent ability to adapt by adjusting his testimony with ease both during and after the hearing. Based on the numerous inconsistencies and improbabilities, I find the applicant's allegations not credible and conclude that his story was fabricated to obtain protection.

That said, for [all the] reasons above, I conclude that the applicant is not genuine Christian. In addition, the applicant has not demonstrated more than a mere possibility, nor has he established

on a balance of probabilities that he would be perceived as a Christian convert if he returned to Egypt.

For all the reasons mentioned above, I conclude that the applicant is not homosexual. I am not satisfied that the applicant was involved in homosexual relationships or activity prior to his arrival in Canada or that he would pursue a homosexual lifestyle or activity if he returns to Egypt.

As a result, I am not satisfied that the applicant is being sought by his family or the authorities for his sexuality or religious conversion as he alleges.

...

After examining the applicant's PRRA application, information on file, as well as the country conditions, I conclude that the applicant has not demonstrated more than a mere possibility of being subjected to persecution as per section 96 of the IRPA, nor has the applicant established on a balance of probabilities that he risks torture or cruel or unusual treatment or punishment as per section 97 of IRPA. Consequently, the application is refused.

(Decision of the PRRA officer, Applicant's Record, at pp 29 and 30)

IV. Statutory provisions

[11] The relevant provisions of the IRPA that deal with PRRA applications are as follows:

Application for protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Consideration of application

113. Consideration of an

Demande de protection

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

Examen de la demande

113. Il est disposé de la

application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(d) in the case of an applicant described in subsection 112(3) — other than one described in subparagraph (e)(i) or (ii) — consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of

demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

d) s'agissant du demandeur visé au paragraphe 112(3) — sauf celui visé au sous-alinéa e)(i) ou (ii) —, sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada;

Canada; and

(e) in the case of the following applicants, consideration shall be on the basis of sections 96 to 98 and subparagraph (d)(i) or (ii), as the case may be:

(i) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punishable by a maximum term of imprisonment of at least 10 years for which a term of imprisonment of less than two years — or no term of imprisonment — was imposed, and

(ii) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, unless they are found to be a person referred to in section F of Article 1 of the Refugee Convention.

e) s'agissant des demandeurs ci-après, sur la base des articles 96 à 98 et, selon le cas, du sous-alinéa d)(i) ou (ii) :

(i) celui qui est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle soit un emprisonnement de moins de deux ans a été infligé, soit aucune peine d'emprisonnement n'a été imposée,

(ii) celui qui est interdit de territoire pour grande criminalité pour déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans, sauf s'il a été conclu qu'il est visé à la section F de l'article premier de la Convention sur les réfugiés.

V. Issues raised

[12] The applicant provides the following reasons in support of his application for judicial review:

- (a) The officer erred in his assessment of the fear of persecution based on the applicant's conversion;
- (b) The officer erred in his assessment of the fear of persecution based on the applicant's sexual orientation;
- (c) The officer erred in his assessment of the applicant's credibility.

VI. Analysis

[13] The PRRA officer's decision is entirely reasonable. After analyzing all of the documents, the applicant's written, oral and visual evidence of which demonstrates that the very crux of the account fails as a result of the applicant's major contradictions, a clear, precise and unambiguous lack of credibility flows from the deficiencies and lack of any inherent logic of his case.

[14] In his analysis, the PRRA officer clearly explained, point by point, the reasons why he found the applicant not credible concerning the acquisition of his passport, his sexual orientation and his religious conversion, despite the fact that the applicant had persuaded certain people otherwise; but, the evidence demonstrates completely the opposite of what the applicant had persuaded certain people of; those people obviously did not have the evidence before them.

[15] Furthermore, the PRRA officer also, very specifically, demonstrated that the applicant's homosexuality is completely challenged by his relationships with women; the evidence in this regard also supports the officer's statements.

[16] The officer's assessment concerning the applicant's credibility not only demonstrates significant deficiencies, but also a lack of inherent logic at the very crux of the account; the contradictions directly cause the account to collapse by the central implausibilities with respect to the applicant's life and conduct (see pages 15 to 24 of the PRRA officer's decision and also page 27 of that same decision); also, see *Sanaei v Canada (Minister of Citizenship and Immigration)*, 2014 FC 402 and also, *Alomari v Canada (Minister of Citizenship and Immigration)*, 2015 FC 573).

VII. Conclusion

[17] In light of the foregoing, the application for judicial review is dismissed.

JUDGMENT

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

There is no question of importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: WALEED KANDEL v THE MINISTER OF
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PREPAREDNESS

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