Federal Court  Cour fédérale

Date: 20160912

Docket: IMM-532-16

Citation: 2016 FC 1026

Ottawa, Ontario, September 12, 2016

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

SAHLEMARIAN KEL TEKLEWARIAT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

I. Nature of the Matter

[1] This is an application for judicial review pursuant to paragraph 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision by a Pre-Removal Risk Assessment Officer [the Officer] wherein he concluded that the applicant was not subject to a risk of persecution, danger of torture, risk to her life, or risk of cruel and unusual punishment if she were returned to her country of origin.

II. Facts

[1] The applicant, Ms. Sahlemarian Kel Teklehawariat, is a citizen of Ethiopia. She alleged the following facts in support of her refugee claim:

- Her parents, her brother and she were involved with the Coalition for Unity and Democracy party in Ethiopia and became involved in its successor party, the Unity for Democracy and Justice [UDJ]. Her parents and her brother were imprisoned in relation to their political activities and her father was severely tortured in 2000.
- In 2005 and 2006, the applicant was also questioned by the police.
- In September 2009, she left Ethiopia for the Netherlands to pursue a degree.
- In May 2012, she returned to Ethiopia to attend to her sick mother. She was then arrested, tortured and sexually assaulted because of her membership in UDJ. She was released after seventeen days.
- In June 2012, she returned to the Netherlands to resume her studies and seek employment.

[2] In October 2013, she obtained a visa to attend a conference in Canada. She entered Canada on November 30, 2013 and filed an inland refugee claim in Toronto.

[3] On March 25, 2014, the Refugee Protection Division [RPD] determined that there was no credible basis to the applicant's refugee claim. The application for leave and judicial review was refused by this Court on July 23, 2014.

[4] The applicant applied for a pre-removal risk assessment on May 11, 2015.

III. Decision

[5] The Officer found that the applicant was restating the same circumstances she had articulated in her refugee claim and had not rebutted the issues raised by the RPD with respect to her credibility and membership in the UDJ. He reviewed 11 sets of documents, but did not mention a letter from UDJ confirming the applicant's membership in the organization.

[6] The Officer concluded that the applicant had not rebutted the RPD findings, so there was not sufficient evidence for him to allow a different conclusion. He noted that the PRRA was not a review of the RPD decision and that the applicant had not established that she had a sufficient political profile to be of interest to the Ethiopian authorities, or that these authorities were aware of her activities.

IV. Issues

[7] This matter raises the following issues:

1. What is the applicable standard of review?

2. Did the Officer err in assessing the new evidence in the application of paragraph 113(a) of the Act?

3. Did the Officer err in his assessment of the *sur place* claim?

4. Did the Officer err in ignoring the letter from UDJ?

V. Analysis

A. *What is the applicable standard of review?*

[8] The interpretation of the test under s 113(a) of the Act [the Raza test] is reviewable under the standard of correctness, while its application to the facts is a mixed question of facts and law reviewable under the standard of reasonableness (*Elezi v Canada (Citizenship & Immigration)*, 2007 FC 240, at para 22 [*Elezi*]; *Adeshina*, para 15; *Chen v Canada (Citizenship & Immigration)*, 2015 FC 565, at para 11).The assessment of risk by a PRRA officer is also reviewable under the standard of reasonableness (*Elezi*, para 21).

B. *Did the Officer err in the application of paragraph 113(a) of the Act?*

[9] Upon review of the decision, I find that the Officer properly applied the test and showed an understanding of the disjunctive nature of its three components. He also demonstrated a correct understanding for the criteria for assessing new evidence for the purposes of s 113 (a) of the Act as summarized by the Federal Court of Appeal in *Raza v Canada (Citizenship & Immigration)*, 2007 FCA 385 [*Raza*].

[10] On the issue of the letters, three of them clearly contained information that could have reasonably been presented to the RPD. I note that the letters from the Ethiopian Association of the Greater Toronto Area and Surrounding Regions, the Ethiopian Satellite Television and the Ethio-Canadian Relief & Cooperation Organization only attest to her involvement since February 2014 (prior to the RPD decision) and to her character, without giving any details as to

the applicant's participation in their activities after the RPD decision. These letters could have been submitted as they were to the RPD.

[11] I also find that the Officer's conclusions on the medical and psychological reports were reasonable. The applicant had had the chance to submit a medical report before the RPD, which was not found probative. The PRRA is not an opportunity to present better evidence following a negative RPD decision. As to the psychological report, it attests to a condition that is a result of the applicant's traumatic experiences in her own country. The applicant offered no explanation as to why she had not sought such a report before the RPD hearing and the report did not attest to a new risk development since the refugee decision.

[12] While the letter from UHDR clearly outlined which activities the applicant participated in after the RPD decision, the Officer noted that the RPD had found that the applicant had joined UHDR in order to bolster her claim. His conclusion that the letter was not sufficient to overcome the RPD's credibility finding falls within the range of possible, acceptable outcomes with regard to the facts. The Officer did not commit any reviewable error in his application of the test.

C. *Did the Officer err in his assessment of the sur place claim?*

[13] On the *sur place* claim, the Officer wrote:

> Additionally, Counsel submits that the applicant is a *sur place* refugee due to her political involvement in Canada with the UHRD, the Ethio-Canadian Relief and Cooperation Organization, Ethiopian Satellite Television and the Ethiopian Association in the GTA and surrounding areas. Counsel submits that her political involvement with the Ethiopian community in Canada place her at risk of returning to Ethiopia, a government that is known for

> spying on its citizens overseas. While I acknowledge that the applicant volunteers at several organizations in the Ethiopian community, the evidence before me does not establish that the applicant has a political profile that would be of interest to the Ethiopian government. Furthermore, I do no find that the applicant has demonstrated that the Ethiopian government is aware of her political activities in Canada.

[14] The applicant's arguments that the Officer did not consider the *sur place* claim have therefore no merit. It was reasonable for him to conclude that the applicant did not have the profile of someone who would be of interest to the Ethiopian authorities, or that they were aware of her activities in Canada. While the documentary evidence indicates that the Ethiopian government may be spying on citizens living abroad, it also indicates that the victims of such surveillance are generally contacted by phone calls. The applicant has not provided any evidence that her activities in Canada have made her a target and so, the Officer's conclusions on that point were reasonable.

D. *Did the Officer err in ignoring the letter from UDJ?*

[15] The applicant argues that the Officer failed to analyze the letter from UDJ submitted in support of her membership and that this constitutes a reviewable error. The Officer does not mention the letter at all in his analysis of the application. The respondent replies that, in any event, the letter is evidence of an old risk and was not admissible under the circumstances.

[16] I am concerned that the Officer appears to have ignored a piece of evidence that goes to the heart of the applicant's allegations of risk. Although a decision-maker is not required to mention all pieces of evidence in his analysis because he is presumed to have reviewed all of

them, the absence of any mention of a key piece of evidence is suspicious, especially in this context where the Officer thoroughly reviewed eleven sets of documents and ignored only one.

[17] The fundamental test for the admissibility of new evidence for the PRRA is stated in *Raza*, at para 13: if the new evidence is only capable of proving an event or circumstances that arose prior to the RPD hearing, then the applicant has to explain why the evidence was not available before, or why he or she could not have been expected to present it at the RPD.

[18] In this case, however, the letter from UDJ could have been reasonably excluded on the basis that it was reasonably available at the time of the hearing. On its own and given the other credibility issues identified by the RPD, the letter is perhaps not sufficient to overcome the findings on credibility. Had the Officer analyzed the letter, his decision may not have been different. It is however impossible from the record to determine whether the Officer deliberately chose not to analyze the letter because no explanation had been given on its admissibility, or whether he simply did not see it.

VI. Conclusions

[19] The letter from UDJ contradicted the RPD's main credibility finding and should have been analyzed (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, [1998] FCJ No 1425). The record is not sufficient to allow the Court to extrapolate what the Officer's reasoning would have been on the subject of the letter and the fact that only this document was excluded from his analysis points to an error on his part, rather than to a conscious choice on which piece

of evidence to analyze in his reasons. For this reason alone, the application for judicial review is granted and the matter is remitted back for redetermination by a different immigration officer.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is granted and the matter is remitted back for redetermination by a different immigration officer. There is no question of general importance to certify.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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