

Federal Court



Cour fédérale

Date: 20170913

Docket: IMM-89-17

Citation: 2017 FC 828

Ottawa, Ontario, September 13, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

B305

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

PUBLIC JUDGMENT AND REASONS
(Confidential Judgment and Reasons issued September 13, 2017)

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the decision of a senior immigration officer in the Backlog Reduction Office in Vancouver [Officer], dated November 16, 2016 [Decision], which rejected the Applicant's Pre-Removal Risk Assessment [PRRA] application.

[REDACTED]

[2] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[3] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[4] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[5] [REDACTED]

[REDACTED]

[REDACTED]

[6] [REDACTED]

[7] [REDACTED]

[8] [REDACTED]

[REDACTED]

[9] [REDACTED]

[10] [REDACTED]

[11] [REDACTED]

[12] [REDACTED]

[REDACTED]

[13] [REDACTED]

[REDACTED]

[14] [REDACTED]

[REDACTED]

[15]

IV. ISSUES

[16] The Applicant submits that the following are at issue in this application:

1. Did the Officer err in law by failing to consider the risk that has arisen because the Applicant witnessed a murder committed by a Karuna Group member? In the alternative, was the Officer unreasonable in failing to consider this risk?
2. Did the Officer err in law by failing to consider the risk related to the Applicant's status as a former MV Sun Sea passenger? In the alternative, was the Officer unreasonable in failing to consider this risk?
3. Did the Officer err by undertaking an unduly narrow and selective view of the country conditions documents, and by failing to give reasons why he or she dismissed evidence that directly contradicts his or her conclusions?

V. STANDARD OF REVIEW

[17] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[18] All of the issues raised by the Applicant concern a PRRA officer's assessment of the evidence in a PRRA application, which is reviewable under the standard of reasonableness: *Nwabueze v Canada (Citizenship and Immigration)*, 2017 FC 323 at para 7.

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in

the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

VI. STATUTORY PROVISIONS

[20] The following provisions of the *IRPA* are relevant in this proceeding:

Convention Refugee

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,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

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

Définition de réfugié

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) 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) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

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

habitual residence, would subject them personally	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 themselves 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.

...

...

Consideration of application**Examen de la demande**

113 Consideration of an application for protection shall be as follows:

113 Il est disposé de la demande comme il suit :

(a) an applicant whose claim to

a) le demandeur d'asile

- 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;
- 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) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;
- b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
- (c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;
- c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 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
- 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) 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
- (i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,
- (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 Canada; and
- (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;

(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.

[REDACTED]

[REDACTED]

[REDACTED]

[21] [REDACTED]

[REDACTED]

[22] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[23] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[24] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[25] [REDACTED]
[REDACTED]

[26] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[27] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[28] [REDACTED]

[29] [REDACTED]

[30] [REDACTED]

[REDACTED]

[31] [REDACTED]

[REDACTED]

[32] [REDACTED]

[33] [REDACTED]

[REDACTED]

[34] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[35] [REDACTED]

[REDACTED]

[REDACTED]

[36] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[37] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[38] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[39] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[40] [REDACTED]

[REDACTED]

VIII. ANALYSIS

[41] In my view, there is only one issue of substance in this application. I don't think that the Officer can be faulted for failing to consider the risks related to the Applicant's status as a former MV Sun Sea passenger. The Applicant provided no new evidence on this issue to demonstrate how the Applicant's presence on the Sun Sea would now affect his profile as a LTTE supporter. In addition, I don't think it is possible to say that the Officer erred in his or her handling of the country condition evidence. As the Officer points out, it is general and it was not unreasonable for the Officer to weigh this evidence and conclude that the Applicant had not shown "through sufficient evidence, he fits the profile of one who would be targeted by the authorities."

(a) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[46] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[47] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[48] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[49] [REDACTED]

[REDACTED]

[50] [REDACTED]

[51] The only issue of substance raised by this application is whether the Officer failed to consider the Applicant's allegation that he faces a discrete risk because he witnessed a murder a considerable time ago.

[52] For the reasons set out in detail in the confidential version of this judgment, I find that there was no new evidence related to the murder that the Officer was asked to assess so that the Decision cannot be said to be unreasonable on this basis.

[53] Counsel agree that there is no question for certification and the Court concurs

JUDGMENT IN IMM-89-17

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-89-17

STYLE OF CAUSE: B305 v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 27, 2017

**PUBLIC JUDGMENT AND
REASONS:** RUSSELL J.

DATED: SEPTEMBER 13, 2017

APPEARANCES:

Lorne Waldman FOR THE APPLICANT

Norah Dorcine FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario