Federal Court  Cour fédérale

Date: 20170711

Docket: IMM-337-17

Citation: 2017 FC 1051

Toronto, Ontario, July 11, 2017

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

FLORENCE NANGA CHO
DANIELA NGWE NTANGO

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review by Florence Nanga CHO [the Applicant], pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by a senior immigration officer [the Officer] dated December 20, 2016, refusing the Applicant's Pre-Removal Risk Assessment [PRRA] application.

[2] The determinative issue in this application is the reasonableness of the Officer's decision rejecting the PRRA application. As such I make no comment on the other points raised which were alleged unreasonableness and or procedural unfairness in finding gender based violence including Female Genital Mutilation was a generalized as opposed to personalized risk in terms of the *Gender Guidelines*, and failure to convoke an oral hearing to determine credibility.

[3] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[4] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[5] The Applicant's and her daughter's refugee claim were rejected by the RPD as were their appeals to the RAD and leave to apply for judicial review was dismissed.

[6] The Applicants' alleged new risk arises out the facts, accepted by the PRRA Officer as new evidence, that the Applicant was sex trafficked in China, for which reason the daughter's father in Cameron threatened to subject the 6 year old daughter to Female Genital Mutilation to in effect cleanse her of her mother's evil.

[7] Before the PRRA Officer, the mother filed an affidavit to that effect, together with a letter from the Applicant's mother (the daughter's grandmother) in which the grandmother wrote that the daughter's father and family "knew well about Florence's past life as a prostitute. As such, they wanted to circumcise [the daughter] with pretext that they wanted to remove the evil deeds of her mother in her blood since it is their tradition."

[8] While as mentioned, the Officer had previously acknowledged that this evidence was new, in that it was neither before the RAD nor the RPD, the Officer discounted the grandmother's letter for several reasons.

[9] First, it was discounted by the Officer because the mother/grandmother had "an interest" in the application. To have done so on this basis was not defensible on the law having regard to decisions of this Court: see Justice Diner's decision in *Abusaninah v. Canada (Citizenship and Immigration)*, 2015 FC 234 at paras 38 and 39, my decision in *Tabatadze v. Canada (Citizenship*

and Immigration), 2016 FC 24, and see *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 where Justice de Montigny as he then was held:

> [28] … Presumably, the Officer would have preferred letters written by individuals who had no ties to the Applicants and who were not invested in the Applicants' well-being. However, it is not reasonable to expect that anyone unconnected to the Applicants would have been able to furnish this kind of evidence regarding what had happened to the Applicants in Mexico. The Applicants' family members were the individuals who observed their alleged persecution, so these family members are the people best-positioned to give evidence relating to those events. In addition, since the family members were themselves targeted after the Applicants' departure, it is appropriate that they offer first-hand descriptions of the events that they experienced. Therefore, it was unreasonable of the Officer to distrust this evidence simply because it came from individuals connected to the Applicants.

[10] Secondly, the Officer's decision to reject the letter is also unreasonable because of the Officer's conclusion that: "[T]he document relates to facts found not credible by the IRB and it does not refute the conclusion of the IRB regarding the same fears." This finding is not defensible because it is neither supported nor justified by the record which established, as the Officer already found, that the facts of the mother's prostitution as a sex trafficked person in China and related threat on this basis to circumcise the female child, were not before the RPD or the RAD. Since this new evidence was not before either the RPD or the RAD it could not have been "found not credible" although I acknowledge the same fears were then advanced albeit on differing bases.

[11] I am further confirmed in my discomfort with this aspect of the Officer's decision by a previous statement in the decision: "[T]he applicant claims essentially the same fact [sic] she did

with the IRB"; this was not the case because the grandmother's evidence was new and were not facts alleged either before the RPD or the RAD.

[12] In my respectful view, the grandmother's allegation is very material to the claim of the child's fear of being assaulted, and her letter both corroborates and is corroborated by the affidavit evidence of the Applicant personally. This new allegation of risk was not specifically engaged or dealt with, and in my view, in all the circumstances, it is not safe to let this decision stand. Viewing the matter as an organic whole, I conclude the PRRA decision is not reasonable and therefore must be set aside for redetermination; it does not falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law according to *Dunsmuir*.

[13] Neither party proposed a question for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision of the PRRA Officer is set aside, the matter is remitted to a different PRRA Officer for redetermination, no question is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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