Federal Court  Cour fédérale

Date: 20200312

Docket: IMM-4686-19

Citation: 2020 FC 371

Toronto, Ontario, March 12, 2020

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

RAPHAEL NORMAN REID,
BY HIS LITIGATION GUARDIAN,
CONSTANCE NAKATSU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Raphael Norman Reid is a citizen of Jamaica. He seeks judicial review of a pre-removal risk assessment [PRRA] conducted by a Senior Immigration Officer [Officer] with Citizenship and Immigration Canada. The Officer concluded that Mr. Reid would not face a forward-

looking, personalized risk to his life, or a risk of cruel and unusual treatment or punishment, if he returns to Jamaica.

[2] The PRRA was communicated to Mr. Reid on January 17, 2019. His application for leave and judicial review was filed on July 29, 2019, more than six months later. Mr. Reid therefore requires an extension of time. The Minister does not oppose an extension of time, except on the ground that the application is without merit (*Canada (Attorney General) v Hennelly*, [1999] 167 FTR 158, 244 NR 399 (FCA)).

[3] For the reasons that follow, the Officer's decision was procedurally fair and reasonable. The applications for an extension of time and for judicial review are dismissed.

II. Background

[4] Mr. Reid arrived in Canada on November 7, 2018 with a fraudulent passport. An exclusion order was issued against him. He applied for leave and judicial review, but this was dismissed (*Reid v Canada (Citizenship and Immigration)*, 2020 FC 222 [*Reid*]).

[5] Mr. Reid then requested a PRRA. This was decided against him on December 7, 2018, but the file was re-opened to permit additional submissions. The adverse decision was confirmed on January 17, 2019.

[6] According to Mr. Reid, in 2009 he heard that his friend Christopher had been killed by the Stone Crusher Gang in Jamaica. He reported this to the police, but had no further contact with them. He says that he then heard from a friend that he had been labelled a "snitch" who "had to die". He moved from St. James to St. Ann.

[7] Mr. Reid says that in early 2015, he and a friend known as OCP were at a carwash. Mr. Reid claims he was targeted by the Stone Crusher Gang. OCP was shot and killed, but Mr. Reid managed to escape to his aunt's house. The shooting was reported, but the perpetrators were never found. Mr. Reid says that the police later killed some members of the Stone Crusher Gang, and more people died at the carwash. He continued to move between different cities until November 2018, when he arrived in Canada.

III. Decision under Review

[8] The Officer found that Mr. Reid had failed to establish a nexus between his alleged persecution by the Stone Crusher Gang and any of the grounds enumerated in s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Officer therefore limited his consideration to whether Mr. Reid was a person in need of protection pursuant to s 97 of the IRPA.

[9] The Officer found that the death of Christopher by gunfire was established by copies of his death certificate and a letter from the police dated December 7, 2018. However, this did not prove that Christopher was killed by members of the Stone Crusher Gang. Mr. Reid claimed to

have reported Christopher's killing by the Stone Crusher Gang to the police, but no copy of the police report was produced.

[10] The Officer found that Mr. Reid's other claims were uncorroborated. These included the assertions that he had been labelled a "snitch", that he had moved to St. Ann, that his friend OCP was killed at the carwash, that the police later killed members of the Stone Crusher Gang, or that the violence was connected to his own circumstances.

[11] The Officer acknowledged Mr. Reid's limited cognitive capacity, and that he may not have realized what documents were required. However, the Officer held that any challenges Mr. Reid might have faced were mitigated by his representation by legal counsel.

[12] Mr. Reid submitted documentary evidence proving the existence of crime and violence in Jamaica, but this did not satisfy the Officer that Mr. Reid faced a personalized risk. The Officer also found that Mr. Reid had failed to rebut the presumption of state protection. The Officer therefore concluded that Mr. Reid would not face a forward-looking, personalized risk to his life, or a risk of cruel and unusual treatment or punishment, if he returned to Jamaica.

IV. Issues

[13] The Minister makes a preliminary objection that some of the evidence submitted by Mr. Reid in support of his application for judicial review was not before the Officer, and therefore cannot be relied upon to challenge his decision (citing *Dayebga v Canada (Citizenship and*

Immigration), 2013 FC 842 at para 25). Mr. Reid agrees that this evidence should be struck from the record.

[14] The remaining issues raised by this application for judicial review are:

A. What is the standard of review?

B. Was the Officer's decision procedurally fair?

C. Was the Officer's decision reasonable?

D. Should an extension of time be granted?

V. Analysis

A. *What is the standard of review?*

[15] The merits of the Officer's decision are subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16). Questions of procedural fairness are generally understood to be subject to review against the standard of correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[16] The parties disagree on whether the Officer's refusal to hold an oral hearing is a question of procedural fairness, and hence reviewable against the standard of correctness, or a question of the Officer's interpretation and application of the statute, and hence reviewable against the standard of reasonableness. There is jurisprudence that supports the application of either standard (see, for example, *Khan v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1515 at para 37; *Huang v Canada (Minister of Citizenship and Immigration)*, 2018 FC 940 at paras 14-17; *AB v Canada (Citizenship and Immigration)*, 2017 FC 629 at para 15).

[17] In *AB v Canada (Minister of Citizenship and Immigration)*, 2019 FC 165 [*AB*], Justice William Pentney declined to apply either standard, opting instead to apply the factors discussed in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 20.

[18] As the Federal Court of Appeal observed in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55 [*CP Railway*], attempting to shoehorn the question of procedural fairness into a standard of review analysis is an unprofitable exercise. The ultimate question is whether the applicant knew the case to meet, and had a full and fair chance to respond (*CP Railway* at paras 41, 56, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

B. *Was the Officer's decision procedurally fair?*

[19] Mr. Reid says the Officer made veiled credibility findings under the guise of requiring more objective evidence, and should have convened an oral hearing. The Minister replies that the

Officer did not reject Mr. Reid's credibility, but attributed little weight to his uncorroborated evidence.

[20] As Justice Pentney observed in *AB* at paras 26-27:

> It can be difficult to distinguish between a finding of insufficiency of evidence and a veiled credibility finding […] This requires a careful consideration of the decision of an officer, in light of the record.
>
> In undertaking this analysis, it is helpful to recall the useful guidance provided by Justice Russel Zinn in [*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*]]. In that case Justice Zinn found that the applicant bears the burden of proof in a PRRA, and that an officer could either assess the credibility of the evidence submitted and then determine the weight to be attributed to it, or simply move to examine the probative value or weight of the evidence, without making a determination as to credibility. Where the evidence tendered by the applicant is to be given little or no weight, it may not be necessary to assess its credibility.

[21] The only assertion of Mr. Reid that was corroborated by other evidence was the death of Christopher by gunfire. There was no evidence to corroborate his claims that the Stone Crusher Gang was responsible for the killing, or that Mr. Reid had reported the matter to the police. Mr. Reid said he was told by a friend that he had been labelled a "snitch" and that he "had to die". There was nothing to corroborate Mr. Reid's account of the killing of OCP and others at the carwash, or who was responsible.

[22] While some of the Officer's observations, read in isolation, may be perceived as adverse credibility findings, in my view the Officer was agnostic about Mr. Reid's truthfulness. Even if

Mr. Reid's narrative was believed in its entirety, the only evidence linking the incidents to the Stone Crusher Gang was hearsay, which may or may not have been accurate.

[23] The Officer did not make veiled credibility findings, but reasonably found that key aspects of Mr. Reid's narrative were insufficiently supported by objective evidence. The Officer's decision not to convene an oral hearing did not render his decision unfair.

C. *Was the Officer's decision reasonable?*

[24] Mr. Reid says that the Officer unreasonably required corroborating documents, unreasonably found him to face only a generalized risk of violence, and unreasonably found that he had not rebutted the presumption of state protection.

[25] The burden was on Mr. Reid to prove his case on the balance of probabilities. This included an evidentiary burden of proving each of the facts on which he relied (*Ferguson* at paras 23-27).

[26] As discussed above, most of Mr. Reid's narrative was unsupported by corroborating evidence, and much of it was hearsay. There was little in the way of convincing evidence to establish that Mr. Reid faced a personalized risk in Jamaica that was not faced by the population as a whole.

[27] The presumption of state protection is strong, and may be rebutted only with clear and convincing confirmation of a state's inability to protect. Except in situations of complete breakdown of the state apparatus, it should be assumed that the state is capable of protecting its nationals (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724-726); *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 29, 31). Given the insufficiency of objective evidence to establish that Mr. Reid was personally at risk in Jamaica, the Officer reasonably found that the presumption of state protection was not displaced.

D. *Should an extension of time be granted?*

[28] In light of my conclusions above, Mr. Reid's application for judicial review does not have sufficient merit to justify an extension of time.

VI. Conclusion

[29] The applications for an extension of time and for judicial review are dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applications for an extension of time and for judicial review are dismissed.

2. At the request of the Minister, the Minister of Citizenship and Immigration is substituted for to the Minister of Public Safety and Emergency Preparedness as Respondent.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4686-19
STYLE OF CAUSE:	RAPHAEL NORMAN REID, BY HIS LITIGATION GUARDIAN, CONSTANCE NAKATSU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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