Date: 20080304

Docket: IMM-1918-07

Citation: 2008 FC 294

Ottawa, Ontario, March 4, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

INGRID MARCIA NATION-EATON
ROSHOWN JORDANE HARDY and
JUSTIN DAWAIN GOULBOURNE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision by a Pre-Removal Risk Assessment Officer (PRRA officer) dated March 26, 2007, rejecting the applicants' Pre-Removal Risk Assessment (PRRA) application.

[2] The applicants requested that the decision be set aside and the matter referred back to a different PRRA officer for re-determination.

Background

[3] Ingrid Marcia Nation-Eaton (the principal applicant), Roshown Jordane Hardy (son) and Justin Dawain Goulbourne (son) (together "the applicants") are citizens of Jamaica. They came to Canada to claim refugee protection on the basis that the principal applicant had suffered severe domestic violence at the hands of her husband from February 1998 to July 2005. In a decision dated March 29, 2006, the Refugee Board found that the applicants were neither Convention refugees, nor persons in need of protection. The Refugee Board accepted the allegations of domestic violence, but found that adequate state protection was available to victims of domestic violence in Jamaica.

[4] The applicants filed a PRRA application on November 7, 2006, and provided submissions November 29, 2006. In a decision dated March 26, 2007, the PRRA officer rejected the applicants' PRRA application. This is the judicial review of the PRRA officer's decision.

PRRA Officer's Decision

[5] The PRRA officer rejected the applicants' application on the basis that they had provided insufficient evidence to demonstrate that they would be at risk if returned to Jamaica. The PRRA officer stated that all of the applicants' submissions and evidence had been reviewed and

considered, but found that they had enumerated the "same risks that were presented to the RPD [Refugee Protection Division] panel". The PRRA officer also found that the applicants had failed to rebut the findings of the RPD panel and to provide any evidence in accordance with subsection 113(a) of IRPA. The PRRA officer stated that the evidence submitted by the applicants pre-dates their RPD hearing and that in the absence of any new evidence, the PRRA officer "was not persuaded to arrive at a different conclusion from that of the RPD […]".

[6] The PRRA officer also discussed how PRRA applications were not to be treated as a review of the RPD decision or a second refugee hearing. The PRRA officer cited *Perez* v. *Minister of Citizenship and Immigration*, 2006 FC 1379 for the proposition that RPD decisions are considered final with respect to the issue of protection under sections 96 and 97 with the exception of new evidence demonstrating exposure to a new, different or addition risk not contemplated at the time of the RPD decision. The PRRA officer then concluded that the applicants did not meet the definition of protected persons as per IRPA.

Issues

[7] The applicants submitted the following issues for consideration:

1. Did the PRRA officer err in law in determining that a successful PRRA must be based upon a different risk than that enunciated in an applicant's refugee claim?

2. Did the PRRA officer breach his duty of fairness to the applicants by failing to provide adequate reasons for concluding that the documentary evidence was insufficient to demonstrate risk under sections 96 or 97 of IRPA?

[8] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the PRRA officer err in law in stating that a successful PRRA application must be based upon a different risk from the risk enunciated in an applicant's refugee claim?

3. Did the PRRA officer breach the duty of fairness in failing to expressly refer to the documentary evidence, specifically the Home Office's *Country Original Information Report, Jamaica,* dated November 30, 2006?

Applicants' Submissions

[9] The applicants submitted that the PRRA officer erred in stating that a successful PRRA application must be based upon a different risk from the risk enunciated in an applicant's refugee claim. It was submitted that while it is clear that successful PRRA applications must be based upon new evidence arising after the rejection of the refugee hearing or evidence not reasonably available at the time of the refugee hearing, there is no requirement that the risk in question be different from that claimed in the refugee hearing. PRRA applications "may require consideration of some or all of the same factual and legal issues as a claim for refugee protection"; however, the requirement of "new evidence" under section 113 of IRPA prevents re-litigation of refugee matters (*Raza* v.

Canada (*Minister of Citizenship and Immigration*), [2007] F.C.J. No. 1632 (FCA). The applicants submitted that the case relied on by the PRRA officer, *Perez* above, does not stand for the enunciated proposition that the risk in question must be different from that alleged in the applicants' refugee proceedings. The PRRA officer erred in stating that this was so.

[10] The applicants submitted that despite the PRRA officer's blanket statement that he had carefully considered all the evidence including the documentary evidence, the PRRA officer failed to expressly mention relevant portions of the Home Office's *Country of Original Information Report, Jamaica,* dated November 30, 2006 (specifically pages 82 to 88). It was submitted that as this documentary evidence was relevant and post-dated the RPD hearing, the PRRA officer was obliged to analyse whether the evidence was merely a repetition of information before the RPD, or whether it was capable of demonstrating that the applicants were now at risk (*Raza* above). The applicants noted that this duty exists irrespective of which party submitted the evidence in question. There is no evidence in the decision that the PRRA officer discharged this duty, instead he provided a blanket statement that he had carefully considered all the evidence. The applicants submitted that such a blanket statement does not suffice where, as here, the evidence omitted from the reasons appears to squarely contradict the PRRA officer's findings of fact (*Cepeda-Gutierrez* v. *Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425). And finally, the applicants submitted that failure to mention this documentary evidence also breached the officer's duty of fairness to provide adequate reasons as per *Via Rail Canada Inc.* v. *National Transportation Agency*, [2000] F.C.J. No. 1685.

Respondent's Submissions

[11] The respondent submitted that the PRRA officer correctly found that the applicants had failed to present any new evidence therefore denying their application. It was submitted that the applicants misconstrued the PRRA officer's findings in stating that the PRRA officer found that the applicants had to provide evidence of a different fear in order to be successful in their application. The respondent argued that the applicants rely on *Raza* above, for the proposition that evidence in a PRRA application cannot be rejected solely because it does not raise a new risk issue, but the applicants do so without demonstrating how it applies to the present case. In the present case, the PRRA officer found that the applicants had not presented any new evidence to support either a heightening or change in the previously alleged fear or a new fear altogether.

[12] The respondent also submitted that the PRRA officer provided sufficient reasons for his decision. With regards to the applicants' argument that the PRRA officer should have expressly considered sections of the Home Office's *Country of Original Information Report, Jamaica*, the respondent submitted that the PRRA officer addressed this evidence in his reasons by concluding that the applicants did not present evidence that rebutted the RPD's findings. Moreover, the evidence does not support that there was a change in the conditions for victims of domestic abuse since the applicants' refugee claim was rejected. The PRRA officer had no duty to provide further reasons for why the country condition evidence was insufficient to establish a risk.

Analysis and Decision

[13] **Issue 1**

What is the appropriate standard of review?

Errors of law are reviewable on a standard of correctness as are questions of procedural fairness (*Canada (Minister of Public Safety and Emergency Preparedness)* v. *Philip*, 2007 FC 908).

[14] **Issue 2**

Did the PRRA officer err in law in stating that a successful PRRA application must be based upon a different risk from the risk enunciated in an applicant's refugee claim?

The applicants submitted that the officer committed a reviewable error in stating that a successful PRRA application must be based upon a risk different from that alleged during the refugee determination. The portion of the decision referred to by the applicants reads as follows:

> In her PRRA application the applicant has enumerated the same risks that were presented to the RPD panel at her hearing on February 24, 2006. The applicant, in the case at hand, has failed to rebut the findings of the RPD panel. Moreover, she has failed to provide any evidence in accordance with section 113(a) of the *Immigration and Refugee Protection Act*. The evidence submitted by the applicant pre-dates her RPD hearing.

[15] In my opinion, the applicants have misinterpreted the phrase "same risks that were presented to the RPD panel". I admit that this phrase is somewhat ambiguous. The applicants understand this phrase to mean that the PRRA officer was denying the applicants' claim on the basis that the risk to the applicants was still one of domestic violence from the principal applicant's husband and that

there needed to be some other kind or source of risk to allow the application. I do not agree with this interpretation.

[16] In my opinion, the PRRA officer's use of the words "same risks" referred to the fact that the circumstances of the risk alleged by the applicants in their PRRA application were the same as the circumstances alleged in their refugee claim. I believe that this interpretation is more logical given that the PRRA officer goes on to cite a passage from *Perez* above wherein the Federal Court stated:

> The decision of the RPD is to be considered as final with respect to the issue of protection under s. 96 or s. 97, subject only to the possibility that new evidence demonstrates that the applicant would be exposed to a new, different or additional risk that could not have been contemplated at the time of the RPD decision.

[17] This passage shows that the PRRA officer was aware that the law permits a successful PRRA application to be based on new evidence of an additional risk alone and as such, that there is no requirement that the risk be of a different kind or from a different source. I do not accept the applicants' interpretation of the PRRA officer's decision, and consequently, I find that no error of law was made by the PRRA officer in this regard.

[18] **Issue 3**

Did the PRRA officer err in failing to expressly refer to the documentary evidence, specifically the Home Office's *Country Original Information Report, Jamaica*, dated 30 November 2006?

The applicants submitted that the PRRA officer committed a reviewable error in not expressly discussing portions of the Home Office's *Country Original Information Report, Jamaica,* dated 30 November 2006 that were relevant to state protection for victims of domestic violence in Jamaica. The respondent submitted that this evidence in no way provides that country conditions had changed since the applicants' refugee application was denied.

[19] The documentary evidence at issue post-dates the refugee hearing. Moreover, the portions of this report identified by the applicants contained information about the country conditions in Jamaica for victims of domestic abuse. However, as submitted by the respondent, the PRRA officer is presumed to have considered all the evidence before her. In fact, the officer stated that she had done so. Moreover, the PRRA officer also concluded that the documentary evidence presented did not demonstrate that the applicants would be at risk if removed from Canada.

[20] The applicants submitted that the PRRA officer's blanket statement that they had considered all the evidence was insufficient given that the evidence omitted from the reasons contradicts the ultimate finding (*Cepeda-Gutierrez* above). I do not agree. In my opinion, the present case is distinguishable from the case of *Cepeda-Gutierrez* above. That case dealt with evidence that was specific and personal to the applicant. In the present case, the evidence alleged to have been not considered is general documentary evidence.

[21] Even if the reasoning in *Cepeda-Gutierrez* above did apply in the present case, the applicants have failed to convince me that the documentary evidence in question contradicts the

PRRA officer's finding. The portion of the documentary evidence identified by the applicants does not support the finding of a change in the country conditions.

[22] The applicants also submitted that the officer's reasons were insufficient. I have reviewed the reasons and I find the reasons to be sufficient.

[23] The application for judicial review is therefore denied.

[24] Neither party wished to submit a proposed serious question of general importance to me for my consideration for certification.

JUDGMENT

[25] **IT IS ORDERED that** the application for judicial review is denied.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c.27:

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).	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).
(2) Despite subsection (1), a person may not apply for protection if	(2) Elle n'est pas admise à demander la protection dans les cas suivants :
(a) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;	a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la Loi sur l'extradition;
(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;	b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);
(c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or	c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas expiré;
(d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.	d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.
(3) Refugee protection may not result from an application for protection if the person	(3) L'asile ne peut être conféré au demandeur dans les cas suivants :
(a) is determined to be inadmissible on grounds of security, violating human or international	a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou

rights or organized criminality;

(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence 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;

(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

(d) is named in a certificate referred to in subsection 77(1).

113. Consideration of an 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), 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

internationaux ou criminalité organisée;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute 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;

c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

d) il est nommé au certificat visé au paragraphe 77(1).

113. Il est disposé de la 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), 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

criminality, whether they are a danger to the public in Canada, or

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.

(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.

114.(1) A decision to allow the application for protection has

(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and

(b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

114.(1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.

(2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(d) and the regulations, the grounds on which the application was allowed and may cancel the stay.

(2) Le ministre peut révoquer le sursis s'il estime, après examen, sur la base de l'alinéa 113d) et conformément aux règlements, des motifs qui l'ont justifié, que les circonstances l'ayant amené ont changé.

(3) If the Minister is of the opinion that a decision to allow an application for protection was obtained as a result of directly or indirectly misrepresenting or withholding material facts on a relevant matter, the Minister may vacate the decision.

(3) Le ministre peut annuler la décision ayant accordé la demande de protection s'il estime qu'elle découle de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

(4) If a decision is vacated under subsection (3), it is nullified and the application for protection is deemed to have been rejected.

(4) La décision portant annulation emporte nullité de la décision initiale et la demande de protection est réputée avoir été rejetée.

FEDERAL COURT

SOLICITORS OF RECORD

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