

**Date: 20080918**

**Docket: IMM-933-08**

**Citation: 2008 FC 1054**

**Toronto, Ontario, September 18, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**SERGIU VACARU  
TAMARA GHEORGHIU  
OLIVIA VACARU  
OVIDIU VACARU  
ADRIANA VACARU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns the principal Applicant, a citizen of Romania and Moldova, who challenges a negative Pre-Removal Risk Assessment (PRRA), dated January 11, 2008, with respect to his return to Romania. A principal argument of the challenge is that the PRRA Officer who rejected his application did not properly assess the newly submitted evidence with respect to the risk he would face in Moldova if he is required to return to Romania.

[2] The Applicant's claim for protection was rejected by the Refugee Protection Division (RPD) on April 26, 2007. The Applicant's argument both before the RPD and the PRRA Officer is that if he is returned to Romania there is more than a mere possibility that he will be required to take up domicile in Moldova before he will be allowed to take up domicile in Romania. While the RPD rejected his claim by rejecting the substance of this argument, it, nevertheless, found that were he to return to Moldova he would be persecuted. The Applicant's challenge to the decision under review is that the PRRA Officer relied on the substance of the rejection detailed in the RPD decision in the face of conflicting evidence submitted to the PRRA Officer. The Applicant's argument on the present Application is as follows:

This opinion concerns itself with the questions whether the PRRA officer made grave errors with respect to his analysis of real risk, state protection, domicile etc. in Romania and the risk related to extradition to R. Moldova of the category of Romanian citizens with multiple citizenship and permanent residence outside the European Union and irreparable harm which may result if Vacaru's family will be removed to Romania- see decision of Federal Court (FC) from March 17, 2008 on stay of removal order [*pages 8-10 in this Application Record, S. Vacaru et al v. Canada (Minister of Citizenship and Immigration)*]

This argument was effectively accepted by Justice O'Reilly on March 28, 2008 as a serious question on a stay of removal with respect to the PRRA decision under review.

[3] The Applicant presented the following "new evidence" argument to the PRRA Officer:

Please note that Mr. Vacaru and family claimed refugee status on in January 4, 2006. Although Mr. Vacaru was found not to be a Convention Refugee under IRB decision, new evidence has come to light regarding the risk to life and torture they would face if returned to R. Moldova, or Romania. This evidence was not presented at their refugee hearing because 1) a lack of natural justice when the claimant was not allowed to present all documents and explanations, 2) some important facts about their immigration status in Spain, Portugal and Romania were distorted and 3) certain existing visa and passport proofs were falsified and, finally, 4) new evidence appeared after the IRB decision was taken. Therefore such evidences may be considered in a PRRA Assessment. We submit that Mr. Vacaru and his family are persons in need of protection because of a risk to life or cruel and unusual treatment as set out in Section 97 (1) (b) of IRPA. [Emphasis added]

(Tribunal Record, p. 77)

[4] In reaching a decision on the Applicant's PRRA Application, the PRRA Officer relied on the following RPD finding:

With respect to the alleged inability of the claimants to establish domicile in Romania, without having to go to Moldova, the panel notes the Romanian citizenship laws state the following, and, on a balance of probabilities, I find that Romania's entrance to the EU ensures their observance:  
Article 19, No Romanian citizen may be extradited or expelled from Romania; ...[Emphasis added]

(Tribunal Record, p. 102)

[5] In the PRRA application the Applicant tendered the following evidence:

There is the article 24 of the Romanian Law nr. 302/2004 “On International Cooperation in Justice” which allows to re-deport citizens of Romania to the County of first citizenship and permanent residence (for this case, R. Moldova). Document A12 contains the translation of that Article and a case, when a citizen with double citizenship, of R. Moldova and Romania, even he had domicile in Romania, but in the past he lived in R. Moldova, was extradited to R. Moldova on request of the General Prosecutor of R. Moldova.  
[...]

The Law 302/2004 was not analyzed by the IBR judge, see page 8, on decision A07. She only stated formally Art. 19 that “No Romanian citizen may be extradited or expelled from Romania” and Art. 16 “Citizens are equal before the law, et al;” But we can see, that in Romania there are effective laws contradicting the Constitution and International Law, when there are citizens of two categories (with domicile and not domicile in Romania), with different rights, and the second category are usually extradited if there are requests, or false criminal charges.

(Tribunal Record, p.84)

“Document A12” in the quoted passage contains the following statement:

Following art. 24 letter c) from Law nr. 302/2004, the Romanian citizens can be extradited from Romania following international conventions to which Romania participates and on base of reciprocity, if the extradited person has also the citizenship of the requesting state.

The Law does not requests to satisfy cumulatively all conditions written in art. 24, but following it the Romanian citizens can be extradited from Romania if it is satisfied at least one condition, among those the Law lists that from art. 24 letter c). So, from the file, one follows that M.M. is also a citizen of the Republic of Moldova.  
[Emphasis added]

(Tribunal Record, pp. 113-114)

[6] The Applicant's newly submitted evidence provides doubt as to the RPD's findings respecting the law of Romania. However, the PRRA Officer's determination with respect to this newly submitted evidence is as follows:

A12 and A13: Romanian Legislation.

The applicant has provided documentation pertaining to extradition rules and establishing domicile in Romania. I find that this information is not new evidence as it was reasonably available for presentation to the RPD. I have insufficient evidence before me that the legislation was enacted after the negative RPD decision. The applicant has not provided a satisfactory explanation as to how it constitutes new evidence or why this documentation was not reasonably available before the RPD rendered its negative decision.

(PRRA Decision, p. 4)

[7] The question is whether the PRRA Officer committed a reviewable error in not accepting the Applicant's newly submitted evidence. The Applicant's evidence on the PRRA was supplied through an immigration consultant. The consultant's letter enclosing the evidence displays a complete lack of appreciation of the issues which are in play in a PRRA Application. As a result, the "application" does not provide an argument which directly addresses the criteria in s.113 of the *IRPA* as to why the Article 24 evidence should be admitted as "new evidence" by the PRRA Officer. Without the argument, I find that the PRRA Officer did not err in determining that the evidence was not admissible. As a result, I find no reviewable error in the decision under review.

**ORDER**

Accordingly, the Application is dismissed.

There is no question to certify.

“Douglas R. Campbell”  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-933-08

**STYLE OF CAUSE:** SERGIU VACARU, TAMARA GHEORGHIU, OLIVIA VACARU, OVIDIU VACARU, ADRIANA VACARU  
v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 18, 2008

**REASONS FOR ORDER AND ORDER BY:** CAMPBELL J.

**DATED:** SEPTEMBER 18, 2008

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