Federal Court  Cour fédérale

Date: 20100317

Docket: IMM-5290-08

Citation: 2010 FC 304

Ottawa, Ontario, March 17, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

HIWOT ASFAW MEKURIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of an Officer with the Minister of Public Safety and Emergency Preparedness dated October 9, 2008, wherein the Officer refused the Applicant's Pre-Removal Risk Assessment (PRRA) application. The Applicant seeks the following relief: that the decision of the Minister be set aside and the matter be referred back for re-determination by a differently constituted panel.

[2] For the reasons set out below this application has been rendered moot by the removal of the Applicant from Canada. There is no longer a live issue between the parties and the Court declines to

exercise its discretion to decide the matter on the merits (see *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; [1989] S.C.J. No. 14).

I. Background

[3] The Applicant is a citizen of Ethiopia that has been to Canada six times. She has a Canadian born daughter who is not a party to this application.

[4] On her fifth visit to Canada in May 2006, the Applicant made a refugee claim. She withdrew this claim in October 2007 and opted not to have a Pre-Removal Risk Assessment (PRRA) conducted. The Applicant voluntarily left Canada for Ethiopia in December 2007. Approximately one month later, the Applicant left Ethiopia for the Unites States. She did not make a refugee claim in the United States. In February 2008, the Applicant applied to extend a visitor's visa previously issued to her for entry into Canada. The request was denied.

[5] The Applicant made a second refugee claim in July 2008. This second claim was rejected pursuant to subsection 101(1)(c) of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27 (*IRPA*). The Applicant was invited to submit a PRRA and did so based on domestic violence and her membership in a particular political group. The PRRA application was refused on October 9, 2008. The Applicant sought leave for judicial review of the PRRA Officer's decision.

[6] The Applicant was ordered to be removed on January 8, 2009 and the Applicant brought a stay of her removal to this Court. On January 7, 2009, Justice Michael Kelen dismissed the stay on the basis that there was no irreparable harm (*Mekuria v. Canada (Citizenship and Immigration Canada*), IMM-5290-08 (January 7, 2009). The Applicant was removed from Canada.

[7] On December 14, 2009, the Applicant's application for leave was granted.

II. Analysis

[8] The parties agree that this matter is moot. The Respondent argued this point in their Memorandum of Fact and Law and the Applicant stated at paragraph 3 of their Further Memorandum of Argument that "The Applicant is no longer in Canada. Accordingly, the matter is moot". As stated above, I agree.

[9] As set out in *Borowski*, above, the Court has the discretion to decide the matter even if it is moot. In *Borowski*, above, the Supreme Court of Canada set out three issues to consider when determining if the Court should exercise this discretion. These can be summed up as (1) the presence of an adversarial context; (2) the concern for judicial economy, and (3) the need for the court to be sensitive to its role.

[10] The Applicant argues that the Court should exercise its discretion based on the best interests of the Applicant's Canadian born child. The Applicant argues further that the destination of removal

was the United States when the stay of removal was argued. The Applicant is now in Ethiopia and it is in the interests of justice to hear the case as the focus of the irreparable harm was not the harm in Ethiopia but in the United States.

[11] The Respondent argues that the Court should not exercise its discretion. I agree

[12] In declining to exercise my discretion, I rely on this Court's decisions in *Rana v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 36, *Sogi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 108; [2007] F.C.J. 158, *Perez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 663; 328 F.T.R. 290, *Ero v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1276; 226 F.T.R. 311. In these cases, the Court was faced with similar issues as here – that the Applicant had been removed from Canada prior to the hearing of their application for judicial review.

[13] In this matter, I am satisfied that an adversarial context still exists between the parties. However, the existence of an adversarial context does not outweigh the other two issues set out in *Borowski*, above.

[14] These issues, the conservation of judicial resources and the importance of not departing of the courts role as the adjudicative branch, were discussed by Justice Luc Martineau in *Perez*, above. I agree with his conclusions and apply them to this case. Specifically, that a moot issue should not unduly take up judicial resources, that a re-determination order may establish a new category of

persons in need of protection, that what was once a legal action of the government (the enforcement of the removal order) may become illegal afterwards simply by judicial dicta, and that a hearing of the judicial review in this instance may, in essence, amount to an indirect review of the merits of Justice Kelen's discretionary decision with regard to the stay.

[15] A further consideration is that I cannot grant a practical remedy in this case - while I may set aside the decision of the Officer, I cannot order a new PRRA be undertaken (see *Ero*, above, at paragraphs 26-27). The purpose of a PRRA, as set out in paragraph 31 of *Sogi*, above, is to assess the risks before the removal, not after.

[16] In this case, the Applicant's daughter is a Canadian citizen and is not under any removal order. While it is normally best for children to remain with their parents, I note that the child has immediate family in Canada who can care for her, and have already done so.

[17] At the time of the stay application, the Applicant was to be deported to the United States. The fact that the United States subsequently sent the Applicant to Ethiopia is beyond the reach of this Court and does not persuade me that I should exercise my discretion to hear the matter.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. this application is dismissed; and

2. there is no order as to costs.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-5290-08**
STYLE OF CAUSE:	**MEKURIA v. MCI**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**MARCH 10, 2010**
REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
DATED:	**MARCH 17, 2010**

APPEARANCES:

Micheal Crane	FOR THE APPLICANT
Nur Mohammed-Ally	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Micheal Crane Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General Canada	FOR THE RESPONDENT