Federal Court  Cour fédérale

Date: 20100518

Docket: IMM-4784-09

Citation: 2010 FC 548

Ottawa, Ontario, May 18, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

DAVEANANAD RAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] In this case, an application was submitted by Daveananad Ram (the "Applicant"), seeking judicial review of a decision dated August 20, 2009 by an Immigration Officer (the "officer") who carried out a pre-removal risk assessment; the officer concluded that the Applicant would not be subjected to more than a mere possibility of a risk of persecution, nor was it likely that he would be in danger of torture, at risk to his life or at risk of cruel or unusual punishment if he returned to Guyana.

[2] For the reasons set out below, this application for judicial review is dismissed.

Background

[3] The Applicant is a male national of Guyana who arrived in Canada as a visitor on September 19, 1997. He subsequently submitted a refugee claim which was eventually withdrawn in July of 2001. The Applicant also submitted an application for permanent residence based on humanitarian and compassionate considerations pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), but this application was rejected on January 24, 2004. The Applicant submitted a second application for permanent residence based on humanitarian and compassionate considerations in January of 2009; however, the decision on this second application has yet to be rendered. He then requested a pre-removal risk assessment ("PRRA") in May of 2009. The decision on this assessment was completed on August 20, 2009 and is the subject of this judicial review application.

[4] The documentation before the officer shows the Applicant as a hard working and law abiding individual who has succeeded in accumulating assets and establishing a comfortable life for himself in Canada. The Applicant has a sister living in Canada. His mother and two other sisters are residing in Guyana.

[5] The PRRA application submitted by the Applicant raises general risks in Guyana related to criminality, as well as some risks particular to the Applicant. The particularised risks are set out as follows by the Applicant:

> My life was hell in Guyana because of what I had to endure, the people that had wanted to hurt me while I was there, has (sic) not stopped enquiring about my whereabouts and I felt that I was being racially targeted because of my strong political views. It was just recently when I phoned a friend back home, I was told that rumor (sic) has it that they were planning on finding me if I ever come (sic) back to Guyana because of my political views.
>
> […]
> I had made numerous attempts to get help from the police with no action taken or safety provided to me. Even if I tried to lay low because of the smallness of Guyana I would eventually be found.
>
> When I was working at the sugar estate I was harassed on a daily basis and terrorized by a group of Afro-Guyanese men that lived in my area. Since we both supported different political groups, they felt that they had the right to treat me in whatever way they wanted and abuse me. They would wait for me to get back home and they would rob me and beat me up. They would take all the money I worked hard for and tell me that they would kill me if I didn't change my political views. I couldn't take this ongoing harassment and beatings anymore. Everywhere I turned this gang of men were always harassing me and following me. They would beat me up if I didn't give them all of my money, and they threatened me numerous times if I didn't change my mind on what political group I supported. It even got to the point where they knew where I lived and my phone number and began calling me all the time harassing me and leaving me threats.

The impugned decision

[6] In the PRRA assessment, the officer ascribed low probative value and placed little weight on the Applicant's statement reproduced above. The officer explained this decision as follows:

> With regards to the applicant's brief statement of recently phoning a friend "back home" who advised that the "rumour has it they were planning on finding me if I ever come back to Guyana because of my political views", I note that no corroborative evidence in that regard was provided (i.e (sic) sworn affidavit from the applicant's "friend"). Also, the above cited statement is vague, brief and general in nature. In the applicant's undated and unsigned statement, the applicant does not specify what were the reasons for the applicant's fear such as

> specific events that had occurred or who specifically the suspected perpetrators were. Consequently, low probative value is awarded to this statement.
>
> Similarly, with respect to the applicant's following statement "I had made numerous attempts to get help from the police with no action taken or safety provided to me" I find it vague and general in nature; it also lacks specific details surrounding what steps he has taken to contact the local authorities and how the Police have failed to offer him protection in the past. To date, no corroborative evidence in that regards (sic) was tendered (i.e. police record, sworn affidavits). For this reason, I ascribe the above statement little weight.

[7] The officer then proceeded to an extensive review of the country conditions documentation. He acknowledged that some of the country documentation was dated, and consequently granted more weight to the more recent country conditions evidence submitted by the Applicant. The officer however awarded greater weight still to the 2008 United States Department of State Country Reports on Human Rights Practices, the 2009 International Narcotic Control Strategy Report and the Immigration and Refugee Board, Research Directorate Response to Information Requests GUY100762.E and GUY101029.E as these were recent sources which provided a comprehensive and broad-based picture of country conditions in Guyana.

[8] The officer concluded from his country conditions analysis that though Guyana was a functioning democracy, it was dealing with rampant acts of crime and violence. He also found that the government of Guyana was committed to protecting its nationals from criminal violence and was making ongoing efforts to fight crime and violence. Though the level of criminality was deplorable, the officer nevertheless concluded that the Applicant would be able to access adequate state protection in his home country should he so require.

[9] The officer finally concluded that, in light of the evidence provided, he did not believe that the Applicant personally faces risks in Guyana.

Position of the Applicant

[10] The Applicant asserts that the officer was capricious and acted unreasonably in assigning little probative value and weight to his statement, and failed to adequately explain why this statement was disregarded.

[11] This error by the officer resulted in a skewed analysis of country conditions and of the availability of state protection for the Applicant in Guyana. Indeed, though the Applicant had raised concerns about the generalized risk of criminality in Guyana, his particular circumstances were those of an Indo-Guyanese with political views, and he was therefore more at risk than the general population. The officer thus failed to consider the particular circumstances of the Applicant in the analysis of the availability of state protection.

[12] The officer consequently did not give sufficient weight to the country conditions documentation submitted by the Applicant and ignored some of the country conditions information in the Immigration and Refugee Board, Research Directorate's Response to Information Request GUY100762.E referred to by the officer. In particular, evidence of inadequate law enforcement practice and of racial polarization of law enforcement in Guyana was ignored.

Position of the Respondent

[13] The Respondent argues that the officer's determinations of facts are entitled to a high degree of deference by this Court. The officer found that the Applicant's statement was vague and lacked specific details, and consequently ascribed little probative weight to it. This was a reasonable conclusion in the circumstances of this case.

[14] The Respondent adds that the officer carried out an extensive and in-depth analysis of country conditions in Guyana. The officer recognized that the level of criminality was high and that law enforcement was deficient in some aspects. However, the officer also reasonably concluded that the government was committed to protecting its nationals from criminal violence and making ongoing efforts to fight crime and violence. The officer further reasonably concluded that the Applicant could obtain the protection of his state should he require it.

Pertinent legislative provisions

[15] The pertinent provisions of the Act for the purposes of this application for judicial review are paragraph 96(a), subparagraphs 97(1)(b)(i) and (ii), subsection 112(1) and paragraphs 113(c) and 114(1)(a) which read as follows:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their	

countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries;

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
[…]
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
[…]
b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

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).

113. Consideration of an application for protection shall

113. Il est disposé de la demande comme il suit :

be as follows: […] (*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	[…] *c*) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
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;	**114.** (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; […]

Standard of review

[16] As noted by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 ("*Dunsmuir*") at paras. 54, 57 and 62, the first step in ascertaining the appropriate standard of review is to ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question.

[17] In *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 39, [2004] F.C.J. No. 30 (QL) at paras. 5 to 10, and thereafter in *Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] 4 F.C.R. 387, 262 F.T.R. 219, [2005] F.C.J. No. 458 (QL) at para. 51, Justice Martineau found that decisions of PRRA officers on questions of fact, such as country conditions, are to be

reviewed on a standard of reasonableness *simpliciter*. Since *Dunsmuir*, the standard of reasonableness *simpliciter* has been collapsed into the standard of reasonableness, and this Court has consequently consistently applied this standard in judicial review decisions of PRRA officers which do not raise issues of natural justice and procedural fairness: *Ramanathan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 843, [2008] F.C.J. No. 1064 (QL) at paras. 16 to 18; *Christopher v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 964, [2008] F.C.J. No. 1199 (QL) at paras. 11-12; *Hnatusko v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 18, [2010] F.C.J. No. 21 (QL) at paras. 25-26.

Analysis

[18] The officer ascribed low probative value and placed little weight on the Applicant's statement in light of its vagueness and lack of particulars. As noted by Justice Zinn in *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, [2008] F.C.J. No. 1308 (QL) at para.33:

> The weight the trier of fact gives evidence tendered in a proceeding is not a science. Persons may weigh evidence differently but there is a reasonable range of weight within which the assessment of the evidence's weight should fall. Deference must be given to PRRA officers in their assessment of the probative value of evidence before them. If it falls within the range of reasonableness, it should not be disturbed. In my view the weight given counsel's statement in this matter falls within that range.

[19] The Applicant's statement is lacking specific details and is vague. No specific individuals are identified by name, no specific dates for events are set out, the Applicant's "friend" who recently informed him of a "rumour" remains unidentified, the statement itself is not sworn and not

signed, and no corroborative evidence is submitted to confirm the statement. Moreover, some of the events related by the Applicant date from well over a decade ago. In such circumstances, the decision of the officer ascribing low probative value and placing little weight on the statement is reasonable.

[20] The officer further carefully reviewed country conditions, including the evidence submitted by the Applicant on this issue. Based on this review, the officer determined that there was adequate, while not perfect, state protection available in Guyana. The officer relied on many different sources to reach this conclusion. In order to have this Court overturn this finding, the Applicant must demonstrate that the officer's decision was unreasonable. The Supreme Court of Canada in *Dunsmuir* at para. 47 instructs as follows as to the reasonableness of a decision:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. 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.

[21] In this case, the officer's analysis was largely comprised of long citations from the country conditions documentation. After these long citations, the officer concluded as follows:

> The above referenced documentary evidence indicates that criminal violence is not tolerated by the Government of Guyana. This is evident in the government's recent attempts to address criminal violence through anti-crime initiatives which included a national anti-crime plan and crime prevention programs. In 2005 the government increased police visibility and created community based policing units. Further government efforts to strengthen law enforcement activities saw the renovation and building of police stations across the country, the purchasing of new vehicles, and an assortment of training programs for officers (Guyana 31 Oct. 2005). Through these ongoing efforts the government has shown its commitment to fight crime and violence thus, protecting its citizens.
>
> In conclusion, I find that the government of Guyana is committed to protecting its nationals from criminal violence. In these circumstances, it is reasonable to conclude that the applicant would be able to access adequate state protection in his home country should he require it. If the applicant does encounter problems, he can also seek protection from the Police Complaints Authority (PCA) and the Ombudsman.

[22] The Applicant's counsel asserts that the officer simply proceeded with a "cut and paste" exercise rather than with the analysis of country conditions and associated risk for the Applicant.

[23] I agree with the Applicant's counsel that simply quoting long extracts from country conditions documentation without more may lead to the conclusion that a PRRA officer has not carried out a proper risk analysis or has ignored pertinent information. PRRA officers are entrusted with an important responsibility under the Act and presumably have expertise in determining risk in various countries, such as in this case, Guyana. These important responsibilities and this special expertise require more from a PRRA officer than simply copying large extracts of country conditions documentation. PRRA officers are minimally expected to actually analyse such

documentation with a view to ascertain if the particular circumstances of an applicant are such as to place that applicant at risk in light of prevailing country conditions.

[24] However, there is also an obligation for applicants to provide PRRA officers with sufficient information in order for such an analysis to have some meaning in their particular circumstances. A risk analysis is indeed a personalised and highly contextualized analysis. An applicant who simply sets out generalities about criminality or other prevailing country conditions leaves the PRRA officer with little material with which to carry out a personalized and contextualized risk analysis.

[25] In this specific case, the Applicant submitted vague statements about the risk he faced, and made general statements concerning country conditions leaving little for the PRRA officer to work with. Consequently, though I understand that the analysis of country conditions carried out in this case is very general and lacking in deep analysis, this is largely attributable to the Applicant's failure to provide the PRRA officer with material facts allowing the contextualized analysis to be carried out.

[26] In essence, the Applicant here has raised a general risk of criminality rather than a personalized risk. The Applicant essentially alleges that citizens who return to Guyana from another country are automatically assumed to have access to wealth, and because of this, he would become a prime target for the gangs and thieves of his country. The Applicant has however failed to point out any support for this allegation in any of the country conditions documentation. Moreover, this Court

has rejected similar allegations relating to Guyana in *Katwaru v. Canada (Minister of Citizenship and Immigration)* 2010 FC 196, [2010] F.C.J. No. 232 (QL) at para. 28. Analogies can also be made with similar allegations which have all been rejected and concerning returnees to Honduras in *Carias v. Canada (Minister of Citizenship and Immigration*, 2007 FC 602, [2007] F.C.J. No. 817 (QL) and to Haiti in *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, [2008] F.C.J. No. 415 (QL) affirmed 2008 FCA 31, [2009] F.C.J. No. 143 (QL) and in numerous other decisions.

[27] Consequently, based on the information provided by the Applicant (or lack thereof) the decision of the officer was reasonable in the particular circumstances of this case. The decision in this case falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[28] The parties did not seek that I certify a question and no such question is justified here. Consequently, no question shall be certified pursuant to paragraph 74(d) of the Act.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is denied.

"Robert M. Mainville"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Joel Etienne	FOR THE APPLICANT
Khatidja Moloo	FOR THE RESPONDENT

SOLICITORS OF RECORD:

GERTLER, ETIENNE LLP Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT