Federal Court Cour fédérale

Date: 20110316

Docket: IMM-4228-10

Citation: 2011 FC 319

Toronto, Ontario, March 16, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

LORENZO SALVADOR CID GUERRA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Lorenzo Salvador Cid Guerra is a Mexican gangster. He was found to be inadmissible by the Immigration Division of the Immigration and Refugee Board because he is a member of a criminal organization as envisaged by section 37(1)(a) of the *Immigration and Refugee Protection Act* (IRPA). An application for leave to have that decision reviewed was dismissed by this Court. Although inadmissible, he is still here. Should he be allowed to stay?

[2] Parliament (and I emphasize it was Parliament, not the Courts) has provided that persons such as Mr. Cid Guerra are entitled to a Pre-Removal Risk Assessment (PRRA) in accordance with sections 112 and following of IRPA. He will not be returned to Mexico if, on a balance of probabilities, he would be subjected to a danger of torture, or to a risk to his life or to a risk of cruel and unusual treatment or punishment. To put matters in context, the Minister has not given an opinion under section 115(2) of IRPA that the Applicant should not be allowed to remain in Canada on the basis of the nature or severity of the acts he committed or because of danger to Canada's security.

[3] This is a judicial review of the decision of the PRRA Officer who determined there were no substantial grounds to support the proposition that Mr. Cid Guerra would face torture and there were no reasonable grounds to believe he would face a risk to life, or a risk of cruel and unusual treatment or punishment as contemplated by section 97 of IRPA should he be returned to Mexico. I find the decision to be well reasoned, logical, transparent, coherent and it easily stands up to the reasonableness standard of review as set forth in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[4] Counsel for Mr. Cid Guerra submitted the decision was unreasonable, and also procedurally unfair (a point on which no deference is owed to the decision maker) in the following respects:

a. The PRRA Officer did not identify the agents of persecution he feared;

b. The PRRA Officer applied the wrong legal test to section 97 of IRPA in determining that he had no subjective fear. Subjective fear is not relevant on a section 97 analysis;

c. The PRRA Officer simply stated a series of facts followed by a conclusion, without any analysis. More particularly the Officer simply cut and pasted from one report and failed to refer to other country condition reports which led to a completely different conclusion with respect to the availability of state protection in Mexico; and

d. The PRRA Officer failed to grant an oral hearing notwithstanding that there were credibility issues, and that the Applicant was found to be not credible.

[5] While the Officer did not specifically identify the Applicant's risk in the lengthy notes to file narrative, the Officer specifically stated in part III of the PRRA form that "[t]he applicant fears the *La Mana* criminal organization in Mexico (who are themselves associated with the Sinaloa Drug Cartel)." Having specifically identified the risk, it was not necessary for the Officer to repeat it in the assessment.

[6] It is correct to say that while subjective fear is an aspect of a refugee claim under section 96 of IRPA, it is not part of a need of protection analysis under section 97 (*Shah v Canada (Minister of Citizenship and Immigration*), 2003 FC 1121, 240 FTR 15; *Li v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1514, [2004] 3 FCR 501, confirmed by the Federal Court of Appeal at 2005 FCA 1, [2005] 3 FCR 239). However that statement is more relevant to the Officer's finding that time and time again Mr. Cid Guerra voluntarily put himself in what he now says is harm's way by going back to *La Mana*. Even if this could be construed as an error, it is not relevant as it was found that there was no objective basis for a fear of persecution under section 97. As Mr. Justice Joyal pointed out in *Miranda v Canada (Minister of Employment and Immigration)* (1993), 66 FTR 81, [1993] 2 CTC 126, artful pleaders can find any number of errors when criticizing decisions of administrative tribunals.

[7] I cannot agree with the submission that the PRRA Officer simply stated the facts and the conclusion, without any analysis. If that is what the Officer had done, judicial review would be granted as it is a requirement of procedural fairness that one understands the process by which an adjudicator reaches a conclusion (*North v West Region Child and Family Services Inc*, 2007 FCA 96, 362 NR 83).

[8] In this case the Officer had a great deal of country conditions to consider and quoted from the United States Department of State's *2009 Country Reports on Human Rights Practices* which sets forth efforts in Mexico to deal with organized crime. Based on that information the Officer concluded that the Applicant had not rebutted the presumption of state protection in Mexico with clear and convincing evidence. In submitting that the Officer should have referred to and preferred the United Nations' General Assembly Universal Periodic Review on Mexico of May 2009 and Professor Judith Hellman's report favourably referred to in *Villicana v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1205, 86 Imm LR (3d) 191, counsel is asking me to re-weigh evidence. The PRRA Officer's selection of the US DOS report was not a good news analysis.

[9] Finally, although refugee claimants are entitled to a hearing, there is no such requirement in a PRRA. Section 167 of the *Immigration and Refugee Protection Regulations* sets out prescribed factors which are whether there is evidence raising a serious issue of the Applicant's credibility, whether the evidence is central to the decision and whether if accepted it would justify allowing the application for protection.

[10] The Officer had the right to refuse a hearing. Credibility was not at issue. At the crux of the determination that Mr. Cid Guerra was not at risk was his own affidavit. If he was at risk at all it was while under the influence of *La Mana* while a dock worker in Manzanillo. By his own admission he was far less at risk when in Ensenada.

[11] If he were at risk, he has not provided sufficient evidence that the police would not protect him. If they were approached they might well charge him with the crimes he tells the Canadian authorities he has committed. That is his own doing.

[12] Counsel for the Minister moved to have Mr. Cid Guerra's admissibility file before this Court added to the record. I dismiss on the grounds of mootness.

ORDER

FOR REASONS GIVEN:

1. The judicial review is dismissed;

2. There is no serious question of general importance to certify.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4228-10
STYLE OF CAUSE:	LORENZO SALVADOR CID GUERRA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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