Federal Court  Cour fédérale

Date: 20110321

Docket: IMM-2829-10

Citation: 2011 FC 338

Ottawa, Ontario, March 21, 2011

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

RENEE MONGID MEHESA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION; THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks an order setting aside an April 16, 2010 decision of the Pre-Removal Risk Assessment Office (PRRA) of Citizenship and Immigration Canada, rejecting her PRRA application for protection under the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). For the reasons that follow, the application for judicial review is dismissed.

[2] The applicant is a 66-year old citizen of Egypt. She, her daughter, and her son-in-law claimed to be fleeing persecution in Egypt as Coptic Christians. The applicant's son-in-law's claim was rejected but he was granted permanent residency on a successful Humanitarian and Compassionate application. Her daughter is presently in Canada on a temporary resident permit. The applicant's refugee claim was rejected by the Immigration and Refugee Board of Canada (the Board) and leave to appeal that decision was denied.

[3] In support of her PRRA application, the applicant submitted a letter from Reverend Majed El Shafie, an expert with respect to the persecution of Christians in Egypt. The PRRA officer reviewed this letter but found that it provided insufficient new evidence demonstrating that the applicant was subject to risks upon removal to Egypt. In effect, the PRRA officer found that the letter merely repeated facts already supplied to the Board by the applicant and that little weight could be given to the Reverend's assertions with respect to the applicant's risk situation in Egypt because they were too generalized and uncorroborated. The PRRA officer found that the applicant was not subject to more than a mere possibility of persecution nor that she was more likely than not to be subjected to torture or at risk to life or at risk to cruel and unusual treatment or punishment upon her return to Egypt. The PRRA application was therefore denied.

[4] The applicant has argued before this Court that she was denied procedural fairness by not having an oral hearing and the opportunity to respond to concerns about the weight to be accorded the Reverend's letter; and secondly that the PRRA officer committed a reviewable error by dismissing the evidence that Reverend El Shafie's letter purported to provide.

[5] The first issue before this Court is whether the applicant was denied procedural fairness by not having an oral hearing and the opportunity to respond to the PRRA officer's concerns about the limitations of the new evidence. The *IRPA* subsection 113(b) provides as follows:

113. Consideration of an application for protection shall be as follows: … (b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;…[Emphasis added]	113. Il est disposé de la demande comme il suit: … *b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;…[Notre soulignement]

[6] These prescribed factors are set out in the Immigration and Refugee Protection Regulations (SOR/2002-227) (the *Regulations*), specifically section 167:

167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise:
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[7] The applicant relies on *Hurtado Prieto v Canada (Citizenship & Immigration*), 2010 FC 253, decided by Justice O'Keefe on March 4, 2010 for the contention that:

> …where the [PRRA] officer implicitly questions the credibility of the evidence provided by the applicant by stating she has not provided 'sufficient evidence' and/or putting 'little weight' on the documents, the officer is in effect rejecting both the subjective and objective components of the applicant's fear based on a lack of belief in the applicant's evidence, thus giving rise to the requirement that an oral hearing is held pursuant to 113(b) of IRPA and section 167 of IRPR.

[8] A closer reading of this case is, in fact, more supportive of the respondent's position. Justice O'Keefe's holding can be best summarized by citing it directly at paras 33-39:

> But did the officer implicitly question the applicant's credibility by stating frequently throughout the decision that the applicant had not provided "sufficient evidence" to support his claim? Similarly, did the officer implicitly question the applicant's credibility when he stated that he was putting "little weight" on the documents provided by the applicant "because the source of the information was the applicant himself"?
>
> The respondents claim that the officer was not necessarily questioning the applicant's credibility. The applicant bears the onus to establish that his fear is well-founded both on an objective and subjective basis. While the applicant provided evidence of his fear in a sworn affidavit, it was open for the officer to find that the evidence, even if fully accepted, was insufficient.
>
> The officer felt that the evidence of the applicant's repeated trips back to Colombia indicated he lacked the subjective fear component. I find that this is clearly an issue of credibility. Only the applicant himself would know how much he feared his alleged agents of persecution. To question his subjective fear is essentially finding him not to be credible.
>
> The test for an oral hearing under subsections 167(b) and (c) of the Regulations requires that a positive decision would likely have resulted 'but for' the credibility issue. Thus, the applicant must show that he would have likely been able to establish the objective component as well.

> The officer held the applicant's evidence failed to establish the objective component of the test.
>
> The objective component, in my view, cannot always be fully established simply by relating one's story in an affidavit. Sometimes, depending on the circumstances, additional evidence will be required. The issue of credibility may not be determinative of an issue if the evidence submitted, whether credible or not, would simply not have sufficient probative value (see *Carrillo v. Canada (Minister of Citizenship & Immigration)*, 2008 FCA 94, [2008] 4 F.C.R. 636 (F.C.A.) at paragraph 30).
>
> By saying that the evidence was 'insufficient' to establish the objective component, the officer was **not** necessarily questioning the applicant's truthfulness. It is open for an officer to be of the opinion that a reasonable person having gone through what the applicant alleges to have gone through, would not have had a well-founded fear.
>
> [Emphasis added]

[9] In sum, sufficiency findings with respect to the letter supplied by the Reverend are not, necessarily, credibility findings with respect to the applicant. In other words, it was not the applicant's credibility which was under scrutiny, but rather the sufficiency of Reverend El Shafie's letter.

[10] Additionally, as the respondent notes, Justice Phelan held in *Clarke v Canada (Citizenship and Immigration)*, 2009 FC 357 at para 10:

> Findings of sufficiency do not require, absent other factors, an oral hearing. [Citation omitted]

[11] *Tran v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 175 para 28, in which Justice Beaudry held:

> It is clear in the Act that the PRRA process is meant to be dealt with in writing and oral hearings are held only in exceptional circumstances. This Court has accepted that a hearing is not generally required where the RPD has heard a claim and made a determination on credibility. Further, the Court has held that a hearing is not required where the officer denies that application on the basis of objective evidence as that finding is a matter distinct from credibility (*Al Mansuri v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 22, 60 Admin. L.R. (4th) 228 (F.C.) at paragraph 43 (*Al Mansuri*)) [Emphasis added].

[12] The decision presently under review falls squarely within *Clarke*, *Prieto* and *Tran*. At issue was the sufficiency of the new evidence supplied on behalf of the applicant by Reverend El Shafie. Of the three statutory factors to be considered only one, (c) is arguably triggered in these circumstances. The PRRA officer reviewed the letter carefully and assessed its implication for the finding of risk. Simply stated, the PRRA officer made sufficiency findings and not credibility findings; thus a hearing was not necessarily required. It cannot therefore, be said that the applicant was owed a hearing and has suffered a breach of procedural fairness by not being granted a hearing or the chance to respond to the PRRA officer's findings. There is no basis on which the Court can interfere with this exercise of discretion.

[13] The second issue before this Court is whether the PRRA officer committed a reviewable error in dismissing the evidence of the Reverend El Shafie.

[14] In the decision, the PRRA officer notes: "…the applicant presented a substantial package of documentation. Because of the large number of documents, I will not comment on each one, but I have read and considered each document." The applicant argues that no weight was given to the

letter supplied by the Reverend El Shafie to the PRRA officer, and as such, amounts to a reviewable error in the absence of a hearing to allow the Reverend to respond to the PRRA officer's concerns.

[15] Subsection 113(a) of the *IRPA* provides as follows:

113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit:
(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; [Emphasis added]	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; [Notre soulignement]

[16] In *Escalona Perez v Canada (Minister of Citizenship and Immigration)* 2006 FC 1379 at para 5, Justice Snider held:

> It is well-established that a PRRA is not intended to be an appeal of a decision of the RPD …. The purpose of the PRRA is not to reargue the facts that were before the RPD. 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. Thus, for example, the outbreak of civil war in a country or the imposition of a new law could materially change the situation of an applicant; in such situations the PRRA provides the vehicle for assessing those newly-asserted risks. [Citations omitted; Emphasis added]

[17] Justice Mosley held to the same effect in *Raza v Canada (Citizenship & Immigration)*, 2006 FC 1385 at para 22:

> It must be recalled that the role of the PRRA officer is not to revisit the Board's factual and credibility conclusions but to consider the present situation. In assessing "new information" it is not just the date of the document that is important, but whether the information is significant or significantly different than the information previously provided … Where "recent" information (i.e. information that post-dates the original decision) merely echoes information previously submitted, it is unlikely to result in a finding that country conditions have changed. The question is whether there is anything of "substance" that is new…. [Citations omitted; Emphasis added]

[18] Adopting the framework articulated by Justices Mosley and Snider, the question becomes whether the information is significantly different from the information previously provided. There is nothing in the Reverend El Shafie's letter that could not have been addressed at the time of the Board decision. Furthermore, there was nothing of substance that was new with respect to the applicant's situation once removed to Egypt. Thus, the Reverend's letter presented no evidence of any new, different or additional risk. Evidence can be considered insufficient without necessarily being disbelieved; *Herman v Canada (Citizenship and Immigration)*, 2010 FC 629 at para 18. This is, in effect how the PRRA officer viewed this evidence; she did not reject the letter on the basis of disbelief; rather she rejected it by reason of its inherent limitations:

> I have considered the letter from Rev. Majed El Shafie regarding the applicant and her daughter and acknowledge his expertise in the area of treatment of Copts in Egypt. Rev El Shafie restated the circumstances of the applicant and her daughter that were presented to the RPD. He does not have first-hand knowledge regarding these events and is repeating information that would have been provided to him by the applicant and/or her daughter. Rev El Shafie stated that he had investigated the circumstances of the applicant's departure from Egypt through his local resources but provided no information regarding his team in Egypt. He provided no documentation from his team explaining how they verified the information concerning the applicant. There is no evidence before me that the team confirmed

> the existence of the Lost Sheep organization or the son-in-law's involvement with that organization and I find that there is insufficient information provided that would rebut the findings of the RPD. With respect to the majority of the information in Rev. El Shafie's letter, I find it is general and not specific to the applicant. For example, he notes the treatment of converts in Egypt; however, the applicant is not a convert and therefore would not be considered a convert. With respect to the treatment received by persons deported from Canada, I find that it is speculation that the applicant faces the same treatment if she returns to Egypt. [Emphasis added]

[19] A PRRA application is not an appeal mechanism for a negative Board finding with respect to a rejected refugee claim. The applicant had not presented any evidence before the PRRA officer of any new, different or additional risk if she is removed to Egypt. The PRRA officer did not summarily dismiss or discount the letter submitted, and indeed, the officer's analysis of its deficiencies indicates that she did not turn a blind-eye to its content. This case is, therefore, distinguishable from *Gandhi v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1054, where the visa officer discounted the evidence with a categorical assertion that she had all of the documentation necessary to make a decision.

[20] Accordingly, the application for judicial review is dismissed.

[21] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2829-10
STYLE OF CAUSE:	RENEE MONGID MEHESA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION; THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Toronto
DATE OF HEARING:	January 27, 2011
REASONS FOR JUDGMENT:	RENNIE J.
DATED:	March 21, 2011

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