Federal Court  Cour fédérale

Date: 20110407

Docket: IMM-3289-10

Citation: 2011 FC 434

Ottawa, Ontario, April 7, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

CAROL JOAN GRIFFITHS

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 Pre-Removal Risk Assessment Officer T. N'Kombe (the Officer) dated April 26, 2010, wherein the Officer determined that the Applicant would not be subject to risk of torture, be at risk of persecution, or face a risk to life or risk of cruel and unusual treatment or punishment if removed to Jamaica.

[2] Based on the reasons below, this application is allowed.

I. Background

A. *Factual Background*

[3] The Applicant, Carol Joan Griffiths, is a citizen of Jamaica. She arrived in Canada in May 2006 on a Temporary Resident Visa. On April 4, 2007 the Applicant was found to be inadmissible as she intended to establish permanent residence in Canada and did not hold the visa required to do so. A section 44 report was prepared and a departure order was issued against the Applicant. The same day the Applicant filed a claim for refugee protection.

[4] The Applicant's refugee claim was heard August 18, 2009. The Applicant based her claim on the harassment she suffered at the hands of a man named Mickey. Mickey raped the Applicant in 1985. She became pregnant and was forced to give the baby up for adoption. Mickey continued to harass her and also physically attacked the Applicant once after the birth of the baby. To avoid further harassment the Applicant went to St. Martens in 1997 and stayed there for a few years. She returned to Jamaica in 2002, but was again approached by Mickey in 2002 and 2006. As a result she fled to Canada. The Applicant's claim was rejected on October 13, 2009. The Board cited credibility and the availability of state protection as the determinative issues.

[5] On December 8, 2009 the Applicant made a Humanitarian and Compassionate (H&C) application for permanent residence. That decision is still pending.

[6] On March 12, 2010 the Applicant submitted a Pre-Removal Risk Assessment (PRRA) application. The PRRA application was refused April 26, 2010. This is the decision under review.

B. *Impugned Decision*

[7] The PRRA Officer determined that the Applicant had not rebutted the findings of the Immigration and Refugee Board, but had presented a new set of risks having to do with violent criminals robbing and raping the citizens of Jamaica. The PRRA Officer noted that these risks were not unknown to the Applicant at the time of her refugee hearing, and yet she did not bring them up then. Nevertheless, the PRRA Officer was of the opinion that the new risk feared was generalized and not personal to the Applicant. While the documentary evidence showed that violence is a problem in Jamaica, the Applicant had not presented clear and convincing evidence of the state's inability to adequately protect her. The PRRA Officer was satisfied that the country conditions had not deteriorated since the Immigration and Refugee Board's (IRB) rejection so as to place the Applicant at risk of persecution or cruel and unusual treatment or punishment.

II. Issues

[8] This application raises only one issue:

(a) Did the PRRA Officer disregard important evidence?

III. Standard of Review

[9] The appropriate standard of review to apply to findings of fact, or mixed fact and law in a PRRA decision is reasonableness (*Hnatusko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 18 at para 25). Judicial deference to the decision is appropriate where the decision demonstrates justification, transparency and intelligibility within the decision making process, and where the outcome falls within a range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

IV. Argument and Analysis

A. *Did the PRRA Officer Disregard Important Evidence?*

[10] The Applicant submits that the PRRA Officer ignored evidence before him alleging that the Applicant had been branded as an informer because of various reports she had made to police in Jamaica.

[11] The section of her PRRA narrative detailing this claim read:

> Ms. Griffiths has been raped and beaten on different occasions. She reported these assaults to the police and because of this, she was branded an informer. Informers don't fare well in Jamaica. And police remained passive and inactive.
>
> Reporting a crime or a personal assault to Jamaican police is really not a good option. It's extremely difficult to trust the police because the information that is provided to the people who should be protecting you is relayed to the criminal element. The thugs will take

> revenge and punish the person who reported the crime or punish their close family members.

[12] The Applicant made no mention of her status as an informer in her prior refugee hearing. As such, it is indeed a new risk. The Applicant submits that nowhere in the decision is there an analysis of the risk faced by the Applicant because she has been accused of being an informer.

[13] The Respondent submits that the Applicant has failed to identify any error with respect to the PRRA decision. The Applicant provided no evidence to support the contention that she had been branded an informer. Furthermore, she provided no evidence to explain the surrounding circumstances or to show that she only found out about this allegation after her refugee hearing. The Respondent disputes that this allegation was even disregarded by the PRRA Officer as he found that other individuals in a similar situation as the Applicant share the same risk.

[14] I must disagree with the Respondent. The decision makes no mention of the Applicant's alleged status as an informer. The PRRA Officer finds that the risk the Applicant describes as refusing, "to be victimized again by the violent criminals who are indiscriminately robbing, raping and murdering the innocent victims of Jamaica…" is a generalized risk. Indeed, by the Applicant's own description, it was reasonable for the Officer to conclude that this "indiscriminate" violence is a generalized risk. However, nowhere in the decision is it clear that the Officer considers the risk faced by an alleged police informer to be similarly non-personalized. It is not obvious that the PRRA Officer turned his mind to this alleged risk.

[15] I am unable to accept the Respondent's characterization of the informer allegation as a risk that was merely mentioned in passing. In reading the PRRA narrative, it is clear that the Applicant was alleging a specific new risk which was significantly different than the claims put before the IRB during the Applicant's refugee hearing. Was any corroborating evidence provided by the Applicant? Does the Applicant explain that she was only branded an informer after the refugee hearing, or that this information was not reasonably available at the time of the hearing? Does the Applicant provide any kind of explanation for this claim? Does any of the documentary evidence provided by the Applicant address the risks faced by police informers in Jamaica? The Respondent mentions these issues in his submissions and certainly it would have been reasonable for the PRRA Officer to point to these questions, the lack of answers to which might cast doubt on the Applicant's seemingly convenient allegation. Raising any of these issues would also have clearly brought into focus the fact that the Officer considered all of the evidence that was before him. However, absent any kind of indication that he did consider the claim that the Applicant was an informer, the decision is not reasonable in that it is not transparent, intelligible or justifiable. Neither I, nor the Applicant knows why the PRRA Officer did not find that being an informer would put the Applicant at risk.

[16] The Respondent cited the Federal Court of Appeal decision *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] 2 FCR 635 at paras 9 and 10 in support of his contention that there is no reviewable error:

> [9] The half-sentence on page four of the seven-page letter, quoted above in [6], said only that Mr. Owusu would be unable to support his family financially if he was deported was too oblique, cursory and obscure to impose a positive obligation on the officer to inquire further about the best interests of the children. The letter did not say that Mr. Owusu had been supporting his children from the

> money he earned while in Canada, and that they were financially dependent upon him and would be deprived of that support if he was deported. Nor was there any proof before the officer of any of these facts.
>
> [10] Counsel argued that the officer should have inferred from what the letter did say that Mr. Owusu's children would be deprived of the financial support on which they depended if their father was deported. In the circumstances, the officer is not to be faulted for failing to draw this inference. Hence, the immigration officer did not err in rejecting the H & C application without analysing the likely impact of her decision on Mr. Owusu's children.

[17] In that case the applications judge decided to dismiss the judicial review even though he found that the immigration officer erred in law in not being sufficiently attentive to the best interests of the children. He nonetheless decided not to set the decision aside because the claimant had not provided any evidence to support the allegation that his deportation would be contrary to the best interests of his children and because if the matter were remitted for redetermination by another officer on the same material, the application was bound to be rejected. On appeal, however, the Federal Court of Appeal upheld the outcome but based its decision to do so on the claimant's failure to discharge his onus of providing a sufficient evidentiary basis on which the officer could make a decision with regards to the best interests of the children,. However, that case is distinguishable from the present matter. The half-sentence on which the claimant based his application for judicial review in *Owusu*, above, read:

> Should he be forced to return to Ghana [Mr. Owusu] will not have any ways to support his family financially and he will have to live every day of his life in constant fear.

[18] The claimant, Mr. Owusu, ostensibly based his H&C application on establishment in Canada and not the best interests of the child. In essence, the claimant was requiring the officer to

go looking for evidence. This “hint” in the letter was, as described by the Court of Appeal, oblique, cursory and obscure. The Applicant’s reference to being an informer in the present matter is not couched in comparable obscurity. Her allegation was quite clear, if not credible. That credibility of the statement would have been for the PRRA Officer to determine.

[19] It is trite law that the officer is presumed to have considered all of the evidence before him and that the assessment of weight to be given to the evidence is a matter within the discretion and expertise of the officer. But, in the present case, absent some kind of acknowledgement of the risk alleged by the Applicant, the decision cannot be said to be justifiable, transparent or intelligible. Therefore the judicial review will be granted, the PRRA decision is quashed and the matter remitted back to be heard by a different officer.

V. Conclusion

[20] No question was proposed for certification and none arises.

[21] In consideration of the above conclusions, this application for judicial review is allowed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-3289-10**
STYLE OF CAUSE:	**GRIFFITHS v. MCI**
PLACE OF HEARING:	**TORONTO**
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