

Federal Court



Cour fédérale

Date: 20111013

Docket: IMM-1827-11

Citation: 2011 FC 1156

Toronto, Ontario, October 13, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**LORRAINE MPSHE, PULENG MAHONGWA,
LESEGO MONTANA MPSHE AND
KAMOGELO KARUBO MAHONGWA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The decision presently under review is a second Pre-Removal Risk Assessment (PRRA) in which the principle Applicant Ms. Mpshe and her sister, Ms. Mahongwa, claimed risk on gender grounds due to fear of violence, in particular, from their intimate partners should they be required to return to South Africa.

[2] The first PRRA officer made the following determination with respect to generalized and personalized gender risk:

I do not find that Lorraine Mpshe has presented sufficient objective evidence in her narrative to tie these generalized crimes to a personalized risk to any of the four applicants. I note that the *Reasons Why We Left South Africa* narrative does not present any evidence regarding the filing of a police report, or any other contact with the authorities in South Africa.

[...]

I accept that Lorraine Mpshe does present personalized evidence in her narrative regarding a fear for her safety, at the hands of her husband, Totoni Mpshe. I also accept that there were events which occurred in Canada that lead to the issuance of the *Recognizance of Bail*; however, I note that Totoni Mpshe has since made arrangements to depart Canada, and I find that there is insufficient objective evidence before me to demonstrate that Totoni Mpshe has threatened to harm any of the four applicants, or that he seeks to have a relationship with any of the four applicants in South Africa which might place any of the four applicants in danger.

(Certified Tribunal Record, pp. 320 – 321)

[3] On their second PRRA application presently under consideration, Counsel for Ms. Mpshe attempted to introduce “new” evidence to the PRRA Officer that goes to prove Mr. Mpshe is violent, and, thus, is a continuing risk to Ms. Mpshe. The evidence is a report coined a “Crown Brief Synopsis” written by the police officers that investigated the assault on Ms. Mpshe by her husband as mentioned by the first PRRA officer in the above quoted passage.

[4] The PRRA Officer received the report after writing, but not delivering, the decision under review, and, thus, its reception into evidence was dealt with by way of an Addendum which forms part of the decision under review. In the decision the following findings are made:

As the Pre-Removal Risk Assessment is not designed to be an appeal process for Refugee Board decisions, but an evaluation of new evidence presented, only evidence presented by the applicant which responds to the criteria in Section 113(a) of the Act and 161(2) of the Regulations can be considered. In a similar fashion, where a person has already received a PRRA, a subsequent assessment is based only on evidence arising since the previous one (per the administrative law principle of *issue estoppel*).

As the applicant did not claim refugee protection, and were not heard before the Immigration and Refugee Board Refugee Protection Division (the Board), the New Evidence evaluation is not applicable.

However, they have previously submitted PRRA applications which were refused on 15 February 2010. Therefore, I will consider the evidence submitted with respect to the administrative law principle of *issue estoppel*.

(Application Record, p. 10)

In the Addendum the following elaboration is provided:

The above noted applicants submitted a subsequent PRRA application which was received on 9 December 2009 and which had been refused on 31 January 2011. The applicants, via their counsel, then submitted additional documentary evidence, which was received on 1 February 2011, before the PRRA decision had been communicated to them. Therefore, I have reevaluated their PRRA application in light of these new submissions.

The applicants submitted a copy of a case file synopsis from the Guelph Police Service for Mr. Totoni Benjamin MPSHE. This document provides information regarding the principal applicant's spouse and his arrest for allegedly assaulting his wife while in Canada. I note that some portions of this report have been blacked out.

This information had previously been given by the applicants in their subsequent PRRA application as well as in their first PRRA application. Information and supporting documentation regarding the principal applicant seeking police assistance from her spouse while in Canada have already been taken into consideration.

That being said, I also note that this document is dated 23 December 2010 [sic] and thus pre-dates the previous PRRA decision, signed 15 February 2010 and delivered to the applicants on 10 March 2010.

Therefore, I find that it does not meet the requirements of the administrative law principle of *issue estoppel* and is therefore excluded.

After careful consideration of the above, my decision dated 31 January 2011 remains unchanged.

(Application Record, p. 5)

[Emphasis added]

[5] The determinative issue in the present Application is whether the PRRA Officer made a reviewable error in not admitting the report into evidence.

[6] The Applicants argue that the evidence contained in the report is “new” and should have been accepted into evidence by the PRRA Officer because it provides details which expand on Ms. Mpshe’s account of the assault event. In particular, the observations of the police officers who attended go to prove that the assault was serious and, therefore, Ms. Mpshe is at risk of further violence from her husband should she return to South Africa. I find that the problem with this argument is that it was not made to the PRRA Officer at the time the report was tendered. The report was tendered with the following letter:

I am legal counsel to the above captioned PRRA applicants. Ms. Lorraine Mpshe recently procured the following attached document in support of her submitted PRRA application:

Copy of case file synopsis from the Guelph Police Service, case file No. GU09041228, Mpshe, Tottoni Benjamin.

I ask that you take this said document into consideration in making your final determination on the said applicants’ PRRA application. Should you have any questions or concerns, please feel free to contact the undersigned.

(Tribunal Record, p. 177)

In my opinion, without a compelling argument as to why the report constitutes “new”, and, therefore, admissible evidence, I find no reviewable error in the PRRA Officer’s decision to reject the evidence.

ORDER

THIS COURT ORDERS that as I find no reviewable error in the decision under review, the present Application is dismissed.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1827-11

STYLE OF CAUSE: LORRAINE MPSHE, PULENG MAHONGWA, LESEGO
MONTANA MPSHE AND KAMOGELO KARUBO
MAHONGWA v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: October 11, 2011

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: October 13, 2011

APPEARANCES:

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