Federal Court  Cour fédérale

Date: 20111031

Docket: IMM-1128-11

Citation: 2011 FC 1240

Ottawa, Ontario, October 31, 2011

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

NOUREDDINE OMAR RIAJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of Pre-Removal Risk Assessment [PRRA] officer dated January 13, 2011 where she rejected the applicant's application for permanent residency based on humanitarian and compassionate [H&C] grounds pursuant to subsection 25(1) of the Act.

BACKGROUND FACTS

[2] The applicant, a citizen of Morocco, claims that he fears for his life because, in 1995, he converted to Christianity and such conversion is considered apostasy and is punishable by death. From 1992 to 2004, he lived in Bulgaria but he has since lost his status in that country.

[3] In 2002, he met Christine Bouchard, a Canadian citizen, and they began a romantic relationship. On September 24, 2003, they were married in Morocco in a Muslim ceremony.

[4] On July 2, 2004, the applicant applied for a temporary resident permit at the Canadian embassy in Bucharest. He came to Canada on July 14, 2004 to testify in court proceedings that were repeatedly postponed, leading the applicant to overstay his visa and to lose his status in Bulgaria.

[5] On April 12, 2005, he claimed refugee protection based on a fear of persecution because of his religious conversion. His refugee claim was refused on November 28, 2007 based on findings that there was no credible basis for his claim and that his religious conversion was not credible.

[6] The applicant and Ms. Bouchard separated in 2007 and, on April 17, 2008, they were divorced. In April 2007, the applicant met Josee Cote, also a Canadian citizen. The applicant and Ms. Cote were married on April 19, 2008.

[7] On May 2, 2008, the applicant applied for a PRRA, alleging risk in Morocco based on his religious conversion.

[8] On August 7, 2008, Ms. Cote applied to sponsor the applicant. However, she and the applicant separated in April 2009 and she withdrew her sponsorship application on July 20, 2009.

[9] At some point in July 2009, the applicant met Danielle Breton and they began living together. Ms. Breton has not applied to sponsor the applicant.

[10] On February 2, 2010, the applicant filed his H&C application.

[11] On November 27, 2010, the applicant retained counsel to assist with his PRRA and H&C applications. On December 6, 2010, the applicant's counsel contacted the Officer to request complete copies of his PRRA and H&C applications. On December 13, 2010, counsel again contacted the Officer to request a complete copy of the applicant's file. On January 6, 2011, counsel inquired when the Officer expected to render her decision, but the Officer refused to provide a date.

[12] On January 13, 2011, the Officer refused both the PRRA and H&C applications.

[13] On February 9, 2011, the applicant's counsel received a copy of his file and on February 11, she was notified of the negative PRRA and H&C decisions.

THE DECISION UNDER REVIEW

[14] The Officer reviewed the H&C considerations underlying the applicant's H&C application: namely, his establishment in Canada, his family's financial dependence on him, the best interests of his daughter, and the risk he faces if he returns to Morocco.

[15] On the issue of establishment, the Officer found that the lack of a sponsorship application by Ms. Breton weighed against a positive H&C decision. She also examined the applicant's employment history in Canada and his volunteer activities and found that these weighed in favour of his H&C application.

[16] The Officer considered the applicant's claim that his family in Morocco is financially dependent on him, but ultimately rejected it due to a lack of detail in the letters from these family members and a lack of corroborating evidence. She acknowledged that the applicant's brother in Morocco is disabled, but noted that a Google search for "pension invalidité Maroc" ("disability pension Morocco") revealed a detailed scheme for the provision of disability pensions, retirement pensions, family allotments and death benefits in Morocco; she found that the applicant failed to establish that his family could not obtain a disability pension from the state of Morocco or that this pension would be insufficient to meet their needs.

[17] She then considered the best interests of the applicant's Moroccan daughter and his claim that she is dependent on him for emotional and financial support, as well as his claim that she had been sexually assaulted and will therefore be ostracised unless the applicant can bring her to Canada. She interviewed the applicant over the telephone, but was concerned with his inability to answer basic questions about the daughter's assault, such as in what year it occurred or what the

circumstances were that led up to it. The Officer noted the medical certificate that had been provided, but found that it merely stated that the daughter and her mother attended a medical clinic and that the daughter is not a virgin. She noted that the daughter's affidavit made no mention of the assault. Thus she gave little weight to the allegation that the daughter had been assaulted.

[18] The Officer considered the emotional ties between the daughter and the applicant, but noted that the medical certificate stated that she lived with her father's family in Casablanca, and that her affidavit stated that she is living with a paternal aunt. Based on this information, she was not satisfied that the daughter has no emotional support in Morocco such that her best interests warrant a positive H&C decision for the applicant. She further noted that the applicant left Morocco when the daughter was 2 years old and that he has only seen her once since then when he returned to Morocco for his wedding to Ms. Bouchard.

[19] The Officer also considered the applicant's claim that his daughter will be ostracised if she stays in Morocco because she is no longer a virgin, but found after an internet search that some Moroccan women in urban centres are choosing to eschew traditional values such as chastity until marriage, and that there are medical procedures available to implant an artificial hymen should the daughter wish to recreate the appearance of chastity. Thus she gave little weight to the allegations that the daughter will be ostracised and will have no social prospects in Morocco.

[20] The Officer concluded that the daughter's best interests did not warrant H&C relief for the applicant.

[21] Finally, the Officer turned to the alleged risk to the applicant should he return to Morocco. She noted that the risk is the same risk that was alleged in the applicant's refugee claim and that the Immigration and Refugee Board had doubted the genuineness of his religious conversion given his return to Morocco for his Muslim wedding to Ms. Bouchard.

[22] The Officer considered the applicant's claim that he is known to the authorities due to his contact with high-ranking officials through his former business, but found that he had not demonstrated that these prestigious contacts would put him at risk on his return to Morocco. He also found no evidence that the applicant would be unable to find work because of his religion, noting that several reference letters from these high-ranking contacts post-date his conversion to Christianity. She consulted the documentary evidence about religious minorities in Morocco and found that the evidence contradicted the applicant's assertion that Christians cannot get jobs and that religious converts have not been imprisoned since 1999.

[23] The Officer therefore denied the H&C application.

ISSUES

a. Did the Officer breach procedural fairness by failing to provide the applicant with an opportunity to comment on extrinsic evidence?

b. Did the Officer breach the applicant's legitimate expectations?

c. Was the Officer's assessment of the evidence unreasonable?

STANDARD OF REVIEW

[24] The first two issues are procedural fairness issues reviewable on the correctness standard (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43). The issue of the Officer's weighing of the evidence is a question of mixed fact and law and is reviewable on the reasonableness standard (see *Awolope v Canada (Minister of Citizenship and Immigration)*, 2010 FC 541, 368 FTR 177 at para 29).

1. Did the Officer breach procedural fairness by failing to provide the applicant with an opportunity to comment on extrinsic evidence?

[25] The applicant submits that the Officer breached procedural fairness by consulting extrinsic evidence from the internet without giving him a chance to comment on it.

[26] The Respondent submits that the Officer's extrinsic research was not material to her decision, as she had already given little weight to the allegations that Sanna had been sexually assaulted and had concluded that the daughter's ties to her Moroccan family were much stronger than her ties to the applicant. Even if the Officer erred in not disclosing the information she found on the internet to the applicant, the Court should uphold the decision because the information is not conclusive. I agree with the respondent for the following reasons.

[27] The Officer's conduct in performing her own internet searches to clarify certain narrow issues clearly falls outside of the norm as they are not standard documents from sources such as Human Rights Watch, Amnesty International, or from a government authority such as the United

States Department of State. Although officers routinely consider such standard documents, there is no duty to disclose them even though they are extrinsic to the application because an applicant is deemed to know that this type of evidence will be considered and where to find it (see *Mancia*, above, at para 22).

[28] However, *Mancia*, above, drew a distinction between the treatment of standard documents and documents from other sources:

> [W]here the immigration officer intends to rely on evidence which is not normally found, or was not available at the time the applicant filed his submissions, in documentation centres, fairness dictates that the applicant be informed of any novel and significant information which evidences a change in the general country conditions that may affect the disposition of the case. [At para 22, my emphasis]

[29] Here, as was the case in *Zamora*, above,

> The documents in question were not standard documents such as Human Rights Watch, Amnesty International or country reports issued under governmental authority, but rather the result of specific research on the internet carried out by the PRRA officer. That research, including such documents she may have found were beneficial to Mr. Aguilar Zamora, should have been disclosed and he should have been given an opportunity to respond. [At para 18]

[30] However, unlike in *Zamora*, the Officer's extrinsic research in this instance was not material to the outcome of the H&C application because she did not rely upon this information to render her decision.

[31] The Officer considered evidence about disability pensions in Morocco only after she had concluded that the applicant had provided insufficient evidence that his Moroccan family depends on him for financial support, and she only considered evidence about sexually active women after

she had given little weight to the allegations that the daughter had been attacked and had concluded that the daughter had much closer ties to her Moroccan family than to the applicant.

[32] I note as well that the applicant has not offered any evidence to contradict the extrinsic evidence, although he has attempted to explain how it does not apply.

[33] While it would have been prudent for the Officer not to conduct her own research or to have disclosed this evidence to the applicant, the evidence ultimately was not material to the decision and therefore the non-disclosure did not breach procedural fairness.

2. Did the Officer breach the applicant's legitimate expectations?

[34] The applicant submits that he had a legitimate expectation that the Officer would not reach a decision until his counsel had received a copy of his file and had the chance to make additional submissions. The Officer was aware that his counsel was awaiting a copy of his file. The Officer's refusal to provide a date when the decision would be made gave rise to a legitimate expectation.

[35] The Respondent submits that the Officer did not breach any legitimate expectations. The Respondent notes that, in a letter dated December 13, 2010, the applicant's counsel indicated that "Nous croyons que le dossier est complet". Further, it is common practice for officers to refuse to remark on when a decision will be issued, and explains that this is why the Officer did not tell the applicant's counsel that the decision would be rendered shortly. Further, the applicant's counsel never indicated that she wished to make further submissions.

[36] I am not persuaded that the applicant had a legitimate expectation particularly in light of the applicant's counsel's letter stating that his file was complete and the fact that she never mentioned that she had the intention of sending additional material, there was no reason for the Officer to wait to render her decision. The Officer's vague answer when asked about when the decision might be rendered did not give rise to a legitimate expectation. In fact, in my opinion, it is prudent not to disclose any particular date as any delay in rendering a decision could be interpreted negatively.

3. Was the Officer's assessment of the evidence unreasonable?

[37] The applicant claims to have informed the Officer in his interview that rape is a taboo subject in Morocco, and that for this reason he did not ask any questions when he was informed of the daughter's sexual assault. He therefore claims that it was reasonable for him to be unable to answer even basic questions about the incident and for the only evidence of the assault to be a medical certificate indicating that the daughter is no longer a virgin.

[38] Further, the applicant argues that the Officer's conclusion that the daughter will not be ostracized is unreasonable because it is based on information found in online forums. The applicant claims that information from online forums is not reliable and should be given less weight than information from other sources, citing several cases of this Court.

[39] Although the applicant has cited some decisions (*Jalil v Canada (Minister of Citizenship and Immigration)* 2006 FC 303, *Lubega v Canada (Minister of Citizenship and Immigration)* 2006

FC 303, *Kocak v Canada (Minister of Citizenship and Immigration)* 2004 FC 1288) to support his assertion that information from internet forums is not reliable evidence, none of these decisions actually stand for that principle.

[40] Further, the presence of children is not determinative of a claim, *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] FC 358 at para 12. Rather, all that is required is that the Officer was "alert, alive and sensitive" to the best interests of the applicant's children.

[41] The applicant has failed to demonstrate that the Officer was not alert, alive and sensitive to the daughter's interests or that the decision is otherwise unreasonable.

[42] Thus, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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