Federal Court  Cour fédérale

Date: 20120116

Docket: IMM-1913-11

Citation: 2012 FC 29

Ottawa, Ontario, January 16, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

RAMIRO ARTEAGA SARABIA,
ERIKA APONTE GOMEZ, AND
ANGELICA SOFIA ARTEAGA APONTE,
ANA PAULA ARTEAGA APONTE,
ALEJANDRA ARTEAGA APONTE, AND
ERIKA ARTEAGA APONTE,
BY THEIR LITIGATION GUARDIAN
RAMIRO ARTEAGA SARABIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This decision pertains to an application for judicial review of a February, 11 2011, decision by Citizenship and Immigration Canada's Pre-Removal Risk Assessment Office (PRRA) which rejected the applicants' PRRA application. For the reasons that follow, the application is granted.

Facts

[2] The principal applicant (applicant), Ramiro A. Sarabia, a political official and a journalist, claimed to be a target of politically-motivated violence in Mexico. The applicant also claimed that he had been wrongly accused by the Governor of the State of Guerrero of a murder that took place in Mexico. He fled Mexico for Canada, along with his family, and arrived here in August 2008. His claim for refugee status was denied by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (the Board) in November 2009 due to credibility concerns, delay in flight and the failure to rebut the presumption of state protection. On April 6, 2010, his application for leave to seek judicial review in this Court was denied.

[3] In August 2010, the applicant submitted his PRRA application. The applicant submitted twelve documents, mostly consisting of country reports, photographs from newspapers and a threatening note that his father, still in Mexico, had received in July 2010. On February 11, 2011 the PRRA Officer communicated his decision to the applicant. That decision stated:

> For the purposes of this assessment, I have reviewed and considered the applicants' PRRA applications, PRRA submissions, the RPD decision and reasons as well as the documentary evidence submitted by these applicants. In their PRRA applications and documentation the applicants have not enumerated any new risks or risk developments since their RPD rejection; they have simply submitted a substantial package of documentation on Mexico regarding political killings, drug cartel killings, travel warnings to American citizens planning a trip to Mexico and an Amnesty International report for 2010. These issues were considered by the RPD panel. No new risks have been enumerated nor have the findings of the RPD panel been rebutted. Also….they have failed to persuade me that a new risk has developed between the rejection by the RPD and their PRRA assessment. In the absence of evidence to the contrary, I am not persuaded to arrive at a conclusion different from that of the RPD panel….

Issue

[4] The issue in this case is whether the decision of the PRRA Officer that the applicant had not submitted new evidence as to risk was made in accordance with applicable legal principles; hence the standard of review is correctness. The applicant's primary argument is that the PRRA Officer erred in failing to mention, consider or otherwise reference the photographs and the threatening note left with his father. The threatening note, according to the translation, indicated that "*we are waiting for you*". It was accompanied by photographs of decapitated bodies.

Analysis

[5] Section 113(a) of the *Immigration and Refugee Protection Act*, (SC 2001, c 27), (*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;	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;

[6] The jurisprudence on this section of *IRPA* is well-settled. In *Perez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1379 at para 5, Justice Judith 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.

[7] In *Raza v Canada (Minister of Citizenship & Immigration)*, 2006 FC 1385, Justice Richard Mosley held, to the same effect, that:

> 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….

[8] In the submissions received by the PRRA Officer the applicant attached a schedule which explained his submissions, thus discharging the burden imposed upon him in section 161(2) of the *Immigration and Refugee Protection Regulations*, (SOR/2002-227) (*Regulations*), which states as follows:

New evidence	Nouveaux éléments de preuve
(2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.	(2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113a) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

[9] The PRRA Officer found that with the submission of this evidence, "the applicants have not enumerated any new risks or risk developments since their RPD rejection," and that "[n]o new risks have been enumerated nor have the findings of the RPD panel been rebutted. Also….they have failed to persuade me that a new risk has developed between the rejection by the RPD and their

PRRA assessment." As a matter of first impression, these findings are reasonable, as the information submitted in support appears, in the main, to have only merely echoed the information previously submitted.

[10] However, there is no evidence in the decision that the PRRA Officer considered the photographs and the note. The failure to consider material and relevant evidence cannot be saved, in this case, by reference to a general statement that the decision maker considered all of the evidence. Here, the Officer expressly considered all the evidence, save the two critical pieces of new evidence. This case thus falls squarely within the decision of *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* 1998 FCJ 1425 where, at paras 16 and 17 Justice John Evans wrote:

> On the other hand, the reasons given by administrative agencies are not to be read hypercritically by a court *(Medina v. Canada (Minister of Employment and Immigration)*, (1990), 12 Imm. L.R. (2d) 33 (F.C.A.)), nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it (see, for example, *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.). That would be far too onerous a burden to impose upon administrative decision-makers who may be struggling with a heavy case-load and inadequate resources. A statement by the agency in its reasons for decision that, in making its findings, it considered all the evidence before it, will often suffice to assure the parties, and a reviewing court, that the agency directed itself to the totality of the evidence when making its findings of fact.
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> However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the

> agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

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[11] The note and the photographs are evidence which came into the applicant's possession after his refugee claim had been decided. In the absence of reasons for rejecting, or otherwise not considering this evidence, it is impossible to tell from the PRRA Officer's decision whether an additional risk that could not have been contemplated at the time of the RPD decision would have been established.

[12] Counsel for the respondent contended that if viewed in the context of the findings of the Board, which found against the applicant on credibility on most aspects of the claim, the PRRA Officer was not required to address the evidence. Put otherwise, the PRRA Officer was entitled to discount the evidence, indirectly, given the credibility issues that pervaded the claim itself. Here, however, the new evidence was material and related to a new risk; hence it fell squarely within the purpose for which the pre-removal risk assessment must be conducted. The evidence was central to the issue of risk, and if accepted, could have changed the outcome of the PRRA Officer's assessment.

[13] The respondent also contends that the application should be rejected on the basis that it simply amounts to a request that this Court re-weigh the evidence. While that is indeed a valid argument in many cases, in this case it does not apply. The applicant does not seek a re-weighing of the evidence; rather the applicant seeks that it be weighed.

[14] The application is granted. The PRRA decision is set aside and sent back for redetermination by a different officer.

[15] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Pre-Removal Risk Assessment Office for reconsideration before a different officer. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1913-11
STYLE OF CAUSE:	**RAMIRO ARTEAGA SARABIA et al** v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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