Federal Court  Cour fédérale

Date: 20120815

Docket: IMM-9647-11

Citation: 2012 FC 990

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, August 15, 2012

Present: The Honourable Madam Justice Gagné

BETWEEN:

MARIE GISÈLE BADOBREY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application for judicial review of a decision of the Canada Border Services Agency (the Agency) made under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) by Marie Gisèle Badobrey (the applicant). The Agency rejected the applicant's pre-removal risk assessment (PRRA) application.

FACTS

[2] The applicant was born in Côte d'Ivoire in 1987 and arrived in Canada in 1997 with diplomatic status, her father being an employee of the Embassy of Côte d'Ivoire in Canada. She therefore completed her education in Canada.

[3] On June 30, 2008, the applicant was arrested for obstructing justice and assaulting a peace officer. When a check was done with the Agency, it was discovered that the applicant no longer had status in Canada, her diplomatic status having ended on December 30, 2005, when her father's term ended. On July 3, 2008, the applicant was released on conditions.

[4] On July 22, 2008, she applied for refugee protection, and a departure order was issued to her on that date. On September 28, 2010, her refugee protection claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board (the Board), on the ground that she had an internal flight alternative (IFA) in Gagnoa, where her grandmother lives, and that she was not subject to any personalized risk. The applicant had stated that she feared returning to Côte d'Ivoire because she had been sexually assaulted by her half-brother before 1997 and from 2002 to 2005, and because of the unsafe situation following the contested elections in Côte d'Ivoire in 2009. That decision was never appealed.

[5] In October 2010, the applicant ceased to comply with the conditions of her release, and a warrant for her arrest was issued on December 17, 2010. She was arrested on January 15, 2011, and was detained by the Agency. The applicant was released on January 26, 2011. Her PRRA

application was filed on February 4, 2011, and her additional representations were received by the Agency on February 18.

[6] The applicant's PRRA application is based on her fear of being sexually abused by her half-brother if she were to return to Côte d'Ivoire. She also claims that her father might be targeted by the government, and adds that she has not lived in Côte d'Ivoire since she was 14 years old, and thus does not know where she could settle (her parents did not return to Côte d'Ivoire after her father's diplomatic term in Canada ended).

[7] In her memorandum, the applicant argued that she would be at risk if she were to return to Côte d'Ivoire, as a single woman of [TRANSLATION] "Canadian culture" who has lost her connection with her country of origin.

[8] On August 19, 2011, the Agency rejected her PRRA application, concluding that the applicant would not be subject to a danger of torture or persecution or to a risk of cruel and unusual treatment, or to a threat to her life if she were to be sent back to Côte d'Ivoire. The applicant became aware of that decision only on December 7, 2011, and filed this application for judicial review on December 22, 2011.

DECISION UNDER APPEAL

[9] The Agency analyzed the documentary evidence provided by the applicant, which describes the violence surrounding the elections held in Côte d'Ivoire in 2009. Those documents include recommendations by the Canadian government for travelers wishing to go to Côte d'Ivoire and an

article about the demonstrations in response to the restrictions imposed by the government on cocoa exports.

[10] The Agency considered each of the documents submitted by the applicant and concluded that this evidence did not establish that the applicant was at risk of persecution if she were to return to Côte d'Ivoire or that she was subject to any personalized risk within the meaning of sections 96 and 97 of the Act. The Agency concluded that the applicant would face the same risks as the other citizens of Côte d'Ivoire in the present political context in that country, and that she was facing only a possibility of risk: [TRANSLATION] "the situation in the country presents no risk to a person whose profile is similar to the [applicant's], and there is little evidence that there is a risk for persons who supported the former regime" (from translation of reasons of the Agency, page 6).

[11] In addition, the allegations of sexual abuse are the same as were considered by the Board in the applicant's refugee protection claim. Since the applicant did not offer new evidence in support of her allegations, she still has an IFA in Gagnoa: the applicant failed to establish that she would be at risk of persecution or that it would be unreasonable for her to relocate there.

[12] The burden of proof was on the applicant, and given that there was no new evidence of persecution or risk within the meaning of sections 96 and 97 of the Act, the Agency rejected the applicant's PRRA application.

ISSUES

[13] This application for judicial review raises the following issues:

(1) *Was the Agency's decision unreasonable, and in particular, did the Agency fail to have regard to the applicant's specific situation and the evidence in the record?*

(2) *Did the Agency violate the principles of natural justice, given that several months elapsed between its decision and when the decision was communicated to the applicant?*

[14] The standard of review applicable to the first question is reasonableness (*Hurtado v Canada (Minister of Citizenship and Immigration*), 2008 FC 634 at paragraph 7, [2008] FCJ 807 (*Hurtado*); *Pareja v Canada (Minister of Citizenship and Immigration*), 2008 FC 1333 at paragraph 12, [2008] FCJ 1705 (*Pareja*)). This question addresses the assessment of the evidence by the Agency, falls within its area of expertise and calls for a high degree of deference from this Court (*Hurtado*, above, at paragraph 8; *Pareja*, above, at paragraphs 12 and 19). In applying the reasonableness standard, the Court must determine whether the decision and conclusions of the Board are justified, transparent and intelligible, and fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 (*Dunsmuir*)).

[15] However, the standard of review applicable to the second question, relating to the principles of natural justice, is correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 43).

ANALYSIS

(1) *Did the Agency violate the principles of natural justice, given that several months elapsed between its decision and when the decision was communicated to the applicant?*

Position of the applicant

[16] The applicant contends that the Agency's decision is unreasonable and asserts that the Agency failed to have regard to the particular facts of her case. If she were to return to Côte d'Ivoire, she says, she would be at risk of sexual abuse. She is a single woman, of "Canadian culture", and has lost all connection with and attachment to Côte d'Ivoire. She adds that she could not work in the field in which she studied in Canada if she were to return to Côte d'Ivoire and would therefore have no means of subsistence. The Agency's conclusion regarding the absence of personalized risk is therefore incorrect.

[17] She added that the Agency's decision is also unreasonable because it erred in concluding that there is an internal flight alternative (IFA) for the applicant.

Position of the respondent

[18] The Respondent submits that the burden of proof was on the applicant: she had to establish that she was a refugee or a person in need of protection within the meaning of the Act. The purpose of a PRRA application is to assess any new evidence that was not available at the time of the hearing before the Board (sections 112 and 113 of the Act). The applicant, however, relied on the same facts as those in her refugee protection claim and did not submit any new evidence concerning

the alleged risks or concerning the existence of an IFA. The applicant instead relied on documents about the general situation in Côte d'Ivoire, without connecting it to her personal situation.

[19] The respondent added that the Agency had regard to the applicant's personal situation and concluded that she did not have a profile that put her particularly at risk of persecution in Côte d'Ivoire. The Agency addressed the sexual abuse committed against women in Côte d'Ivoire as reported in the documentation, but was of the view that it described a generalized situation in the country.

[20] Regarding the existence of an IFA, the respondent submitted that the applicant did not offer any new evidence and this issue was disposed of by the Board. The purpose of a PRRA application is not to review the decision of the Board. The applicant failed to show why it would be unreasonable for her to settle in Gagnoa where her grandmother lives.

[21] The applicant's contention that she would be at risk because of her Canadian culture and her absence from Côte d'Ivoire for 14 years is not supported by the evidence in the record. The applicant's subjective fear does not in itself, in the respondent's submission, justify intervention by this Court.

Analysis

[22] Having reviewed all of the evidence in the record and considered the arguments of both parties, the Court concludes that the Agency's decision rejecting the applicant's PRRA application is reasonable. The Agency had regard to the particular facts of this case, in particular the applicant's

allegations of risk and the documentary evidence she submitted to it. It was up to the applicant to show, in light of new evidence or new facts, that she now qualified as a refugee or a person in need of protection within the meaning of the Act (*Bayavuge v Canada (Minister of Citizenship and Immigration*), 2007 FC 65 at paragraph. 43, [2007] FCJ 111; *Pareja*, above, at paragraph 23), and she did not do so.

[23] It is settled that the purpose of a PRRA application is to consider the new circumstances and changes that have occurred since the applicant's refugee protection claim was rejected: a PRRA application is not a reconsideration of the decision of the Board (*Raza v Canada (Minister of Citizenship and Immigration*), 2007 FCA 385 at paragraph 12, [2007] FCJ 1632 (*Raza*)). Rather, as explained by Madam Justice Sharlow in *Raza*, above, at paragraph 13: "a negative refugee determination by the [Board] must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the ROD hearing if the evidence had been presented to the RPD."

[24] The applicant's PRRA application was largely based on the same facts as alleged in her refugee protection claim, which was rejected by the Board in September 2010. That decision has never been challenged. It was therefore reasonable for the Agency to conclude there was no risk of persecution: there was no evidence in the record that showed that the applicant would be subject to a personalized risk if she were to return to Côte d'Ivoire. It was also reasonable for the Agency to conclude that the applicant had an IFA in Gagnoa: that conclusion by the Board was never challenged and the applicant did not offer any evidence to show that the situation had changed in Gagnoa so that it had become unreasonable or put her at risk for her to relocate there.

[25] The analysis of risk and of the existence of an IFA is within the jurisdiction and expertise of the Agency (*Pareja*, above, at paragraph 19). Given that it clearly considered all of the evidence in the record and referred to the applicant's particular circumstances, it is not for this Court to intervene. Accordingly, the conclusions of the agency are justified, transparent and intelligible, and fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47).

(2) Did the Agency violate the principles of natural justice, given that several months elapsed between its decision and when the decision was communicated to the applicant?

Position of the applicant

[26] The applicant contends that the Agency violated the principles of natural justice because of the time that elapsed between its decision and when the decision was communicated to the applicant. Although the decision is dated August 19, 2011, the applicant was only informed that her PRRA application had been rejected in December 2011. She contends that the Agency's decision did not take into account facts that occurred between August and December 2011. The applicant therefore did not receive a decision that took her situation at the time into account.

Position of the respondent

[27] The respondent submits that there was no violation of the principles of natural justice on the part of the Agency. Although there was a delay between the Agency's decision and when it was communicated to the applicant, the applicant has not shown how the situation in Côte d'Ivoire or

her personal situations had changed in the interim. The applicant has not alleged any actual prejudice arising from the delay or offered any evidence to show that the time that elapsed was unreasonable. She had the benefit of four additional months in Canada and could have updated her PRRA application or made a new application if she thought it necessary.

Analysis

[28] To establish a violation of the principles of natural justice, the applicant had to show that the time gap was unreasonable and how it caused her actual prejudice (*Gelaw v Canada (Minister of Citizenship and Immigration*), 2010 FC 1120 at paragraph 16, [2010] FCJ 1398; *Qazi v Canada (Minister of Citizenship and Immigration*), 2005 FC 1667 at paragraph 16, [2005] FCJ 2069 (*Qazi*)). The applicant, on the contrary, has not explained how her situation or the situation in Côte d'Ivoire changed during that period. I agree with the respondent that the applicant could have used that time to update her application or make a new PRRA application if changes had occurred (see *Qazi*, above at paragraph 15), which she did not do. Today, she is not asserting any actual prejudice she may have suffered as a result of the delay, and so this Court cannot conclude that she was denied the procedural fairness to which she was entitled.

CONCLUSION

[29] I am therefore of the opinion that the applicant has not demonstrated reviewable error by the Agency that would justify intervention by this Court, nor has she identified any breaches of the principles of natural justice and procedure fairness on the part of the Agency that otherwise tainted the legality of the impugned decision. In addition, the decision of the Agency falls "within a range

of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47). Intervention by this Court is not warranted.

[30] The parties agree that this case does not raise any question for certification. The Court is also of that view.

JUDGMENT

THE COURT ORDERS THAT:

1. the application for judicial review is dismissed; and
2. the case raises no question for certification.

"Jocelyne Gagné"
Judge

Certified true translation

Daniela Guglietta, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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