

Date: 20090115

Docket: IMM-360-08

Citation: 2009 FC 38

Montréal, Quebec, January 15, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

ABDULLAH MOHAMMED ALEZIRI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) of the decision of an immigration officer dated December 6, 2007, dismissing the applicant's pre-removal risk assessment (PRRA) application.

I. Overview

[2] The applicant, a citizen of Saudi Arabia, arrived in Canada on a student visa. A year later, he made a refugee claim which was denied. A challenge of that decision was denied leave. The applicant then applied for a pre-removal risk assessment (PRRA) on the same grounds as his

refugee claim. That application was also refused, as the applicant failed to provide sufficient new evidence to permit a different conclusion than the one rendered on his refugee claim. The applicant now challenges that negative PRRA decision.

II. The Facts

[3] The applicant claims he began to study Christianity in Saudi Arabia, and that as a result he was harassed, detained and charged by the Saudi religious police. The applicant was baptized in Canada on March 19, 2006, one day prior to his hearing before the Refugee Protection Division (RPD). The hearing was adjourned and further written submissions were allowed but never submitted by the applicant's counsel who never received the documentary evidence the applicant had the responsibility to provide.

[4] The applicant states that he was advised by his counsel the day before the hearing to obtain a certificate confirming he had been baptized; but the applicant claims he was unable to obtain his certificate of baptism before April 23, 2006, when he alleges to have immediately contacted his counsel's office by phone requesting an appointment to bring him the certificate. This message and other post-hearing telephone messages left by the applicant with his counsel's office went unanswered.

[5] His refugee claim was denied on May 9, 2006 without the certificate of baptism having been produced. In its decision, the RPD notes with respect to the applicant's conversion to Christianity that "[t]he claimant gave very confusing testimony" and that "[w]hile [he] may now regularly attend

a church, [...] there is no credible or trustworthy evidence to support the conclusion he has converted to Christianity [...]. The claimant may have a “real interest” in studying Christianity but I am unable to accept, on a balance of probabilities, that claimant’s interest is motivated by faith”. Leave for judicial review of this decision was refused by this Court on November 27, 2006.

[6] The applicant then applied for a PRRA. His application included as new evidence his certificate of baptism which was refused by the PRRA officer because it should and could have been submitted before the RPD before its decision.

[7] The PRRA decision of December 6, 2007, is now impugned by the present application for judicial review. In support of his PRRA application, the applicant submits fearing that he will be severely persecuted upon his return to Saudi Arabia as a result of his conversion to Christianity.

III. The Impugned PRRA Decision

[8] The applicant’s PRRA application is based on the same grounds as his refugee claim. The PRRA officer based his adverse finding on the following:

1. The RPD found the applicant not to be a refugee as it found him not to be credible nor that he was a genuine Christian convert.
2. The applicant presented three documents as new evidence. None of these documents fit the definition of new evidence in section 113 of the *IRPA*. The first documents were already considered by the RPD. The second document predated the RPD hearing and no

reasonable explanation was provided as to why it was not previously available. In any event, the second document, a hospital report, did not contain any detail which would give it any probative value.

The third document, a certificate of baptism, was to have been submitted directly following the RPD hearing but was not. No reasonable explanation was provided as to why it was not previously submitted. In any event, even if considered as new evidence, the certificate of baptism alone was insufficient to overcome the significant credibility concerns of the RPD.

3. The documentary evidence on country conditions provided by the applicant does not show that conditions have worsened in Saudi Arabia since the applicant's RPD hearing.
4. The US Department of State Report (US DOS) indicates that Christians are free to practice their religion in Saudi Arabia and that no Muslim citizen who converted to Christianity was prosecuted for apostasy in years.

[9] Finally, the PRRA officer concluded that he did not believe that the applicant would face more than a mere possibility of persecution on any of the convention grounds, and that it was unlikely that he would face a risk of torture or a risk to life or a risk of cruel and unusual treatment or punishment.

IV. Issues

[10] The present application raises the following issues:

1. Did the PRRA officer err in his determination of “new evidence” pursuant to s. 113(a) of the *IRPA*?
2. Did the PRRA officer err in fact and law in his assessment of the applicant’s “*sur place*” claim?
3. Did the PRRA officer misconstrue the evidence before him and base his determination on irrelevant considerations?

V. Analysis

Standard of Review

[11] The present case involves the application of law to a situation of fact only. The appropriate standard of review here is therefore reasonableness. The question at issue falls within the expertise of the PRRA officer and as a result deference is owed to him (*Dunsmuir v. New Brunswick*, 2008 SCC 9). The Court should not intervene unless the PRRA officer’s decision does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at paragraph 47).

New Evidence

[12] The applicant argues that the certificate of baptism should be considered new evidence since his former counsel was responsible for the applicant’s baptismal certificate not being filed before

the RPD. The applicant alleges that the negligence of his former incompetent counsel constitutes a breach of natural justice.

[13] The problem with this reasoning is that it is the applicant who had undertaken to obtain and remit his certificate of baptism, not his lawyer. The applicant may have very well waited for a reply of his counsel to his telephone messages, but his obligation never ceased and he never delivered his certificate of baptism on time either to his counsel or the RPD, and this although he knew then that the RPD was expecting this certificate before rendering its decision. The certificate of baptism was not admitted as new evidence by the PRRA officer because the applicant did not provide him with a reasonable explanation as to why his certificate of baptism was not previously placed before the RPD on time.

[14] Furthermore, the Court notes that there was no mention of his counsel's negligence in the applicant's PRRA submissions; therefore, the PRRA officer should not be faulted for not considering submissions that were not before him. This is the first instance where allegations of negligence on the part of applicant's previous counsel are alleged. There was no acceptable explanation for the delay in providing the baptismal certificate, or allegations of the negligence of the applicant's former counsel prior to this application for judicial review. The PRRA officer's decision not to admit the certificate on the basis that it was not new, was not unreasonable. But even if the baptismal certificate had been admitted, the PRRA officer held that this would not have made a difference in his decision; in the context of this case, the Court does not see why this additional conclusion is unreasonable.

[15] With respect to the negative credibility findings of the RPD, the applicant does not characterize the decision correctly in stating that it turned on the lack of objective proof of conversion. While that was one finding, there were many more negative findings including many inconsistencies between the applicant's PIF and his oral testimony, parts of the oral testimony that the RPD found to be unlikely or inconsistent, and discordance between the submissions that there were charges against him in Saudi Arabia when he had travelled to Canada on a passport with a visa. The PRRA officer was not unreasonable in deciding that even if the baptismal certificate were admitted, it would not have been sufficient to make a difference in the finding of negative credibility against the applicant.

Risk

[16] The weighing of evidence was well within the discretion of the PRRA officer; therefore, the Court will not interfere with the PRRA officer's finding that the baptismal certificate, even if admitted as new evidence, was insufficient to overcome the RPD's negative credibility findings. The PRRA officer explained why this was not sufficient evidence in that it did not present any further evidence of genuine conversion, of attendance at Christian services or of participation within the Christian community. This finding should also be read in conjunction with the RPD's other reasons for finding the applicant not to be credible.

[17] No "*sur place*" claims were present or necessary in this case since the applicant claimed to have begun studying Christianity before he came to Canada, and that he did not present credible evidence of genuine conversion since.

[18] Whether the PRRA officer applied or not the correct test for section 97 of the *IRPA*, when he found that the applicant did not face any objective risk, becomes irrelevant for the case at hand from the moment this judicial review fails on the issue of credibility.

[19] True the applicant is not satisfied and disagrees with the PRRA officer's findings in this regard. However, the PRRA officer as the trier of fact was entitled to weigh the documentary evidence and come to his own conclusion. The applicant having failed to convince the Court that the impugned decision is not defensible in respect of the facts and law, the Court does not see any valid reason to intervene.

[20] Therefore, the application to review the PRRA officer's decision will be dismissed, and the Court agrees with the parties that there is no important question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS THE COURT dismisses the application.

“Maurice E. Lagacé”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-360-08

STYLE OF CAUSE: ABDULLAH MOHAMMED ALEZIRI v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 3, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** LAGACÉ D.J.

DATED: January 15, 2009

APPEARANCES:

D. Clifford Luyt FOR THE APPLICANT

Judy Michaely FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario