Date: 20060919

Docket: IMM-2091-06

Citation: 2006 FC 1125

Ottawa, Ontario, September 19, 2006

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SALEH OMAR OSAMA FI

Applicant

and

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision rendered by a Pre-Removal Risk Assessment Officer (PRRA officer) on March 23, 2006, who rejected the applicant's application for protection made under section 112(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[2] In the case at bar, the applicant's claim for protection was based both on his Palestinian "nationality" (or membership in a particular social group, that is, as a relatively young male Palestinian from the Israeli-occupied West Bank) and imputed political opinion.

[3] The application for protection was dismissed by the PRRA officer.

[4] The PRRA officer recognizes that the documentary evidence clearly supports the existence of an "objective fear" felt by the Palestinian population in the West Bank territories occupied by the army of Israel. In this regard, the PRRA officer notes that the extensive control over the Palestinian population has led to severe restrictions on its freedom of movement. Closure and curfews on towns and villages have also seriously obstructed Palestinian economic activity. Moreover, houses are destroyed for alleged reasons of security or in the context of territorial expansion. That being said, the denial of protection in this case is essentially based on the fact that the applicant has not demonstrated to the satisfaction of the PRRA officer that there is a "personalized" risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment.

[5] In support of his finding that there is not a "personalized" risk, the PRRA officer notes that the applicant is not a Palestinian militant leader who would be at risk from "targeted killings". In coming to this conclusion, the PRRA officer has considered the allegation that the applicant was previously arrested and detained by Israeli authorities, first in 1988 following his participation in the first Intifada, and then in 2000 after his return from the United Arab Emirates, where he had resided for the previous 10 years. The PRRA officer has also considered the new evidence of persecution submitted by the applicant, who relies on the fact that in 2003, the applicant's family house was destroyed and the family's land was confiscated by the Israeli army. The PRRA officer accepts that the acts in question occurred. He nevertheless finds that the reasons or motives for the reported destruction of the applicant's family home and the confiscation of the family's land have not been satisfactorily established. The applicant also alleged that some members of his family were beaten by Israeli authorities in 2003, but there is no credibility finding with respect to this allegation, which is supported by a letter of the mayor of Beit-Lid written on Palestinian National Authority (PNA) letterhead.

[6] Where an impugned PRRA decision is considered globally and as a whole, the applicable standard of review should be reasonableness simpliciter. That being said, the interpretation of a particular section of IRPA should be assessed on a correctness basis, while a particular finding of fact made by the PRRA officer should not be disturbed unless it was made in a perverse or capricious manner or without regard to the evidence before the PRRA officer (*Figurado v. Canada (Solicitor General) (F.C.)*, [2005] 4 F.C.R. 387, 2005 FC 347 at para. 51; *Harb v. Canada (Minister of Citizenship and Immigration)* (2003), 302 N.R. 178, 2003 FCA 39 at para. 14.

[7] The present application must be allowed.

[8] First, the PRRA officer violated the applicant's right to procedural fairness in the determination of his application for protection. The principles mentioned by the Federal Court of Appeal in *Mancia v. Canada (Minister of Citizenship and Immigration)(C.A.)*, [1998] 3 F.C. 461 at para. 27, are applicable here. It is apparent that the PRRA officer consulted relevant documentary extrinsic evidence found on the internet, upon which the applicant was never given an opportunity to comment. Such unilateral use of the internet is unfair (*Zamora v. Canada (Minister of Citizenship and Immigration)* (2004), 260 F.T.R. 155, 2004 FC 1414 at paras. 17-18).

[9] In particular, the use of information from the Wikipedia website is highly questionable, as the reliability of its sources has not been demonstrated to the Court. Moreover, I note that the number of internet documents consulted by the PRRA officer is important. Of these documents, only the 2005 Amnesty International Country Report and the U.S. Department of State Country Reports on Human Rights Practices – 2005, are among the standard documents found in the Immigration and Refugee Board (IRB) Documentation Centres. (There is also a Country Report from 2004.)

[10] The PRRA officer relied on other documents originating from public sources that related to general country conditions and that became available and accessible after the filing of the applicant's submissions. In view of the above finding, it is not necessary to determine whether or not they were "novel" and "significant" in light of the *Mancia* test (above, at para. 27).

[11] Second, the PRRA officer clearly misunderstood the different and distinct applicable tests under sections 96 and 97 of IRPA respectively. He states in the impugned decision:

> Afin de se prévaloir de la protection édictée par les articles 96 et 97 de la LIPR, tout demandeur doit démontrer l'existence d'une crainte objective vérifiable ainsi que d'un risque personnalisé.

[12] Section 96 of IRPA refers to "a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion".

[13] To satisfy the definition of "Convention refugee" found in section 96 of IRPA, the claimant must show that he meets all the components of this definition, beginning with the existence of both a subjective and objective fear of persecution. The claimant must also establish a link between himself and persecution for a Convention reason; he must be targeted for persecution in some way, either "personally" or "collectively" (*Rizkalla v. Canada (Minister of Employment and Immigration)* (1992), 156 N.R. 1 (F.C.A.).

[14] That being said, it is trite law that persecution under section 96 of IRPA can be established by examining the treatment of similarly situated individuals and that the claimant does not have to show that he has himself been persecuted in the past or would himself be persecuted in the future. In the context of claims derived from situations of generalized oppression, the issue is not whether the claimant is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then he is properly considered to be a Convention refugee (*Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250 at 259 (F.C.A.); *Ali v. Canada (Minister of Citizenship and Immigration)* (1999), 235 N.R. 316.

[15] In *Salibian*, above, the decision under review related to a refugee claim made by a citizen of Lebanon. It also appeared that the plaintiff had been the subject of various incidents connected with the fact of being Armenian and a Christian. Despite this evidence, the IRB had dismissed the claim on the ground that the plaintiff was "a victim in the same way as all other Lebanese citizens are". The Federal Court of Appeal concluded that the IRB had both erred in law and made an arbitrary and capricious conclusion of fact. With respect to the issue of law, Justice Robert Décary clearly indicated that a situation of "civil war" in a given country "is not an obstacle to a claim provided the fear felt is not that felt indiscriminately by all citizens as a consequence of the civil war, but that felt by the applicant himself, by a group with which he is associated, or, even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]" (*Salibian*, above, at 258).

[16] Therefore, a refugee claim that arises in a context of widespread violence in a given country must meet the same conditions as any other claim. The content of those conditions is no different for such a claim, nor is the claim subject to extra requirements or disqualifications. Unlike section 97 of IRPA, there is no requirement under section 96 of IRPA that the applicant show that his fear of persecution is "personalized" if he can otherwise demonstrate that it is "felt by a group with which he is associated, or even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]" (*Salibian*, above, at 258).

[17] The above determinations are essentially factual. Once that nexus is established, whether the fear of persecution is personalized or generalized, the applicant is to be accorded the status of a Convention refugee under section 96 of IRPA.

[18] According to the documentary evidence, in the West Bank, there are civilians who are Palestinian or Israeli. In the U.S. Department of State Country Reports on Human Rights Practices – 2005, it is noted that "Palestinians in the occupied territories are not citizens of the country and do not enjoy the rights of citizens, even if living in areas under full Israeli authority or arrested in Israel".

[19] In one of the positive determinations of Convention refugee status made by the IRB in the case of Palestinians, produced as part of the tribunal's record, the "general consequences of civil war" were described as being "losing one's life by accident, loosing a limb by treading on a land mine, lack of food, water, electricity, etc." On the other hand, "if one of the warring parties singles out a person or group of persons for reasons of race, political opinion or one of the other elements enumerated in the refugee definition and subjects it to serious human rights violations this clearly constitutes persecution" (Chairperson's Guidelines on Refugee Claims related to Civilian Non-Combatants).

[20] I express no opinion with respect to the qualification of the particular situation in the West Bank and the acts of violence against Palestinians allegedly committed by the Israeli army in the occupied territories. This is a matter to be addressed exclusively by the IRB, or as the case may be, by the PRRA officer. Moreover, it is fully recognized by this Court that a PRRA decision is not an appeal of

an IRB decision; however, new facts require that the jurisdiction of the PRRA officer be properly understood and executed. This signifies that the fear of persecution on a Convention ground and risk evaluation must both be analyzed to ensure that the PRRA decision's outcome is affected in substance, not simply cosmetically.

[21] That being said, I note that in the impugned decision, there is no general finding of non-credibility and there is no separate "subjective fear" analysis done under section 96 of IRPA in the specific context of the new facts alleged by the applicant in support of his application for protection (*i.e.* the destruction of the applicant's family home and the confiscation of the family's land, as well as the beating of certain family members by the Israeli army in 2003).

[22] It is also apparent that the PRRA officer failed to determine under section 96 of IRPA whether the applicant is a member of a particular group of persons and whether the acts of violence against Palestinians and other members of the applicant's family, which constitute the basis for the applicant's fear, may amount to "persecution" in the circumstances. Instead, the PRRA officer more or less asked himself whether the applicant faced distinct or more serious risks than the Palestinian population at large, and thus avoided analyzing the nexus between the alleged acts of persecution and the applicant's nationality or membership in a particular social group. This is an error of law.

[23] Apart from generalizations, the PRRA officer did not make any finding with respect to human rights violations occurring in the West Bank except to state that the Israeli authorities will invoke security reasons. Indeed, according to the documentary evidence submitted by the applicant, which is not specifically commented upon by the PRRA officer, there are allegations of increased repression, disproportionate military force being used and collective punishment and there are many reports of the Israeli government detaining Palestinians without charge. The applicant alleges in this regard that the evidence before the PRRA officer clearly establishes that home demolitions are often carried out against the Palestinian civilian population for punitive motives, as part of Israeli authorities' practice of collective punishment, an allegation that I do not need to comment upon here, but that was certainly relevant with respect to the fear of persecution alleged by the applicant.

[24] The PRRA officer acted arbitrarily or in a capricious manner in discarding the reasons or motives advanced by the applicant for the destruction of the applicant's family home and the confiscation of his land. The PRRA officer found that the letters from the PNA did not satisfactorily establish the reasons or motives for these acts. However, no rationale is provided for this particular finding. Moreover, the fact that the applicant's family was beaten by Israeli authorities, a fact that was never disputed by the PRRA officer, was certainly a relevant consideration in the assessment of the applicant's risk of persecution. That the assessment of the risk of persecution was carried out in abstraction of this crucial fact is sufficient to render that determination patently unreasonable (*Hasan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1537 at paras. 17-18).

[25] Therefore, in view of the breach of the duty of fairness, the errors of law and the capricious findings mentioned above, the conclusion reached in this case by the PRRA officer is unreasonable and a new assessment must take place. That being

said, I also conclude that there is not a reasonable apprehension of bias in this case, as alleged by the applicant. (The applicant has submitted in this regard that the impugned decision was the third negative PRRA assessment after the dismissal of the applicant's claim by the IRB in 2002, and has suggested that in view of the perfunctory analysis made in the impugned decision, such conduct gives rise to a reasonable apprehension of bias.)

[26] In conclusion, the impugned decision must be set aside and the matter referred back for re-determination by another PRRA officer. No question of general importance was raised by counsel.

ORDER

The application for judicial review is allowed. The decision rendered by the PRRA officer is set aside and the matter is referred back for re-determination by a different PRRA officer. No question of general importance is certified.

"Luc Martineau"
Judge