Federal Court  Cour fédérale

Date: 20150106

Docket: IMM-1280-14

Citation: 2015 FC 9

Ottawa, Ontario, January 6, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

VIKTORIA CSANYANE NOVAK
NORBERT CSANYA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

UPON 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 made on January 23, 2014 by the Refugee Protection Division of the Immigration and Refugee Board (the RPD), wherein the RPD rejected the applicants' claim for refugee protection under sections 96 and 97 of the Act;

AND UPON considering the written and oral submissions of the parties and reviewing the RPD's Certified Record;

AND UPON considering that the applicants are mother (Ms Novak) and son (Norbert) and are citizens of Hungary;

AND UPON considering that they submitted a refugee protection claim on November 18, 2011 along with Mr Norbert Csanya, Ms Novak ex-husband and Norbert's father alleging discrimination based on Mr Norbert Csanya's Roma ethnicity;

AND UPON considering that Mr Norbert Csanya abandoned his refugee protection claim in June 2012 following the couple's separation and that he returned to Hungary and that Ms Novak then amended her refugee claim to allege fear for her life and that of Norbert if they were to return to Mr Norbert Csanya in Hungary due to the domestic violence and the abuse they were victims of at the hands of Mr. Norbert Csanya;

AND UPON considering that on January 23, 2014, the RPD rejected the applicants' refugee claim based on Ms Novak's lack of credibility and failure to rebut the presumption of state protection in Hungary;

AND UPON considering that the issue raised by this application is whether the RPD, in concluding as it did, committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7;

AND UPON finding that, even if I were to rule that the RPD was unreasonable in its assessment of Ms Novak's credibility, the applicants' failure to rebut the presumption of state protection was fatal to their refugee protection claim and that, as a result, the application for judicial review will be dismissed for the following reasons:

[1] Issues relating to state protection are reviewable on a standard of reasonableness as such issues are questions of mixed fact and law which, given the RPD's expertise on this subject matter, attract deference (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 44, 59, [2009] 1 SCR 339; *The Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94, [2008] 4 FCR 636, at para 36; *Romero Davila v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1116, at para 26; *Gulyas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 254, 429 FTR 22, at para 38).

[2] The applicants maintain that the RPD used the wrong test to assess whether state protection was available for them, focusing its analysis on the efforts made to protect victims of domestic violence rather than the effectiveness of Hungary's protection.

[3] However, as the Supreme Court of Canada stated in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, refugee protection is meant to be a form a surrogate protection, invoked only in situations where a refugee claimant has unsuccessfully sought the protection of his home state (*Ward*, at para 18). This means that, absent a complete breakdown of the state apparatus, it is presumed that state protection is available for a refugee claimant and that to rebut this presumption, the claimant must provide clear and convincing evidence of the state's inability or willingness to provide adequate – not perfect - protection (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 43 and 44; *Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636 at para 19; *Ruszo v Canada*

(Minister of Citizenship and Immigration), 2013 FC 1004, at para 29; *Salamon v Canada (Minister of Citizenship and Immigration), 2013 FC 582*, at para 5; *Ward*, above at para 52).

[4] In this case, the alleged acts of violence towards Ms Novak occurred both before she left Hungary for Canada and while she was living with her ex-husband, Mr. Norbert Csanya, in Canada. The evidence is that Ms Novak did not attempt to access state protection from her ex-husband in Hungary as she believes that domestic abuse is not taken seriously in that country. However, the evidence adduced needed to provide a direct, relevant and compelling explanation as to why she failed to make a single attempt to seek protection from the police. Furthermore, she had to demonstrate that it was objectively unreasonable for her to seek the protection of the state based on her fear of persecution (*Ruszo*, above).

[5] Whilst it is true, as acknowledged by the RPD, that the jurisprudence and the Gender Guidelines are to the effect that a woman victim of domestic abuse can be reluctant to seek protection from her home state, a legal burden to do so remains and the applicants needed to establish and prove this fear, explaining the "unwillingness" to engage with the state (*Mares v Canada (Minister of Citizenship and Immigration)*, 2013 FC 297 at para 43; *Yang v Canada (Minister of Citizenship and Immigration)*, 2012 FC 930, 416 FTR 110 at paras 25 and 83). Furthermore, as the RPD reasonably concluded that Ms Novak had not taken all objectively reasonable steps to avail herself of state protection, the error in the enunciation of the state protection test, assuming there was one, would not be enough for this Court to overturn its decision. As the Chief Justice of this Court said in *Ruszo*, above, at para 28:

> Nevertheless, the RPD's misunderstanding or misapplication of the "adequate state protection" test is not necessarily fatal in cases

> where, as here, the RPD also reasonably concluded on other grounds that the Applicants had failed to rebut the presumption of adequate state protection with "clear and convincing evidence of the state's inability to protect [them]." In this case, those grounds were the failure of the Applicants to demonstrate that they had taken all objectively reasonable steps to avail themselves of state protection, and to provide compelling or persuasive evidence to explain their failure to do more than make a single attempt to seek protection from the police. As discussed below, it is clear from various parts of the decision that these were very important considerations for the RPD, and, indeed, provided an alternate basis for the RPD's decision. Having regard to the RPD's determinations on these points, its decision was not unreasonable.

[6] Here, the RPD clearly expressed its concern with the evidence adduced by the applicants being solely subjective and not objectively establishing their reluctance to engage with the state (RPD's decision, at para 27). Indeed, it is clear, from various parts of the decision, that it is the applicants' failure to provide evidence of their reluctance to engage the state that was fatal to their claim and not, as the applicants contends, the use of the wrong legal test. In fact, the RPD's approach to the state protection analysis is fully consistent with the above principle that refugee protection is meant to be a form a surrogate protection (*Ward*, above, at para 18).

[7] The applicants also submit that the RPD selectively relied on the documentary evidence, focusing exclusively on the efforts made by Hungary and ignoring the evidence that these efforts are ineffective for victims of domestic violence.

[8] This argument cannot stand. The RPD assessed the evidence on domestic violence in Hungary and referred to it thoroughly in its decision. The RPD specifically acknowledged the inconsistencies in the documentary evidence adduced. Nevertheless, it is clear, from the RPD's reasons that it reached its conclusion that Hungary would be willing and capable of offering

protection based on the totality and entirety of the record before it, including the contradictory evidence referred to and provided by the applicants. As the Respondent points out, the RPD noted the efforts and actions undertaken by Hungary to address the situation of victims of domestic abuse in that country which would have made it reasonable for Ms Novak, who is of Hungarian ethnicity, to at least attempt to seek protection. The evidence before the RPD is that she did not do so. It was therefore reasonably open to the RPD, in my view, to conclude that the evidence on the ineffectiveness of state protection for victims of domestic violence in Hungary was not convincing and that Ms Novak had failed to rebut the presumption of state protection by making no attempts to seek that protection and by failing to provide a reasonable explanation as to why this was not done.

[9] As is well established, the role of this Court is not to interfere with factual conclusions reached by the RPD, nor is it to re-weight the evidence before it (*Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2003 FC 1225, [2004] 3 FCR 523 at para 102, *Selliah v Canada (Minister of Citizenship and Immigration)* 2004 FC 872, 256 FTR 53 at para 38; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No. 12 at para 59). As long as such conclusions fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court ought not to interfere with them (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, [2011] 3 SCR 708); *Dunsmuir*, above).

[10] For these reasons, I find that the RPD's finding on state protection and its assessment of the evidence on this issue falls within that range of possible, acceptable outcomes. Since this finding is fatal to the applicants' case, the application for judicial review is dismissed.

[11] Neither party has proposed a question of general importance. None will be certified.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Adela Crossley	FOR THE APPLICANTS
Alexis Singer	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Adela Crossley Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT