

Federal Court



Cour fédérale

Date: 20151126

Docket: IMM-2751-15

Citation: 2015 FC 1317

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, November 26, 2015

Present: The Honourable Mr. Justice Shore

BETWEEN:

NIKOLA PARMACEVIC

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, dated May 25, 2015, dismissing the

applicant's claim for protection as a refugee or a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

II. Facts

[2] The applicant, Nikola Parmacevic, 31 years old, is a citizen of Croatia. He alleged that he received death threats if he did not leave Croatia to return to Canada and make a refugee claim based on a fictional story provided by his persecutor.

[3] The applicant's problems allegedly began when he borrowed \$25,000 KN from a wealthy individual, Kristijan Gerhard, who apparently had connections with influential people in Croatia (police officers, government representatives, etc.). The applicant alleged that he reimbursed the sums due in accordance with the agreement, but Mr. Gerhard allegedly continued to swindle him, always asking for more money. The applicant, unable to meet his financial obligations, received a [TRANSLATION] "proposal" from Mr. Gerhard to make a refugee claim in Canada, work there and make monthly payments to Mr. Gerhard for a period of approximately three years so as to be released from the debt due. The applicant was told that if he refused to comply and claim refugee status in Canada, based on a fictional story that he was persecuted in Croatia because of his sexual orientation, he would be murdered. The applicant left Croatia on June 4, 2012, and arrived in Canada the following day. The applicant made a refugee claim on June 22, 2012, and his Basis of Claim form (original BoC) was received by the RPD on June 26, 2012.

[4] In his original BoC, the applicant affirmed that he was persecuted in Croatia because of his sexual orientation. But an amended Basis of Claim form (amended BoC) was submitted on

May 24, 2014, in which the applicant admitted that his story that he was persecuted in Croatia because of his sexual orientation is fabricated and that he was threatened with death and swindled by Mr. Gerhard. During his hearing on September 10, 2014, the applicant—representing himself—explained the reasons for which he lied in his original BoC. The RPD was informed on October 2, 2014, that the applicant had a new lawyer. Since the RPD member who heard the first hearing was not available, a *de novo* hearing into the file was ordered with a new member.

[5] In a decision dated May 25, 2015, the RPD found the applicant credible, believed his story that he had been persecuted in Croatia by Mr. Gerhard, that he received death threats and that he would risk being persecuted if he were to return to Croatia. However, the RPD found, after reviewing the documentary evidence, that the applicant had not rebutted the presumption of state protection in Croatia. Given this finding, the RPD did not review the question as to whether the applicant's risk is personalized.

III. Analysis

[6] The main issue before the Court is whether the RPD's decision is reasonable.

[7] The applicant alleged that the RPD disregarded the contradictory documentary evidence with respect to state protection in Croatia; and that the RPD should have examined whether the measures taken by the authorities in Croatia produced results (*Galogaza v Canada (Minister of Citizenship and Immigration)*, 2015 FC 407).

[8] As this is a question relating to the issue of state protection in Croatia, the RPD's findings to this effect must be reviewed on a standard of reasonableness (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 38; *Majlat v Canada (Minister of Citizenship and Immigration)*, 2014 FC 965 at para 9).

[9] For the following reasons, the Court found that the RPD's decision is reasonable.

[10] It is well established that it is not this Court's role to reassess the documentary evidence reviewed before the RPD, neither is it this Court's role to substitute its conclusions with respect to the documentary evidence for that of the RPD (*Paniagua v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1085 at para 8; *Orellana Ortega v Canada (Minister of Citizenship and Immigration)*, 2012 FC 611 at para 14). Furthermore, the mere fact that the RPD did not mention in its decision all the applicant's evidence does not mean that the RPD did not consider them in making its decision (*Velasquez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 109 at para 21).

[11] It appears from the RPD's decision that it conducted a detailed review of state protection in Croatia since it examined both the evidence in support of its conclusion and the evidence against it. In addition, the Court noted that the RPD was sensitive to the applicant's situation, but ultimately found that there was state protection for people in the same situation as the applicant in Croatia.

[12] Given that the RPD properly justified its decision, that it carefully examined the evidence contradicting its findings, that it showed that it is sensitive to the applicant's particular situation and the risks that he would encounter by returning to Croatia, it appears that the decision falls within the possible, acceptable outcomes. The Court may disagree with the decision-maker's conclusion with respect to state protection in Croatia, however, that is not the question; the question is whether the RPD's conclusions fall within the possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 at para 47). In this case, the answer is yes, thus the RPD's decision is reasonable.

IV. Conclusion

[13] The Court finds that the RPD's decision is reasonable. Therefore, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. There is no question of importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2751-15

STYLE OF CAUSE: NIKOLA PARMACEVIC v THE MINISTER OF
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APPEARANCES:

Claude Whalen

FOR THE APPLICANT

Andrea Shahin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Whalen
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT