

Federal Court



Cour fédérale

Date: 20160609

Docket: IMM-5666-15

Citation: 2016 FC 637

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 9, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

JASMIN PETROVIC

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Montréal, Quebec, on June 1, 2016.)

I. Nature of the Matter

[1] This is an application for judicial review of the decision rendered on November 27, 2015, by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) to deny Jasmin Petrovic (Mr. Petrovic) Convention refugee status and refuse to deem him a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, chapter 27 (the Act).

II. Background

[2] Mr. Petrovic was born on September 2, 1989, is a Croatian citizen and belongs to the Roma minority. He started school in Croatia. Because of the war, he and his family left Croatia for Germany, where he went to school from 1999 to 2003. In 2003, his family's application for protection in Germany was denied and they were forced to return to Croatia. When he returned to Croatia, Mr. Petrovic, age 14 at the time, apparently asked to continue his secondary education, but the principal of the school denied him access. Mr. Petrovic was therefore unable to complete his secondary studies and unable to find work in Croatia. He claims that in Croatia, he lived in a dilapidated area without water or electricity, and subsisted solely on his father's disability benefits. Mr. Petrovic also claims that he collected bottles and was sometimes struck and insulted by Croatians. At the hearing before the RPD, Mr. Petrovic said he could not go to downtown Darda, the village where he lived, without others spitting at him, beating him up or trying to hit him with their cars.

[3] He maintains that because of his Roma background, Croatians insulted, struck, mocked and attacked him. He was also harassed and arrested by police. He claims that he is not safe in Croatia because he belongs to the Roma national minority, and is afraid of returning there.

III. Impugned decision

[4] At the hearing before the RPD, Mr. Petrovic indicated that the claims for refugee protection made by his cousin, Sinisa Petrovic, and his cousin's spouse, Renata Bogdan, both Roma people from Croatia, were granted by the RPD (hereinafter the "Petrovic-Bogdan decision"). In its November 27, 2015 decision, the RPD found that the details of these claims for refugee protection (Petrovic-Bogdan) had not been entered into evidence, and that in any case, it was not bound to decisions rendered in other cases, since each claim must be analyzed individually.

[5] In its decision, the RPD denied Mr. Petrovic's claim and concluded that there was not a serious possibility that he would be persecuted in Croatia or that, based on the balance of probabilities, he would be personally subjected to a danger of torture or a risk to his life or a risk of cruel and unusual treatment or punishment in Croatia. The RPD also concluded that Mr. Petrovic did not establish, based on the balance of probabilities, that he would be denied his fundamental rights such that he would have a reasonable fear of persecution, or that he would face one of the prejudices listed in section 97 of the Act.

[6] In concluding that Mr. Petrovic's situation does not amount to persecution within the meaning of the Convention, the RPD pointed out that the evidence on file shows that the

Croatian government has put in place action plans and measures, as well as invested considerable sums of money to increase enrolment of young Roma people in academic institutions in Croatia. To support its conclusion, the RPD referred to several sources, such as the Office of the United Nations High Commissioner for Human Rights February 2015 report, Croatia's fourth report to the Council of Europe in accordance with the Framework Convention for the Protection of National Minorities, and a Radio-Canada report on the Roma people in Croatia. The RPD maintained that although the Radio-Canada report shows that the lives of the Roma people in Croatia are not easy, it also shows that education and professional training is available to young and old alike, and that Roma people are increasingly able to freely express their ethnicity in Croatia. After taking into consideration Mr. Petrovic's limited level of education, the RPD concluded that, like the young people interviewed in the Radio-Canada report, he could also benefit from an educational program offered in Croatia.

IV. Standard of review

[7] Although Mr. Petrovic claims that the RPD did not comply with the *Refugee Protection Division Rules* SOR/2012-256 (the Rules), specifically sections 42 to 44, I find that the standard of review for all of the issues before me is the standard of reasonableness. Several of the arguments rely on questions of mixed fact and law. Furthermore, reviewing courts must show judicial deference when a tribunal interprets its enabling statute and legislation, as acknowledged in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47 [*Dunsmuir*]. According to the standard of reasonableness, the Court will intervene only if the decision is not justified, transparent and intelligible, or if it 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).

V. Analysis

[8] First, Mr. Petrovic argues that the RPD did not comply with section 43 of the Rules in that it failed to admit the Petrovic-Bogdan decision as evidence. He maintains that the RPD received the decision on November 24, 2015, and because the decision in this case was rendered on November 27, 2015, the RPD had not yet definitively ruled on the case and was not *functus officio*.

[9] I agree that the RPD was not *functus officio* when it received the Petrovic-Bogdan decision; however, I do not agree with Mr. Petrovic's claim that the RPD did not comply with subsection 43(1) of the Rules. Subsection 43(1) indicates that Parliament is referring to evidence that could be admitted by the tribunal. In French, the subsection reads as follows:

43 (1) La partie qui souhaite transmettre à la Section après l'audience, mais avant qu'une décision prenne effet, un document à admettre en preuve, lui présente une demande à cet effet.

[10] The English version of the same subsection reads:

43 (1) A party who wants to provide a document as evidence after a hearing but before a decision takes effect must make an application to the Division.

[11] Mr. Petrovic had the right to submit case law to the RPD for consideration, and did so. However, I do not find that a copy of a tribunal decision constitutes “evidence” under

subsection 43(1) of the Rules for the following reasons. First, the RPD is not required to analyze each piece of case law, as it would material evidence. Second, with the presentation of new evidence, the opposing party is generally given the opportunity to make submissions on the admissibility of said evidence, including cross-examination. It is difficult to imagine how anyone could oppose the admissibility of a piece of case law (decision). Lastly, if Parliament wanted previous RPD decisions to constitute evidence under section 43 of the Rules, I believe it would have explicitly indicated so. I therefore find that the other factors listed in subsections 43(2) and (3) of the Rules do not apply in this case.

[12] My second point regarding the Petrovic-Bogdan decision is as follows. It is well established in case law that the RPD is not bound by the decisions of other members or panels of the same tribunal. Claims are considered individually and on their own merit. Several decisions, including *Rahmatizadeh v. Canada (Minister of Employment and Immigration)*, 48 ACWS (3d) 1427, [1994] FCJ No 578 at paragraph 8 and *Arias Garcia v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 310, [2006] FCJ No 394 at paragraph 38, support the position that it was not unreasonable for the RPD not to take the Petrovic-Bogdan decision into consideration in its analysis.

[13] In my opinion, the RPD had the right to render a decision in this case without being bound by the Petrovic-Bogdan decision. However, the circumstances in this case show a clear similarity between the facts alleged in Mr. Petrovic's claim and the Petrovic-Bogdan decision. As a side note, perhaps the RPD should have analyzed the similarities and explained why, based on the similarities or differences, Mr. Petrovic's claim should be rejected. In *Domtar Inc. v.*

Quebec (Commission d'appel en matière de lésions professionnelles), [1993] 2 SCR 756 and *Jones' Masonry Ltd. v. Labourers' International Union of North America, Local 900*, 2013 NBCA 50, [2013] AN-B No. 231, the administrative tribunals referred to their own decisions (and those of administrative tribunals of the same level) on similar cases, and applied the same principles to the facts of the case at hand. In this case, the RPD not only ignored the Petrovic-Bogdan decision in its analysis, it gave no indication that it was in possession of said decision, even though Mr. Petrovic had submitted it to the RPD on November 24, that is, three days before it gave its reasons. Although a tribunal is not bound by the decisions of other members or panels of the same tribunal, there is nothing to stop it from familiarizing itself with the content of the decisions, at least for information purposes, particularly when they are brought to its attention. It begs the question: does consistency in decision making require that the RPD conduct such an analysis, and, should it fail to do so, does that give rise to judicial review? In any event, I do not find it necessary to rule on this issue in this case for the reasons that follow.

[14] On another note, Mr. Petrovic states that given the abundant evidence available and his credibility, which was not called into question, it was unreasonable to conclude that the cumulative discrimination did not amount to persecution. In that regard, Mr. Petrovic maintains that the RPD made a mistake in stressing the fact that the government was taking steps to fight discrimination in Croatia, rather than focusing on the documentary evidence corroborating the allegations in his claim for refugee protection. In this case, the RPD had contradictory evidence on the current situation of the Roma people in Croatia in terms of discrimination and access to education. The jurisprudence is clear that administrative tribunals need not refer to every piece of evidence (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 FTR 35,

[1998] FCJ No 1425 at paragraph 16). Furthermore, the existence of contradictory evidence will not necessarily render a decision unreasonable (*Voloshyn v. Canada (Citizenship and Immigration)*, 2016 FC 480, [2016] FCJ No 444 at paragraph 25; *Herrera Andrade v. Canada (Citizenship and Immigration)*, 2012 FC 1490, [2012] FCJ No 1594). In this case, I find that the RPD's decision took into consideration all of the available documentary evidence before drawing its conclusions. I am therefore of the opinion that the RPD's analysis of the documentary evidence on the Roma people's access to education in Croatia was reasonable under the circumstances. Although an applicant might disagree with the inferences made by an administrative tribunal, it is not up to this Court to re-evaluate the evidence on record (*Cina v. Canada (Citizenship and Immigration)*, 2011 FC 635, [2011] FCJ No 817 at paragraph 67; *Castrañeda v. Canada (Citizenship and Immigration)*, 2010 FC 393, [2010] FCJ No 437 at paragraph 14).

[15] I now arrive at what I feel is the determining factor in this case, and one that warrants this Court's intervention. At the hearing, I raised a significant concern that had not been put forward by the parties. I have to say that I greatly appreciated the Minister's counsel's candid answer. In my opinion, the RPD did not analyze either the cumulative nature of the acts of persecution or the other allegations raised by Mr. Petrovic, allegations that do not relate to a lack of access to education. The RPD's analysis focuses on only one discriminatory action alleged by Mr. Petrovic: access to education. Although that is a crucial factor to take into consideration in the analysis, the fact remains that Mr. Petrovic alleged in his Personal Information Form and his testimony at the hearing that he was the victim of violence at the hands of Croatians because of his ethnicity. However, the RPD did not mention or consider the acts of violence and harassment

alleged by Mr. Petrovic, nor did it analyze his allegation of police misconduct. In my mind, these allegations were specific to his situation. In response to the question of whether the discrimination alleged by Mr. Petrovic constitutes persecution, in paragraph 26 of its decision, the RPD concluded:

[TRANSLATION]

The tribunal considered whether the discrimination the claimant says he has been subjected to cumulatively constitutes persecution, and it determined that the discrimination in this case does not amount to persecution.

[16] I find such a simple conclusion insufficient under the circumstances. It is not enough for the RPD to say that it simply evaluated the discriminatory acts cumulatively without explaining in its analysis why, cumulatively, the acts do not constitute persecution (*Mete v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 840, [2005] FCJ No 1050. The RPD commits a reviewable error when it fails to evaluate the cumulative nature of the discriminatory acts alleged by a claimant (*Bobrik v. Canada (Minister of Citizenship and Immigration)*, 85 FTR 13, [1994] FCJ No 1364 at paragraph 22).

[17] A refugee protection claimant has the right to know why the acts of violence or discrimination to which he was subjected do not constitute persecution, particularly when, as in this case, his credibility is not in question (*Balog v. Canada (Citizenship and Immigration)*, 2015 FC 414, [2015] FCJ No 396 at paragraph 15). In this case, the RPD did not analyze the factual context of Mr. Petrovic's claim for refugee protection, that is, the personal information specific to his situation. In *Canada (Citizenship and Immigration) v. Munderere*, 2008 FCA 84, [2008] FCJ No 395, the Federal Court of Appeal stressed the importance of conducting an

analysis based on the context of the claim for refugee protection, as well as the cumulative nature of the incidents. At paragraph 42, it states:

These authorities make clear that the Board is duty bound to consider all of the events which may have an impact on a claimant's claim that he or she has a well founded fear of persecution, including those events which, if taken individually, do not amount to persecution, but if taken together, may justify a claim to a well founded fear of persecution. . . .

VI. Conclusion

[18] In my opinion, the RPD conducted a balanced, reasonable analysis of the complaints related to access to education. However, the RPD's analysis of Mr. Petrovic's other allegations is not reasonable under the circumstances. This unreasonable analysis of persecution means that the RPD's decision is not justified, transparent and intelligible and does not fall within a range of reasonable outcomes that are defensible in respect of the facts and law (*Dunsmuir*, above at paragraph 47). I therefore find that this Court's intervention is justified and that the application for judicial review must be allowed.

JUDGMENT

THE COURT:

ALLOWS the application for judicial review, without costs, and refers the case back to another member of the RPD for reconsideration. There is no question to be certified.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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