Federal Court Cour fédérale

Date: 20170124

Docket: IMM-2544-16

Citation: 2017 FC 77

Ottawa, Ontario, January 24, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

PATRIK STOJKA
PATRICIA STOJKOVA
ROMEO STOJKA
ESPERANZA STOJKOVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

I. Overview

[1] Cumulative discrimination amounts to persecution when it is assessed as such; that, as to frequency of abuse and the nature of the discrimination, with the passage of time, is seen as

persecution, as it accumulates to that by its knowing continuous harrowing presence. [Emphasis in original.]

[2] If a complaint process does not function, as it should, no redress can be expected. A history of violent behavior against the Roma, without adequate safeguards to prevent such acts, is evident in the personal evidence of the Applicants: each, from their specific perspective, coupled with the country condition evidence to which the respective narratives on their merits are linked.

[3] In addition herein, cumulative discrimination in regard to the Roma had been demonstrated in both the education system and by the medical establishment for health care, all of which, in an incremental fashion by its frequency, appears clearly to lead to outright persecution, as per evidence on file (reference is made to *Pinter v Canada (Citizenship and Immigration)*, 2012 FC 1119; also the Certified Tribunal Record at p 277; in addition to *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 53, which refers to *Divakaran v Canada*, 2011 FC 633). [Emphasis in original.]

[4] Therefore, when voluminous detailed, in-depth evidence demonstrates state protection is sporadic at best, and, most rare, most often, at worst (reference is made to Graff v Canada (Citizenship and Immigration), 2015 FC 437), it cannot be said that state protection as such exists if the theory (as per the legislation) does not meet the reality (paragraph 16 below). [Emphasis in original.]

II. Decision

[5] The Applicants are a family. The father is a dual citizen of Slovakia and the Czech Republic. The mother, born in Slovakia, holds citizenship of Slovakia and is a resident of the Czech Republic; whereas the children, who are minors, are citizens of both countries, also, having been born and raised, thus far, in the Czech Republic.

[6] Thus, all of the Applicants are citizens of Slovakia; and, all are Czech citizens except the mother who is a resident therein.

[7] The Applicants requested refugee protection upon their arrival in October 2011 due to their Roma origins and lack of adequate state protection.

[8] Placed on a removal track by the Immigration authorities with an option for a Pre-Removal Risk Assessment [PRRA], they did choose to have a PRRA.

[9] The Applicants were all refused by the PRRA as both against the Czech Republic and Slovakia for all of the Applicants, except for the mother who is only a citizen of Slovakia, but not of the Czech Republic.

[10] Several sets of submissions were sent to the PRRA Officer for his consideration and then even reconsideration subsequent to which he reconfirmed his negative initial assessment.

[11] The Applicants have submitted that the PRRA Officer erred, in not having reasonably assessed the evidence. They argue that the government measures, in both countries, cannot protect them as there is no will on the ground with respect to enforcement.

[12] All protection measures, said to be in place, in both countries, are not able to protect the Roma, in that even the complaint process is "not effective" at any level, nor is there a will, nor an ability to adequately or even effectively protect the Roma.

[13] In addition herein, cumulative discrimination in regard to the Roma had been demonstrated in both the education system and by the medical establishment for health care, all of which, in an incremental fashion by its frequency, appears clearly to lead to outright persecution, as per evidence on file (reference is made to *Pinter v Canada (Citizenship and Immigration)*, 2012 FC 1119; also the Certified Tribunal Record at p 277; in addition to *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 53, which refers to *Divakaran v Canada*, 2011 FC 633). [Emphasis in original.]

[14] Therefore, when voluminous detailed, in-depth evidence demonstrates state protection is sporadic at best, and, most rare, most often, at worst (reference is made to Graff v Canada (Citizenship and Immigration), 2015 FC 437), it cannot be said that state protection as such exists if the theory (as per the legislation) does not meet the reality (paragraph 16 below). [Emphasis in original.]

[15] In correspondence with the Research Directorate of the Immigration and Refugee Board, an independent expert to the Board itself, has clearly written that the present complaint process to the police is “not effective” (reference is made to Anna Porter, 17 February 2015).

[16] The Applicants were questioned about the Czech Republic but not Slovakia. The documentary evidence points out that the Roma suffer discrimination and violence in Slovakia in addition to police mistreatment of Roma suspects and detainees. [Emphasis in original.]

[17] In addition, neo-Nazi organizational entities harass and attack the Roma.

[18] Cumulative discrimination amounts to persecution when it is assessed as such; that, as to frequency of abuse and the nature of the discrimination, with the passage of time, is seen as persecution, as it accumulates to that by its knowing continuous harrowing presence. [Emphasis in original.]

[19] If a complaint process does not function, as it should, no redress can be expected. A history of violent behavior against the Roma, without adequate safeguards to prevent such acts, is evident in the personal evidence of the Applicants: each, from their specific perspective, coupled with the country condition evidence to which the respective narratives on their merits are linked.

[20] The evidence on file in respect of every individual indicator points to a situation of persecution, as per those respective links which the Applicants have with both countries, some of

which are even more serious as for the mother Applicant, as she is only resident of Slovakia, but not a citizen thereof.

[21] The evidence, both of a personal or subjective nature, for the Applicants, cumulatively, and linked to the voluminous objective clear country condition evidence on file, was not taken into consideration by the officer as to the persecution each of the Applicants face respectively; that is, in every sphere and dimension of life in both countries, as is witnessed in their personal respective narratives.

[22] Each case must, therefore, be considered on its own merits as to both the subjective, personal evidence and objective country condition evidence, even if, but briefly; that was not done. Therefore, the decision of the officer is unreasonable; and, the matter must be returned to be considered anew by a different immigration officer.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be granted; the matter must be considered anew by a different PRRA Officer. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2544-16
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