Federal Court  Cour fédérale

Date: 20171101

Docket: IMM-1408-17

Citation: 2017 FC 980

Ottawa, Ontario, November 1, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

LAJOS LAJHO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Mr. Lajho, the applicant, seeks judicial review of the decision of a Senior Immigration Officer [Officer] rejecting his Pre-Removal Risk Assessment [PRRA] and finding that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Lajho is a Hungarian citizen of Roma ethnicity. He first arrived in Canada in March 2010 and made a refugee claim at that time. He subsequently withdrew that claim and left Canada in November 2010. He returned to Canada in September 2016 accompanied by his wife, son, daughter-in-law, and grandson. The family members made a refugee claim. Mr. Lajho was found ineligible on the basis of his prior withdrawn claim. After being issued an exclusion order, he submitted a PRRA on September 29, 2016. The remaining family members are awaiting a hearing before the Refugee Protection Division.

[3] In rejecting the PRRA, the Officer acknowledged "the plight of the Romani population in Hungary who face human rights issues such as discrimination in education, housing, employment and access to social services." However, the Officer concluded that none of the material reviewed "refers to the applicant specifically or his personal circumstances."

[4] Mr. Lajho submits the decision is unreasonable on numerous grounds. I need not address all of the issues raised. I am of the opinion that the Officer's failure to engage the objective documentary evidence in a meaningful way and within the context of the affidavit evidence filed in support of the application undermines the transparency and thus the reasonableness of the decision. The application is granted for the reasons that follow.

II. Preliminary Issues

[5] In written submissions Mr. Lajho sought to introduce new evidence and argued a breach of procedural fairness on the basis that the Officer erred in failing to convoke an oral hearing.

Neither argument was pursued in oral submissions. The application has been considered on the basis of the record that was before the Officer.

III. Standard of Review

[6] An officer's findings of fact or of mixed fact and law in the PRRA context are to be reviewed against a standard of reasonableness (*Somasundaram v Canada (Minister of Citizenship and Immigration*), 2014 FC 1166 at para 18). In assessing the reasonableness of a decision the Court is required to consider whether the decision-making process is justified, transparent and intelligible and whether the decision falls within the range of possible acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

[7] Mr. Lajho's PRRA was rejected on the basis that the country condition documentation is generalized in nature and does not specifically refer to Mr. Lajho or his personal circumstances, and the discrimination he experienced in Hungary did not reach the level of persecution.

[8] It is unclear whether refusal of the PRRA was an outcome reasonably available to the Officer; the decision falls short of evidencing a justifiable and transparent decision-making process or demonstrating that the result falls within the range of possible acceptable outcomes.

[9] In support of his claim, Mr. Lahjo relied on the affidavit evidence of his wife. That evidence stated that the family was discriminated against, harassed and attacked because they were Roma. The affidavit describes discrimination in the education system and states that she and her husband were unemployed and not given jobs because they were Roma. The affidavit describes marches by extremist groups and paramilitaries between 2006 and 2010 where Roma homes were damaged and set on fire, local Roma residents were attacked and police did not respond because they were involved with these extremists and the groups in turn were supported by the Government. She describes incidents involving her daughter where police did not respond to allegations of domestic abuse because of her Roma ethnicity. She affirms that the family lived in deep poverty as the result of unemployment which again she links to their Roma ethnicity. She describes an incident involving her son where he was beaten by police in 2012. She describes the families' eviction from a ghetto in Miskolc in 2016 where she acknowledges the family received notice but were nonetheless subject to an attack by a police officer and two paramilitary members. She affirms that during this eviction Mr. Lajho was beaten by the police officer and paramilitary members, his nose was broken, and he was then refused medical care because he was homeless. She also describes a second forcible eviction later in 2016.

[10] Despite this evidence describing personal circumstances the Officer concludes that the country condition evidence is generalized in nature and does not reflect Mr. Lahjo's personal circumstances. This conclusion is puzzling. The generalized country condition evidence, which the Officer acknowledged demonstrates the Romani population is discriminated against in education, housing, employment and access to social services could not reasonably be considered separately from, or without reference to, the personal evidence described above. As stated by

Justice James Russell in *Racz v Canada (Minister of Citizenship and Immigration)*, 2017 FC 824 [*Racz*] at para 37 "the general country documentation is not "general" in nature in this instance. It directly supports and confirms the Applicants' own experience."

[11] The state protection analysis is similarly lacking. The Officer concludes "that there are agents of state protection available to Roma in Hungary" but the agents of state protection are not identified and the conclusion is not linked to the country condition evidence. The Officer does make reference to mechanisms for lodging complaints against the police and a Constitutional provision establishing an ombudsman but does not address the effectiveness of these mechanisms. In addition these mechanisms have been consistently held by this Court as not providing a basis upon which to conclude state protection is adequate in Hungary (*Racz* at para 38).

[12] Finally in assessing Mr. Lahjo's section 96 claim the Officer states the following:

> I acknowledge that the applicant has experienced discriminatory acts at some points during his life in Hungary and that being insulted and threatened is both unpleasant and unsettling; however, I find that the applicant has provided insufficient objective evidence that he experienced serious systematic and repetitive discrimination. While the applicant has experienced some sporadic incidents of discrimination, it did not rise to the level of persecution.

[13] In reaching this conclusion the Officer has not identified the acts of discrimination the Officer assessed. The Officer does make reference to insults and threats but the evidence does not disclose allegations of insults and threats. Rather the evidence describes forced evictions,

beatings, and at a minimum state-tolerated discrimination based on ethnicity that impacts access to employment, housing, health care and education.

[14] To establish a well-founded fear of persecution a claimant must demonstrate (1) subjective fear of persecution and (2) that the subjective fear is well-founded in an objective sense (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 723). Section 96 does not require a claimant to establish actual persecution on a personal level; rather the section requires that a claimant demonstrate a well-founded fear of persecution. The absence of any analysis to support the conclusion reached undermines the transparency and intelligibility of the decision.

V. Conclusion

[15] The Officer's decision relies on a perfunctory review of the evidence and boilerplate conclusions. While a decision-maker is not obligated to address each and every piece of evidence or seek out and address any evidence that is contrary to the conclusion reached, it is similarly not enough to simply conclude that "the evidence is mixed with respect to the level of discriminatory acts." A decision-maker must do more; a decision-maker must deal with mixed evidence (*Racz* at para 41).

[16] The parties have not identified a question of general importance and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted and the matter returned for redetermination by a different decision-maker. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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