

Federal Court



Cour fédérale

Date: 20171204

Docket: IMM-2401-17

Citation: 2017 FC 1094

Ottawa, Ontario, December 4, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

PATRICK EROS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision made by a Senior Immigration Officer (the “Officer”) refusing the Applicant’s Pre-Removal Risk Assessment (“PRRA”) application.

II. Background

[2] The Applicant was born and raised in Czechoslovakia and is a citizen of the Czech Republic. He is of Roma ethnicity and claims to have experienced many years of discrimination and attacks on the basis of that ethnicity.

[3] He was bullied and beaten at school during his youth and experienced racism and threats as he grew older. He struggled to find employment and was told by employers they would not hire Roma.

[4] Anti-Roma sentiment grew after the fall of communism in the 1990s. There were large demonstrations and skinheads terrorized and attacked Roma. Whenever there was a soccer match in the Applicant's town, the Roma would not go outside for fear of being attacked. On one occasion, he attempted to buy tickets to a soccer match but was told by a group of men to leave or he would be beaten.

[5] The Applicant became depressed due to his discrimination and in 2002, he began receiving a monthly disability benefit of about 5200 CZK (\$290 CAD), but found it difficult to survive on that income.

[6] In November 2007, the Applicant's daughter was born.

[7] In August 2008, the Applicant went to the United Kingdom (“UK”), where his sister, brother and cousin lived, in an attempt to find employment. In November 2009, while at a restaurant with his sister and brother, an incident occurred between the Applicant’s sister and another woman. The woman lifted a chair as if she was going to throw it at the Applicant’s sister, so he punched her in the face. A brawl broke out and the Applicant was charged with assault causing bodily harm.

[8] The Applicant returned to the Czech Republic in March 2010 to see his daughter, but could not find work as a Roma.

[9] In August 2011, the Applicant was beaten by a group of skinheads during an anti-Roma demonstration. He was at a restaurant with friends and family when the skinheads began taunting them and telling them to leave. A glass was thrown at his head and he was kicked and punched. By the time police arrived, the skinheads had fled. The police collected information and referred the Applicant to a hospital. The Applicant never received an official report and does not know what happened with the investigation.

[10] The Applicant returned to the UK in May 2012. He was convicted on the previous charge of assault causing bodily harm. He received a sentence of 112 days and served 56 days.

[11] The Applicant was released in September 2012 and returned to the Czech Republic. His disability had been cut-off and he had nowhere to live. In December 2012, he began receiving the benefit again and rented a room in a hostel.

[12] The Applicant returned to the UK in June 2014 but was unable to find any work. He was unable to continue living with family members and ended up homeless. He stayed in shelters or slept on the street. At one shelter he got into an altercation with another man. He was charged with threatening abusive or insulting words or behaviour and spent a night in detention.

[13] Subsequently, he had nowhere to live and no job prospects. A charitable organization offered to help him, but allegedly insisted he return to the Czech Republic, paid for his airfare and set up supports upon his arrival. However, he still could not find a job. His mental health deteriorated and he was hospitalized for 10 days in the spring of 2015. The nurses made fun of him and insulted him.

[14] In June 2015, the Applicant travelled to Canada. He made a refugee claim upon arrival and disclosed his criminal conviction from the UK. The Canada Border Services Agency prepared an inadmissibility report based on that conviction and the refugee claim was suspended. On April 13, 2016, a member of the Immigration Division (“ID”) found the Applicant was inadmissible. The Federal Court denied leave for judicial review of that decision and the Applicant’s refugee claim was terminated.

[15] On May 19, 2016, the Applicant was served with a PRRA application. He retained counsel and made submissions in June 2016.

[16] On November 30, 2016, the Officer refused the Applicant's PRRA application. The Officer found the Applicant did not meet the definition of a Convention refugee or a person in need of protection as defined in sections 96 and 97 of the IRPA.

[17] The Officer noted that the Applicant's UK conviction rendered him inadmissible to Canada under paragraph 36(1)(b) of the IRPA and ineligible to make a refugee claim under paragraph 112(3)(b) of the IRPA, but subparagraph 113(e)(i) of the IRPA provided that the Applicant's PRRA application would be considered on the basis of sections 96 to 98 of the IRPA.

[18] The Officer acknowledged the Applicant's history of discrimination, his fear of returning to the Czech Republic, the incidents that led him to seek protection outside of that country, the letters that supported the Applicant and corroborated the 2011 attack, and the country-conditions evidence that was submitted.

[19] The Officer also acknowledged that discrimination against Roma was a serious problem in the Czech Republic and that experiences of discrimination may cumulatively rise to the level of persecution in individual cases.

[20] The Officer accepted that the Applicant had experienced discrimination in education, but had no plans to attend school in the future and therefore was unlikely to experience any further discrimination in the education system.

[21] As well, the Officer accepted that the Applicant had experienced significant discrimination in finding employment but found there were other facets of his life where there was no evidence of discrimination. For example, when his injuries were treated at a hospital, when he was assessed for depression or when he obtained disability benefits.

[22] Furthermore, the Officer found there was adequate state protection. The Czech Republic had appropriate institutions in place, took action to protect Roma peoples and had arrived and investigated when the Applicant was attacked in 2011.

[23] Finally, the Officer noted that the Applicant had willingly reavailed himself of his state's protection on three occasions and this indicated a lack of subjective fear.

[24] The Officer concluded that the Applicant's experiences of discrimination did not cumulatively rise to the level of persecution and there was only a mere possibility of persecution upon his return. As well, it was unlikely that he would experience a danger of torture, risk to life or risk of cruel or unusual treatment or punishment.

[25] On May 30, 2017, the Applicant applied for judicial review of the Officer's decision.

A. *Preliminary Matter*

[26] The style of cause should be amended to read "The Minister of Citizenship and

Immigration” instead of “Minister of Immigration, Refugees and Citizenship” pursuant to subsection 4(1) of the IRPA:

4 (1) Except as otherwise provided in this section, the Minister of Citizenship and Immigration is responsible for the administration of this Act.

III. Issues

[27] The issues are:

- A. Did the Officer err in assessing whether the Applicant’s experiences of discrimination cumulatively rose to the level of persecution?
- B. Was the Officer’s assessment of the Applicant’s subjective fear reasonable?
- C. Did the Officer use the correct test for state protection and was his assessment of state protection reasonable?

IV. Standard of Review

[28] The Applicant argues that the Officer’s articulation of the tests for state protection and persecution is reviewable on a correctness standard and that the ensuing determination of whether the Applicant established a well-founded fear of persecution or rebutted the presumption of state protection is reviewable on a reasonableness standard (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at paras 16-23). The Respondent counters that the tests for state protection and persecution are mixed questions of fact and law, and should be reviewed on the reasonableness standard, but regardless of which standard is applied, the

Applicant has failed to meet that standard. I agree with the Applicant on the applicable tests for review.

V. Analysis

A. *Did the Officer err in assessing whether the Applicant's experiences of discrimination cumulatively rose to the level of persecution?*

[29] The Applicant submits that the Officer did not reasonably assess whether the Applicant's experiences of discrimination cumulatively rose to the level of persecution: he did not consider the totality of the experiences; failed to explain why they did not rise to the level of persecution; and failed to consider the objective evidence in relation to those experiences.

[30] The Respondent submits that the Applicant had not established that his experienced rose to the level of persecution. The Officer reasonably considered the totality of the experiences as well as the documentary evidence and explained why, in the Applicant's case, the discrimination did not rise to the level of persecution.

[31] In cases where the evidence establishes a series of events characterized as discriminatory, but not persecutory, decision-makers must consider the cumulative nature of that conduct in order to determine whether it constitutes persecution (*Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84 at paras 41-42). It is an error to merely state that instances of discrimination have been considered cumulatively; decision-makers should explain why those instances, in the aggregate, do not amount to persecution (*Bledy v Canada (MCI)*, 2011 FC 210 at paras 31-34).

[32] The Officer was aware of his duty to assess the cumulative effects of discrimination. He concluded:

In light of all this evidence, I do not find, on a balance of probabilities, that the applicant's experiences of discrimination cumulatively rise to the level of persecution.

[33] The Officer provided reasons in support of that conclusion. He acknowledged that the documentary evidence showed discrimination against Roma was a serious problem and could rise to the level of persecution; however, it was necessary to assess the experiences of applicants in each individual case.

[34] The Officer accepted that the Applicant had suffered significant discrimination in employment. In terms of education, the Applicant had no plans to attend school in the future and therefore was unlikely to experience any further discrimination in the education system. Furthermore, there were facets of the Applicant's life with no evidence of discrimination: being treated at a hospital for injuries; being assessed for depression; and obtaining disability benefits.

[35] As well, the Officer accepted that the Applicant had experienced discrimination in his "general sense of safety" and "in the social acceptance of anti-Roma demonstrations and marches" but found there was adequate state protection. Furthermore, the Officer found the Applicant had willingly reavailed himself of his state's protection on three separate occasions and notwithstanding the reasons given for reavailment, this indicated a lack of subjective fear.

[36] The Officer's analysis was reasonable. He did not fail to consider the cumulative effects of discrimination, nor did he make his finding without regard to the evidence.

B. *Was the Officer's assessment of the Applicant's subjective fear reasonable?*

[37] The Applicant submits that the Officer's assessment of subjective fear was unreasonable because it was based on reavailment of state protection, without any consideration of the Applicant's explanations and specific circumstances.

[38] The Respondent submits that the Applicant's justifications for returning home are not sufficient to explain why he left a safe country to return to a place where he had a well-founded fear of persecution. The Officer reasonably found those explanations to be unsatisfactory.

[39] This Court has held that delay in leaving a country should not be used as a significant factor in finding a lack of subjective fear, if a claim is based on cumulative persecution (*Ibrahimov v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1185 [*Ibrahimov*] at para 19):

Furthermore, in my opinion, when a claim is based on a number of discriminatory or harassing incidents which culminate in an event which forces a person to leave his country, then the issue of delay cannot be used as a significant factor to doubt that person's subjective fear of persecution. Cumulative acts which may amount to persecution will take time to occur. If a person's claim is actually based on several incidents which occur over time, the cumulative effects of which may amount to persecution, then looking to the beginning of such discriminatory or harassing treatment and comparing that to the date on which a person leaves the country to justify rejection of the claim on the basis of delay, undermines the very idea of cumulative persecution.

[40] I do not agree that the decision in *Ibrahimov* applies to the facts of this case. The Officer was not concerned with delay in doubting subjective fear, but with the repeated returns to the Czech Republic from the UK, notwithstanding the reasons given for doing so.

[41] While I may not necessarily agree with the Officer, it is not the Court's role to reweigh the evidence and the Officer's decision with respect to subjective fear was reasonable.

C. *Did the Officer use the correct test for state protection and was his assessment of state protection reasonable?*

[42] The Applicant submits that the Officer incorrectly assessed whether the state is making serious efforts to protect Roma rather than assessing whether those efforts translate into actual protection. Furthermore, the Officer ignored evidence that demonstrated a lack of adequate state protection.

[43] The Respondent submits that there was no clear and convincing evidence that the authorities in the Czech Republic are unwilling or unable to protect the Roma; therefore, the Applicant failed to rebut the presumption of state protection.

[44] Applicants have the burden of showing inadequate state protection (*Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 17-19). There is a presumption that state protection is available in an applicant's country of origin, particularly when the state is democratic, and clear and convincing evidence is needed to rebut that presumption (*Canada (Attorney General of Canada) v Ward*, [1993] 2 SCR 689 at 724-725).

[45] The applicable test for state protection is whether it is adequate at the operational level. Such an analysis requires an assessment not only of state efforts, but also the actual results (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2015 FC 337 [*Kovacs*] at para 71). What is “adequate” will vary with the country and the circumstances (*Kovacs* at para 72).

[46] The Officer applied the correct test. He concluded:

From the evidence before me, I find insufficient evidence to demonstrate that the applicant would not receive adequate state protection if he were to require it.

[47] The Officer not only considered the state’s efforts to protect Roma, but results associated with those efforts.

[48] He noted that the Czech Republic had appropriate institutions in place to provide its citizens with state protection. It had a police force that maintains public order, a government body that oversees the police and investigates allegations of misconduct, and it accepted and prosecuted reports of hate crimes.

[49] The Officer also considered whether those efforts produced actual results. He found that police generally provided adequate protection to Roma communities by policing demonstrations and managing participants, including detaining those who tried to march into the neighbourhoods or disturb the peace. He also found that crime within the police force was decreasing, that hate crimes were being prosecuted and that anti-Roma activity is decreasing.

[50] Furthermore, the Officer referred to the Applicant's experience with police after being assaulted by skinheads in a restaurant. The police showed up when called, interviewed all participants and took down their information. They told the Applicant they were investigating the case, and it was not clear whether the Applicant or anyone else followed up with that investigation.

[51] The Applicant argues the Officer "failed to address the many instances in which police were not able to provide adequate protection" but does not cite specific examples. Rather, the documentary evidence supports the Officer's findings. For example, a report by Amnesty International focuses on violent anti-Roma marches that occurred in 2013 and 2014. The report condemns the state's "ambivalent" response but outlines the police response to those marches. The police intervened, installed barriers, prevented protestors from entering the streets, blocked access to roads and investigated and arrested protesters. As another example, a report by the US Department of State showed that police detained extremists and took other preventative measures during an attempted march in a Roma neighbourhood.

[52] The Officer balanced the documentary evidence relating to both positive and negative circumstances surrounding adequate protection for Roma in the Czech Republic.

[53] The Officer's finding on state protection was reasonable.

JUDGMENT in IMM-2401-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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