

Federal Court



Cour fédérale

Date: 20200305

Docket: IMM-4427-19

Citation: 2020 FC 339

Ottawa, Ontario, March 5, 2020

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

KATYA DOBREVA VARBANOVA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT

UPON hearing this application at Toronto, Ontario on Tuesday, February 11, 2020;

AND UPON hearing counsel for the parties and considering the documentary record;

AND UPON reserving the decision;

AND UPON determining that this application be dismissed for the following reasons:

[1] The Applicant, Katya Dobрева Varbanova, challenges a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (Board) by which her claim to refugee protection was found to be manifestly unfounded.

[2] Ms. Varbanova came to Canada in 2019 from Bulgaria. She claimed to fear persecution based on her Roma ethnicity. A central aspect of her claim involved an allegation that she had been unlawfully detained and abused by the Bulgarian Police who were intent on forcing her into prostitution.

[3] The Board dismissed Ms. Varbanova's claim on credibility grounds. It found that she had failed to establish her Roma ethnicity or that she had been targeted by the Bulgarian Police. It also found that core aspects of her claim were fabrications. On that basis, it held that her claim was manifestly unfounded.

[4] Ms. Varbanova challenges the Board's decision saying that it is based on misstatements of the evidence, mischaracterizations of testimony and perverse reasoning. She also complains that the Board failed to question her about the central aspects of her risk narrative and, instead, unreasonably focused on "irrelevant considerations" concerning her corroborating documents. All of the issues Ms. Varbanova raises involve matters of evidence and must be assessed on the standard of reasonableness: see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] SCJ No 65 (QL).

[5] Ms. Varbanova takes issue with the Board's assessment of a letter written by an official with the Roma Community Centre in Toronto attesting to her Roma ethnicity and validating her

story of persecution. The Board gave the letter no weight because the author did not provide a factual basis for his conclusions, nor did he testify. The Board was also concerned about Ms. Varbanova's inability to provide details about what had been discussed with the author.

[6] The Board's assessment of this document was not unreasonable. The letter provided no information about how the author came to the opinion that Ms. Varbanova was Roma or the basis on which her story was found to be convincing. In the absence of such pertinent details, it was reasonable for the Board to have expected the author to testify. The letter on its own was, accordingly, deserving of no weight.

[7] Ms. Varbanova takes issue with the Board's questioning about her use of the subjunctive verb form. Ms. Varbanova describes the Board's concern as "nonsense" because it unreasonably implied that her evidence was describing hypothetical and not real events.

[8] The transcript does disclose an exchange between the Board, the translator and Ms. Varbanova's counsel about this issue, out of which counsel accused the Board of bias. There is nothing in the transcript or in the Board's decision, however, that remotely suggests that this issue remained a concern to the Board. The only reason it is raised at all in the decision was in response to counsel's allegation of bias. In fact, at paragraph 15 of its decision, the Board confirmed that it accepted the interpreter's explanation that Ms. Varbanova's use of the subjunctive form was not inapt.

[9] Ms. Varbanova's complaint that the Board failed to question her directly about her Roma ethnicity or her allegation of police misconduct has no merit. Although the Board relinquished its questioning of Ms. Varbanova fairly early in the hearing, her counsel questioned her closely

about her Roma ethnicity and about the central aspects of her Basis of Claim narrative. In these circumstances, it was fair and appropriate for the Board to limit its questioning of Ms. Varbanova to the matters of its specific concern, mostly involving the reliability of her corroborating documents.

[10] Ms. Varbanova takes issue with the Board's negative findings about the reliability of a medical report and a police summons. The Board found both documents to be fabrications based on inherent substantive implausibilities. The Board reasonably took issue with the police summons because it referred to a statutory penal provision that made no sense.

[11] The Board's finding that the tendered medical report was a fabrication arose from Ms. Varbanova's testimony on the following points:

- a. that it had been given to her unsolicited;
- b. that it was in the form of a medical referral that was never made; and
- c. that it was prepared in proof of a police assault that allegedly occurred eight days after she had obtained an electronic travel authorization to enter Canada.

[12] All of the above concerns were justified. Indeed, the allegation of a police assault was central to Ms. Varbanova's assertion of risk. The fact that she had obtained a travel authorization a few days before this alleged event created a profound credibility problem.

[13] The Board's rejection of both the police summons and the medical report was based on legitimate inherent problems with those documents. The documents were, after all, material to Ms. Varbanova's story about a police assault. Having reasonably found the documents to be

fabrications, it was open to the Board to reject the entirety of Ms. Varbanova's personal risk narrative.

[14] Ms. Varbanova's complaints about the Board's pejorative characterization of her testimony as rehearsed are equally without merit. Indeed, it is somewhat surprising that she was able to describe in great detail a Roma wedding from several years before and yet was unable to independently recall the details of her far more recent discussions with the official from the Roma Community Centre. In any event, the Board's general concern about Ms. Varbanova's testimony did not form a material aspect of its credibility finding. As discussed above, the Board had a reasonable foundation for rejecting Ms. Varbanova's evidence and for its finding that the claim was manifestly unfounded based on her dishonesty: see *Nagornyak v Canada (Citizenship and Immigration)*, 2017 FC 215 at para 12-15, 276 ACWS (3d) 419.

[15] The Board's concluding statements about Ms. Varbanova's appearance were mentioned in response to her evidence about being identifiable as Roma from hair and skin colour. It is not clear what the Board intended by referring to differences from an earlier photograph but it drew no adverse inference from that comparison. In the result, these observations were immaterial to the outcome.

[16] All of Ms. Varbanova's arguments call upon the Court to reweigh or to re-characterize the evidence. The Board's credibility findings, however, had evidentiary support and, therefore, were reasonably made. Where the primary decision-maker has a rational basis for its assessment of the evidence before it, it is not the role of the Court on judicial review to substitute its own views or to reweigh the evidence. The application is, accordingly, dismissed.

[17] Neither party proposed a certified question and no issue of general importance arises on this record.

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge