

Federal Court



Cour fédérale

Date: 20200402

Docket: IMM-3052-19

Citation: 2020 FC 472

Ottawa, Ontario, April 2, 2020

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

LEO PAGANEL ZATREANU

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Zatreanu, is an Irish citizen of Roma ethnicity. Having experienced racism in Romania, his parents moved the family to Ireland in 2002 when he was four years old. The family sought protection in Ireland and were recognized as refugees. He subsequently acquired citizenship.

[2] Mr. Zatreanu now seeks protection in Canada. He claims that in Ireland he will face discrimination and harassment rising to the level of persecution. In a separate claim, his parents and sister have also sought protection in Canada.

[3] The Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] found Mr. Zatreanu is neither a Convention refugee nor a person in need of protection. The Refugee Appeal Division [RAD] upheld that determination. The RAD found that the harassment and discrimination experienced in Ireland did not amount to persecution. It also found that he had failed to rebut the presumption of state protection.

[4] In seeking judicial review, Mr. Zatreanu has raised multiple issues. Here, I need only address whether the RAD's persecution and state protection findings were reasonable. They were not. The application is granted for the reasons that follow.

II. Background

[5] On arriving in Ireland, Mr. Zatreanu reports that he and his family experienced ethnically-motivated discrimination and harassment. This included physical and verbal harassment both at school and in the community. The family reported the incidents to the school and the police. The police took no action to prevent their recurrence.

[6] In 2008, due to Mr. Zatreanu's father's poor health and resultant inability to work, the family moved into a social housing community. There, the family frequently faced harassment, verbal abuse, property destruction, physical threats, and violence. These incidents continued until

Mr. Zatreanu and his parents left Ireland in 2014. The family reported numerous incidents to the police. The police advised the family that they would investigate the incidents; ultimately, however, they did not. The family received assistance from certain municipal councillors, who made representations to the police on the family's behalf. Around 2011 and 2012, the family requested a housing transfer from the responsible authority. This request was denied. In 2013, the High Court of Ireland ordered the authority reconsider the decision.

[7] The High Court's Order had not been complied with or enforced when, in 2014, the family moved to and claimed asylum in the United States. In July 2017, Mr. Zatreanu withdrew his claim in the United States, entered Canada, and claimed refugee protection. His parents and sister had done the same a few months earlier. In December 2017, the RPD rejected Mr. Zatreanu's claim. On appeal to the RAD, he requested that his claim be joined with his family's claim, which the Federal Court had returned to the RAD for redetermination in *Zatreanu v. Canada (Citizenship and Immigration)*, 2019 FC 332.

III. The Decision under Review

[8] The RAD considered the Basis of Claim [BOC] forms of both Mr. Zatreanu and his father. Mr. Zatreanu's father's BOC explains that the family faced discrimination and harassment in Ireland since they arrived in 2002, and that this intensified in 2008, after the family moved into social housing.

[9] The RAD found that Mr. Zatreanu's circumstances differ from those of his father. Unlike his father, Mr. Zatreanu is single, has nine years of education in Ireland, speaks English, and

does not suffer from health issues that would prevent him from working. He would be able to move if not happy with his neighbours in Ireland. Based on these differences, and the fact that refugee claims are forward-looking, the RAD concluded Mr. Zatreanu would not face the same housing challenges that he experienced at the time he left Ireland. At this point, Mr. Zatreanu would be able to live anywhere in Ireland.

[10] The RAD acknowledged that discrimination against Roma does exist in Ireland but concluded that incidents such as name-calling and being spat at—incidents Mr. Zatreanu experienced as a student—do not amount to persecution.

[11] In assessing state protection, the RAD noted that Ireland is a stable democracy with robust political rights and civil liberties. It also noted that the Irish government has made efforts to address discrimination against the Roma community, but acknowledged that no data was available to assess the success of these efforts. Finally, the RAD acknowledged the family's repeated requests for police assistance. It states that the police could not successfully investigate the family's complaints because the family never identified the agents of persecution to the police. For these reasons, the RAD found that Mr. Zatreanu had not rebutted the state protection presumption.

IV. Standard of Review

[12] Prior jurisprudence has found RAD decisions relating to the risk of persecution and state protection are reviewable on reasonableness (*Al-Sarhan v. Canada (Citizenship and Immigration)*, 2019 FC 1438 at para. 18; *Canada (Citizenship and Immigration) v. Huruglica*,

2016 FCA 93 at para. 35). The Supreme Court of Canada, in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, has held that reasonableness is the presumptive standard of review (para. 17). I will review the RAD’s decision on a reasonableness standard.

[13] In *Canada Post Corp v. Canadian Union of Postal Workers*, 2019 SCC 67, Justice Rowe described the attributes of a reasonable decision in the following way:

[31] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

V. Analysis

[14] The RAD’s misapprehension of the evidence renders both its assessment of Mr. Zatreanu’s risk of persecution and state protection analysis unreasonable.

[15] The RAD cites incidents of “discrimination and harassment in school from other students” faced by Mr. Zatreanu. It then concludes that this treatment did not amount to persecution. This summary of the discrimination Mr. Zatreanu reports he experienced is incomplete. In his BOC, Mr. Zatreanu describes a physical assault at a water park in 2007 and another assault in a public park in 2011. He has also relied on and refers to the threats, assaults and vandalism experienced in and around the family home between 2008 and 2014 described in his father’s BOC.

[16] The RAD acknowledges Mr. Zatreanu’s father’s BOC in reaching its conclusion on discrimination. However, it limits its consideration to incidents regarding Mr. Zatreanu’s experiences at school, and summarises these experiences by stating that Mr. Zatreanu was called “names, harassed and spit at.”

[17] In considering whether Mr. Zatreanu had experienced persecution in Ireland, the RAD was required to consider the cumulative effect of the discriminatory conduct he experienced (*Kamran v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 380 at paras. 43 and 44). It did not. The RAD excluded from consideration serious incidents of harassment in assessing whether the reported experiences amounted to persecution. The excluded incidents differed in character and kind from school yard harassment. They included reported incidents of assaults by adult community members, threats of bodily harm, and property damage. This falls well short of the RAD’s requirement to engage in a consideration of the cumulative effect of the reported discriminatory conduct. This flawed approach to the determination of whether the

incidents reported by Mr. Zatreanu rise to the level of persecution taints the remainder of the analysis.

[18] The RAD rightly states that, in considering persecution, it must consider forward-looking risk. However, the RAD's partial assessment of the evidence leaves open the question of whether the RAD would have viewed the forward-looking risk in the same light had it fully considered Mr. Zatreanu's previous experiences of persecution.

[19] The RAD's state protection analysis raises similar concerns.

[20] It is clear from the record that Mr. Zatreanu and his family repeatedly reported incidents of violence and harassment to the police. The police reliably responded to calls for support. However, Mr. Zatreanu took the position before the RAD that the police never pursued an investigation into any of the complaints and that no meaningful protection ever materialized.

[21] The RAD attributes the absence of police protection to the family's failure to identify the agents of persecution. This finding does not accord with the record, which makes clear that the family identified the agents of persecution to the police on multiple occasions. Mr. Zatreanu states in his BOC that in one instance the police were provided the name of an assailant by Mr. Zatreanu's brother. Mr. Zatreanu's father states in his BOC that: (1) the family described to police those who assaulted the family and vandalized their home in 2009; (2) a witness to an incident in 2010 was identified to the police "but the police refused or were scared to approach

him”; and (3) the family described to police those who vandalized and stole the family car in 2010.

[22] The record contradicts the RAD’s conclusion that the victims provided inadequate information to the police in order to have a reasonable expectation of state protection. This undermines the reasonableness of the RAD’s state protection conclusion.

[23] The RAD also relies on evidence of state efforts to address anti-Roma discrimination in reaching its conclusion. In doing so, it acknowledges the absence of any evidence indicating the effectiveness of those efforts.

[24] The applicant bears the burden of rebutting the presumption of state protection. It was open to the RAD to conclude that Mr. Zatreanu had not satisfied that burden. However, the RAD’s misapprehension of the evidence, and its reliance on evidence of state efforts in the absence of any consideration of the effectiveness of those efforts, renders the state protection finding unreasonable.

VI. Conclusion

[25] The application is granted. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-3052-19

THIS COURT'S JUDGMENT is that:

1. The application is granted;
2. The matter is returned for redetermination by a different decision maker; and
3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3052-19

STYLE OF CAUSE: LEO PAGANEL ZATREANU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 3, 2019

JUDGMENT AND REASONS: GLEESON J.

DATED: APRIL 2, 2020

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