

IMM-2444-96

OTTAWA, ONTARIO, THIS 11th DAY OF APRIL 1997

PRESENT: THE HONOURABLE MR. JUSTICE YVON PINARD

BETWEEN:

MYOUDA BOGOSLAVSKY,

Applicant,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

ORDER

The application for judicial review of a decision of the Refugee Division dated July 3, 1996, determining that the applicant is not a Convention refugee, is dismissed.

Judge

Certified true translation

C. Delon, LL.L.

BETWEEN:

MYOUDA BOGOSLAVSKY,

Applicant,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

PINARD J.:

This is an application for judicial review of a decision of the Refugee Division dated July 3, 1996, determining that the applicant is not a Convention refugee. The applicant asserts that she has a well-founded fear of persecution in Israel because of her nationality, race, religion and membership in a particular social group.

The Refugee Division doubted the applicant's assertion that she had been treated as a non-Jew because of her sons' Asiatic appearance. On this point, the Board stated:

[TRANSLATION]

Jews of all colours and all physical appearances immigrate to Israel on a daily basis, relying on their mothers' Jewish nationality. We do not see how Israeli Jews, even immigrants or sons of immigrants, could be unaware of the biological diversity of the Jewish people and assert some racial norm to exclude a Jewish mother and her children from Jewish nationality. Ms. Bogoslavsky may have had difficulties with hooligans in Israel after she returned from Canada; these difficulties are not attributable to one of the grounds in the Convention but to the lack of respect among youth for older people.

It also appears that the Refugee Division did not believe the applicant's claims in respect of her fear of [TRANSLATION] "returning to a country where she had suffered so much in the past", since she had returned to Israel of her own accord in July 1993.

On the question of the protection afforded by the State of Israel, the Board held that the allegations that protection was not afforded to nationals of the former U.S.S.R. facing harassment from orthodox Jews were not reflected in the international press specializing in human rights monitoring. On this point, the Board referred to the documentation indicating that Israel is a democratic country which is very open to new immigrants from the former Soviet Union and concluded that the applicant had not discharged the burden of proving that the State of Israel was not able to protect her:

[TRANSLATION]

Since the claimant was unable in her reply to undermine the integrity and truth of the documentary evidence filed, we are of the opinion that her initial testimony is exaggerated and accordingly is

not very trustworthy. It is not impossible that religious extremists might bother new arrivals, but it has not been proved to the satisfaction of the Board that the Israeli authorities failed in their task of protecting them.

The applicant has not succeeded in satisfying me that the Refugee Division committed such an error as to allow this Court to intervene. More specifically, having regard to all of the evidence in the record, I am of the opinion that the applicant has not discharged her burden of showing that the inferences drawn by this specialized tribunal could not reasonably have been drawn (see *Aguebor*¹).

¹(1993), 160 N.R. 315 (F.C.A.).

Lastly, since the decision in *Ward v. Canada (M.E.I.)*², it is also settled that a refugee claimant must show, at the hearing, by clear and convincing proof, that the State of which he or she is a national is unable to protect him or her. Moreover, need it be pointed out that "Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens"³ Since the applicant did not show

²[1993] 2 S.C.R. 689.

³*Supra*, at p. 725.

at the hearing that there had been a complete collapse of the Israeli State, the presumption that the State is capable of protecting its citizens applies and the applicant had to show that it was objectively unreasonable to seek the protection of the Israeli authorities. In my view, after reviewing the transcript of the hearing and the applicant's PIF, it was entirely open to the Refugee Division to determine that the applicant had not discharged the burden placed on her by *Ward* of showing that the Israeli authorities were not capable of protecting her.

Accordingly, the application for judicial review is dismissed. Counsel for the parties did not submit any question for certification.

O T T A W A
April 11, 1997

Judge

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: IMM-2444-96

STYLE OF CAUSE: MYOUDA BOGOSLAVSKY v. MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 10, 1997

REASONS FOR ORDER OF PINARD J.

DATED: APRIL 11, 1997

APPEARANCES:

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