Federal Court  Cour fédérale

Date: 20100218

Docket: IMM-2764-09

Citation: 2010 FC 168

Ottawa, Ontario, February 18, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

LAURA SOKOLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision (the decision) of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated May 1, 2009, wherein the Board determined that the Applicant is neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27.

[2] For the reasons set out below, the application is dismissed.

I. Background

[3] The Applicant is a single 28 year-old ethnic Hungarian who is a Serbian citizen. She has one child who remains in Serbia and is not a party to this application. Her father has been a resident in Canada for twenty years. The Applicant entered Canada on a visitor's visa in June 2006 and claimed protection that September.

[4] The Applicant claims that she faces persecution in Serbia because she is ethnic Hungarian. The Applicant stated that this persecution has been in the form of harassment and rape. She also claims that her son's father is abusive towards them and has made threats. The Applicant went to the police after one incident of harassment, being pushed off her bicycle, but not after she was raped. The Applicant stated that she did not go to the police as they do not provide protection for Hungarian women and that she had a negative experience with them.

[5] The Board found that the determinative issues in this matter were credibility and state protection. The Board determined that the Applicant was not credible based on the number of errors, omissions and inconsistencies between her Personal Information Form (PIF), testimony, and the documentary evidence. The Board also found that the Applicant had failed to rebut the presumption of state protection.

II. Standard of Review

[6] The issues raised by the Applicant will be assessed on a standard of reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339; *Sanchez v. Canada (Minister of Citizenship and Immigration)* [2008] F.C.J. No. 886; 2008 FC 696). As set out in *Dunsmuir*, above, and *Khosa*, above, reasonableness requires the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of the facts and law.

[7] I note that the Court is to demonstrate significant deference to Board decisions with regard to issues of credibility and the assessment of evidence (see *Camara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 362; [2008] F.C.J. No. 442, at paragraph 12).

III. Issues

[8] The Applicant set out the following issues to be determined:

(a) Did the Board render a negative credibility finding that was unreasonable and not in accordance with the evidence before it?

(b) Did the Board render a finding of state protection that was unreasonable and not in accordance with the evidence before it?

[9] For the reasons below, the Board's decisions with regard to credibility and state protection were reasonable.

[10] Prior to reviewing these issues, I must consider a piece of evidence provided by the Applicant that was before the Board. The evidence in question is in the form of a three page letter from the Executive Director of the Sexual Assault/Rape Crisis Centre of Peel. The letter opens with the line "I am writing this letter in support of the Refugee claim of Ms. Laura Sokola…" It sets out how the Executive Director came to know the Applicant, the facts related by Ms. Sokola, and the Executive Director's assessment. In conclusion, the Executive Director stated that the letter was based on "my brief assessment". At paragraph 12, she also wrote that:

> I strongly believe that were Ms. Sokola returned to Serbia that she would not only suffer cruel and unusual treatment, but continue to experience a life of indignity, persecutorial human rights violations as a Hungarian woman.

[11] The Applicant argues that this evidence is a psychological report that sets out challenges the Applicant has with answering questions and providing details. The Applicant argues that the report outlines various types of avoidance behaviours, which included the types of behaviours which the Board member relied on in determining that the Applicant lacked credibility. The Applicant argues that the Board failed to take the report into account and/or evaluate the evidence before it in light of the report.

[12] The Respondent argues that the letter is not a psychological report as the Executive Director did not identify herself as a certified professional, it is based on the Applicant's allegations, and the introductory sentence states that the writer is sending a letter of support.

[13] If the letter is a psychological report that addresses issues that may affect the Board's credibility determination, then the Board would need to evaluate it specifically (see *C.A. v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1082; 73 A.C.W.S. (3d) 654).

[14] In this case, the letter is not a psychological report. I come to this conclusion for the following reasons: it was written as a "letter of support"; was based on a "brief assessment"; it does not indicate any tools, methods or tests used, and the fact that it goes beyond the psychological expertise of the writer as she opined on non-psychological issues. The combination of these factors, in this case, does not support the position that the letter was a psychological opinion.

[15] Therefore, it was not unreasonable for the Board to have not specifically referred to the letter and how it related to the credibility findings. In this case, the Board did mention the letter and gave it little weight. This was reasonable.

A. *Did the Board Render a Negative Credibility Finding That Was Unreasonable and Not In Accordance With the Evidence Before It?*

[16] The Applicant argues that the Board's credibility assessment is flawed as the Member ignored country information, found inconsistencies in the Applicant's testimony where none existed, and found some of the Applicant's evidence to be implausible.

[17] The Respondent argues that the Board did not err in drawing an adverse credibility finding given the omissions, contradictions and inconsistencies in her evidence.

[18] The Board found numerous inconsistencies between the Applicant's PIF, oral testimony and the documentary evidence. For example, the Board found inconsistencies in her explanation as to why she went to the police after she was knocked off her bicycle but not after any of the three alleged rapes. Another example is with regard to inconsistencies in her explanation as to why she did not apply for protection in Hungary during her numerous trips to that country or immediately after she arrived in Canada. As stated in *Castroman v. Canada (Secretary of State)* (1994), 27 Imm. L.R. (2d) 129; 81 F.T.R. 227 (F.C.T.D.), one of the primary ways that the Board tests a claimant's credibility is by comparing the PIF with the claimant's oral testimony.

[19] The Board also found some of the Applicant's evidence to be implausible. The Board has the jurisdiction to determine the plausibility of testimony and their decision is to be shown deference (*Aguebor v. (Canada) Minister of Employment and Immigration)*, [1993] F.C.J. No. 732; 160 N.R. 315 (F.C.A.)).

[20] The Board member made some unfortunate choices with regard to the words used in the decision, such as his statements with regard to “the good doctor” and references to a “minor” assault on the Applicant’s son. The Applicant also claims that the Board accepted a poor translation of a term. However, these matters do not affect the heart of the decision. I note that in *Ogiriki v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 420; 2006 FC 342, Justice Simon Noël held that Board decisions maybe reasonable even if a few "weaknesses" are identified (see paragraph 13).

[21] I also note that the Board did consider the nature of the allegations. Based on this consideration, the Board asked counsel to be the first to question the Applicant and considered the Chairperson’s Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

B. *Did the Board Render a Finding of State Protection That Was Unreasonable and Not In Accordance With the Evidence Before It?*

[22] The Applicant argues that the Board ignored contradictory evidence of the state’s failure to protect Hungarians and other minorities and erred when it concluded that grassroots organizations could provide protection for her.

[23] The Respondent argues that the Board reasonably concluded that the Applicant’s actions do not rebut the presumption of state protection and that the panel reasonably found that the

Applicant's reason that she was "disappointed" in the police was not sufficient to explain her inability to seek help from the authorities.

[24] A claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact, on a balance of probabilities, that the state protection is inadequate (*Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94; 69 Imm. L.R. (3d) 309 at paragraph 30).

[25] In this case, the Board held that the Applicant had not made efforts to seek out state protection, that the documentary evidence did not support the position that state protection was unavailable, and that the Applicant's reasons for not contacting the police were not credible or plausible.

[26] Refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where the refugee claimant has unsuccessfully sought the protection of their home state (see *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689; [1993] S.C.J. No. 74; *Hinzman v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 584; 2007 FCA 171). In *Szucs v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1614; 100 A.C.W.S. (3d) 650 (T.D.), the Applicant claimed he did not report the two incidents of persecution to the police because he did not think it would help his situation. In his reasons, Justice Pierre Blais held the Board may examine all reasonable steps that the Applicant has taken to seek state protection.

[27] In this case, the Board held that the Applicant should have sought state protection for the serious assaults on her. This was reasonable.

[28] The Applicant argues that the Board ignored contradictory evidence of the state's failure to protect Hungarians and other minorities. However, the Board is not required to make reference to each item of documentary evidence or summarize all the documentary evidence introduced (see *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.)) and the reasons of administrative agencies are not to be read hypercritically (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35; 1998 CanLII 8667 (F.C.T.D.)).

[29] In this case, the Board referenced the Applicant's evidence in page 1 of its reasons and stated on page 6 that "on the evidence" the Applicant had not rebutted the presumption of state protection. This was reasonable.

[30] The Applicant further argues that the Board erred in determining the risk to the Applicant, as state availability of state protection is an individualized determination. The Applicant relies on *Nadarajah v. Canada (Solicitor General)*, 2005 FC 713, [2005] F.C.J. No. 895, for this position.

[31] In *Nadarajah*, above, Justice Carolyn Layden-Stevenson held that the Board had failed to properly assess the states ability to protect the Applicant, a high profile member of a particular

political group, based on the evidence that high profile members, as opposed to low profile members, were wanted by the authorities. There are no similar links in this case.

[32] The Applicant also argues that the Board erred when it concluded that grassroots organizations could provide protection for her. This was not the conclusion of the Board. The Board stated at page 8 of its reasons that "…in addition to direct state protection provided by the government of Serbia, there are effective grassroots organizations working to assist victims of domestic abuse, most of these are women and sometimes children." Therefore, the grassroots organizations were identified to play an assistive role and not that of state protection.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. this application for judicial review is dismissed; and

2. there is no order as to costs.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-2764-09**
STYLE OF CAUSE:	**SOKOLA v. MCI**
PLACE OF HEARING:	**TORONTO**
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