

Federal Court



Cour fédérale

Date: 20100902

Docket: IMM-6718-09

Citation: 2010 FC 873

Toronto, Ontario, September 2, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**DANICA NEE RANDJELOVIC STOJMENOVIC
(a.k.a. DANICA STOJMENOVIC)
DUSAN STOJMENOVIC
AND LAZAR STOJMENOVIC**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are a mother and two of her sons, all Serbian citizens. They made a claim for protection as convention refugees. The claim was rejected by a decision of a member of the Immigration and Refugee Board of Canada dated December 14, 2009. Judicial review of that decision is now sought. For the reasons that follow, this application for judicial review is dismissed. No question is to be certified.

[2] The applicant mother, though not a Roma by birth, married her husband who was a Roma and a vocal advocate for the Roma cause in Serbia. The applicant had a married daughter who became a Canadian citizen. The daughter, together with the daughter's husband sought to sponsor the applicants and applicant's husband to enter Canada. Initially the applicants, including the husband, came to Canada under visitors visas. A series of events transpired, the applicant mother's husband died, the daughter and her husband went through a marital breakdown meaning that no funds were available for sponsorship. The applicants extended their visitors' visas then sought status in Canada on humanitarian and compassionate grounds, which was unsuccessful. At the end, the applicants made a claim for refugee protection. This claim was said to have been suggested by someone at the Refugee Protection Division but there is nothing on the record to reflect this suggestion.

[3] The Member rejected the applicants' claim on two grounds. First, the Member found that the reasons given for the delay in making a refugee claim were lacking in credibility and that the basis for alleging fear of persecution in Serbia, attacks by skinheads on Roma, lacked credibility. Secondly, the Member found that adequate state protection was available to the applicants in Serbia.

[4] Applicants' counsel argued, as to the first ground, that the applicants were entitled to seek out various means by which they might enter Canada and it was reasonable for them not to burden the Refugee Protection Division with a refugee claim if other grounds that were available proved to be successful. Only if unsuccessful, as was the case here, would it be reasonable to make a refugee

claim it was argued. Here the delay was 14 months, a matter that the Member found seriously impugned the credibility of the claim.

[5] The Member's determination in this respect was reasonable. As Simpson J. said in *Cruz v. Canada (MCI)*, June 16, 1994, [1994] F.C.J. No. 1247 at paragraph 10, delay is an important factor in the assessment of a refugee claim because it addresses the existence of a subjective fear of persecution which is an essential element of a convention refugee claim. A refugee claim should not be looked at simply as one of many choices as to how best to seek status in Canada.

[6] As to the second ground, state protection, applicants' counsel made no serious argument as to the legal test applied by the Member. Rather, the argument was directed to whether the Member had given adequate weight to a lengthy memorandum filed by applicants' counsel after the hearing before the Board in which many references were cited so as to support a conclusion that state protection in Serbia, particularly for Roma, was inadequate.

[7] In the reasons, the Member indicates that the applicants' counsel's memorandum was reviewed. The Member referred in particular only to one document a UK Home Office report, which was a compendium of other reports, in supporting a conclusion that there was adequate state protection.

[8] The law is clear that a Member in giving reasons is not required to discuss every document and piece of evidence in the record nor is the Member required to consider every argument raised so

long as it is clear that the relevant documents, evidence and arguments were considered. In the present case the Member states that the counsel's material, identified as exhibit C-5, was reviewed and noted that there were many problems facing Roma in Serbia. However, the Member preferred to rely on the UK Home Office report in concluding that Serbia offered adequate state protection regarding the treatment of Romas.

[9] I find no basis for setting aside the Member's decision. No party requested certification and none will be made.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is dismissed;
2. There is no certified question;
3. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6718-09

STYLE OF CAUSE: DANICA NEE RANDJELOVIC STOJMENOVIC, (a.k.a. DANICA STOJMENOVIC), DUSAN STOJMENOVIC AND LAZAR STOJMENOVIC v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 2, 2010

REASONS FOR JUDGMENT AND JUDGMENT: HUGHES J.

DATED: September 2, 2010

APPEARANCES:

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