

Federal Court



Cour fédérale

**Date: 20101015**

**Docket: IMM-6608-09**

**Citation: 2010 FC 1013**

**Ottawa, Ontario, October 15, 2010**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ELENA YURIEVNA KOZYREVA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of a decision to deny the applicant's Pre-Removal Risk Assessment (PRRA) application.

[2] I am not persuaded that the PRRA officer made the errors alleged by the applicant and for the reasons that follow this application is dismissed.

## **Background**

[3] Ms. Kozyreva is a citizen of Russia. She came to Canada on a temporary resident visa on May 5, 2006. The visa expired on November 5, 2006. She had a whirlwind relationship with Eduard Baraban, a Canadian citizen. They met on July, 1, 2006, began living together on September 1, 2006, and married on October 27, 2006.

[4] In January 2007, Ms. Kozyreva applied for an extension of her temporary resident visa and her husband filed a spousal sponsorship application. When they attended an interview on February 28, 2008 with respect to the sponsorship application, the applicant was seven months pregnant. The officer was apparently satisfied that the marriage was *bona fide*; however, it was noted that Mr. Baraban was in default under a previous sponsorship application he had filed with respect to his first wife. The first Mrs. Baraban attacked Mr. Baraban with a knife shortly after she arrived in Canada as a sponsored spouse. She was charged with a criminal offence but it was dropped when it was determined that she suffered from mental health issues.

[5] In order to be able to sponsor the applicant, Mr. Baraban collected the funds he thought were necessary to pay back the social assistance monies his first wife had received from 2001 to 2004. However, he later learned that a further sum of nearly \$35,000 was still outstanding.

[6] Subsequently, the applicant was removed from Canada with her son, who had been born on April 3, 2008. However, because her son did not have the necessary visa, they were turned back at

Amsterdam, Holland, and were returned to Canada. The applicant filed a PRRA application on August 26, 2008, claiming that she feared that if she returned to Russia she would be harmed by her former boyfriend.

[7] Before the applicant came to Canada, an ex-boyfriend had threatened to kill her, and said that if she ever returned to Russia he would drown her. According to the applicant, he has used different names and has connections both with criminals and with the Russian police. He is 17 years older than she and has beat her many times. Ms. Kozyreva says that she did not report the beatings to police because it would have been hard to prove her allegations of abuse and because her ex-boyfriend had connections with the police and was rich. Furthermore, the applicant's ex-boyfriend told her that any jail sentence would not be long because of his mental instability.

[8] The PRRA officer noted that the applicant never made a refugee claim. In rejecting the PRRA application, the officer considered that the applicant is no longer in a relationship with her former boyfriend and determined that there was insufficient objective evidence that the former boyfriend would still have any interest in her. Considering that the applicant is in a new relationship and has a son, the officer was not satisfied that the authorities would not take action on violence perpetrated against the applicant.

[9] The officer found that even if the applicant were threatened by her former boyfriend, there was adequate state protection available for her in Russia and that state protection was the determinative issue in the applicant's case.

[10] The officer acknowledged that domestic violence is a major problem in Russia but noted that its law prohibits battery, assault, threats and murder. The officer noted that victims of domestic violence must prosecute cases themselves, and found that while some sources indicate police discourage victims from filing complaints, there was insufficient evidence to find that they are prohibited from doing so. It was also noted that some reports have indicated improvements in cities where organizations have worked with police to support victims of domestic violence.

[11] The officer noted that while the remedies available to domestic violence victims in Russia may not be equal to those offered in Canada, refugee protection is not meant to permit a claimant to seek better protection abroad than he or she would receive at home.

[12] The officer ultimately determined that the applicant had not provided sufficient objective documentary evidence to support her assertions and had not provided an objectively identifiable reason for not seeking protection in Russia. Accordingly, the officer determined that the applicant did not qualify for protection under either s. 96 or s. 97 of the Act.

### **Issues**

[13] The applicant raises the following issues:

1. Whether the officer erred by finding that the applicant had not discharged her onus in rebutting the presumption of state protection with clear and convincing evidence; and

2. Whether the officer erred by finding that because the applicant is in a new relationship and has a son that her former boyfriend in Russia would no longer pose a threat to her.

## **Analysis**

### *State Protection Analysis*

[14] I find that the officer's finding that Ms. Kozyreva had failed to provide clear and convincing evidence to rebut the presumption of state protection was reasonable based on the material before the officer.

[15] Contrary to the applicant's submissions, the officer did not ignore portions of the documentation supporting the applicant's position. The officer stated that domestic violence was a "major problem," that "[v]ictims of domestic violence must prosecute cases themselves" and that the evidence indicated that "police discourages (*sic*) victims from filing complaints."

[16] The applicant mischaracterizes these findings by suggesting that the officer concluded that state protection is available because victims of domestic violence are not prohibited from filing complaints. Although the latter part of this observation was made by the officer, it was not the only reason for the finding that state protection was available. Rather, the officer considered the evidence as a whole and determined that the applicant had not provided clear and convincing evidence of an absence of state protection.

[17] I reject the applicant's submission that the officer did not consider the implications of the applicant's statement that her ex-boyfriend had connections to the police and criminals. The officer specifically acknowledges her statement that her ex-boyfriend has connections to police and criminals, and goes on to observe that "local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its citizens ..." While perhaps the officer could have been more fulsome in addressing this issue, I cannot agree that on a reading of the decision as a whole this renders the officer's finding regarding state protection unreasonable.

*The Threat Posed by the Former Boyfriend*

[18] The applicant submits that she has presented compelling reasons for why she refused to avail herself of the state protection, and that accordingly s. 108(4) of the Act operates to render irrelevant the fact that her former boyfriend may not currently have any interest in her. The relevant provisions of the Act read as follows:

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

...  
(e) the reasons for which the person sought refugee protection have ceased to exist.

...  
(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of

108. (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

...

e) les raisons qui lui ont fait demander l'asile n'existent plus.

...  
(4) L'alinéa (1)e ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se

the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[19] I agree with the respondent that jurisprudence makes it clear that before an officer may embark on a s. 108(4) analysis there must first be a finding that there was a valid refugee or protected person claim and that the reasons for the claim have ceased to exist due to changed country conditions: *Brovina v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 635, para. 5. Because state protection was found to exist, Ms. Kozyreva is not a refugee or person in need of protection and the compelling reasons analysis under s. 108(4) is not warranted.

[20] I further find that the officer's conclusion that there was insufficient evidence to support the assertion that the former boyfriend would be interested in pursuing the applicant if she were to return to Russia was fair and reasonable on the evidence that was put before the officer.

[21] As much as one may sympathize with the plight of the applicant and her new Canadian family, this Court cannot upset the decision of the officer as it was reasonable based on the facts and evidence that were before her.

[22] Neither party proposed a question for certification; there is none.

**JUDGMENT**

**THIS COURT ORDERS that** this application for judicial review is dismissed and no question is certified.

“Russel W. Zinn”

---

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6608-09

**STYLE OF CAUSE:** ELENA YURIEVNA KOZYREVA v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 23, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** ZINN J.

**DATED:** October 15, 2010

**APPEARANCES:**

Joseph S. Farkas FOR THE APPLICANT

Kevin Doyle FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

JOSEPH S. FARKAS FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario