Federal Court  Cour fédérale

Date: 20110113

Docket: IMM-2192-10

Citation: 2011 FC 36

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 13, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

ELEONORA GALINKINA AND JOSEPH KARPMAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated April 9, 2010, that the applicants are neither Convention refugees nor persons in need of protection under the Act.

Facts

[2] The principal female applicant and her husband are Jews born in the USSR. They left the USSR in 1990 to seek refuge in Israel following anti-Semitic attacks.

[3] In January 1991, during bombings, they met an Arab family, that of Hidjazi Mahmoud Omaina, who took them to a bomb shelter. Afterward they became friends.

[4] In 2000, after the start of the Intifada, Mahmoud was attacked by Israelis. The principal female applicant tried to intervene, but she was also pushed and her husband, Jakob Karpman, and his son-in-law had to intervene to protect her.

[5] The principal female applicant also argued that she was insulted by the neighbours who called the police when she entertained Mahmoud and his family in her home. At that time, she was allegedly subject to an identity check by Israeli police officers on three separate occasions.

[6] In 2006, during the Lebanon-Israel conflict, the female applicant noted increased hostility against Arabs.

[7] On April 4, 2007, the principal female applicant and her family left for a suburb with their friend Mahmoud. While the men were playing volleyball, one of the neighbours pushed Mr. Karpman, who fell to the ground. Mahmoud tried to come to his aid, but in vain; a number of men assaulted him as well.

[8] Jakob Karpman was taken to hospital where they found multiple contusions to his arm and his ribs. The principal female applicant then went to the police station to file a complaint. She states that she did not receive any assistance from the authorities.

[9] The applicants also apparently consulted a legal practitioner who allegedly told them that it was not worth pursuing.

[10] Following a telephone conversation with their daughter Viktoria who lives in Montréal, they decided to come to Canada and claim refugee protection. They arrived on June 2, 2007, and filed their claim on June 4, 2007.

Impugned decision

[11] The panel first determined that the principal female applicant and her husband are not Convention refugees or persons in need of protection because the mistreatment suffered would not amount to persecution under the Convention and the applicants have not rebutted the presumption of state protection.

Issues

[12] This application for judicial review raises the following issues:

1. Did the panel err in concluding that the mistreatment suffered by the applicants did not amount to persecution?

2. Did the panel err in finding that the applicants had not rebutted the presumption of state protection?

Analysis

A. *Standard of review*

[13] The question of state protection is one of mixed fact and law; it is reviewable on the standard of reasonableness (*Dunsmuir v New-Brunswick*, 2008 SCC 9, 2008 1 SCR 190, at paras 55, 57, 62 and 64; *Hinzman v Canada* (*Citizenship and Immigration*), 2007 FCA 171, 282 DLR (4th) 413 at para 38; *Liang v Canada* (*Citizenship and Immigration*), 2008 FC 450 at paras 15 and 17). The same standard applies to assessing the evidence and credibility (*Ndam v Canada* (*Citizenship and Immigration*), 2010 FC 513 at para 4).

B. *The credibility of the applicants*

[14] The applicants argue that the panel erred in finding that the mistreatment suffered does not amount to persecution. In their view, the panel trivialized the reported incidents by calling them unpleasant rather than very serious mistreatment.

[15] It is for the panel to assess the evidence adduced. It is well established that issues of credibility and of assessment of the facts and the evidence are wholly within the discretion of the panel, as the trier of fact (*Chen v Canada* (*Minister of Citizenship and Immigration*), 2005 FC 767, 148 ACWS (3rd) 118. It is not for the Court to substitute its own assessment of the evidence for that of the panel.

[16] The panel applied the criteria set out in *Ward* (*Canada* (*Attorney General*) *v Ward*, [1993] 2 SCR 689, [1993] SCJ No 74 [*Ward*]) that the mistreatment suffered must constitute serious prejudice, a violation of fundamental rights, to be deemed an objective fear of persecution. It came to the conclusion that the incidents reported by the applicants did not meet the above criteria.

[17] Indeed, the applicants in their memorandum again related the incidents that took place over a period of over fifteen (15) years, but they did not show how the panel erred in assessing these facts or what evidence the panel disregarded.

[18] At the hearing, counsel for the applicants reiterated the criticisms levelled at the panel regarding the objective seriousness of the incidents, particularly the mistreatment suffered by Mr. Karpman, and argued that the panel erred.

[19] From the reading of the decision, it is evident that the panel considered each of the incidents related by the applicants in their testimony and came to a reasonable conclusion in the circumstances. There is therefore no need for the Court to intervene on this first issue.

C. *Internal flight alternative*

[20] Did the panel err in finding that the applicants had not rebutted the presumption of state protection?

[21] The case law of this Court is clear: to rebut the presumption of state protection, an applicant must present clear and convincing proof of the state's inability to provide protection. This evidence must be reliable and relevant and must be able to convince the panel, which has sole jurisdiction over the facts, of the inadequacy of state protection (*Ward*, above, *Carrillo v Canada* (*Minister of Citizenship and Immigration*), 2008 FCA 94, [2008] 4 FCR 636).

[22] The obligation to obtain state protection is greater when the state is a democratic state such as Israel. The applicants in this case must show that they tried to exhaust all courses of action open to them in Israel to obtain the necessary state protection (*Kadenko v Canada* (*Minister of Citizenship and Immigration*), [1996] FCJ No 1376, 206 NR 272 (FCA) [*Kadenko*]).

[23] This Court has already found that the state of Israel is a democratic country that is willing and able to protect its citizens, including former citizens of Russia and non-Jews (*Sverdlov v Canada* (*Minister of Citizenship and Immigration*), 2007 FC 652, [2007] FCJ No 892; *Hanna v Canada* (*Minister of Citizenship and Immigration*), 2006 FC 580, [2006] FCJ No 720).

[24] The applicants allege that the panel did not consider all of the evidence in relation to the steps they took to obtain state protection in Israel, in particular that it did not believe the female applicant, who alleges that she reported the incident of April 4, 2007, to the proper authorities and consulted a legal practitioner regarding her courses of action following the incident.

[25] In its decision, the panel argues that the applicants could have applied to other organizations in Israel, such as the Ombudsman. Although the criticisms levelled at the applicants for failing to file a copy of the April 4, 2007, is without merit, the fact remains that the applicants did not exhaust all possible courses of action, as the panel points out in its decision.

[26] If refugee claimants fail to take all available measures to seek state protection before filing a refugee claim, they cannot then rebut the presumption of state protection (*Cordova v Canada* (*Minister of Citizenship and Immigration*), 2009 FC 309, [2009] FCJ No 620). This is a rule clearly established by this Court's case law (see also *Kadenko*, above, and *Castellanos v Canada* (*Minister of Citizenship and Immigration*), 2009 FC 307, [2009] FCJ No 663).

[27] Under the circumstances, the Court finds that the panel's decision is reasonable. The applicants did not try to seek out other means of state protection in Israel, and they did not show, by means of the evidence, that state protection was not reasonably available in Israel.

[28] For these reasons, the application for judicial review is dismissed. The parties did not propose a question for certification, and no question arises in this file.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

- The application for judicial review is dismissed and no question is certified.

"André F.J. Scott"
Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2192-10
STYLE OF CAUSE:	**ELEONORA GALINKINA AND JAKOB KARPMAN V. THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
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