Federal Court  Cour fédérale

Date: 20111201

Docket: IMM-1852-11

Citation: 2011 FC 1396

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Vancouver, British Columbia, December 1, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

VARGA MARTA AMBRUS DEZSONE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Ambrus Dezsone (hereinafter Ms. Dezsone) left Hungary for Canada to claim refugee protection on the basis of her Roma origins. Shortly afterwards, she learned that her grandson had been hospitalized in Hungary. She then decided to return there, but the Canadian authorities were in possession of her passport. To get it back, she withdrew her refugee protection claim.

[2] In the end, Ms. Dezsone did not return to Hungary. She instead decided to file an application to reinstate her refugee protection claim. However, the Refugee Protection Division (RPD) of the

Immigration and Refugee Board of Canada dismissed her application to reinstate her claim. This is an application for judicial review of that decision.

[3] The RPD member aptly summarized the situation:

> In the case before the panel, contrary to what is written in her application, the 66-year-old claimant arrived in Canada not in November 2009, but on September 10, 2009, and she claimed refugee protection three days later as a ROMA from Hungary. In her request for reinstatement, the claimant alleged that, a few days later, she received a telephone call from her grandson, who had been hospitalized in Hungary following a hemorrhage. Panicked by the news, she wanted to support her grandson like a good grandmother. Without thinking about her own situation, the claimant withdrew her claim for refugee protection with CIC on December 6, 2010. After the claimant's daughter and son-in-law, who live in Montréal, calmed her down, explaining to her that she could not return to Hungary to be with her grandson because her own life was at risk there, the claimant applied for reinstatement on January 13, 2011.

[4] Subsections 53(1) and (3) of the *Refugee Protection Division Rules* describe the process by which a refugee protection claim is reinstated:

53. (1) A person may apply to the Division to reinstate a claim that was made by that person and withdrawn.	53. (1) Toute personne peut demander à la Section de rétablir la demande d'asile qu'elle a faite et ensuite retirée.
…	[…]
(3) The Division must allow the application if it is established that there was a failure to observe a principle of natural justice or if it is otherwise in the interests of justice to allow the application.	(3) La Section accueille la demande soit sur preuve du manquement à un principe de justice naturelle, soit s'il est par ailleurs dans l'intérêt de la justice de le faire.

[5] It is clear that Ms. Dezsone made the decision to withdraw her refugee protection claim without consulting her children or her counsel. The file before the member did indicate that she was represented by counsel and that her daughter was acting on her behalf. However, Ms. Dezsone signed a notice of withdrawal willingly, a notice that had, moreover, been translated for her from French to Hungarian.

[6] Although the issue of Ms. Dezsone's mental state was raised, there was no evidence adduced in that regard. At best, it can be said that she made a bad decision, a decision that she wishes she had not made.

[7] In the circumstances, I do not believe that there was a failure to observe a principle of natural justice or that it is otherwise in the interests of justice to require that the RPD ensure that Ms. Dezsone had consulted her children and her counsel before withdrawing her refugee protection claim. As explained by Justice Beaudry in *Arndorfer v Canada (Minister of Citizenship and Immigration)*, 225 FTR 124, [2002] FCJ No 1659 (QL), at paragraph 44:

> Similarly, the IRB and the respondent must be able to rely on what is communicated to them by claimants. If the IRB and the Minister had to impose on themselves a waiting period before acting on such notices as the Notice of Withdrawal, or impose extra steps on themselves simply to ensure that the statement of the claimant is indeed his or her final answer, the refugee claims process would be encumbered, which would in turn worsen an already critical backlog in the refugee claims system.

[8] The member's decision is reasonable. Consequently, this Court will not intervene.

[9] It does not necessarily follow that Ms. Dezsone will be removed to a country where she was allegedly persecuted. She is still entitled to a pre-removal risk assessment (PRRA). Under sections 112 and 113 of the *Immigration and Refugee Protection Act*, her PRRA will address all of the risks listed in sections 96 and 97 of the Act (*Hausleitner v Canada (Minister of Citizenship and Immigration)*, 2005 FC 641 at para 29, 139 ACWS (3d) 115; and *Chokheli v Canada (Minister of Citizenship and Immigration)*, 2009 FC 35 at para 13, [2009] FCJ No 51 (QL)).

ORDER

FOR THE FOREGOING REASONS;

THE COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to be certified.

"Sean Harrington"
Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1852-11
STYLE OF CAUSE:	AMBRUS DEZSONE v MCI
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 24, 2011
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	DECEMBER 1, 2011

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