Federal Court  Cour fédérale

Date: 20140214

Docket: IMM-3688-13

Citation: 2014 FC 145

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 14, 2014

Present: The Honourable Mr. Justice Roy

BETWEEN:

Monika JOZSA
Kira KOVACS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review filed by the applicants under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC (2001), c 27 (the Act). The applicants

complained of the decision rendered on April 18, 2013, by the Refugee Protection Division of the Immigration and Refugee Board (IRB) that refused their refugee claims.

[2] Considering the evidence, the submissions filed by the parties and the arguments heard before this court, the application for judicial review was dismissed for the reasons that follow.

[3] The applicants, the mother and her very young daughter, are of Hungarian nationality and Roma ethnicity. Essentially, the principal applicant alleged discrimination against her in Hungary and she claims that she was attacked by skinheads in 2009.

[4] Following this incident she left her country on October 28, 2009, and arrived the next day in Canada. She then sought protection under sections 96 and 97 of the Act. At the time of the decision for which judicial review is requested, the principal applicant was 21 years old while her daughter was 4 years old.

[5] In my view, the principal applicant's claims are divided in two very separate parts. First are her claims that precede her arrival to Canada. Second is the situation that she would face if she had to return to her country of nationality. In either case, the RPD's decision is based on the applicant's absence of credibility.

[6] Thus, everything that is alleged by the applicant before her arrival in Canada is discrimination that she allegedly experienced in Hungary and an attack that required stitches. The RPD did not consider that these acts could constitute persecution and this conclusion is

reasonable. Indeed, as to the single violent incident put forward by the applicant, if it could have been sufficient, her story in 2013 is different from that which was given at first. Her testimony is in fact different from what she submitted in writing in March 2013. In short, the applicant was not able to offer any corroboration of the incident that she said she was a victim of. She was not able to support her allegations by any documentation from the hospital where she allegedly went or from authorities that she made a complaint to, then withdrew it. A witness of the incident, who the applicant says is a friend, also did not provide any testimony, by letter or otherwise. As the RPD noted, it is no longer the age when it was difficult for written documents to travel. However, nothing of the sort was offered. In addition, it is certainly possible that the accumulation of harassment and discrimination could become persecution. However, it must still be proven. That was not done in the circumstances.

[7] As for a possible return to Hungary, the applicant alleges that her relationship with her common law spouse deteriorated in the fall of 2010. He was allegedly violent toward her. Since then, he has been deported from Canada because of inadmissibility. The applicant claims that he made threats from Hungary, at a distance, since his expulsion from Canada. Moreover, as for the allegations made about the applicant's treatment in Hungary, these allegations since her arrival in Canada are tainted with a complete lack of corroboration. Therefore, even the incident that allegedly occurred in Canada and in which the applicant was the victim of violence is not corroborated by any documentation that could have come from the Montréal Police Department.

[8] It is not particularly original to state that the burden of proof is on the applicant. It is no more original to claim that the applicable standard of review in this case is that of reasonableness

(*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Carranza v Minister of Citizenship and Immigration*, 2010 FC 914). The fact remains that it is the burden that the applicants are faced with.

[9] It is up to the applicant to establish the elements necessary to his or her application. The evidence in administrative law may take different forms, such as hearsay, but it must be credible and sufficient to succeed.

[10] The principal applicant's credibility was vital in this case. Further, limiting herself to generalities, remaining evasive and reticent, certainly does not favour credibility, which is necessary to compel. When inconsistencies also appeared in different versions, there should be no surprise if the trier of facts, who is the master of the assessment of credibility, chooses not to grant compelling weight to such testimony.

[11] Without purporting to be exhaustive with respect to the elements that are considered by the decision-maker, the following passage taken from *White v His Majesty the King*, [1947] SCR 268, is almost a classic:

> The foregoing is a general statement and does not purport to be exhaustive. Eminent judges have from time to time indicated certain guides that have been of the greatest assistance, but so far as I have been able to find there has never been an effort made to indicate all the possible factors that might enter into the determination. It is a matter in which so many human characteristics, both the strong and the weak, must be taken into consideration. The general integrity and intelligence of the witness, his powers to observe, his capacity to remember and his accuracy in statement are important. It is also important to determine whether he is honestly endeavouring to tell the truth, whether he is sincere and frank or whether he is biassed, reticent and evasive. All

> these questions and others may be answered from the observation of the witness' general conduct and demeanour in determining the question of credibility.

[12] Therefore, it cannot be more surprising that a court in judicial review shows great deference with respect to the question of the credibility of a witness (see also *Cooper v Minister of Citizenship and Immigration*, 2012 FC 118, at paragraph 4). Witnesses who rely on generalities could see their testimony be given less weight. To a certain extent, it could be seen as being evasive or showing some reticence to provide details, which could go against their claim. One cannot hope to provide a generic version that is believable in all instances and sufficient. This does not mean that the application under sections 96 and 97 of the Act is automatically dismissed. Other evidence must be considered. But if there is none, it would be difficult to show the dismissal of the application based only on lack of credibility as not reasonable unless it was the result of a capricious or microscopic review. A.W. Bryant, S.N. Lederman and M.K. Fuerst in *The Law of Evidence in Canada*, 3th Ed., LexisNexis, 2009, remind us that

> §12.151 The assessment of the credibility of witnesses is considered a prime judicial function. The Supreme Court reaffirmed the principle that the ultimate conclusion as to the credibility or truthfulness of a particular witness is for the trier of fact and is not the proper scope of expert opinion evidence. Laypersons are capable of determining truthfulness based on logic, experience and exercising their intuition and common sense.

[13] In this case, the applicant made allegations relating to discrimination that she had experienced in Hungary and described a single incident that she was not able to confirm by independent evidence, which in the RPD's view, could easily have been available. The finding on the credibility of the applicant' version can only be reasonable. In the same way, the

allegations of violence against her by her former common-law spouse are vague and result more from speculation of whether she has to return to Hungary. There is no reviewable error.

[14] It follows that the application for judicial review is dismissed. There is no question that warrants certification.

ORDER

The application for judicial review of the April 18, 2013, determination by the Refugee Protection Division of the Immigration and Refugee Board is dismissed. There is no question that is warrants certification.

"Yvan Roy"
Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Alain Vallières	FOR THE APPLICANTS
Guillaume Bigaouette	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alain Vallières Montréal, Quebec	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT