

Federal Court



Cour fédérale

Date: 20150420

Docket: IMM-6928-14

Citation: 2015 FC 505

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 20, 2015

PRESENT: The Honourable Mr. Justice Noël

BETWEEN:

JELENA PUNOS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review by Jelena Punos [the applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision, dated September 4, 2014, by the Immigration and Refugee Board of Canada, Refugee Protection

Division [RPD] rejecting the applicant's refugee protection claim under section 96 and subsection 97(1) of the IRPA.

II. Alleged facts

[1] The applicant is 23 years old and is a citizen of Croatia and of Serbia.

[2] In 1995, she states that she left her village in Croatia for Serbia with her parents due to the war.

[3] In 2007, the applicant alleges that she began a romantic relationship with a Serbo-Croatian man who lived in Croatia, whom she would visit whenever possible. She claims that she hid this relationship from her parents.

[4] She submits that when she was in Croatia in 2008, two individuals asked her to leave the country, telling her that all Serbs should be beaten. She adds that when her father found out about her relationship with the Serbo-Croatian man, in January 2010, he purportedly asked her to marry one of his acquaintances, Branko. She refused and her father reportedly beat her and kept her confined to her room.

[5] Her boyfriend subsequently came to Canada. The applicant followed in July 2010 in order to study English. She returned to Serbia in December 2010 to discuss her relationship with her boyfriend. Her father apparently told her that he would rather see her dead than see her marry her boyfriend. She returned to Canada on January 21, 2011, and applied for refugee protection on

March 21, 2011. On September 9, 2014, the RPD rejected the applicant's claim for refugee protection. It is this decision that is under review.

III. Decision under review

[6] The RPD noted at the outset that although the applicant had no family in Croatia and had not lived there since the war, she had travelled to Canada with her Croatian passport and returned there frequently to visit her boyfriend. During these visits, she was never physically assaulted nor did she suffer any real harm as a result of her Serbian origins. The RPD further noted that the documentary evidence showed that hostility towards Serbs in Croatia had diminished and protection of minorities had improved. The RPD concluded that state protection would be available to the applicant if she were to return to Croatia.

[7] The RPD then commented on the applicant's fears in the event of a return to Serbia and her father's insistence that she marry Branko. The RPD found that more than four years had elapsed since the applicant had last seen Branko. The RPD therefore doubted the he would still have an interest in the applicant. The RPD further determined that it was not credible that the applicant's father would go so far as to force her to marry Branko, given that he was unable to do so prior to her leaving Serbia in December 2010 and given the fact that she had returned home in December 2010. The applicant's return to Serbia therefore indicated a lack of subjective fear on her part. The RPD also dismissed evidence regarding forced marriages, as it stated that this problem affected the Roma population and other minority groups which the applicant did not belong to. The RPD then noted that there were laws in Serbia prohibiting domestic violence and

threats made against other family members. The RPD subsequently determined that the applicant's father could not force her to marry a man against her will.

[8] The RPD therefore concluded that the applicant was not in danger, either in Croatia or in Serbia, and thus was not a refugee under sections 96 and 97 of the IRPA.

IV. Parties' submissions

[9] The applicant first submits that the RPD erred by failing to even mention the Guideline for Women Refugee Claimants Fearing Gender-Related Persecution [the Guideline]. The applicant further asserts that the RPD failed to ask her any questions about the documentary evidence during the hearing, which constituted a breach of procedural fairness. The respondent replied that the fact that the Guideline was not mentioned was not in itself a ground for judicial review of the RPD's decision.

[10] The applicant further argues that the documentary evidence contradicts the RPD's finding that state protection would be available to her if she were to return to Croatia. She also contends that the RPD ignored documentary evidence that was central to her claim for refugee protection. The respondent replies that, for its part, the evidence in the record showed that there are occasionally incidents against ethnic minorities, but that it was not convincing with regard to the alleged fear of the Serbian minority in Croatia or the alleged ineffectiveness of the Croatian authorities in protecting minorities.

[11] The applicant also argues that a breach of procedural fairness occurred because the RPD failed to question her at the hearing about the fact that her father had not imposed the marriage on her between May 2010 and July 2010. She adds that the RPD erred in law in regard to its conclusion of lack of subjective fear because the applicant had returned to Serbia. The applicant asserts that the RPD failed to consider her explanation that she had returned to Serbia because her mother was ill and had asked her to return to the family home. The respondent counters that having chosen to return to see her father in December 2010 clearly shows that the applicant does not fear that he would kill her. The respondent also notes that it was reasonable for the RPD to find that the story about Branko had lost its significance given that four years had elapsed since the father had selected this man for his daughter.

[12] The applicant also submits that she has all of the characteristics of a victim of battered woman syndrome, given that her father is the agent of persecution and that she had been a victim of violence for extended periods of time. The respondent replies that this argument is incorrect as it is not founded on any factual basis. The respondent adds that she was free to leave Belgrade, Serbia, without having her father object or try to stop her. This shows that the applicant is ready to say just about anything to remain in Canada.

[13] The applicant further contends that there is nothing in the documentary evidence to support the RPD's finding that forced marriages applied solely to the Roma population and other minority groups, and states that violence against women is a large problem in Serbia. Moreover, she points out that having laws on the books does not equate with meaningful state protection.

The respondent replies that there is nothing in the evidence to suggest that the applicant would face a dangerous situation in Serbia today.

[14] In reply, the applicant submits that the respondent failed to address all of the arguments she raised in her memorandum.

V. Issues

[15] Having reviewed the parties' memoranda, I would state the issues as follows:

1. Did the RPD err by failing to mention the Guideline?
2. Did the RPD err in its assessment of the documentary evidence?
3. Is the RPD's decision reasonable?

VI. Standard of review

[16] The question as to whether the RPD erred by failing to mention the Guideline is reviewable on a standard of reasonableness (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1379 at para 13). The question as to whether the RPD erred in its assessment of the documentary evidence is a question of mixed fact and law and is also reviewable on a standard of reasonableness (*Ortega v Canada (Minister of Citizenship and Immigration)*, 2011 FC 657 at para 5). The same standard is applicable to determining whether the RPD's decision is reasonable in this case. This Court will therefore only intervene if the decision is unreasonable, namely, if it falls outside the "range of possible, acceptable outcomes

which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

VII. Analysis

A. *Did the RPD err by failing to mention the Guideline?*

[17] The applicant alleges that the RPD erred by failing to mention the Guideline in its decision. On this question, the case law of this Court explains that the Guideline should be considered in the context of the allegations contained in the claim (*Higbogun v Canada (Minister of Citizenship and Immigration)*, 2010 FC 445 at para 56). The Guideline ought to be considered in the appropriate circumstances (*Higbogun*, above, at para 57). Failing to mention the Guideline is not an error in itself, provided that the RPD adequately applies the principles enshrined therein (*Mabuya v Canada (Minister of Citizenship and Immigration)*, 2013 FC 372 at para 7). In this case, the applicant alleges, *inter alia*, that her father wanted her to marry one of his acquaintances and that he hit her when she refused. Although the nature of these allegations form part of the grounds found in the Guideline, after having reviewed the RPD’s decision and the transcript of the hearing, I am of the view that the RPD did not demonstrate a lack of sensitivity with regard to the applicant’s situation. Indeed, the RPD did question the applicant about her relationship with her father and his opinion about her relationship with her boyfriend (Certified Tribunal Record [CTR] pages 303-306) in addition to considering the documentary evidence on forced marriages in its decision (CTR page 15 at para 19)). Therefore, the RPD did not err by failing to mention the Guideline in its decision.

[18] The applicant further alleges that she suffers from battered woman syndrome. This argument must be dismissed. The applicant submitted no evidence to that effect. Upon considering the decision as a whole, the RPD clearly explained its reasons for rejecting the applicant's refugee protection claim. It also took into account the documentary evidence regarding domestic violence and early and forced marriages. Moreover, it considered the fact that domestic violence is a criminal act in Serbia. The findings of the RPD on this issue are therefore reasonable.

B. *Did the RPD err in its assessment of the documentary evidence?*

[19] The applicant contends that the RPD ignored documentary evidence that was central to her claim for refugee protection. The case law of this Court explains that the RPD need not refer to each document included in the record before it. It is only where the non-mentioned evidence is of such critical importance and contradicts the RPD's conclusion that the Court may decide that its omission means that the RPD did not have regard to the material before it (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 39; *Herrera Andrade v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1490 at para 9 [*Herrera*]). The RPD is also presumed to have considered all of the documentary evidence in the record (*Herrera*, supra, at paras 10-11). It is for the RPD to determine the weight to be accorded to the documentary evidence submitted (*Singh v Canada (Minister of Citizenship and Immigration)*, 2004 FC 610 at para 4; *Jing v Canada (Minister of Citizenship and Immigration)*, 2012 FC 609 at para 19). In this case, the RPD makes frequent references to the documentary evidence that was submitted to it in its analysis of the conditions in Croatia and on the issue of forced marriages (CTR at pages

14 to 16, at paras 14, 15, 19 and 20). Contrary to the applicant's claims, the RPD did in fact adequately consider the documentary evidence and there is no reason for this Court to intervene.

[20] The applicant also alleged that at the hearing the RPD never mentioned the documentary evidence and that she was not asked any questions in this regard. She cites *Gondi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 433 [*Gondi*] in support of her argument. In that case, Justice Layden-Stevenson explained that the applicants' counsel had made multiple references to the documentary evidence at the hearing but that in its decision the RPD mentioned only one report. The situation is completely different here. In the case with which we are concerned, counsel for the applicant referred to a single document during his final submissions at the hearing before the RPD, namely, the document regarding marriages in Serbia (CTR at page 308). Furthermore, contrary to *Gondi*, the RPD made reference to several documents in the refugee claim file. Thus, there was no breach of procedural fairness as alleged by the applicant.

C. *Is the RPD's decision reasonable?*

[21] In order to establish a claim for refugee protection, a claimant must meet the onus of proof on a balance of probabilities. The claimant must establish the existence of a subjective fear as well as an objective basis for that fear (*Canada (Minister of Citizenship and Immigration) v B272*, 2013 FC 870 at para 78; *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 120). In order to be granted the status of person in need of protection, a claimant must show, on a balance of probabilities, that he or she would be personally subjected to a danger of torture or a risk to his or her life or a risk of cruel and unusual treatment or

punishment (*Covarrubias v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365 at para 43).

[22] In this case, the RPD assessed the applicant's alleged fears in and of themselves according to the documentary evidence. As to the applicant's fear with regard to the situation faced by people of Serbian origin in Croatia, the RPD adequately determined, based on the documentary evidence, that the hostilities towards Serbs in Croatia were diminishing and that the applicant had frequently travelled to Croatia when she was visiting her boyfriend and that she had come to Canada using a Croatian passport.

[23] As to the alleged fears regarding her father, the RPD properly concluded that the applicant's father had proposed that she marry Branko in January 2010, that the applicant came to Canada in July 2010 to study English and see her boyfriend and that she subsequently returned to Serbia in December 2010 in order to see whether her father had changed his opinion with respect to the marriage. It was reasonable for the RPD to conclude that this showed a lack of subjective fear of persecution on the part of the applicant. The RPD also considered the fact that the applicant had neither seen nor heard anyone speak about Branko since 2010, namely, four years prior to the hearing before the RPD. In addition, the RPD determined that it was not credible that the applicant's father would go so far as to force her to marry an acquaintance against her will. The RPD's conclusions are reasonable and supported by the evidence in the record.

[24] I also note that, according to the applicant's written narrative, she did not come to Canada in order to flee her father, but rather, to study English and see her boyfriend (CTR page 112). In her narrative, the applicant states that she returned to Serbia in order to see whether her father had changed his mind. It was not until the hearing before the RPD that the applicant mentioned (for the first time) having returned to Serbia to see her mother, who was stricken with cancer (CTR page 303). Further, when the applicant returned to Serbia in December 2010, she stated at the hearing before the RPD that she had discussed the issue of the marriage and of her relationship with her boyfriend with her father over the telephone, as her father was on a trip (CTR pages 303-304). The RPD's decision was therefore reasonable.

[25] Lastly, the applicant submits that the RPD breached procedural fairness by failing to question her at the hearing about the fact that her father had not imposed the marriage between May 2010 and July 2010. That argument is without basis. The decision of the RPD evinces a good grasp of the facts alleged and a reading of the transcript of the hearing shows that the RPD did question the applicant about her leaving Canada in June 2010, her return to Serbia in December 2010, as well as the reasons behind her return (CTR at pages 303 to 306). The RPD also questioned the applicant with respect to the situation between her and her father regarding his suggestion that she marry Branko (CTR at pages 297-300). The RPD therefore adequately assessed the applicant's situation, asked the appropriate questions and thus did not commit any breach of procedural fairness.

VIII. Conclusion

[26] The RPD was not required to specifically mention the Guideline in its decision. The RPD adequately considered and assessed the documentary evidence in the record in its analysis and asked appropriate questions at the hearing. The findings of the RPD are reasonable.

[27] The parties were invited to submit questions for certification, but none were submitted.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Simon Noël”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6928-14

STYLE OF CAUSE: JELENA PUNOS v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 15, 2015

JUDGMENT AND REASONS: NOËL J.

DATED: APRIL 20, 2015

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