

Federal Court



Cour fédérale

Date: 20170111

Docket: IMM-259-16

Citation: 2017 FC 34

Ottawa, Ontario, January 11, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

SVETLANA BOGDANOVA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Svetlana Bogdanova [the Applicant] had applied for judicial review of a decision dated November 20, 2015 [the Decision], in which a senior immigration officer denied her application for a Pre-Removal Risk Assessment [PRRA]. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27.

[2] The Applicant is a forty three year old female citizen of Russia. She came to Canada on January 26, 2013 and claimed refugee protection at the Montreal airport. Her claim was based on her sexual orientation. She says she is a lesbian.

[3] The Applicant's refugee claim was to be heard by the Refugee Protection Division of the Immigration and Refugee Board [RPD] on April 2, 2013. She alleges that she did not appear due to illness. A hearing was held on April 15, 2013 when the Applicant was given an opportunity to explain, but the RPD found her claim to have been abandoned. There was no Application for Judicial Review of that decision.

[4] On April 7, 2015, the Applicant came to the attention of the Canada Border Services Agency [CBSA] because the York Regional Police were called to her home about a domestic dispute with a man with whom she admits she was having a heterosexual relationship. The CBSA described him as her "boyfriend" in her Notice of Arrest. On this date, she was arrested for her failure to provide the CBSA with an accurate home address as required by her reporting conditions.

[5] On May 1, 2015, the Applicant submitted her first PRRA application [the First PRRA]. She said she is a lesbian and that she would suffer severe psychological harm, including potential suicide, if removed. She also alleged that she was assaulted numerous times in Russia due to her sexual orientation.

[6] On November 20, 2015, a senior immigration officer [the Officer] denied the First PRRA [the First Decision]. The First Decision was delivered to the Applicant by hand on January 4, 2016. It is the subject of this judicial review.

[7] Two days later, on January 6, 2016, the Officer received the additional material listed below [the Further Material]:

- Counsel's submissions dated December 31, 2015;
- The Applicant's declaration dated January 3, 2015;
- Medical reports from the Traumatology Department of the City Outpatient Clinic in the city of Moscow dated September 14, 2011 and September 21, 2012;
- A medical report from the Mental Clinic Hospital in Moscow dated January 13, 2012;
- A report from Natalie Riback, psychotherapist, dated December 22, 2015; and
- Documentary evidence about the treatment of the LGBT community in Russia.

[8] Since the Further Material was not available when the First Decision was written, the Officer prepared an addendum to the First Decision. It is dated February 6, 2016 [the Addendum]. However, there is no evidence that it was ever provided to the Applicant, and it does not form part of the First Decision.

[9] On January 12, 2016, the Applicant submitted a second PRRA application [the Second PRRA] which was assigned to the Officer who had made the First Decision. The Officer considered the materials filed with the Second PRRA as well as the Further Material described above. The Officer denied the Second PRRA on April 15, 2016 [the Second Decision].

[10] The Applicant applied for leave and judicial review of the Second Decision on June 30, 2016. However, on August 22, 2016, since it had not been perfected, the application was dismissed.

I. The First Decision

[11] The Applicant submitted that, in Russia, she and a girlfriend had been yelled at and insulted while sitting in a café, and that “militia” had broken into her girlfriend’s apartment. She also said that they had been called dirty lesbians and had received death threats. On one occasion, they were beaten while shopping.

[12] The Officer referred to the Applicant’s CBSA file which detailed several interactions with York Regional Police due to ongoing domestic disputes with her boyfriend. The Officer found that there was insufficient evidence to establish, on a balance of probabilities, that the Applicant was a lesbian, or that she would face risk owing to her alleged sexual orientation on her return to Russia. The Officer also found that there was insufficient evidence to corroborate the Applicant’s statements that she was assaulted in Russia due to her sexual orientation.

[13] The Officer considered the Applicant’s statement that she had been diagnosed with schizophrenia, and counsel’s statement that a letter to this effect from the Applicant’s mother would be forthcoming. However, the letter never arrived and, given that there was no medical documentation about the Applicant’s mental health, the Officer found that she had failed to establish that she would be at risk for that reason.

II. The Preliminary Issue

[14] The preliminary question is whether this application is moot. The Respondent argues that because the Application for Leave and Judicial Review of the Second Decision was dismissed, and because the Second Decision involved a review of all the relevant material, the Second Decision is a final determination of the Applicant's risk.

[15] I am persuaded by this submission. In my view, this application is moot because the Second Decision is final and dealt with the allegations of risk on a complete record. Accordingly, this application will be dismissed.

III. Certification

[16] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the Application for Judicial Review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-259-16

STYLE OF CAUSE: SVETLANA BOGDANOVA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 22, 2016

JUDGMENT AND REASONS: SIMPSON J.

DATED: JANUARY 11, 2017

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