Federal Court  Cour fédérale

Date: 20221125

Docket: IMM-3643-21

Citation: 2022 FC 1619

St. John's, Newfoundland and Labrador, November 25, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DUNIA IBRAHIM, CHRISTIAN PETROS, AND KLARISSA PETROS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Ms. Dunia Ibrahim (the "Principal Applicant") and her children Christian Petros and Klarissa Petros (collectively "the Applicants") seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the "RAD"), dismissing their appeal from the Immigration and Refugee Board, Refugee Protection Division (the "RPD"). The RPD had found that the Applicants were not Convention refugees nor persons in need of protection, pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee*

Protection Act, S.C. 2001, c. 27 (the "Act") on the ground that they had not rebutted the presumption of state protection.

[2] The Applicants named the "Minister of Immigration, Refugees and Citizenship Canada" as the Respondent in their application for leave and judicial review.

[3] That is the name of the Ministry, not of the Minister and the style of cause will be amended forthwith to show the "Minister of Citizenship and Immigration" as the Respondent (the "Respondent").

[4] The Applicants are citizens of Austria. They sought protection on the basis of domestic violence at the hands of Nissan Petros, the husband of the Principal Applicant and the father of the children. At the time the Applicants applied for protection, the son was aged 12 years and the daughter was aged 15 years.

[5] The Applicants argue that the RAD erred by failing to assess the claims of the children independently of the claim of the Principal Applicant. They also submit that the RAD unreasonably rejected their explanation for failing to pursue police protection in Austria and unreasonably concluded that they had failed to rebut the presumption of state protection.

[6] The Respondent argues that since the Applicants did not raise the issue of independent assessment of the children's claims before the RAD, they cannot raise it upon this application for judicial review. Alternatively, he submits that the RAD reasonably considered the claim of the

children together with the claim of the Principal Applicant since the claims of all three are "identical and interdependent".

[7] In any event, the Respondent argues that the RAD reasonably considered the evidence submitted by the Applicants, as well as the objective country condition evidence, and reasonably found that the Applicants had failed to rebut the presumption of state protection.

[8] The decision of the RAD is reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[9] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra* at paragraph 99.

[10] I agree with the position of the Respondent about the alleged error of the RAD in assessing the interests of the children, together with the claim of the Principal Applicant.

[11] The issue was not raised before the RAD and is not properly raised in this application; see the decision in *Canada (Minister of Citizenship and Immigration) v. R.K. and C.K.*, 2016 FCA 272 at paragraph 6.

[12] The alleged agent of persecution is the same person, that is the husband of the Principal Applicant who is the father of the children. The nature of the harm is the same, that is domestic violence. The RAD reasonably considered the claim of persecution on a global basis. There was nothing unreasonable about doing so.

[13] In any event, the record and the reasons show that the interests of the children were considered by the RAD. Its conclusions about those interests are reasonable.

[14] As for the determination about the availability of state protection, I refer to the decision in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, which highlights the need for a claimant to show both subjective and objective grounds for protection.

[15] In *Flores Carrillo v. Canada (Minster of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 at paragraph 25, the Federal Court of Appeal emphasized that the test is for the provision of adequate state protection. The presumption can be rebutted only upon the production of clear and convincing proof that state protection is not available.

[16] The RAD addressed the subjective reluctance of the Principal Applicant to seek police protection and found that the evidence in this regard was not sufficient to rebut the presumption of state protection.

[17] The RAD also acknowledged the objective evidence contained in the National Documentation Package for Austria and observed that this material recognizes challenges for the

police in protecting victims of domestic violence. It noted the claim of the Principal Applicant that she cannot get police protection because she resides with her husband, the agent of the alleged persecution.

[18] The RAD found the Principal Applicant credible but was not persuaded that she suffers from “Battered Women’s Syndrome”.

[19] The RAD referred to relevant jurisprudence about the need for clear and convincing proof in order to rebut the presumption of state protection.

[20] Upon considering the evidence in the Certified Tribunal Record and the oral and written submissions of the parties, in my opinion, the decision of the RAD meets the legal test of reasonableness. The reasons show a coherent line of analysis and otherwise, they meet the requirements of justification, transparency and intelligibility.

[21] There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-3643-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. There is no question for certification. Further, the Court orders that this style of cause be amended to show the Minister of Citizenship and Immigration as the Respondent.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3643-21
STYLE OF CAUSE:	DUNIA IBRAHIM, CHRISTIAN PETROS AND KLARISSA PETROS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF TELECONFERENCE BETWEEN ST. JOHN'S, NEWFOUNDLAND AND LABRADOR AND TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 6, 2022
REASONS AND JUDGMENT:	HENEGHAN J.
DATED:	NOVEMBER 25, 2022

APPEARANCES:

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Margherita Braccio	FOR THE RESPONDENT

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