Federal Court  Cour fédérale

Date: 20120614

Docket: IMM-8688-11

Citation: 2012 FC 737

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, this 14th day of June 2012

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Gyorgyne KOCSIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by Anna Brychcy, member of the Refugee Protection Division of the Immigration and Refugee Board (the panel) presented pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27 (the Act). The panel dismissed the refugee claim of Gyorgyne Kocsis (the applicant), finding that she was not a Convention refugee or a person in need of protection within the meaning of the Act.

[2] The applicant is a citizen of Hungary. She is a Gypsy and claims to be persecuted in Hungary because of her race and her membership in a particular social group, being of Roma ethnicity.

[3] In its October 24, 2011, decision, the panel accepted the applicant's story as the truth. It found that the determining issue was the state protection offered.

[4] The applicant raises the following issues:

a. Did the panel err by not analyzing the applicant's subjective fear of returning to Hungary?

b. Did the panel err by finding that state protection exists in Hungary?

[5] The appropriate standard of review in this case is reasonableness. The two questions raise a mixed question of fact and law, namely identifying the test and criteria that apply and applying these criteria in the case at bar. The panel's determination of state protection was recognized as a mixed question of fact and law in *Mendoza v. The Minister of Citizenship and Immigration*, 2010 FC 119, at paragraphs 26 and 27; *Soto v. The Minister of Citizenship and Immigration*, 2010 FC 1183, at paragraph 26; and *Burgos v. The Minister of Citizenship and Immigration*, 2006 FC 1537, at paragraph 17. Moreover, assessing the evidence and issues of fact are under the jurisdiction of the panel (*Akhter v. The Minister of Citizenship and Immigration*, 2006 FC 914 at para. 22). This court must therefore determine whether the panel's decision and findings are justified, transparent and intelligible, and fall "within a range of possible acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47 [*Dunsmuir*]).

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1. Did the panel err by not analyzing the applicant's subjective fear of returning to Hungary?

[6] The applicant was to prove a subjective fear of persecution based on an objective reality, which could be based on documentary evidence (*Alexibich v. The Minister of Citizenship and Immigration*, 2002 CFPI 53 at para. 16). More specifically, refugee claimants in Canada must establish a credible link between their claim and the objective situation in their country of origin in order to be recognized as a refugee according to the Act (*Al-Shammari v. The Minister of Citizenship and Immigration*, 2002 CFPI 364 at para. 24).

[7] The panel did not come to any specific conclusions regarding the applicant's subjective fear. The panel generally believed the applicant's story, and did not question her credibility, and therfore her fear. However, the panel found that the applicant's story did not reveal any incidents of persecution. Moreover, the panel explained that the determining issue in this case was the availability of state protection. As a result, if the applicant were to return to Hungary, that country would be able to protect her should she be harassed because of her origins. The panel did not err by not listing the specific findings in its decision regarding the applicant's subjective fear and it did not neglect to consider her situation should she return, instead it focused on state protection. The intervention of this court is not justified on this basis: the applicant did not show that the panel's decision and findings were unreasonable.

2. Did the panel err by finding that state protection exists in Hungary?

[8] The applicant claims that the panel erred by finding that state protection is available in Hungary; the panel neglected to consider all the documentary evidence, in particular regarding relations between the police and the Roma, and the effectiveness of existing measures. The applicant relied on *Kovacs v. The Minister of Citizenship and Immigration*, 2010 FC 1003 [*Kovacs*] and *Bors v. The Minister of Citizenship and Immigration*, 2010 FC 1004.

[9] The respondent claims that the panel's finding about state protection is reasonable, being based on the evidence on record. The respondent adds that the applicant claims that she was only the victim of isolated incidents of harassment, which were never reported to the Hungarian authorities. Lastly, the respondent notes that the applicant says she never had any problems between her most serious assault in 2004 and her departure in 2009.

[10] In my opinion, although the parties agree on the applicable law regarding state protection, the applicant did not refute the presumption that protection exists in Hungary with clear and convincing evidence; this was fatal to her refugee claim (*Kovacs, supra*, at para. 55).

[11] The panel had the obligation to consider the evidence on record, but no obligation to make note of each element the applicant submitted as evidence (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration*), [1998] F.C.J. No. 1425, 157 F.T.R. 35; *Zhou v. Canada (Minister of Citizenship and Immigration*), [1994] F.C.J. No. 1087 (F.C.A.) at para. 1; *Kanagaratnam v. Canada (Minister of Employment and Immigration*), [1994] F.C.J. No. 1069, 83 F.T.R. 131 at para. 6). The

panel is presumed to have considered all the evidence on record (*Florea v. Canada (Minister of Employment and Immigration*), [1993] F.C.J. No. 598 (F.C.A.) at para. 1). The applicant's memorandum identifies two documents the panel allegedly neglected to consider. However, on the contrary, the panel explicitly mentioned these documents in its decision, specifically referring to information found in them, particularly regarding the charges against four individuals pursuant to inquiries into the harassment of Roma in 2008 and 2009 and the existence of funds to assist Roma.

[12] Additionally, in its analysis of the documentary evidence, the panel did not exclusively rely on the willingness of the state, but also on the effectiveness of measures in place in Hungary. For example, when discussing the measures taken to reduce discrimination where jobs are concerned, the panel notes that following the implementation of these programs, some Roma were able to find work; when discussing police investigations, the panel noted the arrest of four individuals; when considering the fines imposed in cases of discrimination, the panel identified a pizzeria that was fined for discriminatory signage. As for the effectiveness of police interventions, the panel noted that a discriminatory website was shut down following the intervention of Hungarian authorities. It is therefore false to claim that the panel did not consider the effectiveness of measures taken in Hungary to deal with discrimination against Roma.

[13] The panel must not only consider the state's commitment to act, but also the effectiveness of the measures it has in place. However, this is not the deciding factor when deciding whether protection was available for the applicant. The panel also considered that she did not take any steps to contact the authorities following the harassment she experienced, as in *Horvath v. Minister of Citizenship and Immigration*, 2012 FC 253, at paragraphs 16 and 19.

[14] Moreover, this case can be distinguished from *Kovacs*, where it was admitted that the applicant and his family faced serious danger and were the victims of many incidents of violence because of their Romni heritage (see paragraph 70). Here, the panel reasonably found that the applicant did not face comparable dangers, having been injured only once, after a fall while taking public transportation. There was no recurrent violence against the applicant.

[15] One need only recall that the panel may, under its field of expertise, sort through the evidence before it (*Ganiyu-Giwa v. Canada (Minister of Citizenship and Immigration*), [1995] F.C.J. No. 506 at para. 2). As explained by Justice Marcel Joyal in *Omar v. Canada (Minister of Citizenship and 'Immigration*), [1997] F.C.J. No. 665, at paragraph 7:

> ... For every bit of evidence referred to by the Board, counsel could find conflicting evidence, and for every bit of inference drawn, he could expose alternate views. The test in such matters, however, is not whether the case might lend itself to a different conclusion, but whether a tribunal, on the evidence before it, could properly arrive at the conclusion it did.

[16] For this purpose, every case must be examined on its own merits. Here, the panel's decision, taken as a whole, seems reasonable to me, and falls within the range of "possible acceptable outcomes because it is defensible in respect of the facts and the law." (*Dunsmuir, supra,* at para. 47).

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[17] For the above-noted reasons, the application for judicial review is dismissed.

[18] I agree with counsel for the parties that there is no question for certification.

JUDGEMENT

The application for judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board, finding that the applicant was not a refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27, is dismissed.

"Yvon Pinard"

Judge

Certified true translation

Elizabeth Tan, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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