Federal Court  Cour fédérale

Date: 20170706

Docket: IMM-5309-16

Citation: 2017 FC 651

Toronto, Ontario, July 6, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

LASZLO CSOKA
ANA CSOKANE FEKETE
MARTIN CSOKA
LASZLO JR CSOKA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [Act or IRPA], of a Pre-removal Risk Assessment [PRRA]. The PRRA Officer's [the Officer] October 31, 2016 negative decision [the Decision],

under review, found that the Applicants lacked credibility and provided insufficient evidence to trigger either section 96 or 97 of IRPA. For the reasons explained below, I am dismissing this application.

[2] The Applicants arrived in Canada in January 2011 and submitted a refugee claim. Before the Refugee Protection Division [RPD], the Principal Applicant [PA], Mr. Csoka, explained that he tried to report an event to police but was prevented from doing so. He said that he was thereafter assaulted by a police officer. He then filed a complaint, for which he was subsequently harassed by law enforcement. At the RPD hearing, he could not name the officer against whom he made the complaint.

[3] The RPD dismissed the claim in November 2012. That decision was challenged before this Court, but leave was denied. During this process, the Applicants were represented by Mr. Hohots, who had engaged in professional misconduct, misrepresenting cases involving Roma claimants, as found by the Law Society of Upper Canada.

[4] The Applicants retained new counsel for their first PRRA application. In light of the Law Society of Upper Canada's findings with respect to the disciplinary action taken action against Mr. Hohots, the officer who assessed the Applicant's first 2015 PRRA [PRRA1] application (of 2015) accepted all the evidence, not only new evidence. The Applicants accordingly submitted new facts in their PRRA1 application, which was considered by the officer. They were helped by a second lawyer [2015 Counsel] in their PRRA1 application. The officer ultimately rejected the PRRA 1 application.

[5] The Applicants subsequently dismissed their 2015 Counsel. As discussed further below, they now say that the 2015 Counsel who represented them during their PRRA1 application, was negligent because she submitted an uncertified, unsworn and unsigned personal statement [the Personal Statement] of the PA.

[6] With assistance of new counsel in 2016 [2016 Counsel], the Applicants challenged the PRRA1 decision before this Court; on June 13, 2016, Justice Fothergill sent it back for re-determination (*Csoka v Canada (Citizenship and Immigration)*, 2016 FC 653). Justice Fothergill found that the PRRA1 officer had failed to provide adequate reasons and was unable to understand the officer's reasoning with respect to the insufficiency of evidence related to state protection, as well as the refusal to grant the Applicants' oral hearing request.

[7] For the 2016 PRRA [PRRA2], the Applicants relied on what they alleged to be widespread harassment, abuse and discrimination that constituted persecution, including through:

- Work: In 2002, Mrs. Csoka, who worked with the PA, was physically, verbally and sexually harassed and abused at work. She was threatened with dismissal if she reported it. The PA, however, filed a complaint. The PA subsequently had his salary reduced by half and was demoted on discriminatory grounds. He was eventually dismissed.
- The Police: In 2007 (and onwards), the PA and his son, Martin, say that they witnessed a police officer, Mr. Casaba Kadar, tamper with evidence at a car accident scene, and a confrontation ensued. When the PA unsuccessfully tried to file a complaint to the authorities, he was further threatened by the police officer.

Mr. Kadar would thereafter stop the PA and fine him for false traffic violations, and told him that if he talked back, he would be shot and killed.

- Politics: In 2010, Mr. Kadar's friend, whom the Applicants say is a member of a right-wing and anti-Roma group, was elected to the position of Mayor of the municipality.
- Schooling: In 2010, the PA's children were deemed mentally ill at school due their Roma ethnicity, suffered asthma attacks from the stress and Child Services threatened to take them away.

[8] In 2011, the Applicants left Hungary. They allege that in 2015, Mr. Kadar returned to their home and told the PA's mother that if they should return to Hungary, he would murder them.

II. The Decision under Review

[9] During the October 26, 2016 PRRA2 oral hearing by videoconference, the Officer asked if the Applicants felt comfortable sharing personal details of their circumstances in Hungary; they agreed to do so. The Officer also asked Ms. Csoka if she wanted to be interviewed alone, given the sensitivity of some the issues raised. The Officer allowed them to take breaks.

[10] The Officer advised of her concerns regarding contradictions between the 2015 Personal Statement and the 2016 Affidavit. In the PRRA2 Decision under review today, the Officer noted that in spite of the inconsistencies, omissions and discrepancies put to the Applicants during the

oral hearing, she was unsatisfied with the vast majority of the responses she received and was therefore unable to set aside her concerns with respect to the Applicants' credibility.

[11] Specifically, the Officer noted various inconsistencies that arose from their PRRA2 hearing, which at times diverged significantly from their PRRA1 Personal Statement. These inconsistencies included when and the circumstances under which they met; the work histories of both the PA and Ms. Csoka; having filed a complaint with the police regarding the alleged abuse suffered at work by Ms. Csoka; and harassment by neo-Nazi groups – a fact which had not been alleged prior to the PRRA2.

[12] When asked to explain the discrepancies noted above, the Applicants stated either that they did not know they existed and that they were now telling the truth, or that there had been interpretation issues previously. 2016 Counsel responded that some of these events happened a long time ago. The Officer rejected these answers and drew negative credibility findings accordingly.

[13] The Officer further noted that upon reviewing the evidence, the Hungarian State had made some improvements in addressing discrimination against their Roma citizens, but that discrimination was still prevalent in some sectors of Hungarian society, such as education and housing. However, she found that while the evidence did point to discrimination against Roma, there was insufficient evidence to establish personalized risk or to conclude that State protection was inadequate.

[14] The Officer rejected the PRRA2 application, which is now the subject of this judicial review. Sometime after the oral hearing, the Applicants once again retained new counsel [2017 Counsel] to represent them in the present judicial review.

III. Analysis

[15] The Applicants say that the Officer's (1) negative credibility findings, (2) assessment of the personalized risk evidence, and (3) state protection analysis were all unreasonable. I view these as two issues: first the credibility findings, and second, assessment of evidence.

[16] The Applicants assert that the reasonableness standard applies except with respect to the test used for state protection. However, as I find that as the Officer did not choose the wrong test, the applicable standard of review is reasonableness (*Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at paras 8 and 34).

A. *Credibility Findings*

[17] The Applicants argue that the Officer's credibility findings in PRRA2 were unreasonable because she erred in (i) taking into account the RPD findings in her decision, and (ii) taking into account a Personal Statement submitted with PRRA1, that was unsworn and translated, and in any event had been superseded by a more reliable Affidavit that was submitted with PRRA2. The Applicants highlight that there is no evidence in the record establishing that the PA ever authored or otherwise wrote PRRA1's Personal Statement. The Applicants argue that sworn documents and testimony should have been preferred or given more weight than the unsworn, unsigned, and

uncertified Personal Statement, which 2017 Counsel contends was too sophisticated in its level of English for the PA to have drafted.

[18] The Applicants submit that since they had no idea that the Personal Statement was submitted by 2015 Counsel, it then follows that their inability to provide satisfactory answers to the Officer regarding discrepancies between the Personal Statement, the 2016 Affidavit and oral testimony was reasonable in the circumstances.

[19] The Applicants also dispute specific findings coming out of the PRRA1's Personal Statement, such as submitting a police complaint. There is no evidence that 2016 Counsel, who was competent (the Applicants provided no evidence otherwise), disputed the Officer's reliance on the Personal Statement or objected to the Officer's line of questions relating to certain inconsistencies.

[20] Even if I were to agree with the Applicants that the PRRA1's Personal Statement should not be considered, there are still residual points of inconsistency not related to it.

[21] The Applicants argued in written submissions that 2015 Counsel was negligent due to having submitted the Personal Statement. The Applicants rely on *Pusuma v Canada (Citizenship and Immigration)*, 2015 FC 658 at para 83 for the proposition that they should not be penalized for their previous counsel's negligence.

[22] These arguments cannot be sustained, because firstly 2016 Counsel neither raised such arguments before the Officer, nor made any complaint either to the competent law society, nor raised the issue with 2015 counsel (a requirement of the *2014 Protocol on Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court*; see also: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 67). It is incumbent upon the applicant to put his or her best foot forward and make his or her case before the administrative decision-maker, rather than waiting until a hearing before the Court to do so. In this case, the Applicants had the benefit of an oral hearing and the opportunity to explain the previous lawyer's alleged negligence or incompetence before the Officer, but opted not do so. The Applicants also had the benefit of an interpreter and of counsel at the PRAA2 oral hearing.

[23] In my view, it would therefore be inappropriate for the Court to find the Officer erred in failing to consider 2015 Counsel's alleged incompetence or negligence, when that information was not communicated to the Officer, 2015 Counsel or before the Law Society of Upper Canada.

[24] Second, while I agree with the Applicants that they should not be penalized for past counsels' professional misconduct or negligence, here, the Officer took note of the one instance of clear misconduct – namely the RPD hearing, and noted the disciplinary action taken against Mr. Hohots by the Law Society of Upper Canada.

[25] Lastly, with respect to the Officer's finding that the Personal Statement indicated that the PA successfully filed a complaint with the police, I agree that it does not say that. Indeed, it says

that the PA tried to file a complaint twice. While viewed on its own, this finding may be incorrect or speculative, I cannot find that this oversight on the Officer's part makes the Decision unreasonable as a whole. It is trite law that the Officer need not provide perfect reasons; they need be reasonable overall. In this case, the Officer's credibility findings were reasonable in their totality.

B. *Assessment of Evidence*

[26] The Applicants argue that the Officer erred in her assessment of the evidence on risk, including ignoring country condition evidence pertaining to persecution and state protection, namely in terms of mobility, employment, education, housing and homelessness and she failed to weigh this evidence against the Applicants' personal circumstances.

[27] I also find that the Decision withstands review on this second ground. First, there is a presumption that the Officer considered all the evidence, which, as the Applicants correctly state, can be rebutted if important contradictory evidence was unreasonably ignored (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, 1998 157 FTR 35 (FC)) at para 17). Here, the Officer accepted that discrimination against Roma persists in many respects in Hungary, namely with respect to housing and education.

[28] As to risk, I find that the Officer considered the key objective evidence in the record, noting some of the difficulties that Roma experience in Hungary. Rather, the issue here was that the Officer found insufficient corroborating or individualized evidence that related to the Applicants' personal situation in Hungary, including a lack of any evidence relating to central

components of the claim such as traffic violations, school segregation, hospital records, affidavits from witnesses or friends or family, and car accident records.

[29] To rule otherwise in this case would amount to reweighing the evidence, which is not the role of a judicial review.

[30] As for state protection, I agree that some of the wording used by the Officer ("concrete serious efforts") was less than ideal when she talked about what the government was hoping to put in place. Nonetheless, in the absence of corroborative documentation noted by the Officer (see above), I do not find that the documentary evidence establishes a general inability of the state to protect, or the fact that general discrimination against Roma amounts to persecution. To that end, I also note that discrimination in and of itself does not amount to a breakdown of adequate state protection (*Gebre-Hiwet v Canada (Citizenship and Immigration)*, 2010 FC 482 at para 17).

[31] I also wish to note that, normally, the role of the PRRA officer is not to re-assess state protection. That function remains with the RPD and/or the Refugee Appeal Division. The role of a PRRA officer is to assess whether the applicant has submitted sufficient new evidence, not before the RPD, that establishes new risk of persecution if returned to his or her home country. However, in this case, the Officer noted and considered the fact that the Applicants' counsel before the RPD was disciplined and further noting that she was not bound by the RPD decision.

[32] Finally, Applicants' 2017 Counsel stated that many of the same errors of PRRA1 were repeated in PRRA2 rather than being remedied after the first judicial review: the Officer chose not to heed the gaps identified by Justice Fothergill in the lack of clarity about state protection and credibility. For the reasons explained above, I find that the Officer not only provided an oral hearing for PRRA2, but in her Decision also provided sufficient justification, transparency and intelligibility to allow this Court to 'connect the dots,' unlike in PRRA1. The Decision, while not perfect, is reasonable.

IV. Conclusion

[33] I find that the Officer was alert and alive to the Applicants' unfortunate previous representation (Mr. Hohots) before the RPD. Absent other evidence, the mere fact that she reached the same outcome as the RPD is not indicative of any lack of sensitivity in that regard. I also find that the Officer addressed the PRRA1 gaps identified by Justice Fothergill, regarding both credibility based on inconsistencies, and state protection. Discrimination can certainly rise to the level of persecution where the evidence bears that out. Here, there was simply a lack of documentation bearing out the treatment complained of, whether that be traffic, fines, hospital records, witness affidavits, or otherwise. In light of the above, this application for judicial review is dismissed.

JUDGMENT in IMM-5309-16

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. Counsel presented no questions for certification, nor do any arise.

3. No costs will be ordered.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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