Federal Court  Cour fédérale

Date: 20171017

Docket: IMM-1008-17

Citation: 2017 FC 920

Toronto, Ontario, October 17, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ANITA BOZIK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The present Application relates to a Pre-Removal Risk Assessment (PRRA) application in which the Applicant, a Hungarian national of Romani ethnicity, claims protection pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, on the basis that if she is required to return to Hungary she will face more than a mere possibility of persecution because

of her ethnicity. In a decision dated January 17, 2017, the PRRA Officer (Officer) rejected the Applicant's claim.

[2] In support of the Applicant's submissions that she has a well-founded fear of persecution in Hungary, and that the state is unable to provide adequate protection to its Roma citizens, the Applicant submitted two volumes of country condition evidence. The Applicant's evidence was accepted as credible and her identity as a Hungarian national of Romani ethnicity was not contested.

[3] The issue for determination is whether the Officer correctly evaluated the country condition evidence. The passages from the decision under review which raise contention are as follows:

> The applicant has also submitted two volumes containing 120 and 184 pages of supporting country condition documentary evidence that includes news reports and research articles from a variety of sources on human rights and social justice issues vis-a-vis the plight of the Roma in Hungary. Having given consideration to these items, I acknowledge that the Roma population in Hungary do face societal attitudes that are inhospitable and intolerant. Namely, discrimination against Roma in education, housing, employment and access to public places have been identified areas of concern. The rise of right-wing nationalism has further fueled anti-Roma sentiment, xenophobic rhetoric, and racially-motivated violence. While I have considered all these documents in the context of assessing country conditions, they are generalized in nature and do not establish a linkage directly to the applicants' [sic] personal circumstances. Evidence of general conditions within a country is not in itself sufficient to show that the applicant is personally at risk of harm.
>
> The applicant fears insecurity due to organized racist groups and the rise and influence of the right-wing Jobbik political party.
>
> The documentary evidence filed indicates that Roma have faced intimidation from radical nationalist militias. Groups such as the

> Hungarian Guard, have held rallies inciting violence in Roma settlements. The applicant states the situation is made worse by the police siding with these groups. While the applicant states she has never been attacked, she knows that it is only a question of time before she will be harmed. While that possibility certainly exists, it is rooted in pure speculation. I find the applicant has produced insufficient objective evidence to establish, on balance, she is at risk of violence at the hands of these groups.
>
> [Emphasis added]
>
> (Decision, pp. 3 – 4)

[4] Counsel for the Applicant argues that the Officer's approach to the country condition evidence is contrary to law because it conflates the criteria for establishing the Applicant's s.96 claim for protection with what is required for establishing a s.97 claim for protection. Counsel for the Applicant submits that these two grounds for protection are distinct and that the relevance and probative value of country condition documentation is treated differently by the two sections.

[5] The following is Counsel for the Applicant's well supported argument on the quality, and, thus, the reasonableness of the decision under review:

> Section 96 is clearly intended to protect people based on a well-founded fear of persecution due to their being part of a broader group of individuals sharing the same race, religion, nationality or political opinions, characteristics seen to be innate to the individual and thus essentially unchangeable. Under section 96, the individual must, as a starting point establish on a balance of probabilities that they fall within a group intended to be protected under the Convention. Once that link has been established, then it is submitted that general country condition documentation reporting on the treatment of members of that group is no longer general; it is now personal to the claimant. There are pronouncements from many sources including in academic writings, the UNHCR handbook, jurisprudence of the Federal Court of Canada, and Guidelines issued by the Chair of the Immigration and Refugee Board on assessing claims of women and children that all confirm

the importance of general country condition evidence on the treatment of similarly situated individuals in assessing claims under section 96.

Section 97, on the other hand, is essentially intended to provide protection to individuals who do not fall within the ambit of section 96, or who for whatever reason have not met all of the conditions required under section 96 to be determined to be a Convention refugee. Section 97 protection may be available to such individuals if they can establish, among other things, that the risk they face is not a risk generally faced by others in or from the same country, and that they personally would be subjected to risks of cruel and unusual treatment, torture or risk to life.

It is submitted that section 96 is intended to protect individuals who are within potentially large groups of people who all potentially face persecutory measures due to their innate characteristics recognized in the Convention as a basis for protection. Therefore, evidence that relates to that specific group is not general country condition documentation, it is evidence of the general treatment of a specific group to which a claimant belongs. That is not to say that every member of a group that generally faces measures or risks amounting to persecution is automatically deemed to be a Convention refugee. However, the fact that an individual has established that they are within that general group, have not distinguished themselves from being susceptible to the treatment typically afforded the group, and who have established that they have the requisite subjective fear and do not have access to adequate state protection should be determined to be Convention refugees if the general country condition documents support that finding. Importing concepts of generalized risk and personalized risk from section 97 into determining what documentary evidence is relevant to an assessment of the merit of the claims under section 96 potentially will result in unreasonable decisions in the context of PRRA decision making. One typically does not see country condition documents dismissed on the basis of being generalized and not personal to the claimants at the RPD or RAD level, as it is well known that a fair consideration of general country condition evidence is absolutely necessary to determining section 96 protection.

The argument being put forward by the Applicant is that the central error resulting in an unreasonable decision was the ignoring, in its totality, the general country condition documentary evidence on the treatment of Roma in Hungary on the basis that it does not establish a linkage to the applicants' [sic] personal circumstances. It is submitted that the general country condition

> documents do not have to establish a link to the applicants' [sic] personal circumstances. Under section 96, the applicant has to establish a link (nexus) to the group given protection under the Convention, in this case based on her Roma ethnicity. That nexus was established. No one has questioned her credibility or her assertion that she is Hungarian Roma. Once that nexus to the Convention is established, the evidence on the general conditions for Roma, similarly situated to the Applicant becomes entirely relevant as it is personal to her. It is submitted that the PRRA officer appears to have been looking for evidence within the general documentation referring specifically to this Applicant, and as there was none, the linkage was found not to exist.
>
> [Emphasis added]
>
> (Applicant's Further Argument, paras. 5 to 8)
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> […]
>
> It is submitted that in the Applicant's case, the Officer has taken refuge in the position that the "'documents ... are generalized in nature and do not establish a linkage directly to the applicant's personal circumstances" epithet which it is respectfully submitted also "will not do". Based on all of the above, it is submitted that the Officer erred by failing to properly assess the Applicant's risk under section 96 with regard to all of the evidence, and most significantly the objective country condition documentation. <u>The explanation for doing so would appear to lie in confusion between the concepts of general and personal risk as the [sic] apply to section 97 [sic] as opposed to section 97. It is submitted, however, that regardless of the error made, the decision is unreasonable</u>.
>
> [Emphasis added]
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> (Applicant's Further Argument, para. 24)

[6] A particularly important precedent supporting Counsel for the Applicant's argument is Justice Strickland's decision in *Somasundaram v Canada (Citizenship and Immigration)*, 2014 FC 1166.

[7] The correct use of country condition evidence is a live issue in the present Application. I agree with Counsel for the Applicant that the Officer was required to examine the country condition evidence submitted on behalf of the Applicant to determine whether the Applicant's subjective fear of violence has an objective evidentiary basis. The evidence of the experience of similarly situated persons can supply the objective basis.

[8] As found by the Officer in the passages from the decision quoted above, the Applicant fears insecurity due to organized racist groups and the rise and influence of the right-wing Jobbik political party. In the argument presented to the Officer, Counsel for the Applicant referred to country condition evidence which goes to establish that persons similarly situated to the Applicant have suffered the violence she fears.

[9] I find that the Officer was required to carefully consider this evidence and to determine its value with respect to the Applicant's claim. If the evidence moved the Applicant's fear from speculation to more than a mere possibility of suffering persecutory violence, she will have established her claim for protection. I agree with Counsel for the Applicant: the Officer did not correctly evaluate the Applicant's country condition evidence in this way. As a result, I find that the decision is unreasonable.

[10] Ironically, as quoted and also emphasized above, the Officer made a finding based on the country condition evidence which can be fairly interpreted as effectively establishing the Applicant's claim. That is, while it is speculative that she will suffer the violence she fears, it is possible that she will:

> While the applicant states she has never been attacked, she knows that it is only a question of time before she will be harmed. While that possibility certainly exists, it is rooted in pure speculation.

[11] In my opinion, for the Officer to have made this finding, the Applicant was entitled to have her PRRA application accepted. Since by the decision under review it was denied, I find a second reason to determine that the decision is unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

"Douglas R. Campbell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1008-17
STYLE OF CAUSE:	ANITA BOZIK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 16, 2017
JUDGMENT AND REASONS:	CAMPBELL J.
DATED:	OCTOBER 17, 2017

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