Federal Court  Cour fédérale

Date: 20180124

Docket: IMM-2461-17

Citation: 2018 FC 69

Ottawa, Ontario, January 24, 2018

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

TIBOR LAJOSNE BOZIK

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review by Tibor Lajosne Bozik (the "Applicant") pursuant to ss. 72(1) of the *Immigration and Refugee Protection Act*, c 27 ("IRPA"). The Applicant is a Hungarian citizen of Roma ethnicity and requested that the Canada Border Services Agency defer her removal to Hungary, pursuant to s. 48 of the IRPA.

[2] The Applicant's request was denied by an Inland Enforcement Officer (the "Officer") by way of a decision (the "Decision") dated June 1, 2017. The Officer found that the evidence was insufficient to establish that the Applicant's situation is of such an exceptional nature that it merits a deferral of removal.

II. Facts

[3] The Applicant is a 40 year old citizen of Hungary and member of the Roma ethnic group. She arrived in Canada with her husband, five children, and grandchild on October 23, 2011.

[4] The Applicant and her family made a claim for refugee protection. The Refugee Protection Division ("RPD") deemed them all to be Convention refugees with the exception of the Applicant, who was excluded because she is alleged to have committed a serious non-political crime (fraud) in Hungary.

[5] The Applicant appealed to the Refugee Appeal Division ("RAD"), which dismissed her claim for lack of jurisdiction; due to the entry into force of the *Balanced Refugee Reform Act*, SC 2010, c 8, the correct route of appeal was to the Federal Court and not the RAD. The Applicant then initiated a Pre-Removal Risk Assessment ("PRRA"), which was rejected, as was leave for judicial review of the PRRA decision. Throughout those proceedings, the Applicant was represented by Joseph Farkas, a lawyer who was subsequently disciplined by the Law Society of Upper Canada for professional misconduct in his treatment of several cases concerning Roma asylum-seekers.

[6] The Applicant retained new counsel and requested that her deportation be deferred on the grounds that she had an ongoing application for permanent residence, that removal would sever her relationship to her spouse and children, and that deportation would expose her to a risk of homelessness and inhumane treatment upon return to Hungary.

III. Issue

[7] Neither the facts, nor the standard of review, are disputed in the matter before me. The sole issue that arises in this case is whether the Decision is reasonable, specifically as it relates to the risk of harm that the Applicant would face should she be deported to Hungary, the best interest of the child, and the impact of Mr. Farkas' conduct on the prior immigration proceedings.

IV. Analysis

A. *Standard of Review*

[8] As the Supreme Court of Canada explained in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 62, where the appropriate standard of review is established in jurisprudence, a full analysis of the standard is unnecessary. When reviewing an enforcement officer's decision on a request to defer removal, the appropriate standard of review is that of reasonableness: *Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para 25.

B. *Deferral Decision*

[9] At the outset, I wish to note that the Decision was rendered on the same date that the Applicant requested the stay. I find it extraordinary that the Officer was able to review the entirety of the Applicant's extensive submissions, decide on the matter, and compose her reasons on the same day that the deferral request was received.

[10] The Decision is based primarily on four grounds. First, the Officer notes that the Applicant's submissions do not provide any objective corroborated evidence to demonstrate that her presence in Canada is required to process her PR application. Second, noting that deferral of removal is a temporary measure intended to alleviate exceptional circumstances, the Officer finds that there is insufficient "new and compelling evidence of serious detriment" to warrant deferral in the Applicant's circumstances. Third, the Officer finds that there is insufficient corroborated evidence to support the Applicant's allegation that she would face homelessness upon her return to Hungary, as the Applicant has relatives in Hungary and can rely upon the support of the state's "protective entities." Finally, the Officer finds that separation of the Applicant from her spouse, children and grandchild are neither irreparable nor permanent and thus does not merit deferral.

C. *Reasonableness of the Decision*

[11] The Applicant submits that the Officer ignored both the personal and documentary evidence that was submitted in support of the deferral request as it relates to the risk she would face upon return to Hungary. In support of this argument, the Applicant highlights the RPD's

finding that her family members are Convention refugees, and suggests that the PRRA application was deficient due to the former counsel's negligence. The Applicant further submits that her documentary evidence is clear with respect to the homelessness and possible incarceration she faces should she return to Hungary, based on prevailing socioeconomic conditions of the Roma population in Hungary and the particular situation in the Applicant's neighbourhood (it has been demolished).

[12] The Respondent submits that the Decision was reasonable. It argues that the Officer's discretion is limited and should only be exercised in extraordinary circumstances. The Respondent contends that the Officer reasonably considered the findings of the PRRA and the RPD, noting the credibility concerns, inconsistent testimony and material omissions raised in the latter. The Respondent furthermore argues that the Applicant's claim that she risks incarceration in Hungary is undercut by her own evidence that the criminal proceedings against her are being suspended.

[13] I find that the Officer's Decision is unreasonable with respect to the issue of risk, as it fails to meaningfully engage with the evidence adduced as to the circumstances that the Applicant is likely to face upon return to Hungary. Although the record is replete with documentary evidence about the persecution of Hungary's Roma population, the Officer needed look no further than the RPD's decision on the Applicant's claim for refugee protection to know that persecution and discrimination is likely to result upon her return. The only fact distinguishing the Applicant's circumstances from that of her family is the allegation of fraud. As such, the conclusion is inescapable: the Applicant faces substantial risks (i.e. those that would

normally attract refugee protection) and the Decision offers no reasons as to why these risks do not qualify as the "exceptional circumstances" that engage the Officer's discretion to defer removal. In any event, the Officer's simple statement that she is "not satisfied that the evidence submitted supports the narrative presented" does not constitute adequate reasons; at minimum, it was incumbent upon her to explain how she arrived at this conclusion, and her failure to do so constitutes a reviewable error.

[14] Concluding as I have with respect to the issue of risk, it is unnecessary for this Court to consider the other issues advanced by the Applicant. Let me say briefly, nevertheless, that I find the Officer also failed to give due consideration to the Decision's impact on the best interest of the children. As the Supreme Court of Canada said in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at 75, an officer must be "alert, alive and sensitive" to the best interest of the child. The Decision before me does not reveal such qualities; instead, the Officer points to the presence of the Applicant's husband in Canada to effectively suggest that the children will receive the minimum requirements of care, and that therefore the mother's presence in Canada is unnecessary. This approach, in my view, is not what is meant by "alert, alive and sensitive" to the best interest of the child, as it fails to take into account the emotional suffering that the children will face if their mother is removed to a place where she is likely to face discrimination and persecution. I find that the pain resulting from separation would be particularly acute for the youngest children (who are only of 8 years and 12 years of age), as well as the grandchild (who is 6 years of age).

V. Certification

[15] Counsel for both parties was asked if there were questions requiring certification, they each stated that there were no questions arising for certification and I concur.

JUDGMENT in IMM-2461-17

THIS COURT'S JUDGMENT is that the Decision under review be set aside and the matter be referred back for redetermination by a different officer.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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