

Federal Court



Cour fédérale

**Date: 20180409**

**Docket: IMM-1993-17**

**Citation: 2018 FC 381**

**Ottawa, Ontario, April 9, 2018**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**DRAGINJA SEKULARAC**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Ms. Draginja Sekularac, is a citizen of Serbia. She and her husband were both sponsored for permanent residence in Canada by their daughter.

[2] The Federal Republic of Yugoslavia [FRY] and the Republic of Serbia were designated by the Minister of Public Safety pursuant to paragraph 35(1)(b) of the *Immigration and Refugee*

*Protection Act, SC 2001, c 27 [IRPA]* as regimes engaged in war crimes and crimes against humanity between February 1998 and October 2000. During that time Ms. Sekularac's husband worked for Prva Iskra, a company which manufactures, among other things, explosives.

[3] Ms. Sekularac was found inadmissible pursuant to paragraph 42(1)(a) of the IRPA. The Officer found that her husband, who held the military rank of Lieutenant-Colonel between February 1998 and March 2000, had been a prescribed senior official in a government that had "engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity" under the IRPA paragraph 35(1)(b).

[4] Ms. Sekularac brings this application for judicial review stating the decision to deny her permanent resident visa application was based on erroneous findings of fact made in a perverse or capricious manner. She submits that: (1) her husband's military rank was an honorary rank; (2) he did not occupy a position in the military structure of the Federal Republic of Yugoslavia; (3) with the exception of a period of mandatory military service in 1972 and 1973 where he held the rank of private he was employed as a civilian; (4) he worked for the majority of his career as a mechanical engineer; (5) he was not involved in the manufacture of weapons or explosives; and (6) he was removed from his duties as a director and engineer with the state owned enterprise, Prva Iskra, in 1996 prior to the period of designation.

[5] The respondent notes that: (1) Ms. Sekularac's husband held the rank of Lieutenant-Colonel in the Serbian military between 1996 and 2002; (2) he was employed with Prva Iskra; (3) the Prva Iskra website discloses the company's role in supplying explosives for defence; (4)

transcripts of evidence given before the International Criminal Tribunal for the former Yugoslavia [ICTY] include reference to a Lieutenant-Colonel Sekularac and describes him as a military man and director of Prva Iskra. The respondent submits that on the basis of this evidence the Officer reasonably concluded Ms. Sekularac was inadmissible pursuant to paragraph 42(1)(a) of the IRPA as her husband had been a prescribed senior official in a government that had “engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity”.

## II. Preliminary Matter – Style of Cause

[6] The applicant has named the Minister of Immigration, Refugees and Citizenship as the respondent in this matter. The correct respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27, s4(1)). Accordingly, the respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

## III. Relevant Legislation

[7] Paragraph 35(1)(b) of the IRPA provides that a senior official of a government that in the Minister’s opinion engages in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity is inadmissible to Canada:

**35 (1)** A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

[...]

**35 (1)** Empoortent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :

[...]

**(b)** being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the Crimes Against Humanity and War Crimes Act;

**b)** occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la Loi sur les crimes contre l'humanité et les crimes de guerre;

[8] Section 33 of the IRPA requires that an officer must be satisfied that the facts and evidence establish reasonable grounds to believe an individual is a senior official in order to conclude an individual is inadmissible pursuant to paragraph 35(1)(b):

**33** The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

**33** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

[9] Section 16 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] describes how the term “senior official”, as used in paragraph 35(1)(b) of the IRPA, is to be interpreted:

**16** For the purposes of paragraph 35(1)(b) of the Act, a prescribed senior official is a person who, by virtue of the position they hold or held, is or was able to exert significant

**16** Pour l'application de l'alinéa 35(1)b de la Loi, occupent un poste de rang supérieur les personnes qui, du fait de leurs fonctions — actuelles ou anciennes —, sont

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| influence on the exercise of government power or is or was able to benefit from their position, and includes | ou étaient en mesure d'influencer sensiblement l'exercice du pouvoir par leur gouvernement ou en tirent ou auraient pu en tirer certains avantages, notamment : |
| <b>(a)</b> heads of state or government;   | <b>a)</b> le chef d'État ou le chef du gouvernement;  |
| <b>(b)</b> members of the cabinet or governing council;  | <b>b)</b> les membres du cabinet ou du conseil exécutif;  |
| <b>(c)</b> senior advisors to persons described in paragraph (a) or (b);                                     | <b>c)</b> les principaux conseillers des personnes visées aux alinéas a) et b);   |
| <b>(d)</b> senior members of the public service;   | <b>d)</b> les hauts fonctionnaires ;  |
| <b>(e)</b> senior members of the military and of the intelligence and internal security services;            | <b>e)</b> les responsables des forces armées et des services de renseignement ou de sécurité intérieure;  |
| <b>(f)</b> ambassadors and senior diplomatic officials; and  | <b>f)</b> les ambassadeurs et les membres du service diplomatique de haut rang;   |
| <b>(g)</b> members of the judiciary.   | <b>g)</b> les juges.  |

[10] Paragraph 42(1)(a) of the IRPA provides that spouses of prescribed senior officials inadmissible under section 34, 35 or 37 of the IRPA are also inadmissible:

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| <b>42 (1)</b> A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if    | <b>42 (1)</b> Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants : |
| <b>(a)</b> their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; | <b>a)</b> l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas;              |

[11] Section 23 of the IRPR further describes the circumstances in which a family member will be inadmissible even if not accompanied by the prescribed senior official:

**23** For the purposes of paragraph 42(1)(a) of the Act, the prescribed circumstances in which the foreign national is inadmissible on grounds of an inadmissible non-accompanying family member are that

- (a) the foreign national is a temporary resident or has made an application for temporary resident status, an application for a permanent resident visa or an application to remain in Canada as a temporary or permanent resident; and
- (b) the non-accompanying family member is
  - (i) the spouse of the foreign national, except where the relationship between the spouse and foreign national has broken down in law or in fact,

**23** Pour l'application de l'alinéa 42(1)a de la Loi, l'interdiction de territoire frappant le membre de la famille de l'étranger qui ne l'accompagne pas emporte interdiction de territoire de l'étranger pour inadmissibilité familiale si :

- a) l'étranger est un résident temporaire ou a fait une demande de statut de résident temporaire, de visa de résident permanent ou de séjour au Canada à titre de résident temporaire ou de résident permanent;
- b) le membre de la famille en cause est, selon le cas :
  - (i) l'époux de l'étranger, sauf si la relation entre celui-ci et l'étranger est terminée, en droit ou en fait,

#### IV. Issue

[12] The sole issue raised in this application is whether the Officer's decision to deny the applicant's permanent resident visa application was reasonable.

V. Standard of Review

[13] The party's submit and I agree that inadmissibility determinations under paragraph 35(1)(b) are to be reviewed against a standard of reasonableness (*Mirosavljevic v Canada (Citizenship and Immigration)*, 2016 FC 439 at paras 11-12 [*Mirosavljevic*]; *Barac v Canada (Citizenship and Immigration)*, 2017 FC 566 at para 16).

VI. Analysis

[14] Ms. Sekularac acknowledges that her husband held the military rank of Lieutenant-Colonel in the Federal Republic of Yugoslavia and that he held this rank during the period the Minister had designated the regime as being a regime engaged in war crimes and crimes against humanity.

[15] The parties do not dispute that the jurisprudence of this Court also establishes that: (1) occupying a position in the top half of the military is sufficient to establish an individual is a "senior member of the military;" and (2) that no analysis of that individual's ability to influence the government's exercise of power is required (*Mirosavljevic* at paras 23-25; *Younis v Canada (Citizenship and Immigration)*, 2010 FC 1157 at paras 23,25 and 26; *Ali Al-Ani v Canada (Minister of Citizenship and Immigration)*, 2016 FC 30 at paras 2, 14 [*Ali Al-Ani*]).

[16] In *Mirosavljevic*, Justice Russel Zinn reviewed the rank structure within the Yugoslav army (*Mirosavljevic* at para 10). In that case the decision-maker relied on the rank structure alone to conclude the rank of lieutenant-colonel was within the top half of the structure and

therefore in the top half of the Yugoslav army. Justice Zinn found, absent any evidence to the contrary, that this was a reasonable interpretation of the IRPA and the IRPR and entitled to deference (*Mirosavljevic* at paras 24 and 25).

[17] Ms. Sekularac essentially argues that unlike the situation in *Mirosavljevic*, there was evidence to the contrary before the Officer and the Officer's failure to appreciate and consider that evidence renders the decision unreasonable. I am unable to agree.

[18] Ms. Sekularac's argument that her husband was in reality a civilian and the rank held was simply an honorary title is not supported by any other evidence on the record. There was no evidence placed before the Officer to show that civilians were given honorary military ranks or promoted on an honorary basis from one rank to another as their civilian careers advanced. As was noted by the Officer there was no explanation "at all [of] the origin of the [translation] "Serbian military tradition" according to which such a high (and/or honorary) rank would be given to a civilian."

[19] In addition to noting the absence of any evidence to support the argument that honorary ranks were part of the FRY military tradition the Officer also notes: (1) the absence of a military service booklet despite an admitted period of military service; (2) Prva Iskra's primary role as an explosives producer as disclosed through internet research; and (3) the references to a Lieutenant-Colonel Sekularac in ICTY evidentiary transcripts who is described as a military man and director of Prva Iskra.



[20] Ms. Sekularac takes no issue with the Officer's reliance on information found through open source internet searches but does take issue with the conclusions drawn from this information. Ms. Sekularac's submissions in this regard amount to nothing more than disagreement with the Officer. Mere disagreement with the Officer's interpretation of the information relating to the role of Prva Iskra or the contents of the ICTY transcripts does not render those interpretations unreasonable. In the circumstances, it was reasonably open to the Officer to conclude that Ms. Sekularac's husband was a senior official in the FRY regime during the period of designation based on his military rank.

[21] Having reasonably concluded that Ms. Sekularac's husband was a senior official in the FRY regime, the position he held with Prva Iskra between February 1998 and March 2000 is of no consequence. As noted above, the jurisprudence is clear that "once an individual is found to be a prescribed senior official in the service of a designated regime, no analysis of their ability to exert influence over the exercise of government power is required." (*Ali Al-Ani* at para 2).

## VII. Conclusion

[22] The Officer's decision is transparent, justified and intelligible and it falls within the range of reasonable possible outcomes based on the facts and the law. The application is dismissed.

[23] The parties have not identified a question of general importance for certification, and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. No question is certified.
3. The style of cause is amended to name the Minister of Citizenship and Immigration as the respondent.

"Patrick Gleeson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1993-17

**STYLE OF CAUSE:** DRAGINJA SEKULARAC v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JANUARY 30, 2018

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** APRIL 9, 2018

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