Federal Court  Cour fédérale

Date: 20190627

Docket: IMM-5509-18

Citation: 2019 FC 866

Ottawa, Ontario, June 27, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

FERENC VANGOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review by the Applicant, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a decision of the Refugee Protection Division [RPD], dated October 18, 2018, rejecting the Applicant's refugee claim [Decision].

II. Facts

[2] The Applicant is a Hungarian citizen of Roma ethnicity, born in 1987. The RPD heard the Applicant's claim on October 1, 2018. The key facts are summarized in the Decision:

> [2] ... In sum, he states that as a Roma person he has experienced discrimination in all facets of public life. The discrimination began at school, where his classroom was segregated between Roma and non-Roma students. It has followed him since. Quite literally, the claimant describes being followed in stores. Following on the substandard education he alleged he received, he has been unable to find good, paying work on a consistent basis. The claimant has also found himself to be the victim of random attacks by non-Roma Hungarians. The police took no action when he complained to them.

III. Decision under review

[3] The RPD rejected the Applicant's refugee claim, finding the Applicant to be neither a Convention refugee nor a person in need of protection. The RPD found the claimant established his Roma identity and acknowledged, as does the weight of country condition evidence and numerous decisions of this Court, that Roma people face widespread discrimination in Hungary. However, the RPD found that the Applicant failed to credibly establish two discriminatory incidents (attacks on him) and failed to rebut the presumption of state protection.

IV. Issue(s)

[4] At issue is the reasonableness of the Decision and in particular whether the RPD properly applied the governing jurisprudence regarding the need to consider all elements of the Applicant's claim, and the test for state protection.

V. Standard of review

[5] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57 and 62 [*Dunsmuir*], the Supreme Court of Canada holds that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question."

[6] The standard is reasonableness on the issues to be considered in these Reasons. In *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 [*Canadian Human Rights Commission*] at para 55, the Supreme Court of Canada explains what is required of a court reviewing on the reasonableness standard:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.

[7] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp &*

Paper, Ltd, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

VI. Analysis

A. *Did the RPD err in failing to conduct an assessment of cumulative discrimination amounting to persecution in accordance with binding jurisprudence?*

[8] On credibility, the Panel reported, correctly in its opening comments cited above, that "as a Roma person [the Applicant] experienced discrimination in all facets of public life." It repeated this finding elsewhere in its reasons. However, the RPD concludes at paras 20 and 25 that the Applicant had not established that he was attacked on two occasions:

> [20] ... The panel accepts that as a Roma man, the claimant may have been subjected to discrimination and harassment, however, there is no persuasive evidence before it that could allow the panel to find that the claimant had ever, personally, been attacked in the manner he claimed. Based on the foregoing, the panel finds that the claimant has not met his onus to establish by means of credible and trustworthy evidence that he has a well-founded fear of persecution in Hungary.
>
> ...
>
> [25] It is not in dispute that Roma persons face widespread discrimination in Hungary. However, what was at issue in this claim was whether the claimant could credibly establish that the discriminatory incidents he alleged he suffered amounted to persecution.

[9] The Applicant submits the RPD failed to assess the Applicant's fear of persecution on cumulative grounds. I agree. While the Applicant's written testimony detailed discrimination

faced in education, employment, public spaces, housing, and healthcare due to his ethnicity, the RPD started and ended its analysis upon deciding the Applicant's alleged incidents of physical assault were not credible. In doing so, the RPD failed to consider evidence of the many other areas of life in which the Applicant faced discrimination: *Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84, per Nadon JA ("the Board is duty bound to consider all of the events which may have an impact on a claimant's claim that he or she has a well founded fear of persecution, including those events which, if taken individually, do not amount to persecution, but if taken together, may justify a claim to a well founded fear of persecution" at para 42); *Ameeri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 373, per then Gleason J at para 20; *Bledy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 210, per Scott J at para 34; *Balogh v Canada (Minister of Citizenship and Immigration)*, 2014 FC 932, per Brown J at paras 30 – 32 ("The RPD failed in its duty to conduct a careful analysis of the evidence adduced and a proper balancing of the various elements contained therein" at para 30).

[10] With respect, the RPD's Decision is therefore not defensible on the law in terms of it being "duty bound to consider all of the events which may have an impact on a claimant's claim that he or she has a well founded fear of persecution, including those events which, if taken individually, do not amount to persecution, but if taken together, may justify a claim to a well founded fear of persecution."

[11] I also note the RPD reasons at para 6 say: "The claimant states that two events give rise to his fear." This was not correct. As the RPD itself reiterates in its Decision, the Applicant provided many events over a long time, indeed since kindergarten, that gave rise to his fear.

It appears this unreasonable overview of the case led the RPD into the unreasonableness I have found.

B. *Did the RPD err in its analysis of state protection?*

[12] The Applicant submits the RPD erred in requiring the Applicant to establish that he has personally sought and been refused police protection. I am obliged to agree because it appears the RPD required the Applicant to establish that he had "personally been attacked in the manner he claimed." In doing so the RPD minimized the ruling of the Federal Court of Appeal which establishes that an applicant may show the fear he or she has resulted not only from reprehensible acts committed or likely to be committed directly against him or her, but from reprehensible acts committed or likely to be committed against members of a group to which he or she belongs.

[13] In this regard, I accept the decision of Justice Décary for the Federal Court of Appeal in *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 (CA) [*Salibian*] at paras 17 – 19:

> [17] It can be said in light of earlier decisions by this court on claims to Convention refugee status that:
>
> > (1) the applicant does not have to show that he had himself been persecuted in the past or would himself be persecuted in the future;
> >
> > (2) the applicant can show that the fear he had resulted not from reprehensible acts committed or likely to be committed directly against him, but from reprehensible acts committed or likely to be committed against members of a group to which he belonged;

> (3) a situation of civil war in a given country is not an obstacle to a claim provided the fear felt is not that felt indiscriminately by all citizens as a consequence of the civil war, but that felt by the applicant himself, by a group with which he is associated, or if necessary by all citizens on account of a risk of persecution based on one of the reasons stated in the definition; and
>
> (4) the fear felt is that of a reasonable possibility that the applicant will be persecuted if he returns to his country of origin: see *Seifu v. Immigration Appeal Board*, A-277-82, January 12, 1983, cited in *Adjei v. Canada* (1989), [1989] 2 F.C. 680, at 683; *Darwich v. Minister of Manpower & Immigration*, [1979] 1 F.C. 365; *Rajudeen v. Minister of Employment & Immigration* (1984), 55 N.R. 129, at 133 and 134).

[18] The impugned decision falls squarely within the line of authority described by Prof. Hathaway [footnote omitted] as follows:

> In view of the probative value of the experiences of persons similarly situated to a refugee claimant, it is ironic that Canadian courts historically have shown a marked reluctance to recognize the claims of persons whose apprehension of risk is borne out in the suffering of large numbers of their fellow citizens. Rather than looking to the fate of other members of the claimant's racial, social, or other group as the best indicator of possible harm, decision makers have routinely disfranchised refugees whose concerns are based on generalized groups-defined oppression.

and I adopt this description of the applicable law to be found at the end of the aforementioned article:

> In sum, while modern refugee law is concerned to recognize the protection needs of particular claimants, the best evidence that an individual faces a serious chance of persecution is usually the treatment afforded similarly situated persons in the country of origin. In the context of claims derived from situations of generalized oppression, therefore, the issue is not whether the claimant is more at risk

> than anyone else in her country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then she is properly considered to be a Convention refugee.
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> [19] In the case at bar the Refugee Division misunderstood the nature of the burden the applicant had to meet and dismissed his application on the basis of a lack of evidence of personal persecution in the past. This conclusion is a twofold error: in order to claim Convention refugee status, there is no need to show either that the persecution was personal or that there had been persecution in the past.

[14] In my view para 19 of the Federal Court of Appeal's ruling applies equally to this case. I am not satisfied that if the case at bar were to be decided in accordance with the *Salibian* matrix, the same result would obtain. Judicial review must be granted on this ground also.

[15] In the circumstances it is not necessary to review the additional grounds raised by the Applicant because in my view these issues are determinative.

VII. Conclusion

[16] Looking at the Decision as an organic whole, it is unreasonable based on the two issues discussed above. Respectfully, the RPD acted unreasonably by failing to cumulatively assess the evidence beyond two alleged incidents of physical assault. It failed to consider all of the events which may have an impact on a claimant's claim that he or she has a well-founded fear of persecution. In addition it imported a degree of personal persecution not required in law. Therefore, the Decision does not fall within a range of possible, acceptable outcomes which are

defensible in respect of the facts and law, as required by *Dunsmuir* at para 47. Judicial review is granted.

VIII. Certified question

[17] Neither party submitted a question of general importance to certify, and none arises.

JUDGMENT in IMM-5509-18

THIS COURT'S JUDGMENT is that judicial review is granted, the Decision is set aside and the matter is remanded to a different decision-maker for redetermination, no question is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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