

Federal Court



Cour fédérale

Date: 20191024

Docket: IMM-5803-18

Citation: 2019 FC 1333

Ottawa, Ontario, October 24, 2019

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**ZANKO BARTULA
IVANA DELAC-BARTULA (AKA IVANA BARTULA)
RITA BARTULA
MANUELA BARTULA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This decision relates to an application for judicial review of the decision dated November 6, 2018 [the Decision], by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, rejecting the Applicants' claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in more detail below, this application is allowed, because I have found reviewable errors in the RPD's analysis whether the Applicants experienced discrimination amounting to persecution, whether the Applicants faced a forward-looking risk of persecution, and whether the Applicants had a viable internal flight alternative [IFA].

II. **Background**

[3] The Applicants are a husband, wife, and their two children, all citizens of Croatia. The adult Applicants were born in Bosnia-Herzegovina and relocated to Croatia during the Yugoslavian conflict in the early 1990s. The family arrived in Canada on July 27, 2011 and claimed refugee protection based on ongoing discrimination, amounting to persecution, they claimed they had experienced in Croatia as ethnic Croats from Bosnia-Herzegovina.

[4] On November 6, 2018, in the Decision that is the subject of this judicial review, the RPD denied the Applicants' refugee claim, finding the discrimination they experienced did not rise to the level of persecution, the evidence was insufficient to support an objective basis for their claim of persecution on a forward-looking basis, and the capital city of Zagreb would be a viable IFA for them.

[5] As summarized by the RPD, the Applicants provided evidence of multiple incidents of discrimination they experienced, including: loss of medical coverage due to the Croatian government's decision to cancel coverage for Bosnian refugees; difficulty in obtaining and retaining employment, each time because the male adult Applicant [the Principal Applicant] was identified as having come from Bosnia; exploitation at work by various Croatian employers;

verbal denigration by Croatian nationalists; and continual relocation due to prejudices and corruption among local authorities.

[6] The RPD considered the country condition documentation [CCD] and found, while there was evidence of discrimination against Serbs, Roma, and Bosnian Muslims, there was no evidence of widespread discrimination against ethnic Croats born in Bosnia. The RPD did review one piece of country condition documentation that discussed discrimination against this group: an interview with a representative from the Center for Peace Studies [identified in the Decision by the acronym CMS], a non-governmental organization based in Zagreb, which was reproduced in a Response to Information Request [RIR]. The CMS representative indicated ethnic Croats from Bosnia may face discrimination in employment, schooling, and healthcare and that discrimination is especially prevalent in Knin (where the Applicants lived). The RPD noted it was not able to corroborate the information in the CMS interview, but it agreed this information aligned with the Applicants' description of their experiences.

[7] The RPD acknowledged the Applicants' submission that these incidents of discrimination cumulatively rose to the level of persecution, citing passages from the UNHCR Handbook about circumstances in which discrimination can amount to persecution on a cumulative basis. Following further review of CCD, the RPD found the Croatian government continues to struggle with issues of ethnic discrimination among its population, although Roma and Serbian minorities appear to be the principal targets. Based on the Applicants' identification as Croat and Roman Catholic, which are majority groups, it appeared to the RPD they would have no difficulty integrating into the majority population. However, it acknowledged the Applicants have faced

discrimination and therefore proceeded to analyze whether that discrimination rose to the level of persecution and whether circumstances have improved since 2011/2012.

[8] The RPD noted that recent CCD indicated discrimination has been focused on the Serbian and Roma populations and that there is no mention of discrimination against ethnic Croats from Bosnia. Although the Bosnian Croat population is small, the RPD observed that the Roma, a comparably small group, has a well-documented history of discrimination. It reasoned that, if discrimination against Bosnian Croats was a significant issue, it likely would have been identified in the CCD. The RPD therefore found that, while the Applicants may have experienced individual acts of discrimination during the period 1996-2011, there was insufficient evidence to support an objective basis for their claim of persecution. It also found the discrimination they faced does not rise to the level of persecution.

[9] Finally, the RPD considered whether the Applicants have a viable IFA in Zagreb. The Applicants submitted that Zagreb is notorious for not accepting ethnic Croats from Bosnia, which they experienced when the Principal Applicant was looking for work in the 2000s. The RPD found there was no objective evidence to support this allegation. It noted Zagreb is the capital and most populous city in Croatia. As Zagreb is a larger and more cosmopolitan centre, the RPD found the Applicants would likely not face the same difficulties there that they faced years ago in the small parochial centre where they had lived and would have stood out more prominently. The RPD also concluded that employment opportunities, housing options, and medical resources would naturally be more available in the nation's capital and most populous

city and they would have a better chance of integrating there. The RPD therefore held that Zagreb would be a reasonable IFA for the Applicants upon a return to Croatia.

III. **Issues and Standard of Review**

[10] The Applicant raises the following issues for the Court's determination:

- A. Did the RPD err in not accepting the claim because of the lack of objective documentary evidence that there is discrimination against those of Bosnian Croat origin in Croatia?
- B. Did the RPD fail to consider the cumulative effects of discrimination?
- C. Did the RPD make central findings that were speculative?

[11] These issues are all reviewable on a standard of reasonableness.

IV. **Analysis**

[12] The Applicants submit the Decision demonstrates the RPD accepted as credible their evidence about the discrimination they experienced, including in the areas of employment, housing, and healthcare. I agree with this characterization of the Decision, particularly when reviewed in combination with the transcript of the Applicants' hearing, at the conclusion of which the RPD stated that it accepted their evidence as truthful.

[13] However, the RPD concluded that the discrimination experienced by the Applicants did not amount to persecution, the objective evidence was insufficient to support a forward-looking risk of persecution, and the Applicants had a viable IFA in Zagreb. As each of these three findings is determinative, the Applicants can succeed in this application for judicial review only if they demonstrate a reviewable error in relation to all of these findings.

[14] In relation to the first finding, that the discrimination to which the Applicants were subjected did not amount to persecution, they submit the RPD did not assess the cumulative effects of the Applicants' experiences or provide any explanation why the multiple incidents and areas of discrimination did not rise to the level of persecution. The Respondent notes the Decision refers to the Applicants' submissions, including the argument that discrimination amounted to persecution on a cumulative basis. I accept the Respondent's argument that merely failing to include the word "cumulative" in the RPD's finding does not represent a reviewable error.

[15] However, I agree with the Applicants' position that the Decision provides absolutely no analysis supporting the RPD's finding. While adequacy of reasons is not a stand-alone ground for judicial review, a decision must nevertheless be justified, transparent, and intelligible in order to withstand review on the standard of reasonableness. This finding by the RPD is therefore unreasonable.

[16] The Decision could nevertheless remain reasonable overall in the absence of a reviewable error in the RPD's analysis of whether the evidence demonstrates a forward-looking risk. As explained below, I find that it did also err on this point.

[17] Having accepted the Applicants' evidence as to their experiences of discrimination before leaving Croatia, and having found that evidence to be consistent with the RIR referenced in the Decision, the RPD explained that it was necessary to consider whether circumstances in Croatia have improved since 2011/2012. After reviewing the more recent CCD and finding no references to discrimination against ethnic Croats from Bosnia, the RPD found a lack of objective support for a forward-looking risk. The Applicants argue that the RPD erred by basing its conclusion on conjecture and speculation that, if such discrimination existed, it would be found in the CCD. I disagree and concur with the Respondent's position that the RPD's reliance on the CCD in this manner was reasonable.

[18] However, the Applicants also point to evidence before the RPD of recent experience by the Applicants' family with discrimination of the sort they had encountered before leaving Croatia. The Principal Applicant testified that he remains in contact with his mother, who still lives in the Croatia, still experiences difficulty in obtaining secure housing, and still does not have health protection because of her Bosnian origin. In considering whether circumstances in Croatia have improved since 2011/2012, the RPD considered the CCD but made no reference to the Applicants' evidence of this current first-hand experience.

[19] There is a rebuttable presumption that the RPD has considered all the evidence before it, including evidence that is not expressly referenced in the Decision. I find that presumption rebutted on the facts of this case. Although the Applicants' evidence was accepted as credible, the Decision demonstrates no consideration of their evidence of ongoing discrimination, which was consistent with their experiences before leaving Croatia. I conclude that this evidence was overlooked. Notwithstanding the RPD's finding on the objective basis for the claim, it is not possible to assess whether the RPD's overall determination may have been different if it had considered the evidence of the recent experience of the Applicants' family. Without that evidence being taken into account, the RPD's finding on the Applicants' forward-looking risk is unreasonable.

[20] Finally, turning to the IFA, I find the RPD erred on this point as well.

[21] I concur with the Respondent's submission that the Applicants have the onus to demonstrate the proposed IFA of Zagreb is not viable. I also recognize that the Applicants' evidence of discrimination in Croatia relates largely to experiences in their community of Knin and that the RIR which corroborates those experiences also focuses upon that community. The Respondent therefore submits the Applicants have failed to discharge their onus of demonstrating that they would face discrimination, let alone discrimination rising to the level of persecution, if they were to return to Croatia and relocate to Zagreb. I find the Respondent's position on this point compelling.

[22] However, the test for the viability of an IFA has two components: (a) there is no serious possibility of the claimant being persecuted in the IFA exists; and (b) it would not be objectively unreasonable for the claimant to seek refuge there (see, e.g. *Hamdan v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 643 at paras 11-12, citing *Thirunavukkarasu v Canada (Employment and Immigration)* (1993), [1994] 1 FC 589 (FCA) at 593; *Ranganathan v Canada (Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at para 15). The Applicants note that there was evidence before the RPD that they had made efforts to relocate within Croatia, making inquiries of authorities both in Knin and Zagreb to seek relocation, and that they were denied on several occasions. In my view, the Applicants' evidence as to their relocation efforts is relevant to the second branch of the IFA test, and the Decision does not demonstrate an engagement with that evidence.

[23] The RPD refers to the Principal Applicant testifying that he had been unsuccessful in efforts to move elsewhere in Croatia. The RPD then refers to his testimony that Zagreb was notorious for not accepting ethnic Croats from Bosnia. However, the RPD's only finding on this evidence is that the Principal Applicant's characterization of Zagreb as not being accepting of ethnic Croats from Bosnia is unsupported by objective evidence and is given no weight. The RPD then proceeds to discuss the Applicants' prospects of integrating into Zagreb as a large and cosmopolitan centre. There is no analysis of the Applicants' evidence of authorities' past denials of their efforts to relocate. The Respondent points to CCD evidence to the effect that there is freedom of movement within Croatia. However, the Decision demonstrates no reliance on this evidence, or indeed any other analysis, from which the Court can identify consideration by the RPD of this part of the required IFA analysis.

[24] I therefore conclude that, like the other two determinative findings in the Decision, the IFA finding is unreasonable. The Decision must therefore be set aside and the matter returned to the RPD for redetermination. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5803-18

THIS COURT’S JUDGMENT is that this application for judicial review is allowed and the matter is returned to a differently constituted panel of the Refugee Protection Division for redetermination. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5803-18

STYLE OF CAUSE: ZANKO BARTULA
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RITA BARTULA
MANUELA BARTULA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 8, 2019

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: OCTOBER 24, 2019

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