Federal Court  Cour fédérale

Date: 20191028

Docket: IMM-1356-18

Citation: 2019 FC 1351

Ottawa, Ontario, October 28, 2019

PRESENT: Madam Justice Walker

BETWEEN:

SOPIKO MESHVELIANI
JONI LEKVINADZE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Sopiko Meshveliani and Joni Lekvinadze, the Applicants, are citizens of Georgia. They seek judicial review of a decision (Decision) of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada. The RPD found that the Applicants were not persons in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The application for judicial review is brought pursuant to subsection 72(1) of the IRPA.

[2] The Applicants submit that the RPD erred in finding that state protection is available to them in Georgia. The Applicants also argue that paragraph 110(2)(d) of the IRPA (the RAD Bar) infringes section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (*Charter*). At the time of the hearing of this application in December 2018, this Court's conclusion that paragraph 110(2)(d) does not infringe section 7 (*Kreishan v Canada (Citizenship and Immigration)*, 2018 FC 481) was under appeal to the Federal Court of Appeal (FCA) and I reserved my decision pending resolution of the appeal. Justice Rennie has now rendered the FCA's decision (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 (*Kreishan FCA*)) and I have returned to my judgment in this matter.

[3] For the reasons that follow, the application will be dismissed.

I. Background

[4] The Applicants base their refugee claim on a continuing fear of harm in Georgia at the hands of members of the Jachviliani family because of a blood feud involving Mr. Lekvinadze's family. They submit they cannot return to Georgia because they would face a risk to their lives and/or cruel and unusual treatment or punishment.

[5] The feuding families lived in Konchkati, a village in Georgia. Tensions between the families began over a 1998 land dispute. Mr. Lekvinadze alleges that Murtaz Jachviliani stabbed his father and uncle. Murtaz was arrested and sentenced to six years in prison for attempted murder.

[6] The Applicants state that the dispute between the families escalated notwithstanding the relocation by Mr. Lekvinadze's family from Konchkati to Rustavi in 2000. Mr. Lekvinadze alleges that his uncle attended a wedding in Konchkati in 2014 at which Murtaz's oldest son, Giorgri, was also present. During the wedding, Mr. Lekvinadze's uncle became intoxicated and fatally stabbed Giorgri. The uncle later hanged himself after realizing what had occurred. Mr. Lekvinadze states that his family's home in Konchkati was burned down and he began receiving death threats on the phone from Dato Jachviliani, Giorgri's son.

[7] On September 9, 2014, Mr. Lekvinadze filed a police report concerning the death threats and the police issued a two-month restraining order against Dato Jachviliani.

[8] Mr. Lekvinadze submits that he was physically attacked by associates of Dato Jachviliani on November 2, 2014 and was hospitalized for two weeks. Ms. Meshveliani suffered a miscarriage and severe depression shortly thereafter. Mr. Lekvinadze did not provide a statement to the police about the assault because he feared the Jachviliani family would seek revenge.

[9] Following unsuccessful attempts to resolve the feud in 2014, the Applicants were advised to leave Georgia by a family member. The Applicants left Georgia on April 2, 2015 following Ms. Meshveliani's treatment for post-partum complications, first travelling to the United States. The Applicants entered Canada on April 13, 2015 and claimed refugee status.

II. Decision under review

[10] The Decision is dated February 2, 2018. The determinative issue before the RPD was the availability of state protection for the Applicants in Georgia.

[11] The RPD referred to the decision of this Court in *Koky v Canada (Citizenship and Immigration)*, 2017 FC 1035 (*Koky*), which outlined the principles of state protection applicable to refugee claims. The panel highlighted the general presumption of state protection in a democratic country and the requirement that refugee claimants first seek protection from their home state before going abroad to obtain protection through the refugee system. The RPD found that the Applicants had not taken all reasonable steps to exhaust the mechanisms of state protection available to them in Georgia prior to seeking protection in Canada. They had not discharged their onus of establishing, on a balance of probabilities, that the police in Georgia would not protect them. The RPD concluded that the Applicants were not persons in need of protection within the meaning of section 97 of the IRPA.

[12] The RPD emphasized that the Applicants had only approached the police on one occasion to ask for protection. In response, the police issued a restraining order and encouraged the Applicants to come forward if they encountered further issues. The Applicants did not contact the police after the November 2014 incident. The panel accepted Mr. Lekvinadze's testimony that he lacked confidence in the ability of the police to provide him with sufficient protection. However, this subjective reluctance to engage with the available protection in Georgia did not constitute clear and convincing evidence that would rebut the presumption of state protection.

III. Issues and standard of review

[13] The Applicants make two arguments regarding section 7 of the *Charter*. First, they submit that the refusal by Legal Aid Ontario to issue a certificate to allow them to retain counsel breached both section 7 of the *Charter* and subsection 167(1) of the IRPA. Second, the Applicants argue that paragraph 110(2)(d) of the IRPA infringes section 7.

[14] In terms of the Decision itself, the Applicants contest the RPD's finding that they failed to rebut the presumption of adequate state protection in Georgia. The RPD's assessment of the issue of state protection and the evidentiary record before it raises questions of mixed fact and law and is subject to review for reasonableness (*Gjoka v Canada (Citizenship and Immigration),* 2018 FC 292 at para 13; *Howard v Canada (Immigration, Refugees and Citizenship),* 2017 FC 780 at para 20). The standard of reasonableness requires me to accord deference to the RPD's decision. This Court will only interfere if the RPD's conclusion regarding state protection lacks justification, transparency, or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the facts of this case and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

IV. Analysis

1. The Applicants' Section 7 arguments

Refusal of Legal Aid certificate

[15] The Applicants submit that the refusal of their request for legal aid to pursue this application for judicial review breached both subsection 167(1) of the IRPA and section 7 of the *Charter*. I do not find either argument persuasive.

[16] First, subsection 167(1) of the IRPA provides that a person who is the subject of a proceeding before the RPD may be represented by counsel at their own expense. The subsection in no way guarantees a right to counsel or a right to receive funding in order to retain counsel.

[17] Second, the Applicants cite no authority for their argument that section 7 of the *Charter* guarantees a right to funded counsel in their circumstances and make no submissions to the

effect that their substantive section 7 rights were breached in the course of this application. In fact, the Applicants retained counsel who filed written representations on their behalf and represented the Applicants at the hearing before me. In the absence of detailed submissions regarding the scope of any right to funded counsel pursuant to section 7 of the *Charter* on the specific facts of this case, I will not consider the Applicants' argument further.

Paragraph 110(2)(d) of the IRPA and Section 7 of the Charter

[18] The Applicants' written submissions set out their detailed arguments regarding paragraph 110(2)(d) of the IRPA and section 7 of the *Charter*. These arguments have been fully addressed by Justice Rennie in *Kreishan FCA*. The certified question before Justice Rennie was:

> Does paragraph 110(2)(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 infringe section 7 of the *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982*, c.11 and, if so, is this infringement justified by section 1?

[19] Following a comprehensive examination of the refugee determination process in Canada, the legislative history of paragraph 110(2)(d), the purpose of the RAD, the appellants' arguments, and the general principles and jurisprudence applicable to section 7 of the *Charter*, Justice Rennie answered the certified question in the negative (*Kreishan FCA* at para 144). As the Applicants' arguments regarding the RAD Bar and section 7 raise no new issue, they too must be answered in the negative.

2. The RPD's state protection finding in the Decision

[20] The Applicants submit that the RPD erred in its analysis of the adequacy of state protection available to them in Georgia. They allege that the police force in Georgia is "not only complicit but takes part itself in committing war crimes and crimes against humanity". The

Applicants argue that the RPD failed to consider the objective country condition documentation for Georgia and, had it done so, would have concluded that protection from the Georgian authorities is not available to them. They also argue that the RPD failed to consider medical evidence in the record regarding the trauma and concussions they suffered in Georgia that, in turn, affected their ability to recall evidence and provide testimony.

[21] The Respondent submits that the RPD reasonably considered the documentary evidence for Georgia which spoke to the operational effectiveness of measures in Georgia combating vendettas and murder. The Respondent argues that the RPD's conclusion that the Applicants failed to rebut the presumption of adequate state protection in a democratic country was also reasonable as they failed to exhaust all possible protections before leaving Georgia.

[22] I find that the RPD's analysis of the availability of adequate state protection to the Applicants in Georgia and its conclusions regarding their failure to take all reasonable steps to exhaust the available protection were reasonable.

[23] The RPD accurately summarized the principles of state protection, including the fact that mere efforts of protection by a country are not sufficient. It is the operational effectiveness of the country's state protection apparatus that is critical (*Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 21; *Koky* at para 14).

[24] The RPD considered the country condition evidence for Georgia in the National Documentation Package (NDP). Specifically, the RPD reviewed a 2017 Response to Information Request (RIR) on blood feuds in Georgia. The RIR stated that blood feuds had virtually disappeared in Georgia, although they are practised in the Georgian highlands. While the law in

Georgia does not address blood feuds themselves, criminal actions resulting from such feuds are treated like other crimes, including murder and injury. The RIR indicated that the state does not provide services specific to threats arising from blood feuds but an individual who approaches the police as a result of a blood feud would be "treated as an individual who faces a risk of death or possible injuries." The NDP document cited by the Applicants confirms the information in the RIR, stating that the Georgian police treat crimes related to blood feuds within the normal law enforcement system. The NDP document cites a senior official to the effect that the police will investigate blood feud cases and prosecute the criminals involved but there is no general state protection mechanism that protects family members involved in blood feuds.

[25] The RPD then canvassed the Applicants' attempts to obtain state protection. The panel noted that Mr. Lekvinadze went to the police in September 2014 to report the harassment inflicted by Dato Jachviliani. At that time, according to Mr. Lekvinadze, the police stated that they would investigate the case and issued a two-month restraining order against Mr. Jachviliani. The panel emphasized that Mr. Lekvinadze did not approach the police following his assault at the hands of Mr. Jachviliani's associates on November 2, 2014 and stated that "this subjective reluctance to engage with state protection entities in Georgia is not clear and convincing evidence that rebuts the strong presumption of state protection which attaches to Georgia …".

[26] The RPD continued:

> [30] The panel finds that in the circumstances it was reasonably open to the claimants to revert to the police to seek additional protection in the aftermath of the November 2, 2014 attack. The panel makes this finding in light of [Mr. Lekvinadze]'s oral testimony during the hearing about his interactions with the police after he reported the threats to them on September 9, 2014. In particular, [Mr. Lekvinadze] testified that after the police invited him back to advise him that a restraining order had been issued

> against Dato Jachviliani, they said "Just live your life and if something still happens of course still inform us".

[27] Despite the initial involvement of the police and the officer's willingness to provide future assistance to the Applicants, Mr. Lekvinadze decided not to contact the police after the November 2014 attack. He believed that a second restraining order would not dissuade Mr. Jachviliani and his associates from future attacks. In the RPD's view, Mr. Lekvinadze failed to provide the police an opportunity to take action of his behalf, whether by way of a restraining order or alternative measures. The RPD concluded that the Applicants did not exhaust state protection before seeking surrogate protection in Canada and failed to discharge their onus of establishing that the police in Georgia were either unwilling or unable to protect them. I find no reviewable error in the RPD's analysis.

[28] The Applicants also argue that the RPD erred by failing to consider their medical evidence of assaults and injury in Georgia. I do not agree. The medical evidence in question was simply not relevant to the RPD's state protection analysis. The Applicants submit that their testimony was impaired due to the injuries they suffered in Georgia. However, the Applicants provide no further detail. In particular, they do not contest the RPD's determinative factual conclusion that they did not approach the police after the November 2014 attack due to their reluctance to engage with the Georgian authorities. As a result, I find that the Applicants have not established any connection between the medical evidence and a purported error in the RPD's analysis.

[29] Finally, the Applicants rely on a prior Immigration Division (ID) decision in which certain Georgian officials in the Ministry of Internal Affairs were found to have engaged in war crimes. In my view, the case is not relevant to the RPD's analysis of the availability to the

Applicants of state protection from the Georgian police in the face of a private dispute. The facts and law in issue before the ID were markedly different.

V. Conclusion

[30] The application is dismissed.

[31] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-1356-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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