

**Date: 20081212**

**Docket: IMM-2247-08**

**Citation: 2008 FC 1370**

**Montréal, Quebec, December 12, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**MIROSLAV STARCEVIC**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated April 16, 2008, wherein the Board determined that the applicant was not a Convention refugee nor a person in need of protection.

## II. Facts

[2] The applicant went through an acrimonious divorce with his wife in 1993. Prior to the divorce being finalized, the applicant's wife became involved with another man that she married shortly afterwards.

[3] The applicant alleges a risk to his life and cruel and unusual punishment from his ex-wife new husband, a police officer, should he return to the Czech Republic.

[4] Shortly after the breakdown of his marriage, the applicant began to experience a series of alleged persecutory incidents, all of which are said to be connected to his ex-wife and her new husband (i.e. assault causing bodily harm, frivolous legal actions leading to a wrongful criminal conviction, defamation and arson).

## III. The Impugned Decision

[5] The Board concluded that the applicant's alleged fear resulted from a vendetta or criminal activities of his ex-wife and her new husband, and is not linked to a Convention ground. In other words, the Board found that there was no nexus between the harm alleged by the applicant and the Convention definition.

[6] Based on the circumstances, the Board was also satisfied that the applicant had an alternate viable flight alternative, namely Prague where adequate state protection exists and would be available should the applicant experience any further incidents of persecution from his ex-wife's husband.

[7] Consequently, the Board concluded that the applicant is not a Convention refugee, as he does not have a well-founded fear of persecution for a Convention ground in the Czech Republic.

#### IV. Issues

[8] Was the Board's decision unreasonable?

#### V. Analysis

##### *Standard of review*

[9] The present case involves questions of facts and weight of evidence intertwined with legal issues which attracts a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

##### *Nexus to Convention Ground*

[10] The applicant's alleged fear was at the hands of his ex-wife's husband. The Board concluded that the applicant's fear is a vendetta or criminal activities not linked to a Convention ground. The determination of the existence of a nexus between persecutory conduct and the

Convention refugee definition is a question of fact clearly within the Board's expertise. The Court will not intervene unless the Board's determination was made in a perverse or capricious manner.

[11] According to the definition section 96 of the *IRPA*, "[a] Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion" is unable or, by reason of that fear, unwilling to avail himself of the protection of each of his country.

[12] It has been held by this Court that criminality, revenge, and personal vendetta cannot be the foundation of a well-founded fear of persecution by reason of a Convention ground for the simple reason that such a persecution is not related to one of the Convention grounds.

[13] The Board concluded in its decision that the applicant's fear of persecution related to the series of incidents that he alleges to be the work of his ex-wife and her new spouse, not to one of the reasons included in the definition of Convention refugee. Having regard to the evidence on the record, that conclusion appears to be reasonable for the following reasons.

[14] Contrarily to the applicant's contention that the Board did not consider the totality of the evidence before it when it decided as it did, it is evident from the reasons of its decision that it did recognize the many incidents that the applicant experienced while residing in the Czech Republic. But in considering such, the Board was enabled to conclude that the applicant's evidence was not

only inconclusive but it could not establish a link between the fear of persecution and one of the five grounds of the Convention refugee definition.

[15] Recognizing that a claimant must establish a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”, this Court finds the Board’s conclusion reasonable on this issue.

[16] Because the applicant did not meet the definition of Convention refugee, his application cannot be granted, since there is no nexus with the persecution grounds specified in section 96 of the *IRPA*.

#### *State Protection*

[17] Having found that the applicant did not have a nexus to the refugee definition, the Board examined the issue of state protection for the applicant if he were to return to his country of origin and experience any further problems or what state protection would be available to him if he were to report his problems to a police officer in the Czech Republic.

[18] Unsatisfied of the Board’s finding on this issue, the applicant’s argues in light of his allegations that the Board erred in its analysis of state protection. The Board appears to have considered all the evidence on this issue and came to a supportable determination on the record that the applicant had failed to rebut the presumption of state protection. It is not for this Court to reweigh the evidence and substitute its conclusions to those of the Board. The Court owes deference

to the Board's expertise on this issue and is unable to conclude on the record that the Board's finding on this issue is unreasonable.

[19] Refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where the refugee applicant has unsuccessfully sought the protection of his home state (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at p. 709; *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para. 41).

[20] No government that makes a claim to democratic values or protection of human rights can guarantee the protection of all of its citizens at all times. It is therefore not enough for the applicant here to merely show that the authorities of his country have not always been effective in protecting him against his ex-spouse's and new husband's vendetta (*Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.); *Ward*, above at p. 726). The fact that state does not provide perfect protection is not in itself a basis for determination that the state is unwilling or unable to offer reasonable protection in the circumstances (*Milev v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 907 (F.C.T.D.) (QL)).

[21] Absent a situation of a complete breakdown of state apparatus, it should be assumed that the state is capable of protecting an applicant. It is stated law that to rebut the presumption an applicant must produce "clear and convincing confirmation of a state's inability to protect" (*Ward*, above, at pp. 724-725).

[22] Here, the Board noted that the applicant's appeal of his unjustified conviction was successful, and noted also the information he had received as to recourses available to him if he believed that he had been the victim of criminal offences. Furthermore, the documentary evidence with regard to the availability of state protection in the Czech Republic disclosed that while there are clearly issues of corruption including police corruption in that country, the government has implemented reforms and actively gone after corrupt officials and brought them to trial with a number of successful convictions. The Board considered all the evidence including the applicant's allegations that he would not be able to obtain state protection, but found the evidence showed otherwise and that the applicant had not rebutted the presumption of state protection with clear and convincing argument.

[23] It was up to the Board to conclude as it did on this issue. The Board's finding on the availability of adequate state protection is justified, transparent, intelligible and based on the evidence that the Board had the responsibility to weigh. It is therefore an acceptable and reasonable finding within the decision-making process.

*Internal Flight Alternative (IFA)*

[24] The Court, having considered the applicant's situation and education, was satisfied that he would be able to live in Prague which is 200 miles away from the city he resided before coming to Canada.

[25] The applicant had to produce concrete evidence of nothing less than the existence of such adverse conditions which would jeopardize his life and safety in relocating to a safe area, as suggested by the Board (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164 (C.A.)). The onus of proof rested at all time on the applicant to show that it would be objectively unreasonable for him to reside in Prague. Unfortunately for him, the applicant has not discharged this onus and as a result was unable to convince the Board of the absence of a flight alternative in his own country. Moreover, he failed to show this Court that the Board ignored or misconstrued any evidence in this regard or misapplied the legal test in its IFA analysis or made any perverse or capricious findings in this regard. As a consequence, the intervention of this Court is not warranted.

## VI. Conclusion

[26] In brief, the impugned decision falls within a range of possible and acceptable outcomes which are justified in respect of the facts and the law, and therefore deserves deference from this Court. For these reasons, the Court concludes that the Board did not commit a reviewable error and that its decision is reasonable. Therefore, the judicial review application will be dismissed.

[27] The Court agrees with the parties that there is no serious question of general importance to certify.



**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application is dismissed.

“Maurice E. Lagacé”

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Deputy Judge

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

**DOCKET:** IMM-2247-08

**STYLE OF CAUSE:** MIROSLAV STARCEVIC v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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**REASONS FOR JUDGMENT  
AND JUDGMENT:** LAGACÉ D.J.

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