

Federal Court



Cour fédérale

**Date: 20100430**

**Dockets: IMM-2672-09**

**Citation: 2010 FC 475**

**Ottawa, Ontario, April 30, 2010**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ANNA VALERIEVNA KLOCHEK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Ms. Anna Valerievna Klochek arrived in Canada from Belarus in 2004. She sought refugee protection on the basis that she had been forced into prostitution and was sought by criminal elements at home. Given the close association between criminals and the police in Belarus, she also feared being falsely charged with an offence. A panel of the Immigration and Refugee Board dismissed her claim, finding that her account of events was not believable.

[2] When Ms. Klochek tried to obtain permanent residence in Canada, she learned that she was inadmissible due to an outstanding Interpol warrant against her for larceny. She then filed an application for a pre-removal risk assessment (PRRA) and an application for humanitarian and compassionate relief (H&C). Both applications were denied in 2009 by the same officer. This judicial review relates to her H & C. In a separate application (IMM-2670-09), I allowed her application for judicial review of her PRRA.

[3] Ms. Klochek argues that the H&C officer erred in a number of respects, including by failing to consider whether her potential imprisonment in Belarus would amount to unusual, undeserved or disproportionate hardship. I will grant her application for judicial review as I agree with Ms. Klochek that the officer overlooked an important part of her application, resulting in an unreasonable decision.

## II. The Officer's Decision

[4] The officer considered three aspects of Ms. Klochek's application – her family ties in Canada, her establishment here, and the risk she would face on return to Belarus. It is only the latter aspect of the officer's decision that I have considered on this application for judicial review.

[5] The officer noted two aspects of the risk Ms. Klochek might face. The first related to her fear of persons who had forced her into prostitution. The second involved her fear of prosecution in Belarus on an allegedly false charge and the nature of the punishment she might have to endure. In

respect of the latter, the officer claimed to have considered the judicial process in Belarus and the prison conditions Ms. Klochek might face.

[6] The officer's decision involves a discussion of the country conditions in Belarus, in terms of its political, constitutional, and legal apparatus. The officer concluded that while Belarus has a problem with authoritarian rule and suppresses the opposition, the media, and non-governmental organizations, these issues would not affect Ms. Klochek. Further, according to the officer, there was insufficient evidence that it would be a hardship for Ms. Klochek "to obtain fair treatment from the judicial process in Belarus".

### III. Did the Officer Overlook an Important Issue?

[7] While the officer purported to do so, in fact, he did not consider whether any punishment Ms. Klochek might have to endure in Belarus, based on the outstanding charge against her, would amount to unusual, undeserved or disproportionate hardship. To his credit, he considered many aspects of the circumstances Ms. Klochek might face in Belarus. However, notwithstanding his undertaking to do so, the officer did not analyze the hardship that could result from Ms. Klochek's potential prosecution, conviction and imprisonment in Belarus.

[8] In my view, the officer overlooked an important part of Ms. Klochek's application. He did not consider whether being prosecuted and punished in Belarus, even on a valid charge, might amount to unusual, undeserved or disproportionate hardship. The officer assumed that prosecution,

conviction and sentencing would result in “fair treatment from the judicial process in Belarus”. That conclusion was not based on the evidence before the officer.

#### IV. Conclusion and Disposition

[9] The officer failed to consider whether the potential prosecution, conviction and punishment of Ms. Klochek would cause her hardship. Accordingly, I find that the officer’s decision was unreasonable. Therefore, I must order a reconsideration by another officer. Neither party proposed a question of general importance for me to consider, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that**

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration.
2. No question of general importance is stated.

“James W. O’Reilly”

---

Judge

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

**DOCKET:** IMM-2672-09

**STYLE OF CAUSE:** KLOCHEK v. MCI

**PLACE OF HEARING:** Toronto, ON.

**DATE OF HEARING:** February 1, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** April 30, 2010

**APPEARANCES:**

Matthew Jeffery FOR THE APPLICANT

Melissa Mathieu FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

MATTHEW JEFFERY FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, ON.

JOHN H. SIMS, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, ON.