

Federal Court



Cour fédérale

Date: 20100902

Docket: IMM-981-10

Citation: 2010 FC 869

Ottawa, Ontario, September 2, 2010

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

RODICA ZMEU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Rodica Zmeu (the Applicant) pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 28, 2010, that the Applicant is not a Convention refugee or a person in need of protection.

[2] The Applicant is a citizen of Moldova. She fears persecution by an ex-boyfriend who, she says, physically abused and harassed her.

[3] The Board concluded that “[t]here’s no credible evidence” that the Applicant’s ex-boyfriend’s threats and violence “ever amounted to persecution.” While the Board did not question that the incidents alleged by the Applicant occurred, it noted that before coming to Canada, “[s]he left Moldova on three separate occasions and returned each time,” including from the United States. In its view, this “indicates that a well-founded fear of persecution is lacking, and that such conduct is inconsistent with such fear.”

[4] Furthermore, the Applicant “failed to establish with clear and convincing evidence that Moldovan authorities are either unable or unwilling to protect her should she return there.” The only time she approached the police for protection, they intervened. The Board considered a letter from the Moldovan Office of Lawyers stating that under Moldovan law, a person suffering from mental illness, such as the Applicant’s ex-boyfriend cannot be prosecuted, but noted that no country could guarantee its citizens perfect protection. In its opinion, the protection Moldovan authorities could offer the Applicant would be adequate.

[5] First, the Applicant submits that “the Board has not explained at all” its conclusion that her ex-boyfriend’s behaviour toward her did not amount to persecution.

[6] In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 734, 103 D.L.R. (4th) 1, the Supreme Court accepted a definition of “persecution” as a “sustained or systemic violation of basic human rights demonstrative of a failure of state protection.” As I explained in *Liang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 450, at par. 19, “the determination of what constitutes persecution involves an analysis of many factors, including persistence, seriousness, and the quality of the alleged incidents.”

[7] In my view, it is sufficiently clear from the Board reasons that it did not consider the seriousness of the incidents involving the Applicant’s ex-boyfriend to have been such that these amounted to “persecution.” While the Board’s reasons are not perfect, they are transparent and intelligible, and therefore adequate.

[8] Second, the Applicant argues that the Board erred in concluding that she did not fear persecution in Moldova since she thrice returned to that country from trips abroad, including a lengthy stay in the United States. According to the Applicant, “so long as the source of harm and fear is present and [she] fears for harm [sic] (that is why she eventually left the country) it is not a reasonable finding that return of the [A]pplicant to her country alone is an indication of lack of fear.” Again, I am of the view that the Board could reasonably question the Applicant’s credibility as to her subjective fear on the basis of the fact that she returned to Moldova despite the presence there of her alleged persecutor. Its findings are neither “perverse or capricious” nor made “without regard to the evidence before it.”

[9] Finally, the Applicant contends that the Board erred in finding that the Moldovan state could protect her. According to her, the authorities could not offer her a reasonable level of protection because, being unable to keep her ex-boyfriend in detention, they lack the power to prevent him from persecuting her.

[10] In my view, the Board's decision is not unreasonable. In light of the fact that the police came to the Applicant's assistance the only time she sought their help, it was open to it to conclude that state protection, while perhaps imperfect, would be reasonably forthcoming. The Applicant suggests, in effect, that the only way in which Moldova could offer her adequate protection would be to put her ex-boyfriend in indefinite detention. This is, in my opinion, an untenable position. It is very unfortunate that the Applicant might have to deal with an obsessive stalker, but the only evidence in the record suggests that if he comes to actually threaten her, police are likely to intervene.

[11] For these reasons, the application for judicial review of the decision is dismissed.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-981-10

STYLE OF CAUSE: **RODICA ZMEU
and
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PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 2, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Tremblay-Lamer J.

DATED: September 2, 2010

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