Federal Court  Cour fédérale

Date: 20101004

Docket: IMM-786-10

Citation: 2010 FC 972

[UNREVISED CERTIFIED TRANSLATION]

Ottawa, Ontario, October 4, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

Alla Serhiyivna BONDAR

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the Act) for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated January 12, 2010. The panel determined that the applicant was neither a refugee nor a person in need of protection and therefore rejected her refugee claim.

[2] The applicant is a Ukrainian citizen. She was a member of the board of directors of a company that owned a number of buildings in the city of Kherson. In 2005, business people interested in these buildings, with the support of the municipal authorities including the mayor, began to threaten her. When the applicant refused to give them the buildings, the mayor of Kherson expropriated them. However, the threats continued. She complained to the federal department of internal affairs, which referred the case back to the municipal authorities.

[3] On November 2, 2007, faced with her failed attempts to stop the expropriation, the applicant resigned from the board of directors. The threats still continued until April 2008 when she was threatened at knifepoint.

[4] In June 2008, she left Ukraine, leaving documents with her former assistant that implicated the municipal authorities in the illegal expropriation. That individual, like the other members of the board of directors, is still in Ukraine and lives there with no problems. The applicant came to Canada with a temporary travel document as a visitor to visit her son, who lives here.

[5] Without questioning the applicant's credibility, the panel determined that she would not be subjected to a risk of persecution or threats to her life if she had to return to Ukraine. It noted that the people who wanted the buildings owned by the company that the applicant managed had succeeded in taking control of them. It also pointed out that the other members of the board of directors, including the applicant's assistant who supported her throughout her battle against the authorities and who is now in possession of documents implicating those individuals, no longer

have problems in Ukraine. The applicant no longer has a connection with the company. As a result, the authorities no longer have any reason to harm her. Thus, according to the panel, "the fear described by Ms. Bondar no longer exists today."

[6] The applicant submits that the panel refused to consider her testimony about her fear of persecution in Ukraine. She says that the panel, which did not question her credibility, could not [TRANSLATION] "conclude that she would have no fear if she returned." In addition, the applicant contends that the panel did not explain why it rejected her explanations about her fight with Kherson's municipal authorities and her vulnerability.

[7] The respondent, for his part, submits that the panel's decision, in addition to being based on the evidence, is reasonable and supported by sufficient reasons. He notes that it is the panel's responsibility, not the applicant's, to evaluate the evidence adduced and to make findings based on it. In determining that the applicant was credible, the panel implicitly recognized that she had a subjective fear of persecution, but under sections 96 and 97 of the Act she must also establish that this fear is objectively well-founded or that there is an objective risk to her life, present or prospective (according to *Ward v. Canada (Attorney General)*, [1993] 2 S.C.R. 689 at page 723, citing *Rajudeen v. Canada (M.E.I.)*, [1984] F.C.J. No. 601 (C.A.F.); *Sanchez v. Minister of Citizenship and Immigration*, 2007 FCA 99 at paragraph 15).

[8] A tribunal's assessment of the facts "commands a high degree of deference" (*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 46). The Court will only intervene if the evaluation is unreasonable, in the sense that it was "made in a perverse or capricious

manner or without regard for the material before it" (*ibid.*; *Federal Courts Act*, R.S.C. 1985, c. F-7, paragraph 18.1(4)(*d*)). Reasons for decision are sufficient if they "ensure that the administrative decision is justified, transparent and intelligible" (*Nicholas v. Minister of Citizenship and Immigration*, 2010 FC 452) and therefore reasonable.

[9] In this case, I am of the view that the panel did not ignore the applicant's testimony or determine that she would have no fear if she were returned to Ukraine. Although the expression used by the panel when it wrote "the fear described by [the applicant] no longer exists today" may appear ambiguous, it is clear from the reasons considered as a whole that the panel was referring to the objective basis of the fear. Thus, it found that although the fear existed in the applicant's mind it was no longer justified.

[10] In this regard, it is useful to note that paragraph 108(1)(*e*) of the Act provides that "[a] claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, [if] the reasons for which the person sought refugee protection have ceased to exist". The difficulty that a refugee claimant may have in [TRANSLATION] "actualizing his or her fear", which the applicant refers to, is not a reason to disregard this express statutory rule.

[11] Moreover, the panel explained clearly why it determined that the applicant's fear was no longer objectively well-founded. The people who harassed and threatened the applicant got what they were seeking and no longer have a reason to harm her. If they wanted to harm her because she [TRANSLATION] "knew too much", it is logical to think that they would harm her assistant who, according to the applicant, was in possession of incriminating documents. That has not happened.

This reasoning is transparent, intelligible and justified having regard to the evidence before the panel. I can only conclude that its decision is reasonable.

[12] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board dated January 12, 2010, is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-786-10
STYLE OF CAUSE:	Alla Serhiyivna BONDAR v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
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