Federal Court Cour fédérale

Date: 20120604

Docket: IMM-5805-11

Citation: 2012 FC 679

Ottawa, Ontario, June 4, 2012

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

JOSEPH BLEDY
HELENA SAMKOVA
ADAM FRANTISEK BLEDY
JENIFER BLEDA
JOSEP BLEDY (JR)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants, Josef Bledy [the Principal Applicant], his common-law partner Helna Samkova, and their children Adam Frantisek Bledy, Jenifer Bleda, and Josef Bledy (Jr) [the Applicants] seek judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated August 5, 2011, wherein it determined that the Applicants are not Convention refugees or persons in need of protection.

[2] The Applicants are Roma citizens of the Czech Republic who came to Canada on December 17, 2009 and, two days later, filed their refugee claim. Their claim was heard by the Board [the First Hearing] and rejected in a decision dated May 20, 2010 [the First Decision]. The Applicants' application for judicial review of the First Decision was allowed by Mr. Justice Scott on February 22, 2011 (see J.B. v MCI, 2011 FC 210, [2011] FCJ No. 358). The Applicants' claim was subsequently heard *de novo* by the Board on June 17, 2011 and was again rejected in a decision of August 25, 2011 [the Second Decision]. The Second Decision is the subject of this application.

[3] In his Personal Information Form [PIF] the Principal Applicant describes five incidents of physical and sexual abuse in the Czech Republic in which the victims were allegedly targeted because of their Roma ethnicity [together, the Incidents]:

1. In August 2005, the Principal Applicant was walking with one of his cousins when they were attacked by about 12 skinheads [the First Incident]. They contacted the police, who responded but accused them of provoking the confrontation. The police also laughed at them and did not complete a report.
2. In January 2006, the Principal Applicant attended a disco with two of his cousins. They were again attacked, this time by a group of about 30 to 40 skinheads [the Second Incident]. One of the cousins was stabbed in the back with a knife. The police were called, but again filed no report.
3. In August 2007, the Principal Applicant's mother-in-law was raped in the town of Prachatice [the Third Incident]. She subsequently sought help from

the police, who laughed at her and suggested that she had imagined the rape. She feared that the perpetrator knew where she lived because he had taken her house keys and citizenship card. The family later inquired about a police investigation but no results were forthcoming.

4. On December 25, 2007, the Applicants were visiting the Principal Applicant's parents' house in the town of Vimperk when the house was "torched", but then saved by firefighters. The next day, skinheads torched the basement of the house but the fire was again doused in time to save the rest of the house. On December 28, the roof of the house was torched and the next day the entire roof and part of the house burned [the Fourth Incident].

5. On November 22, 2008, the Principal Applicant attended a party at a pub with members of his family, including his common law partner. A group of six skinheads attacked them with baseball bats and then escaped before the police arrived [the Fifth Incident]. The police pursued the skinheads and took statements from the victims, but the Principal Applicant and his family heard nothing further about the investigation.

THE SECOND DECISION

[4] The Board stated that the determinative issue was state protection but began its reasons for decision with a consideration of the veracity of some of the Incidents.

[5] With respect to the Second Incident, the Board noted that, at the First Hearing the Principal Applicant testified that he had gone to the hospital. However, because this fact had not been mentioned in his PIF, the Board concluded in the First Decision that the Principal Applicant had never been to the hospital and that that fact was an embellishment of his claim. Although the Board did not expressly state in the Second Decision that it had reached the same conclusion, I think it reasonable to infer that the Board agreed that there had been an embellishment. However, the Board did not conclude that the entire incident had been a fabrication.

[6] With respect to the Third Incident, the Board observed that the Principal Applicant had produced a letter about the rape which was written in English and signed by his mother-in-law. He testified that his mother did not speak or read English, but that a family member who is fluent in English read the letter back to her and that she understood its contents. However, the Board found that since the mother-in-law had been in Canada for at least two years, the Principal Applicant had had ample opportunity to obtain a letter that was properly translated and signed. The Board concluded on a balance of probabilities that the letter was written to embellish the Principal Applicant's claim.

[7] The Board also doubted that the rape had occurred because, although it was alleged that the medical report dealing with the incident was in Canada and in the possession of the mother-in-law's lawyer, it was not produced.

[8] At the First Hearing, the Principal Applicant submitted a number of letters from family members and acquaintances which supported his evidence that his parents' house had been set on

fire. When asked if the fire had been reported in the newspapers, the Principal Applicant stated that he had seen an article about the fire on the Internet the day before the First Hearing. However, he did not print it because he did not have a printer. In the Second Decision, the Board rejected this explanation and concluded that the Principal Applicant's parents' house had not been set on fire and that the letters had been produced to embellish his claim.

[9] The Board made no adverse credibility findings in the Second Decision about the First and Fifth incidents.

[10] The Board then dealt with the adequacy of state protection and concluded that the Principal Applicant did not rebut the presumption that the Czech Republic is capable of protecting its citizens. The Board acknowledged that, in the past, the Czech Republic had difficulty protecting its Roma citizens and that, even today, that protection "is not perfect". The Board noted that, although there is documentary evidence showing that attacks on the Roma minority by skinheads are on the rise, there is also evidence that the Czech Republic "does not condone and for the most part does not acquiesce to this behaviour."

ISSUES

[11]

1. Was the Board's finding that there was adequate state protection unreasonable
2. Were Board's credibility findings unreasonable?

1. State Protection

[12] Both parties acknowledged that the Board articulated the proper test for determining the availability of state protection and that the test is "adequacy" rather than "effectiveness", following the Federal Court of Appeal's decision in *Carillo v. MCI*, 2008 FCA 94. The Applicants argue, however, that the Board must consider not only the legislative and procedural frameworks created by the state, but also the adequacy of state protection at an "operational level": *Sow v. MCI*, 2011 FC 646, at para 11.

[13] While not cited by either party, a recent decision of this Court in *Koky v MCI*, 2011 FC 1407, FCJ No 1715, decided on facts similar to the present case, is instructive. Mr. Justice Russell said at para 63:

> According to the jurisprudence of this Court, it is not enough that a government is willing to provide protection and is making efforts to do so. In order for state protection to be present, the efforts made must adequately protect citizens in practice.

[14] Justice Russell went on to consider the decision of Mr. Justice Scott on the Applicants' judicial review of the First Decision, *J.B. v MCI*, above, where he said at para 71:

> I find that the RPD committed a serious legal error in equating "serious efforts" with "adequacy" and unreasonably failed to address the evidence before it on the issue of whether, in practice, those efforts have resulted in adequate protection for the Applicants.

[15] The Applicants submit that the Board has again equated serious efforts with adequacy and specifically takes issue with the Board's failure to address evidence on the record which showed that, in practice, the police fail to protect Roma citizens in the Czech Republic.

[16] I have carefully reviewed the record and the documents listed in the Applicants' Memorandum of Fact and Law and find that, while many are of marginal relevance, there is one which includes several references to specific instances in which the police response to crimes against Roma people was inadequate or hostile. However, it also describes incidents of adequate police response. In my view, a determination of the adequacy of state protection should have involved a consideration of this document. It is number 13.16 in the Board's National Documentation Package for the Czech Republic [the Package].

2. Credibility

[17] I have found no basis for concluding that the Board's credibility findings are unreasonable.

CERTIFICATION

[18] No question of general importance was posed for certification pursuant to section 74(d) of the Act.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed and the matter is referred back for further consideration on the existing record [the Record] in accordance with the following directions:

(i) If possible, the Board member who made the Second Decision is to conduct the further consideration;

(ii) The Board is to further consider the adequacy of state protection having regard for the following documents in the Package:

(a) Document 13.6 – A response to Information Request dated March 1, 2011;

(b) Document 13.16 – a European Roma rights centre report updated as of May 4, 2011.

(iii) The Board may consider any other documents in the Record which it considers relevant to the question of the adequacy of state protection;

(iv) No further evidence and no further submissions are to be filed unless the Board, in its discretion, permits such filings and permission is only to be given if the proposed material deals with the practical availability of police protection for Roma citizens of the Czech Republic.

"Sandra J. Simpson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5805-11
STYLE OF CAUSE:	JOSEPH BLEDY ET AL v MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 22, 2012
REASONS FOR JUDGMENT:	SIMPSON J.
DATED:	June 4, 2012

APPEARANCES:

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