Federal Court  Cour fédérale

Date: 20120611

Docket: IMM-6199-11

Citation: 2012 FC 728

Ottawa, Ontario, June 11, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MIROSLAV KROKA
ZANETA BADOVA
SARA KROKOVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated July 29, 2011, which refused the applicants' claim to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

[2] The applicants seek an order setting aside the decision and remitting the matter for redetermination by a differently constituted panel of the Board.

Factual Background

[3] The applicants, Mr. Miroslav Kroka (the male applicant), his common-law partner Ms. Zaneta Badova (the female applicant) and their daughter, Sara Krokova, are all citizens of the Czech Republic. The applicants seek refugee protection in Canada as they allege a well-founded fear of persecution in the Czech Republic based on their Roma ethnicity.

[4] The applicants allege that they experienced a high number of incidents of persecution over the years. More particularly, the applicants highlight an incident that occurred when the applicants were at a McDonald's restaurant and were attacked by a group of skinheads. The applicants maintain that when the police arrived, the police accused the male applicant of provoking the skinheads and chose to sweep everything under the rug.

[5] The applicants fled the Czech Republic and came to Canada on October 7, 2008. They made refugee claims the same day.

[6] The applicants' refugee claim was heard by the Board on October 28, 2009, February 9, 2010, June 22, 2010 and October 1, 2010.

Decision under Review

[7] The Board found that the applicants had not satisfied their burden of demonstrating a serious possibility of persecution on a Convention ground, or that they would be personally subjected to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment if they were to return to the Czech Republic. Although the Board did accept that the applicants were or would at least be perceived to be Roma, the Board found that their credibility had been compromised given the number of discrepancies between their testimony before the Board and their documentary materials – namely their original and amended Personal Information Forms (PIFs).

Issues

[8] The issues that arise in this proceeding can be summarized as follows:

1) Did the Board err in its evaluation of the applicants' credibility?

2) Did the Board err in finding that state protection was available to the applicants in the Czech Republic?

Statutory Provisions

[9] The following provisions of the *Immigration and Refugee Protection Act* are applicable in these proceedings:

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION	NOTIONS D'ASILE, DE REFUGIE ET DE PERSONNE A PROTEGER
Convention refugee	Définition de « réfugié »
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality,	**96.** A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être persécutée du fait de sa race,

membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes

generally by other individuals in or from that country,	originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	Personne à protéger
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Standard of Review

[10] It is trite law that the Board's credibility findings and its treatment of the evidence are reviewable according to the standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 732, 160 NR 315; *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ No 732; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]).

[11] Further, the Board's findings on the availability of state protection are also reviewable according to the standard of reasonableness (*Dunsmuir*, above, at paras 55, 57, 62 and 64; *Hinzman*

v Canada ((Minister of Citizenship and Immigration), 2007 FCA 171 at para. 38, 362 NR 1). Therefore, the Court will only intervene if it finds that the Board's decision was unreasonable in that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

Analysis

1) Did the Board err in its evaluation of the applicants' credibility?

[12] The Court observes that the Board drew negative inferences concerning the applicants' credibility given the serious discrepancies between the applicants' testimony, the information included in their original PIFs and contained in their amended PIFs which contained a significant amount of details. In the Court's view, the Board's conclusions were reasonable. The Board is entitled to base its credibility findings on the omissions and inconsistencies that it observes between the Port of Entry notes (POE), the applicants' PIFs and their testimony (*Gimenez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1114, [2005] FCJ No 1386; *Kutuk v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1754, 60 ACWS (3d) 819; *Cienfuegos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262, [2009] FCJ No 1591).

[13] In contrast to the applicants' arguments, the Court finds that the Board did not base its credibility findings solely on the differences between the original and amended PIFs, but also on the lack of explanations provided by the applicants for these omissions (Board's decision, para 14). For instance, the Board noted discrepancies in the employment history between the Port of Entry (POE) and the PIF. In addition, the Board also based its credibility findings on the applicants' statements during their first visit to Canada when they were forced to return to the Czech Republic and the

male applicant's allegation of the streetcar incident that had not been included in either his original or his amended PIFs.

[14] With regards to the McDonald's incident, although the male applicant testified that the incident at the McDonald's took place in March 2008, their amended narrative stated that the incident took place in March 2006. The Board noted that the applicants affirmed that this was a translation mistake as the incident had taken place in March 2008 and provided an explanatory letter from their translator to that effect. However, the Board concluded that it "seemed quite odd that she [the translator] would use the term 'accident' to refer to skinheads attacking the claimants at a McDonald's. It seemed odder still that this was not merely a one-off reference to a date, but in the amended narrative the incident is physically situated in the section that deals with 2006" (Board's decision, para 6).

[15] Also, the female applicant stated in her amended narrative and in her testimony that she had been pushed to the ground during the incident at the McDonald's. However, the Board found that this allegation had not been included in her original narrative where she had alleged to be only an observer. The Board found the applicants' explanations on this point to be unsatisfactory as the Board noted that the McDonald's incident was described in a fair amount of detail in the applicants' original narrative and therefore questioned why this particular element had been omitted.

[16] There are other important incidents which were not included in the original PIFs but were added in the amended PIFs: the baseball bat incident (Tribunal Record, p. 344); the skinhead attack

with a knife (Tribunal Record, p. 333); a friend being stab in the leg with a knife (Tribunal Record, p. 349).

[17] On the basis of the addition information between the original PIFs and the amended PIFs, the applicants point in the direction of the case of *Okoli v Canada (Minister of Citizenship and Immigration)*, 2009 FC 332, [2009] FCJ No 418 [*Okoli*], where Justice Mandamin held that the Board member in question had failed to assess the applicant's explanation for the amended PIF. However, the *Okoli* case is clearly distinguishable. In the present case, the Court finds that the additional information contained in the amended PIF does not merely expand on the information contained in the original PIF – as was the case in *Okoli* – but amounts to omissions and important differences regarding significant aspects that go directly to the heart of the claim. In these circumstances, it was reasonable for the Board to find that these omissions and differences impacted negatively on the applicants' credibility.

[18] The Board was not obligated to refer to every piece of evidence that was submitted, as Tribunals are presumed to have weighed and considered all of the evidence unless the contrary is shown. On this issue, the Court is of the opinion that the Board's findings were based on relevant considerations and the Board did not misconstrue or ignored the evidence. The applicants disagree with the Board's weighing of the evidence but this is not a legal basis for the Court to intervene.

2) Did the Board err in finding that state protection was available to the applicants in the Czech Republic?

[19] With respect to the issue of the Board's conclusions on the availability of state protection for the Roma in the Czech Republic, again, the Court cannot accept the applicants' arguments.

[20] It is the Court's view that the Board provided a comprehensive and detailed analysis of the current country conditions in the Czech Republic (Board's reasons, paras 15-22). It is trite law that, absent a complete breakdown of either the state apparatus or the government, it is presumed that a state is able to protect its citizens. The state protection must be adequate and does not necessarily have to be effective (see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 153 NR 321; *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1376, 206 NR 272; *Canada (Minister of Citizenship and Immigration) v Villafranca* (FCA), (1992) 150 NR 232, 37 ACWS (3d) 1259; *Flores Carillo v Canada* (*Minister of Citizenship and Immigration)* (FCA), 2008 FCA 94, [2008] FCJ No 399; *Hinzman*, above).

[21] On this point, Justice Near made the following observations in the case of *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668 at para 26, [2011] FCJ No 840:

> [26] The Board is not obliged to prove that the Czech Republic can offer the Applicant effective state protection, rather, the Applicant bears the legal burden of rebutting the presumption that adequate state protection exists by adducing clear and convincing evidence which satisfies the Board on a balance of probabilities (*Carillo*, above, at para 30). The quality of the evidence will be proportional to the level of democracy of the state (*Avila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, 295 FTR 35 at para 30).

[22] While the Board noted that the Roma do face certain problems and are discriminated against in the Czech Republic, the Board concluded that the documentary evidence indicated that the Czech Republic is a democratic state – and a member of the European Union – that generally respects the rights of its citizens and provides protection for the Roma and other minority groups. Furthermore, the Board observed that Czech authorities have also introduced certain programs and social services in order to combat the discrimination faced by the Roma and enhance their inclusion into society.

Moreover, the Board found that the judiciary has also prosecuted hate crimes committed against Roma people on several occasions. Thus, the Court is in agreement with the respondent that the Czech Republic is a democratic state and the mere fact that a state's efforts are not always successful will not rebut the presumption of state protection. In the present case, the applicants failed to rebut the presumption of state protection available to the Roma in the Czech Republic and the Board committed no reviewable error.

[23] With regards to the applicants' motion concerning the apprehension of bias, the Court notes that the Board provided adequate reasons and referred to the relevant case law in its reasons for dismissing the motion (*Cervenakova v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1281, [2010] FCJ No 1591; *Gabor v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1162, [2010] FCJ No 1446, *Zupko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1319, [2010] FCJ No 1637).

[24] Finally, at hearing before the Court, the applicants argued that family members were granted refugee status on the basis of facts allegedly akin to the ones in the present case. Hence, the applicants were of the view that the Board committed an error in deciding that claimants were not Convention refugees or persons in need of protection. The Court recalls that every case turns on its own facts, the decisions of other Refugee Protection Division members are not binding on one another and, there is no evidence on record allowing the Court to conclude that the Board erred in that respect.

[25] For these reasons, the application for judicial review will be dismissed.

[26] No question of general importance is raised by the parties and none shall be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed;

1. There is no question for certification.

"Richard Boivin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6199-11
STYLE OF CAUSE:	Miroslav Kroka et al v MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 29, 2012
REASONS FOR JUDGMENT:	BOIVIN J.
DATED:	June 11, 2012

APPEARANCES:

Adenike Aderibigbe	FOR THE APPLICANTS
Christopher Crighton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law firm of Adenike Aderibigbe Hamilton, Ontario	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT