Federal Court  Cour fédérale

Date: 20120625

Docket: IMM-8519-11

Citation: 2012 FC 806

Toronto, Ontario, June 25, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MARKETA OLAHOVA
DENIS OLAH
ZANETA KECLIKOVA
JANA DIROVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are two sisters, Marketa and Zaneta, and their minor children. They came to Canada from the Czech Republic along with Zaneta's other daughter, who later withdrew her refugee claim and returned to the Czech Republic. They allege persecution because of their Roma ethnicity. Their parents, who had previously filed refugee claims, returned to the Czech Republic when their claims were refused.

[2] The Refugee Protection Division of the Immigration and Refugee Board rejected their claims for protection based on its finding that there was adequate state protection in the Czech Republic.

[3] The Board also made a finding that the experiences of the applicants fell short of persecution. However, I note that the Board failed to provide an analysis of the cumulative effect of these allegedly discriminatory actions in support of its conclusion. Further, the Board failed to specifically consider whether the severity of the actions was such that they rose above the level of mere discrimination. In that respect, it is noted that on one occasion the children had been beaten unconscious.

[4] The applicants raise two issues:

1. Whether the Board applied the proper test for state protection; and
2. Whether the Board misconstrued and/or ignored evidence.

[5] I agree with the applicants that the first issue is reviewable on the correctness standard: *Koky v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1407, para 19 and the authorities cited therein. The second issue is reviewable on the reasonableness standard.

[6] The Court of Appeal has instructed that a claimant "must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate:" *Canada (Minister of Citizenship and Immigration) v Flores Carillo*,

2008 FCA 94 at para 38. Perfection is not the standard of protection that is required. Ability alone to provide protection is insufficient to demonstrate adequate protection if there is no willingness to protect. Similarly, a state's efforts alone do not constitute protection unless those efforts have "actually translated into adequate state protection" at the operational level: *Beharry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 111 at para 9.

[7] The applicants submit, in part, that the Board focused its examination on the serious efforts being made in the Czech Republic to protect the Roma, rather than examining the adequacy of the protection provided to them as a result of those "serious efforts."

[8] I agree with the respondent's submissions that what must be examined is what the Board actually did rather then pick phrases from the decision that suggest an approach that may be questionable. Nonetheless, on the particular facts before the Court, I am not satisfied that the Board did apply the correct test. The Board relies far too much on efforts and good intentions from the State, and gives too little examination of the application of and results achieved from those efforts and intentions.

[9] This problematic approach of the Board in this case intersects with the second submission of the applicants that the Board's decision is unreasonable in that it specifically referenced only one document when examining the question of protection of Roma in the Czech Republic, whereas the applicants had submitted many others that appear to show that the efforts and intentions are not resulting in protection. While the Board need not reference every single document placed before it; the extreme imbalance in this case between the one document relied

upon and the many others that point away from the result reached does, in my opinion, result in a decision that does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law:” Dunsmuir *v. New Brunswick*, 2008 SCC 9, para 47.

[10] For these reasons this application is allowed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the applicants' claims for protection is referred back to the Refugee Protection Division of the Immigration and Refugee Board for redetermination by a differently constituted panel, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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