Federal Court  Cour fédérale

Date: 20130225

Docket: IMM-5184-12

Citation: 2013 FC 186

Ottawa, Ontario, February 25, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

JAROMIR SARISSKY
VIOLA SARISSKA
PATRIK SARISSKY

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants – a husband, wife and their son – are citizens of the Czech Republic. They claim refugee protection in Canada based on their fear of persecution as Roma in the Czech Republic. In a decision dated May 2, 2012, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board), determined that the Applicants were not Convention refugees, pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), or persons in need of protection, pursuant to s. 97 of *IRPA*. While the Board found

the Applicants to be credible, the Board concluded that the Applicants had not rebutted the presumption of state protection in the Czech Republic.

[2] The Applicants seek to overturn the decision, submitting that the Board erred in this finding by carrying out a selective analysis of the evidence and ignoring the inadequacy of the police response to incidents where the Applicants were victims of racial violence.

[3] In this case, the Board's decision on state protection is reviewable on a standard of reasonableness (see, for example, *Ferko v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1284 at paras 22, 24, [2012] FCJ No 1377 [*Ferko*]). When reviewing a decision on a reasonableness standard, the court must determine whether "the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[4] The notion of state protection is fundamental to a claim for refugee protection and has been dealt with at length in the jurisprudence. For purposes of this particular application for judicial review, I wish to highlight certain principles which can be extracted from the jurisprudence presented to me by both parties to this application.

- The Board is presumed to have considered the totality of the evidence, and is not required to refer to every piece of evidence in its decision (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at paras 14-17, [1998] FCJ No 1425 [*Cepeda-Gutierrez*]).

- It is a reviewable error for the Board to engage in selective analysis of documentary evidence, accepting evidence that supports its conclusions but ignoring contradictory evidence without explanation (see, for example, *Manoharan v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 356 at para 6 (TD) (QL)). The relevance of the contradictory evidence to the facts in dispute must be taken into account; the more relevant the evidence, the more likely that failure to mention it will render the decision unreasonable (*Cepeda-Gutierrez*, above at paras 14-17). The Board may demonstrate that it considered a particular document by addressing the substantive point for which the contradictory evidence was put forward, rather than making explicit reference to the document itself.

- Adequate state protection does not mean "perfect protection" but must involve more than making "serious efforts" (see, for example, *Ferko*, above at paras 44, 52-56).

- In assessing the adequacy of state protection, the Board errs by ignoring or misapprehending the individual circumstances of the applicant (see, for example, *Ferko*, above at para 62).

[5] It is also important to note that the Board does not err by failing to respond to arguments that were not made by claimants at the hearing of their refugee claims. On applications for judicial review, counsel for applicants, in their diligence and in hindsight, often make arguments

to the Court that could have and should have been made to the Board. Just as applicants must not augment the record with documents that were not before the Board, they should not be permitted to add to or change the arguments and submissions that were made to the Board.

[6] In this case, the Applicants refer specifically to two documents that they allege were not adequately considered by the Board. The first is an Amnesty International Report describing the failure of the police to protect Roma during a demonstration by the Workers' Social Justice Party. The Report also explains that police committed violence against counter-demonstrators. The second document is a European Roma Rights Centre (ERRC) Report addressing the sufficiency of state response against anti-Roma violence. The ERRC explained that "some progress in addressing racially motivated violence" was reported by the State, but these statistics only related to identified and prosecuted perpetrators and sentences given were relatively light. State authorities are also not aware of available methodological guidance relating to hate crimes.

[7] The Board specifically mentions three documents presented by the Applicants, two of which are the Amnesty International Report and the ERRC Report noted above, and then acknowledges the following:

> Counsel provides numerous… examples to demonstrate that racism, discrimination and in some cases, persecution exists in the Czech Republic against Roma. That these occur is not a matter of dispute. The question that must be determined is whether or not the Czech Republic offers adequate state protection to these claimants in particular.

[8] In addition to identifying the reports themselves, the Board acknowledges their substance. The Board recognizes that there are problems for Roma generally in the Czech Republic, stating that "Roma are discriminated against" and that "societal prejudice against the country's Romani population occasionally manifested itself in violence". The Board explains that there are some inconsistencies in the documentary record, and some documents may suggest that police protection is not available or not sufficient for all Roma. This addresses the substantive point for which the Applicants cite these reports.

[9] I accept that adequate state protection means more than making "serious efforts" (see, for example, *Ferko*, above). A review of the documents before the Board shows that the police have been responsive in many of the individual cases described. It appears that the police are effectively following up and pressing charges in many cases. This certainly is evidence of more than merely "serious efforts".

[10] Moreover, the Board did not ignore the personal circumstances of the Applicants. The Board considered each of the two incidents of violence against the Applicants. On one occasion, when the Male Applicant was attacked in a butcher shop, the police arrived and took away the two individuals responsible, presumably to the police station. When the Applicants' apartment was set on fire, the fire department arrived promptly and interviewed the Male Applicant and the neighbours. Even though the police investigation of the apartment fire appears to have been minimal, the fact that the police immediately responded and attempted some type of investigation supports a conclusion that the response was adequate, albeit not perfect.

[11] Briefly stated, the Board took into account the reality that state protection is not always available for Roma and weighed this against other evidence suggesting that: (a) these particular Applicants have successfully been able to access adequate (albeit not perfect) protection; and (b) in general, state protection goes beyond making "serious efforts" for Roma citizens of the Czech Republic.

[12] On the record before me, the decision of the Board is clearly within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above at at para 47). In conclusion, I can find no grounds upon which this Court should intervene in the Board's decision.

[13] Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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