

Federal Court



Cour fédérale

Date: 20130620

Docket: IMM-9093-12

Citation: 2013 FC 659

Ottawa, Ontario, this 20th day of June 2013

Present: The Honourable Mr. Justice Pinard

BETWEEN:

**LAJOS RUTKA
LAJOSNE RUTKA
GRETA RUTKA
MARTINA RUTKA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Ron Yamauchi, a member of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”). The

Board dismissed the applicants' claim for refugee protection, concluding they were not Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

[2] Lajosne Rutka (the "principal applicant"), her husband Lajos Rutka and their daughters Greta and Martina Rutka are citizens of Hungary.

[3] The principal applicant alleges she suffered discrimination and sexual harassment in Hungary because of her Roma ethnicity. She also claims that her children experienced harassment due to their part-Roma ethnicity and that her husband is not a Roma, but has lost potential clients and work projects in Hungary because he was associated with Roma people.

[4] The determinative issue for the Board was the applicants' credibility. For the purposes of its analysis, the Board assumed the principal applicant was of Roma background. However, the Board found that the evidence gave rise to credibility concerns in a number of areas.

[5] The Board further found the principal applicant was not a particularly straightforward witness, in that she sometimes did not answer questions.

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[6] The issues raised by the applicants may be formulated as follows:

1. Did the Board err in assessing the applicants' credibility?
2. Did the Board breach the duty of procedural fairness by failing to provide adequate translation at the hearing?

[7] The standard of review applicable to the Board's findings of credibility is reasonableness (*Lumaj v Canada (Minister of Citizenship & Immigration)*, 2012 FC 763, 9 ImmLR (4th) 286 at para 25; *Wu v The Minister of Citizenship and Immigration*, 2009 FC 929, at para 17; *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 [*Dunsmuir*]; *Aguebor v The Minister of Employment and Immigration* (1993), 160 NR 315 (FCA) at para 4).

[8] When reviewing a decision on the reasonableness standard, the Court must determine whether the Board's findings fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47). Although there may be more than one possible outcome, as long as the Board's decision-making process was justified, transparent and intelligible, a reviewing court cannot substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at para 59).

[9] It is well established that correctness is the applicable standard of review for the second issue, as it is a question of procedural fairness (*Dhaliwal v The Minister of Citizenship and Immigration*, 2011 FC 1097 at para 12 [*Dhaliwal*]; *Sandoval v The Minister of Citizenship and Immigration*, 2012 FC 1273 at para 35 [*Sandoval*]).

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1. Did the Board err in assessing the applicants' credibility?

[10] Considerable deference is owed to the Board's assessment of credibility (*Hassan v The Minister of Citizenship and Immigration*, 2010 FC 1136 at para 11).

[11] The applicants have not persuaded me that the Board's overall assessment of their credibility was unreasonable.

[12] With respect to the applicants' argument that the Board erred in drawing a negative inference from the finding that the principal applicant was not a particularly straightforward witness, the applicants have not pointed to any psychological evidence before the Board concerning the principal applicant to support the view that the Board should have noted her psychological condition in assessing her testimony. The applicants refer to *Khawaja v Canada (Minister of Citizenship and Immigration)* (1999), 172 FTR 287 and *Lubana v Canada (Minister of Citizenship and Immigration)* (2003), 228 FTR 43 to support their argument, but both cases are distinguishable in that the applicants in those cases had submitted a psychological report to the Board and the Court found that this evidence was not properly considered.

[13] Moreover, in my view, I am not persuaded the Board committed any reviewable error by drawing a negative inference from multiple inconsistencies in the applicants' evidence. The Board acknowledged that the inconsistency between the principal applicant's interview with a Border Services officer and her Personal Information Form regarding the date she was last hurt may have been the result of legitimate confusion, but reasonably noted that this inconsistency created some doubt overall about the accuracy of her recall. It was also reasonable for the Board to note that it was not clear how the principal applicant would have been prevented from making her refugee claim when she attempted to enter Canada in November 2009, given that she admitted an interpreter was available by telephone. It was reasonable that the Board's understanding was not clarified by

the principal applicant's submission that she had a psychological reaction to the aggressive Border Services officer.

[14] As underlined by the respondent, the applicants have not directly challenged the Board's findings that the principal applicant made inconsistent statements about the family's finances. Nor have the applicants challenged the Board's concern that the principal applicant and her children may not be visually discernable as Roma people, or the Board's finding that the fact the non-Roma claimant came first, leaving the Roma family members in Hungary, created a doubt that the family's departure was genuinely motivated by ethnic prejudice.

[15] As for the applicants' argument that the Board unreasonably found that Mr. Rutka had provided inconsistent motives for leaving Hungary, I agree with the respondent that the Board's concern arose from the fact that at different times the principal applicant provided different answers for why her husband left Hungary and could not explain at the hearing why she had done so.

2. Did the Board breach the duty of procedural fairness by failing to provide adequate translation at the hearing?

[16] As underlined by the respondent, interpretation in Board hearings must be "continuous, precise, competent, impartial and contemporaneous" but does not have to be perfect

(*Mohammadian v The Minister of Citizenship and Immigration*, 2001 FCA 191 at paras 4 to 6; *Sandoval*, above, at para 36).

[17] The only evidence in the Certified Tribunal Record of the applicants' concerns regarding the interpretation provided is a note in the Hearing Information Record that on the first day of the two-day hearing, the principal applicant's bilingual daughter "expressed concerns" about the interpreter (page 4 of the Certified Tribunal Record). In their oral submissions before the Court, the applicants said they expressed concerns during a break and that is why their complaint is not reflected in the hearing transcript. There is no evidence explaining how the Board dealt with the applicants' concerns.

[18] The applicants admit that although they expressed concerns about the interpreter to both the Board and their counsel, they never asked the Board to find a different person to provide interpretation. The applicants say they did not know they had the right to make such a request.

[19] Moreover, even though the same person provided interpretation on both days of the hearing, there is no indication in the documentary evidence that the applicants complained about the interpretation on the second day of their hearing.

[20] The principal applicant affirms that she needed to repeat and rephrase the questions put to her by the interpreter in order to understand his Hungarian, but I do not see where in the transcript this occurred. The only interpretation issues I see in the transcript are that several times throughout the hearing the interpreter needed to ask the presiding member or the applicants' counsel to repeat a question.

[21] However, the applicants do not allege any errors made in the interpretation that had a material effect on the proceedings or the decision (*Deng v The Minister of Citizenship and Immigration*, 2007 FC 943 at para 17). The applicants seem to argue that the Board should have acknowledged the principal applicant's difficulty understanding the interpreter in finding that she was not a particularly straightforward witness. The Board's analysis on this point was as follows:

[18] To begin with, the principal claimant was not a particularly straightforward witness, in that she sometimes did not answer questions. For example, asked to clarify how the Hungarian Guard became aware that she is Roma, she repeated the question and then stopped. She was prompted to answer the question and advised that she could say that she did not know the answer. She did not answer at all. After another prompt, she stated that the Hungarian Guardsman must have learned through her name, her outlook, and because her co-worker knew.

[19] The hesitant nature of this answer gives rise to some concerns about its accuracy.

[22] I believe the Board's analysis is based on the following exchange between the applicants' lawyer, the presiding member and the principal applicant which took place at the hearing (pages 399 and 400 of the Certified Tribunal Record):

BY MR. BHATTI:

Q: You said that -- you were asked about the Hungarian Guard targeting your children and you said it was because you were Roma. How did -- from your knowledge, how did the Hungarian Guard first become aware that you were Roma?

A: When did they know or how do they know that I am Roma origin, Counsel?

Q: Yes.

PRESIDING MEMBER: If you don't know, that would be an answer too. You're taking awhile with this. If there is an answer, you

can take your time, but if you don't know, you can say that. Whatever is the truth.

A: Counsel, you asked since when they know or how they know that I am Roma origin?

BY MR. BHATTI:

Q: Yeah. How do you think they knew that you were Roma? If you know. If you don't know, that's fine. Okay. Is it safe to assume from you not answering, ma'am, that you don't know?

A: I'm sorry, I do not understand the question.

PRESIDING MEMBER: The question is –

INTERPRETER: Counsel, can you pose the question again?

MR. BHATTI: I think the Panel is about to.

PRESIDING MEMBER: Well, how would Hungarian Guardsmen know that you're a Roma person? You said your children were harassed because you're Roma. How do they know you're Roma?

A: They know because of my name, because of my outlook. This co-worker, she knew evidently that I am a Roma origin and her husband was a Guardsman. They knew my children attended what school.

[23] As the applicants have not explained how the principal applicant had difficulty understanding the interpreter during this exchange, and this exchange was the only example the Board gave to justify its finding that the principal applicant was not a particularly straightforward witness, I fail to understand how the Board had a duty to acknowledge any interpretation difficulties in making this finding.

[24] Accordingly, since the applicants have not explained how any interpretative errors had a material effect on the decision or impacted their ability to make their case, I cannot find that the Board breached the duty of procedural fairness (*Deng*, above, at para 17; *Dhaliwal*, above, at para 18).

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[25] For the above-mentioned reasons, the application for judicial review is dismissed.

[26] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of Ron Yamauchi, a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada, dated August 14, 2012, is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9093-12

STYLE OF CAUSE: LAJOS RUTKA, LAJOSNE RUTKA, GRETA RUTKA,
MARTINA RUTKA v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 7, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: June 20, 2013

APPEARANCES:

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