

Federal Court



Cour fédérale

Date: 20170116

Docket: IMM-2215-16

Citation: 2017 FC 53

Ottawa, Ontario, January 16, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ANGEL YORDANOV STOILKOV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Angel Yordanov Stoilkov [the Applicant] has applied for judicial review of a negative Decision dated February 29, 2016 [the PRRA Decision] made by a Pre-Removal Risk Assessment Officer [the Officer]. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

I. Background

[2] The Applicant is a 47 year old male citizen of Bulgaria. He alleges that he is of Roma ethnicity. He arrived in the U.S. on a visa and then entered Canada illegally with his wife, and his daughters who are 26 and 9 years of age. They are also citizens of Bulgaria.

[3] The Applicant alleges that he has experienced discrimination due to his ethnicity in his schooling, housing, employment, and access to medical treatment. He says he fears the police. He also fears the 'bodyguards' of a property manager named Boris.

[4] The Applicant and his wife opened a second hand clothing business in 2003. According to the Applicant, they had no choice but to go into business for themselves because no one would hire them due to their ethnicity. The Applicant and his wife rented store space in a plaza to conduct their business.

[5] In 2009, the plaza was sold and the new property manager, whose name was Boris, had 'bodyguards' who extorted money from all the Roma business people in the plaza, saying that "Gypsies" must pay "protection money" to do business in Bulgaria. The Applicant alleges that they targeted Roma because they knew that the state would not protect them. Ethnic Bulgarians who rented space in the plaza were not required to pay. The Applicant also alleges that Boris illegally raised the rent many times.

[6] The Applicant and other Roma business people went to the Police to complain about the extortion and illegal rent increases, but the police were unwilling to assist them.

[7] On September 28, 2009, the door to their store was padlocked by the landlord, and the Applicant's subsequent complaint to the police was ignored. After the Applicant broke into the store to retrieve the inventory, Boris's 'bodyguards' began to threaten him and his family. They left their home and hid with Roma friends in a different village.

[8] On March 10, 2011, the Applicant was attacked by one of Boris's 'bodyguards' while returning home with his daughter [the Assault]. He alleges that his attackers made reference to his defiance of Boris. They mentioned his removal of the inventory and his complaint to the police, and said they knew where he lived and that he should be careful. The Applicant alleges that the next day he again complained to the police. The police officer was dismissive but agreed to take a report once the Applicant threatened to speak to his superior.

[9] Threats from the 'bodyguards' continued and, at the end of March 2011, the Applicant inquired at the police station about the status of his complaint. He was told that "Gypsy matters are not a priority". In April 2011, he complained to the Prosecutor's Office about both the Assault and the lack of response.

[10] In May 2011, the Applicant received a summons to attend at the police station for an inquiry [the Summons]. Upon his arrival, he was taken to a small room, where the police officers slapped him across the face multiple times. They called him the "notorious mangal

troublemaker” and asked if he really believed the Prosecutor’s Office would help him. They threatened that Boris and his friends would “take care” of him and his family.

[11] Shortly after the beating, at the police station, the Applicant received a letter from the Prosecutor’s Office saying that his complaint had been closed due to a lack of evidence.

[12] The Applicant and his family feared for their lives, moved out of their home, raised money to flee Bulgaria, obtained visas for the U.S. and arrived there on March 30, 2012. They then crossed the Canadian border on an unguarded road. They were picked up by the RCMP, and made claims for refugee protection at the port of entry in Stanstead, Quebec.

[13] The Applicant alleges that, since his departure from Bulgaria, Boris’ ‘bodyguards’ have harassed and beaten his relatives. On October 3, 2013, the ‘bodyguards’ questioned the Applicant’s brother, Kiril, about his whereabouts. When he refused to cooperate, they beat him. Kiril received medical treatment and went to the police. They refused to take a report. On August 5, 2015, two men went to the Applicant’s mother’s house and questioned her about him in a threatening manner.

[14] On November 11, 2012, the Applicant was charged with possession of a device to commit fraud. Charges of fraud over \$5,000 and identity theft were later added. The Applicant was convicted of all three offences on September 16, 2014.

[15] On December 2, 2014, the Applicant was found to be inadmissible to Canada on the grounds of serious criminality under subsection 36(1)(a) of the IRPA, because he had been convicted in Canada of fraud which carries a maximum sentence of over 10 years. He was therefore ineligible for refugee protection pursuant to subsection 112(3) of the IRPA, and his claim became ineligible for referral to the RPD. His refugee proceedings were therefore terminated and a deportation order was issued. However, he remained eligible for a PRRA and his removal was stayed pending the outcome of this judicial review.

II. The PRRA Decision

[16] The Officer's PRRA Decision shows that he considered the Applicant's Personal Information Form [PIF] together with his PRRA application and his counsel's PRRA submissions.

[17] The Officer acknowledged that the PRRA material expanded on the allegations in the Applicant's PIF. The PRRA material stated that racists continue to try to find him, and described the incidents involving his brother on October 3, 2013, and his mother on August 5, 2015. The Applicant also said that the extortionists could find him anywhere in Bulgaria, and are aware that the police will not protect him. Finally, the Applicant said that Roma in Bulgaria are subject to systemic discrimination that rises to the level of persecution, and that he cannot seek state protection due to discrimination by the Bulgarian police.

III. The PRRA Decision

[18] The Officer noted that because the risks alleged by the Applicant in his claim for refugee protection had not been considered by the IRB, he would consider *all* evidence submitted by the Applicant in his refugee claim and PRRA application.

[19] The Officer considered: 1) the personalized risk to the Applicant from Boris, the ‘bodyguards’ and extortion; and 2) systemic discrimination against Roma in Bulgaria.

[20] The parties agree that the Officer did not make a negative finding of credibility.

IV. Personalized Risk from Boris and Extortion

[21] The Applicant submitted two documents from 2003 and 2006 to confirm that his wife was the owner of a clothing store. However, the Officer found that since more recent documentation was not provided, “these documents do not demonstrate that the property was sold to Boris in 2009.” The Officer therefore assigned “very little probative value” in support of the Applicant’s allegation of risk from Boris and his associates, and the allegation that Boris raised the rent many times.

[22] The Applicant submitted the following documents in support of his allegation that he was assaulted by Boris’ ‘bodyguards’ in March 2011:

1. a medical certificate from a doctor in Bulgaria dated the day after the Assault;

2. a copy of a handwritten complaint [the Complaint] submitted to the police on that same day;
3. a copy and translation of the police Summons;
4. a copy and translation of a note from the police office [the Police Note] dated June 28, 2011 indicating the Prosecutor's Office file was closed for lack of evidence;
5. an email from his brother Kiril dated August 13, 2015;
6. a copy and translation of Kiril's medical report;
7. a copy of his sister-in-law's positive refugee acceptance notice;
8. a letter from a Canadian psychologist; and
9. a letter from Ronald Lee, an "author, educator and lecturer" on the subject of the Roma.

[23] The Officer reviewed each document and concluded that each had little probative value, and that, "globally", they were not sufficient to "demonstrate that the Applicant is at risk at the hands of Boris" or to "demonstrate that the Applicant filed a complaint against Boris with the police which was ignored due to the Applicant's ethnicity."

[24] Specifically, the Officer found that while the medical certificate confirmed that the Applicant had sustained injuries consistent with being hit with a blunt object, the doctor "did not have firsthand knowledge of the events", and therefore could only confirm that the injuries could have been sustained, as alleged, but could not "indicate exactly who caused them or how." The certificate was found *not* to establish on its own that the Applicant was attacked by Boris' 'bodyguards.'

[25] The Officer criticized the Applicant's handwritten police Complaint because it did not name Boris or the individual who allegedly attacked him. As well, the names of the neighbours who allegedly heard his shouts for help were not included.

[26] The Summons was criticized by the Officer because it did not indicate why the Applicant was to attend at the police station, and the Applicant did not provide corroborating evidence that the police summoned him to threaten him so that he would drop his Complaint.

[27] The Police Note indicated the Applicant could contact the Sofia Regional Prosecutor's office if he disagreed with his complaint being discontinued due to lack of evidence. However, the Officer noted that the Applicant did not provide evidence that he did so, or evidence to support his allegation that the file was discontinued because he was Roma.

[28] The email from his brother Kiril alleged that individuals looking for the Applicant had threatened his mother at her house; that Kiril had not yet recovered from being beaten; and that Kiril's complaint to the police had been closed. The Officer noted that Kiril did not name the individuals who assaulted him or the reason for the assault, or provide supporting documentation of his police complaint. It was therefore not possible to establish the beating was linked to Boris. The Officer gave "very little probative value" to this document.

[29] Kiril's medical report indicated he had been admitted complaining of nausea, abdominal pain and vomiting, and that he had had surgery. It did not, however, explain how this was linked to the allegations. Very little probative value was given to this document.

[30] The Applicant's sister-in-law's positive refugee acceptance, dated December 10, 2010, did not explain why she and her family were granted refugee protection. Given that the Applicant did not explain why his claim was linked to his sister's, the Officer found that this document was irrelevant.

[31] The letter from Gerald Devins, a psychologist, was dated December 20, 2014. He indicated that the Applicant had major depressive disorder and required treatment, and his condition could improve with care and freedom from the threat of removal. The Officer gave the letter little probative value since it was based on the Applicant's testimony in only one interview and did not link the Applicant's mental state to the alleged risks in Bulgaria.

[32] The letter from Ronald Lee, an "author, educator and lecturer", is dated September 29, 2014. Mr. Lee wrote he had known the Applicant and his family since May 2012 and that, in his opinion, due to their Roma ethnicity, they had suffered both persecution and systemic discrimination in Bulgaria. The Officer gave the letter little probative value because it was based on the Applicant's testimony to Mr. Lee, and not on Mr. Lee's firsthand knowledge.

[33] The Officer concluded that the Applicant had failed to establish personal risk upon return to Bulgaria.

V. Persecution Due to Roma Ethnicity

[34] The Officer acknowledged the Applicant's claims that Roma in Bulgaria face systemic discrimination that cumulatively rises to persecution and that he cannot obtain "adequate" state protection due to discrimination by the police.

[35] However, the Officer found that state protection existed. According to him, the numerous documents submitted by the Applicant and "other recent objective sources" indicate that:

...parts of Bulgarian society, including the police, may have discriminated against Roma in the past and may continue to do so today. However...government authorities continue to make efforts to provide services and recourses to Roma.

[36] Specifically, the Officer noted that Bulgaria has established a Commission for Protection against Discrimination, and that the Working Group for the Universal Periodic Review of the UN Human Rights Council reported a solid legal framework existed to combat hate crimes and discrimination, and that prosecutor's offices had become better at liaising with local authorities to investigate such crimes.

[37] Secondly, the Officer found that the Applicant had failed to discharge his "heavy burden" to "exhaust all of the recourses available" domestically before claiming refugee status. This conclusion was based on his determination that Bulgaria is an "imperfect but functioning democratic state".

VI. The Issues

[38] In my view, the determinative issues are:

- A. Did the Officer reasonably assess the Applicants documentary evidence?
- B. Did the Officer reasonably assess the adequacy of state protection?

VII. Discussion and Conclusions

A. *Did the Officer reasonably assess the Applicant's documentary evidence?*

[39] I have found that significant aspects of the assessment of the documentary evidence were unreasonable. For example:

- i. The Officer was given the originals and translations of two documents showing that the Applicant's wife owned a clothing store in 2003 to 2006. However, the Officer rejected them because they did "not demonstrate that the property was sold to Boris in 2009". The first problem with this conclusion is that the plaza was not sold to Boris. He was a property manager. Secondly, it was unreasonable to expect the Applicant to have documents showing the transfer of the ownership of the plaza. The documents were produced simply to establish that the Applicant's wife owned a store in 2003 and 2006 and therefore probably still owned it in 2009. The documents should have been accepted on that basis.
- ii. In my view, the Officer was unreasonable when he failed to conclude that, taken together, the Applicant's documents provided some corroboration of his evidence of the Assault on March 10, 2011. Those documents included:

- a) a March 11, 2011 Medical Report disclosing injuries; and
- b) a March 11, 2011 Complaint to the police about the beating.

The medical report was not given any significant weight because it depended on the Applicant's account of events, and the Complaint was criticized for lacking detail.

In my view, the medical report was important because it described injuries consistent with the Assault, and the Complaint shows that the Applicant promptly reported the Assault. The police, had they taken the Complaint seriously, had a duty to investigate and question the Applicant to obtain a full description of the Assault and the surrounding circumstances. The Officer appeared to believe that the Applicant's Complaint should have read like a completed police report. It was particularly unreasonable to criticize the Applicant for not including the bodyguard's name and address in the complaint when there was no suggestion that he had such information. His failure to mention that his attacker worked for Boris, and his failure to name his neighbours/witnesses would have been remedied in a police interview.

- iii. The Applicant is also wrongly criticized by the Officer for failing to submit evidence to demonstrate what enquiries he made of the local police about the investigation of the Assault. His sworn evidence was that he questioned the police at the end of March 2011 and was told they had more pressing matters. He then made a complaint to the Prosecutor's Office. The corroboration of this complaint is found in the June 28, 2011 Police Note showing that his file had been forwarded to the prosecutor's office but was closed for lack of evidence.

- iv. There were also requirements for corroboration that would be impossible to obtain. For example. The Officer stated:
- a) that the Applicant should have had corroboration for his belief that the Summons was a fake;
 - b) that he should have had corroboration to show that his file was closed because he was Roma; and
 - c) That he should have provided corroboration to demonstrate that the Prosecutor deliberately ignored or refused to investigate his file.
- v. The Officer is critical of the Applicant for including his sister-in-law's PIF and refugee acceptance notice. He says the Applicant failed to explain the relevance of this material. However, on page two of Counsel's PRRA submissions dated August 19, 2015, Counsel states "Finally, the PIF and Positive decision [...] are submitted in support of the Applicant's Roma ethnicity."

[40] In my view, the presumption of truthfulness described in *Maldonado v Canada (MEI)*, [1980] 2 FC 302 (CA), does not apply in this case given that the Applicant crossed into Canada illegally and has been convicted of fraud. In these circumstances, it was reasonable to give his evidence close scrutiny and require some corroborative evidence. However, it was unreasonable to require corroborative evidence that is unlikely to exist or would be impossible to obtain such as that described above. It was also unreasonable to make errors of fact and fail to reach reasonable conclusions when documents were considered together.

B. *Did the Officer reasonably assess the adequacy of state protection?*

[41] In view of my conclusions about the assessment of the evidence, which alone justify granting this application for judicial review, I will simply highlight some concerns I have about the Officer's treatment of this issue:

- i. The Officer imposed a heavy burden of proof on the Applicant to show a lack of state protection because Bulgaria is a functioning, though imperfect, democracy. In my view, an imperfect democracy does not necessarily justify the imposition of a heavy burden;
- ii. the Officer did not sufficiently address the adequacy of the protection. Instead, the focus was on efforts and improvements;
- iii. the Officer made no mention of the Applicant's reports to the police, his threat to summon a senior officer, and his complaint to the Prosecutor's Office; and
- iv. The Officer failed to mention that the Applicant alleged that he had been beaten by the police, and that he viewed them (i.e. the State) as an agent of persecution.

VIII. Certified Question

[42] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed and the PRRA application is to be reconsidered by a different Officer.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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