Federal Court  Cour fédérale

Date: 20171006

Docket: IMM-3920-16

Citation: 2017 FC 890

Toronto, Ontario, October 6, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

FIDAN KRASNIQI AND
ERELEHTA KUQI KRASNIQI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Fidan Krasniqi (the "Principal Applicant") and his wife Ms. Erelehta Kuqi Krasniqi (collectively "the Applicants") seek judicial review of the decision of the Pre-Removal Risk Assessment Officer (the "Officer") dismissing their Pre-Removal Risk Assessment (the "PRRA") application. The Officer determined that the Applicants were not Convention Refugees or persons in need of protection as defined in section 96 or subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended (the "Act").

[2] The Applicants are citizens of Kosovo. They left Kosovo on December 29, 2013 and sought refugee protection in Canada, pursuant to section 96 of the Act, alleging a fear of members of organized crime. Their claim for refugee protection was dismissed and they claimed protection pursuant to the PRRA process, again claiming to be targets of organized crime.

[3] The Officer dismissed their application on the grounds that the new evidence submitted by the Applicants, that is a psychological report relating to the Principal Applicant and police documentation relating to an assault upon his brother, was not "new" evidence; that the risk alleged was not forward-looking; and that the Applicants had failed to rebut the presumption of state protection.

[4] The decision of the Officer, involving the assessment of evidence, is reviewable on the standard of reasonableness; see the decision in *Kathirkamanathan v. Canada (Citizenship and Immigration)*, 2016 FC 761 at paragraph 14.

[5] The reasonableness standard requires that a decision be justifiable, transparent, intelligible and fall within a range of possible, acceptable outcomes; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[6] The Applicants are effectively challenging the Officer's assessment of the evidence. Such findings are entitled to a high degree of deference but are subject to review against the standard of reasonableness, outlined above.

[7] In this case, I am not satisfied that the Officer's findings about the new evidence submitted by the Applicants meets that standard.

[8] I agree with the submissions of the Applicants that the report about the psychological health of the Principal Applicant relates to an ongoing situation and could be considered "new evidence". The report about the assault upon the brother of the Principal Applicant relates to an event that post-dates the hearing before the Refugee Protection Division. The Officer's rejection of this evidence was unreasonable.

[9] Although often a finding of state protection is dispositive of an application for judicial review, in this case, I am concerned that the error of the Officer in assessing the status of the new evidence may have tainted the state protection finding. The benefit of the doubt in that regard will go the Applicants.

[10] In the result, the application for judicial review is allowed, the decision is set aside and the matter remitted to a different Officer for re-determination.

[11] There is no question for certification arising.

JUDGMENT in IMM-3920-16

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to a different Officer for re-determination. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3920-16
STYLE OF CAUSE:	FIDAN KRASNIQI AND ERELEHTA KUQI KRASNIQI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	APRIL 5, 2017
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	OCTOBER 6, 2017

APPEARANCES:

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Maria Green	FOR THE RESPONDENT

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