Federal Court  Cour fédérale

Date: 20171019

Docket: IMM-777-17

Citation: 2017 FC 937

Toronto, Ontario, October 19, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ANITA BALOGH
TAMAS FARKAS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The present Application relates to a Pre-Removal Risk Assessment (PRRA) application in which the Applicants, Hungarian nationals of Romani ethnicity, claim protection pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, on the basis that if they are required to return to Hungary they will face more than a mere possibility of persecution because of their ethnicity. In a decision dated December 16, 2016, the PRRA Officer (Officer) rejected the Applicants' claim.

[2] The decision rendered in *Bozik*, 2017 FC 920 (*Bozik*) is a critical precedent with respect to the decision in the present Application. There are two similar factors between the decisions: the decision-maker in each is the same Officer and the exact same contentious wording is used in each. In each the following statement is made:

> While I have considered all these documents in the context of assessing country conditions, they are generalized in nature and do not establish a linkage directly to the applicant's [sic] personal circumstances. Evidence of general conditions within a country is not in itself sufficient to show that the applicant is personally at risk of harm.
>
> (Decision, p.4)

[3] The finding in *Bozik* with respect to the proper use of country condition evidence for a s.96 claim is as follows:

> [7] The correct use of country condition evidence is a live issue in the present Application. I agree with Counsel for the Applicant that the Officer was required to examine the country condition evidence submitted on behalf of the Applicant to determine whether the Applicant's subjective fear of violence has an objective evidentiary basis. The evidence of the experience of similarly situated persons can supply the objective basis.
>
> [8] As found by the Officer in the passages from the decision quoted above, the Applicant fears insecurity due to organized racist groups and the rise and influence of the right-wing Jobbik political party. In the argument presented to the Officer, Counsel for the Applicant referred to country condition evidence which goes to establish that persons similarly situated to the Applicant have suffered the violence she fears.
>
> [9] I find that the Officer was required to carefully consider this evidence and to determine its value with respect to the Applicant's claim. If the evidence moved the Applicant's fear from speculation to more than a mere possibility of suffering persecutory violence, she will have established her claim for protection. I agree with Counsel for the Applicant: the Officer did not correctly evaluate the Applicant's country condition evidence in this way. As a result, I find that the decision is unreasonable.

[4] In adapting the decision in *Bozik* to the circumstances in the present case, while the factual matrix is different the essential findings are the same. In the present case, the Officer accepted that the Applicants have a subjective fear on the basis of their Romani ethnicity, but the Officer did not evaluate the objective country condition evidence because it was found to be "generalized in nature." As a result, the Officer did not consider how the country condition evidence supports the subjective fears faced by the Applicants. For a s.96 claim, country condition documentation, which relates to the treatment of individuals within a specific profile, is not generalized in nature but is personal to the claimant and those of that profile.

[5] Since the Officer was required to assess objective country condition evidence when evaluating the fears claimed by the Applicants, I find that the Officer's failure to do so constitutes a failure in fact-finding. As a result, I find that the decision is unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

"Douglas R. Campbell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-777-17
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APPEARANCES:

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