Federal Court  Cour fédérale

Date: 20191120

Docket: IMM-1661-19

Citation: 2019 FC 1469

Toronto, Ontario, November 20, 2019

PRESENT: Mr. Justice Diner

BETWEEN:

ANITA BOZIK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This application judicially reviews a negative Pre-Removal Risk Assessment [PRRA] dated January 31, 2019 by a Senior Immigration Officer [Officer], which determined that the Applicant was not at risk. For the following reasons, I will dismiss her application for judicial review.

[2] The Applicant is a 24-year-old Hungarian citizen of Roma ethnicity. She first entered Canada with her family as a minor in October 2011. The family (including her) made a claim for refugee protection, which was refused. She and her family returned to Hungary in December 2012. The family challenged the refugee denial, and was denied leave for judicial review of the Refugee Protection Division decision.

[3] The Applicant returned to Canada in July 2016 and made another refugee claim along with her daughter, who had been born in the interim in Hungary. This time, the Applicant was found ineligible to make a refugee claim, having made the previous claim five years before, and an exclusion order was issued against her. Her minor daughter, however, was allowed to proceed with her refugee claim, but it was ultimately refused at the Refugee Appeal Division, which decided that the evidence did not establish that being a Roma alone is, in and of itself, sufficient to establish that she would face more than a mere possibility of persecution.

[4] For her part, the Applicant submitted a PRRA application [PRRA-I] which was refused in January 2017. On judicial review, Justice Campbell of this Court ordered that PRRA-I be sent back for consideration by a different officer (*Bozik v Canada (Citizenship and Immigration)*, 2017 FC 920 [*Bozik*]).

[5] In January 2018, a second officer refused the PRRA redetermination [PRRA-II]. The Applicant once again sought judicial review, but the proceeding was discontinued with the consent of the parties. PRRA-II went for redetermination by a different officer [Officer], which led to the third PRRA decision, the subject of today's judicial review [PRRA-III]. In it, the

Applicant raised her fears that as a Roma, she will face persecution as a result of the education, employment, healthcare and housing situation she will confront in Hungary, as well as threats and acts of violence from organized groups, and that the police will not assist her because of her Roma ethnicity.

[6] In a detailed, 10-page decision [Decision], the Officer found that the Applicant failed to (i) provide sufficient objective evidence to establish that she would be denied housing, employment, education or medical care as a result of her ethnicity; (ii) establish any past instances of discrimination or persecution; (iii) demonstrate a personalized risk in Hungary; and (iv) rebut the presumption of state protection, in leaving without ever approaching the authorities.

I. Analysis

[7] The Applicant raises two issues with the PRRA-III Decision under review. First, she submits that the Officer erred by failing to properly assess her risk of persecution under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], in that the Officer (i) erroneously rejected the objective country condition documentation and required her to establish a personalized risk, and (ii) selectively relied on certain evidence for the state protection analysis. The standard of review applicable to PRRA decisions – including the Officer's treatment of the evidence – is reasonableness (*Zarifi v Canada (Citizenship and Immigration)*, 2019 FC 1207 at para 11).

(i) *Assessment of Persecution (Section 96) or Person in Need of Protection (Section 97)*

[8] I do not agree with the Applicant that the Officer improperly assessed her risk of persecution under section 96 or protection under section 97 of the Act. Specifically, the Applicant argues that the country condition documents need not establish a link to her personal circumstances, given the plight of Roma in Hungary. I disagree. The thorough Decision referenced not only the details regarding the Applicant's personal experience and discrimination she experienced in Hungary, but also the fact that she never approached any authorities. Despite some financial challenges, in the incident she highlighted regarding her daughter not receiving proper health care for strep throat, ultimately, her daughter was not refused medical treatment and received the medication she needed once she obtained the necessary funds. Furthermore, the Officer pointed to a lack of corroborating documentation regarding the Applicant's residence to which she states she would have to return in Miskolc.

[9] The Officer's findings and conclusion were reasonable given the evidence tendered by the Applicant regarding her personal situation, and particularly in light of the lack of persecutory incidents (including no incidents of violence) that the Applicant cited in her native Hungary. While the Applicant certainly may have experienced some discrimination, it was nonetheless open to the Officer to find that her particular experiences and future circumstances did not meet the threshold of persecution and risk required to meet the statutory requirements under sections 96 and 97 of the Act.

[10] I also find the Officer's observations on the availability of state protection reasonable. While the Applicant asserts that she would face a risk of future persecution based purely on her gender and ethnic group, the Officer reasonably explained why that was neither supported by the country documentation nor the decisions of this Court. Again, I find the Officer's explanation in this regard to be transparent and justifiable based on the record. Certainly, Hungary has its problems. The Officer both reviewed and addressed those weaknesses, referring to the "mixed" evidence, including recent (2017 and 2018) Response to Information Requests from the Immigration and Refugee Board, in addition to other relevant reports also from credible sources such as the US Department of State.

[11] The Applicant argues that the Officer erred in requiring that general documentary evidence refer to her situation. She points out that proof of personal targeting or past persecution is not required to establish a risk under section 96 (*Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 at para 14). The Applicant submits that although her subjective fear must have an objective basis, this objective basis may be found in the experience of similarly situated persons, as stated by Justice Campbell after his review of PRRA-I (*Bozik* at para 7).

[12] However, I note that the Officer cited jurisprudence of this Court for the proposition that "while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return" (*Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19 [*Balogh*]). As the Respondent argues, the Officer understood that the general documentary

evidence could be sufficient to establish that the Applicant is at risk if the circumstances warranted, but here, the fact the Applicant never faced persecution in the past (as opposed to discrimination), meant that the only way she could establish that she is at risk would have been if the documentary evidence indicated that all Roma are at risk in Hungary.

[13] Various cases regarding the Roma in Hungary released over each of the past three years have arrived at the same outcome as the *Balogh* case mentioned above (*Csoka v Canada (Citizenship and Immigration)*, 2017 FC 651 at paras 28-30; *Horvath v Canada (Citizenship and Immigration)*, 2018 FC 273 at para 11 (in a different context); and *Ajtai v Canada (Citizenship and Immigration)*, 2019 FC 292 at para 19, i.e. there is no evidence of wholesale persecution of Roma persons in each of these, and other decisions, of this Court.

[14] The Officer further found that the Applicant failed to establish a link between her specific circumstances and the objective documentary evidence:

> I have been provided a substantial package of documentary material which discusses Roma in Hungary. While I have read and carefully considered this material, I find that it is general in content and does not establish that the applicant by virtue of her circumstances faces a personalized risk in Hungary. Of importance is that the applicant has not linked this evidence to her personalized, forward-looking risks. It is a well-recognized principle that it is insufficient simply to refer to country conditions in general without linking such conditions to the personalized situations of an applicant. The assessment of an applicant's potential risk of being persecuted or harmed if she were sent back to her country must be individualized. The fact that the documentary evidence shows that the conditions for the Romani community is problematic does not necessarily mean there is a risk to a given individual. I, therefore, find this documentation does not establish that the applicant, on a balance of probabilities, faces risk in Hungary for the reasons cited. (Decision at p 7)

[15] Contrary to the Applicant's arguments, the Officer neither rejected her application on the basis that she had not been personally targeted, nor that the country condition evidence was irrelevant to her claim, but rather that that the evidence lacked sufficient connection to her circumstances. And as explained above, lacking evidence of past persecution on a subjective basis, the Applicant was required to establish that persons similarly situated to her would be at risk on an objective basis. The Officer, citing this Court's jurisprudence, justifiably found that simply establishing her identity as a Roma woman fell short of establishing persecution on a purely objective basis.

(ii) *State Protection*

[16] The Applicant submits that the Officer erred in concluding that the presumption of adequate state protection was not rebutted by inappropriately focusing on efforts by the government and other organizations to improve protection, rather than on whether these efforts have translated into actual and effective protection, citing *Boakye v Canada (Citizenship and Immigration)*, 2015 FC 1394. I agree that this remains good law today, as provided in decisions such as *Pava v Canada (Citizenship and Immigration)*, 2019 FC 1239 at para 38 [*Pava*]).

[17] However, I also note that the underlying presumption remains for any state protection analysis – namely that established in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 712 and 724-25, whereby a claim will fail where adequate state protection is reasonably available to the claimant and that there is a presumption that adequate state protection is available in the claimant's country of origin, rebuttable with clear and convincing evidence (see, for instance, *Pava* at para. 36).

[18] I make two comments in this regard. First, the state protection finding was not determinative in this case. Rather, the Applicant's lack of basis for a well-founded fear of persecution determined the outcome of PRRA-III. The state protection discussion, like *obiter* in a court judgment, had no bearing on the Officer's primary conclusion.

[19] Second, the Officer clearly stated that the evidence of improvements is mixed. However, the Officer found that state protection for the Applicant, even though staked on the mixed situation in Hungary, would nonetheless be adequate should she find herself in harm's way going forward. Of course, the Officer could not comment on the Applicant's past experience with seeking state protection, because (i) neither her nor her daughter had been attacked, and (ii) she had not sought out any state protection. The Officer thus reasonably concluded that the Applicant failed to meet her burden of rebutting the state protection presumption through clear and convincing evidence.

[20] Having so concluded, I agree with the Applicant that in at least one place in the 10-page Decision, the Officer misspeaks, such as immediately after concluding that adequate state protection exists for Roma victims of crime, discrimination and persecution, and notes that Hungary is making "serious efforts" to address these problems. Serious efforts, as the Applicant points out, are not good enough. However, very few decisions are perfect. Nor do they have to be: perfection is not the standard in judicial review (see Justice Evans' dissent in *Public Service Alliance of Canada v Canada Post Corporation*, 2010 FCA 56 at para 163, aff'd 2011 SCC 57 at para 1). This case is no exception.

[21] Aside from this observation, I remain unpersuaded by the Applicant's counsel's valiant efforts to, for the third time, return the PRRA for reconsideration on the basis of an unreasonable assessment. There is no basis for me to do so given the findings above. The error pointed out in PRRA-I by Justice Campbell in *Bozik*, as well as presumably the weakness in PRRA-II – that file was sent back for redetermination through a discontinuance rather than through an order of this Court, so there was no evidence before this Court as to that decision – has now been squarely addressed in PRRA-III. Either way, the Court, in this case, simply has no basis either in fact or law to grant this application, given that the Officer's findings were reasonable.

II. Conclusion

[22] Since the Officer rendered a reasonable underlying decision for all the reasons discussed above, I am dismissing the application for judicial review.

JUDGMENT in IMM-1661-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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