Federal Court  Cour fédérale

Date: 20200427

Docket: IMM-4571-19

Citation: 2020 FC 556

Ottawa, Ontario, April 27, 2020

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

VICTORYA SHARIFI
WALEED NOORI
AAHIL AARIA NOORI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Victorya Sharifi (the "Female Applicant"), her husband Mr. Waleed Noori (the "Male Applicant") and their son Aahil Aaria Noori (collectively the "Applicants") seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"), dismissing their claim for protection as Convention refugees or persons in

need of protection within the meaning of section 96 and subsection 97 (1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Female and Male Applicants are citizens of Afghanistan; their son was born in Italy.

[3] The Male Applicant entered Italy in 2008 and sought refugee protection. Although his claim was denied, he was granted "Subsidiary Protection Status," together with a Residency Permit called "Subsidiary Protection Residency Permit." According to the Immigration and Refugee Board Research Directorate Request for Information Responses, a holder of this Permit is eligible to apply for Italian citizenship after residency in Italy for 10 years.

[4] In 2015, the Male Applicant obtained a European Union Long Term Residency Permit ("EU Residency Permit").

[5] In 2014, the Male and Female Applicants married in Afghanistan. The Female Applicant travelled to Italy in 2015 on a family visa. In 2017, she acquired a family residence permit that allowed her to work. This permit expired in 2019.

[6] The minor Applicant was born in Italy in July 2016. He was added to the Male Applicant's EU Term Residency Permit, as a dependent, in 2017.

[7] The EU Residency Permit in Italy is governed by Article 9 of Legislative Decree n. 286 (the "Legislative Decree"). The Legislative Decree provides that an EU Residency Permit can be revoked in certain circumstances, including when the permit holder has been "absent from EU territory for 12 consecutive months."

[8] The RPD found that revocation of the EU Residency Permit is not automatic but subject to discretion.

[9] The RPD determined that the Applicants were excluded from protection pursuant to section 98 of the Act since they are persons described in Article 1E of the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can. T.S. No. 6 (the "Convention").

[10] Section 98 of the Act provides as follows:

Exclusion — Refugee Convention	**Exclusion par application de la Convention sur les réfugiés**
98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	**98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[11] Article 1E of the Convention provides as follows:

E This Convention shall not apply to a person who is recognized by the competent authorities of the country in	**E** Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans

which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays

[12] The RPD found that the Male Applicant and his son were excluded because they hold an EU Residency Permit, which carries the right to return to Italy. The RPD also found that even if the EU Residency Permit were revoked, the Male Applicant and his son could return to Italy under the Male Applicant's Subsidiary Protection Residency Permit.

[13] The RPD found that the Female Applicant could return to Italy, on the basis of the Male Applicant's residency status. It noted that she no longer held the family residency permit and had left Italy voluntarily.

[14] In its decision, the RPD referred to various documents including the National Documentation Package for Italy ("NDP"), Request for Information Responses provided by the Immigration and Refugee Board Research Directorate, and the unofficial translation of the Legislative Decree provided by the Applicants.

[15] The RPD applied the test in *Zeng v. Canada (Minister of Citizenship and Immigration)*, [2011] 4 F.C.R. 3 (F.C.A) about the application of the section 98 exclusion. That test considers whether a claimant has status substantially similar to that of its nationals in the applicable country, if a claimant had previously held such status and lost it, or if a claimant had access to such status and failed to acquire it.

[16] In *Zeng*, *supra*, the Court said the following at paragraph 28:

> [28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[17] The first issue for consideration is the applicable standard of review. The Applicants did not address this issue; the Respondent submits that the decision is reviewable on the standard of reasonableness.

[18] I agree with the position of the Respondent, that the decision of the RPD is reviewable on the standard or reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 10.

[19] In *Vavilov*, *supra*, the Supreme Court of Canada confirmed the content of the reasonableness standard as set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[20] According to the decision in *Dunsmuir*, *supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[21] The RPD addressed the interpretation of Article 9 of the Legislative Decree and considered whether the Male Applicant and his son would automatically lose their status in Italy, as the result of their absence from that country for more than 12 months.

[22] Upon considering the unofficial translation of the Legislative Decree provided by the Applicants, the NDP for Italy and Request for Information Responses relative to the Legislative Decree, the RPD found that status was not automatically revoked after a 12-month absence, but was subject to the exercise of discretion by the Italian authorities.

[23] The RPD also found that even if the Male Applicant lost his status pursuant to the EU Residency Permit, he and his son still enjoyed status pursuant to the Subsidiary Protection Residency Permit.

[24] The RPD found that the Female Applicant had lost her status but would still qualify for family status, due to the status of the Male Applicant.

[25] I am satisfied that the RPD reasonably assessed the evidence before it, including relevant documents. It considered and applied relevant jurisprudence, that is the decision in *Zeng*, *supra*. Its factual findings are supported by the evidence. I am satisfied that the decision of the RPD is reasonable, within the meaning of *Dunsmuir*, *supra* and there is no basis for judicial intervention.

[26] In the result, the application for judicial review is dismissed.

[27] There is no question for certification arising.

JUDGMENT in IMM-4571-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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