Date: 20070213

Docket: IMM-407-07

Citation: 2007 FC 161

Montréal, Quebec, the 13th day of February 2007

PRESENT: THE HONOURABLE MR. JUSTICE DE MONTIGNY

BETWEEN:

DANIEL NEAGU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant, Mr. Daniel Neagu, is a citizen of Romania and is 24 years of age. He is seeking from this Court an order staying his removal, which is scheduled for February 23, 2007.

[2] The applicant was smuggled into Canada on September 9, 2003. He made his claim for refugee protection on October 19 of that year, alleging a fear of persecution in his country because he is a Jehovah's Witness. In this regard, he related how he had been assaulted on January 15, 2002, because of his religious activities. He also submitted that he had objected to doing military service

because of his religious beliefs, and that he feared sanctions following his refusal to obey the recruitment orders he received.

[3] On March 8, 2004, the Refugee Protection Division (RPD) rejected the applicant's claim for refugee protection on the grounds that the alleged incidents constituted discrimination and not persecution, and that the assault that he had suffered was an isolated case. The RPD also held against Mr. Neagu the fact that had not claimed refugee protection in Italy, where he had stayed on two occasions in order to evade military service. Finally, the RPD noted that military service in Romania arises out of a law of general application and that there was an alternative service available to him. In this respect, the RPD noted that the applicant's credibility was undermined by the fact that he had not mentioned that he had made such a request in his personal information form, in addition to erroneously mentioning that he would be sentenced to seven years in prison for not reporting for military service.

[4] On June 24, this Court dismissed the application for leave and for judicial review filed by Mr. Neagu against the RPD.

[5] In November 2006, the applicant filed an application for a pre-removal risk assessment (PRRA), alleging in essence the same fears as those pleaded before the RPD. As fresh evidence, the applicant submitted a new recruitment order dated January 6, 2006, a psychological report and documentation on general conditions in Romania.

[6] On December 27, 2006, after reviewing the documents submitted and the objective documentary evidence on the situation in Romania, the PRRA officer came to the same conclusions as the PRRA officer, namely: (1) the general treatment accorded to Jehovah's Witnesses in Romania amounted at most to discrimination, and not to persecution; (2) the applicant had not rebutted the presumption that the Romanian authorities were able to protect him; (3) the stress and psychological consequences arising from the applicant's removal to his country did not amount to a risk covered by sections 96 and 97 of the *Immigration and Refugee Protection Act*, but must instead be taken into consideration in reviewing his application for exemption on humanitarian and compassionate grounds; (4) military service had been abolished for some months in Romania and, in any case, Mr. Neagu would not be forced to take up arms because there was an alternative service available to him as an adherent of an officially recognized religion; and (5) the sanctions provided for in the Penal Code for a refusal to report for military service did not constitute persecution but arose out of a law of general application.

[7] On January 30, 2007, the applicant filed an application for leave against this decision of the PRRA officer, to which he attached this motion to stay his removal.

[8] To obtain a stay of removal, the applicant must raise a serious issue, establish that he would suffer irreparable harm if no order were granted, and convince the Court that the balance of convenience favours the order (*Toth v. Canada (Minister of Employment and Immigration)*, (1988) 86 N.R. 302 (F.C.A.)). After reviewing the file and hearing the parties, I find that the motion to stay his removal must be dismissed.

[9] The officer's notes supporting his decision clearly show that he took into account all the evidence adduced by the applicant in support of his PRRA application as well as the recent objective situation in Romania. The role of this Court is not to re-weigh the evidence and draw its own conclusions, unless the PRRA officer's decision is patently unreasonable and bears no relation to the evidence adduced (*Tharumarasah v. Canada (M.C.I.)*, [2004] F.C.J. No. 258 (F.C.); *Figurado v. Canada (Solicitor General)*, [2004] F.C.J. No. 296 (F.C.)).

[10] In particular, it was reasonable for the PRRA officer to find that the general treatment accorded to Jehovah's Witnesses does not amount to persecution, which requires repeated threats and systematic infliction of personal injury. As Mr. Justice Reed in *Weiss v. Canada (M.C.I.)*, [2000] F.C.J. No. 1089 (F.C.) stated at paragraph 17, ". . . while the dividing line between persecution and discrimination is difficult to establish, it remains, for the Board to draw the conclusion in a particular factual context by proceeding with a careful analysis of the evidence adduced and a proper balancing of the various elements contained therein, and the intervention of this Court is not warranted unless the conclusion reached appears to be capricious or unreasonable."

[11] The applicant's counsel tried to argue that Mr. Neagu could not count on state protection, given the lack of willingness on the part of the police to prosecute those who assault Jehovah's Witnesses. In his view, this attitude demonstrates the state's complicity in the repression of the applicant's coreligionists. However, the PRRA officer carefully weighed the documentary evidence and the violent incidents reported therein, and ultimately found that these were isolated incidents.

Given the measures taken by the Romanian government to protect the rights of Jehovah's Witnesses and other minorities, the officer refused to find that the authorities would do little in the case of a complaint or an offence solely because it involved a member of these groups. Even if this finding is debatable, it does not seem to this Court to be unreasonable in view of the evidence adduced.

[12] Consequently, the applicant has not discharged the burden of demonstrating the existence of a serious issue. This in itself would be sufficient to end the analysis required under *Toth*. But there is more.

[13] The applicant has not demonstrated to this Court that he would suffer irreparable harm if he were removed to his country. In his written representations, the applicant mentioned the psychological trauma he would suffer if he were to return to his country, and he also mentioned the criminal prosecution he could face. These consequences are clearly not of the type that may be considered in determining whether his life and safety would be in jeopardy (see *Kerrutt v. Canada (M.E.I.)*, [1992] F.C.J. No. 237 (F.C.); *Calderon v. Canada (M.C.I.)*, [1995] F.C.J. No. 393 (F.C.); *Ram v. Canada (M.C.I.)*, [1996] F.C.J. No. 883 (F.C.)).

[14] During the hearing, the applicant's counsel also mentioned the risk of assault that his client could face if he were to return to Romania. However, the RPD and the PRRA officer both dismissed this claim. Given that this Court finds that the applicant has not raised a serious issue regarding the latter decision, I have no choice but to dismiss the claims of irreparable harm resulting from a risk of assault.

[15] Under these circumstances, it goes without saying that the balance of convenience clearly favours the Minister.

[16] For these reasons, the motion to stay removal is dismissed.

[17] Given the governmental reorganization implemented under the *Public Service Rearrangement and Transfer of Duties Act* (R.S.C., 1985, c. P-34), as well as the *Department of Public Safety and Emergency Preparedness Act* (S.C. 2005, c. 10) and orders in council P.C. 2003-2059, P.C. 2003-2061, P.C. 2003-2063, P.C. 2004-1155 and P.C. 2005-0482, the Minister of Public Safety and Emergency Preparedness should be added as a respondent.

ORDER

THE COURT ORDERS that

- The motion to stay removal be dismissed;
- The Minister of Public Safety and Emergency Preparedness be added as a respondent.

"Yves de Montigny"
Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Serban Mihal Tismanariu	FOR THE APPLICANT
Suzon Létourneau	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Serban Mihal Tismanariu Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT