

Date: 20091022

Docket: IMM-461-09

Citation: 2009 FC 1072

Toronto, Ontario, October 22, 2009

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ELENA NEGINSKAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (the Board) dated December 8, 2008, wherein it was determined that the applicant was not a Convention refugee and not a person in need of protection. For the reasons that follow, the application is dismissed.

Background

[2] Elena Neginskay, the applicant, is a 97 year old citizen of Israel who made a claim for refugee protection on the ground that she was persecuted as a result of the fact that she spoke out about the necessity of peace between the Israelis and Arabs.

[3] The applicant acknowledged that she did nothing to seek protection from the authorities in Israel before claiming Canada's protection. Accordingly, the RPD found that the applicant failed to rebut the presumption.

[4] The applicant was unable to testify in support of her claim due to medical problems. After attempts by the RPD to accommodate the applicant proved unsuccessful, counsel agreed that the applicant's daughter, Raisa Pershanok, could testify on the applicant's behalf. Ms. Pershanok testified in Russian with the aid of an interpreter.

Decision Under Review

[5] The RPD found that Ms. Pershanok failed to provide credible and trustworthy evidence of her mother's claim and, based on the applicant's written narrative and the witness's testimony, the applicant did not complain to the authorities in Israel regarding her persecution and seek their protection.

[6] On questions regarding family history and when they arrived in Israel under the Law of Return, the RPD found the witness to be non-responsive, that she delayed her answers or did not answer on point. This was not attributed to a difficulty with the interpretation as the witness did not say that she had trouble understanding the interpreter or that she did not understand the questions that were being put to her.

Issues

[7] The sole issue argued at the hearing of this application is whether the applicant was denied procedural fairness because of inadequate interpretation at the RPD hearing.

Analysis

[8] In this case, the applicant's PIF and the witness's testimony clearly show that the applicant did not seek state protection in Israel, a well established democratic country with functioning institutions. With the heightened obligation that applies in this context, the failure of the applicant to pursue state protection was fatal to her claim: *De La Rosa v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 83, [2008] F.C.J. No. 98, at para. 12; *Ramos v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 179, [2008] F.C.J. No. 232, at para. 5; *Camacho v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 830, [2007] F.C.J. No. 1100, at para. 11.

[9] With regards to the applicant's claim that the interpretation services provided to the witness at the hearing were inadequate, I agree with the respondent that interpretation does not have to conform to a standard of perfection: *R. v. Tran*, [1994] 2 S.C.R. 951, [1994] S.C.J. No. 16; *Mohammadian v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] F.C.J. No. 916, at para. 6.

[10] The affidavit from the applicant's witness cites only a few examples of possible errors in translation/interpretation. Counsel drew my attention to just one, where the interpreter used the English word "Church" rather than "Synagogue". It remains contentious whether that is the word used by the witness. This is far from what is required to satisfy the test that translation was inadequate: *Dhot v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 881, [2001] F.C.J. No. 1264, at paras. 5-6. In this case, the quality of the interpretation, while perhaps not perfect, did not amount to a breach of procedural fairness.

[11] In any event, the adequacy of the interpretation in this case is immaterial. Errors in interpretation had no bearing on the RPD's finding that the applicant did not seek state protection, which was decisive: *Deng v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 943, [2007] F.C.J. No. 1228, at para. 17.

[12] The RPD's decision that the applicant was not a Convention refugee nor a person in need of protection because she did not seek state protection in Israel falls within the range of possible, acceptable outcomes: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 at para. 47. It

is not open to this Court to substitute its own view of a preferable outcome: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12, at para. 59.

[13] The parties did not propose any serious questions of general application.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed. There are no questions to certify.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-461-09

STYLE OF CAUSE: ELENA NEGINSKAY v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 21, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mosley J.

DATED: October 22, 2009

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