Federal Court		Cour fédérale

Date: 20100610

Docket: IMM-4296-09

Citation: 2010 FC 630

Ottawa, Ontario, June 10, 2010

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

TSIURI MCHEDLISHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the RPD) dated July 29, 2009 concluding that the applicant is not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27 because the applicant has an internal flight alternative (IFA) in Georgia.

FACTS

Background

[2] The forty-seven (47) year old applicant is a citizen of Georgia. She will be forty-eight (48) on June 25th. She arrived in Canada on December 29, 2006 and made a claim for refugee protection on January 25, 2007.

[3] The applicant has 13 years of education including nursing, but has spent the last 25 years working on her family farm in the small village of Dumatsko, Georgia. On May 5, 1995, the applicant, then 33, married Mr. Jurabi Aptsiauri through an arranged marriage. She lived with her husband's family in Dumatsko. According to the applicant, her husband was an alcoholic, and was verbally and physically abusive. The situation worsened when she could not get pregnant. In 1998, the applicant became pregnant and her husband accused her of adultery. The applicant suffered a severe beating which resulted in the still birth of her child, although she attributed her injuries at the time, out of shame, to having fallen. The applicant left her husband on more then one occasion but ultimately returned as a result of pressure by her mother-in-law.

[4] The applicant was attacked by her husband again in August 2006 and on November 21, 2006. Police were called on both occasion but resulted in no arrests. The applicant left her home but was forced to return by her mother-in-law. The applicant then decided to leave Georgia through an agent who supplied her with a false passport.

Decision under review

[5] The applicant's refugee claim was dismissed by the RPD on July 29, 2009 because she did not have a well-founded fear of persecution in Georgia since she had a viable IFA in the capital city, Tbilisi.

[6] The Board set out the two-part test for an IFA and held that the applicant had not proven that there was a serious possibility that she would be persecuted in the proposed IFA:

a) The applicant provided insufficient information as to how her husband would locate her in Tbilisi and the resources at his disposal;

b) There is no evidence that government officials in Georgia investigated the applicant's whereabouts, or informed her husband of her location;

c) The law in Georgia allows for freedom of movement in the country, foreign travel, emigration, and repatriation;

d) There is insufficient evidence that the claimant could not seek protection from authorities in Tbilisi;

e) The applicant provided insufficient evidence that police or state apparatus in Dumatsko failed to offer her protection;

f) There is documentary evidence that laws in Georgia allow victims to file for immediate protective orders, and for the police to issue temporary restrictive orders. According to the RPD, the applicant did not seek a restrictive order against her husband for the years of alleged abuse;

g) The Board acknowledged that domestic abuse and other violence against women are problems in Georgia. However, the applicant provided insufficient evidence that she could not obtain adequate state protection in Tbilisi; and

h) The Board recognized that culturally speaking, it may not be acceptable for women to contact police about domestic abuse. Yet according to country documentation, police responded to 2500 cases of family conflicts in 2008, and issued 141 restrictive orders against abusive husbands.

[7] On the reasonableness of the IFA, the RPD held that the applicant's hardships would be related to dislocation and relocation. The applicant has not shown that she would not receive medical attention, employment or education opportunities in Tbilisi. She has 13 years of education and graduated from a nursing program. While the applicant has not been employed in the nursing field, she could work as a nurse in Tsibili without her husband restricting her, as he had when she lived with him.

LEGISLATION

[8] Section 96 of IRPA grants protection to Convention refugees:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[9] Section 97 of IRPA grants to protection to certain categories of persons:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ISSUES

[10] The applicant raises the following issues:

a. Did the Board err in determining that there is a viable IFA in Tbilisi?

b. Did the Board err in its analysis of state protection and its lack of analysis of s. 97 of IRPA?

STANDARD OF REVIEW

[11] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Khosa v. Canada (MCI)*, 2009 SCC 12, per Justice Binnie at para. 53.

[12] Questions of credibility, state protection and IFA concern determinations of fact and mixed fact and law. It is clear that as a result of *Dunsmuir* and *Khosa* that such issues are to be reviewed on a standard of reasonableness. Recent case law has reaffirmed that the standard of review for determining whether the applicant has a valid IFA is reasonableness: *Mejia v. Canada (MCI)*, 2009 FC 354, per Justice Russell at para. 29; *Syvyryn v. Canada (MCI*), 2009 FC 1027, 84 Imm. L.R. (3d) 316, per Justice Snider at para. 3; and my decision in *Perea v. Canada (MCI)*, 2009 FC 1173 at para. 23.

[13] In reviewing the Board's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, *supra*, at paragraph 47; *Khosa*, *supra*, at para. 59.

ANALYSIS

Issue No. 1: Did the Board err in determining that there is a viable IFA in Tbilisi?

[14] The applicant submits that the RPD erred in finding that there was no serious possibility of persecution in the IFA. The applicant submits that her husband could trace her anywhere in Georgia through the government registration system. In the event that she is found, the applicant submits that the evidence indicates that the government treats domestic abuse lightly and would offer her no state protection. Lastly, the IFA chosen by the RPD is not viable because it is unreasonable to expect a "farmer" to find farm work in the city.

[15] The Court takes judicial notice, with permission of the parties that:

a. Georgia has a population of 4,600,825 persons; and

b. Its capital Tbilisi has a population of about 1,480,000 persons.

The Court finds that Tbilisi is a large city, and it was reasonably open to the Board to find that a person could have an IFA from a spouse.

[16] In *Farias v. Canada (MCI)*, 2008 FC 1035, I set out at paragraph 34 a checklist summarizing the legal criteria for determining whether an IFA exists. The checklist is as follows:

1. If IFA will be an issue, the Refugee Board must give notice to the refugee claimant prior to the hearing (*Rasaratnam*, [1991] F.C.J. No. 1256, supra, per Mr. Justice Mahoney at paragraph 9, *Thirunavukkarasu*, [1993] F.C.J. No. 1172) and identify a specific IFA location(s) within the refugee claimant's country of origin (*Rabbani v. Canada (MCI)*, [1997] 125 F.T.R. 141 (F.C.), supra at para. 16, *Camargo v. Canada (Minister of Citizenship and Immigration)* 2006 FC 472, 147 A.C.W.S. (3d) 1047 at paras. 9-10);

2. There is a disjunctive two-step test for determining that there is not an IFA. See, e.g., *Rasaratnam*, supra; *Thirunavukkarasu*, supra; *Urgel*, [2004] F.C.J. No. 2171, supra at para. 17.

    i. Either the Board must be persuaded by the refugee claimant on a balance of probabilities that there is a serious possibility that the refugee claimant will be persecuted in the location(s) proposed as an IFA by the Refugee Board; or

    ii. The circumstances of the refugee claimant make the proposed IFA location unreasonable for the claimant to seek refuge there;

3. The applicant bears the burden of proof in demonstrating that an IFA either does not exist or is unreasonable in the circumstances. See *Mwaura v. Canada (Minister of Citizenship and Immigration)* 2008 FC 748 per Madame Justice Tremblay-Lamer at para 13; *Kumar v. Canada (Minister of Citizenship and Immigration)* 130 A.C.W.S. (3d) 1010, 2004 FC 601 per Mr. Justice Mosley at para. 17;

4. The threshold is high for what makes an IFA unreasonable in the circumstances of the refugee claimant: see *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, per Mr. Justice Russell at paragraph 41. In *Mwaura*, supra, at para.16, and *Thirunavukkarasu*, supra, at para. 12, whether an IFA is unreasonable is a flexible test

> taking into account the particular situation of the claimant. It is an objective test;
>
> 5. The IFA must be realistically accessible to the claimant, i.e. the claimant is not expected to risk physical danger or undue hardship in traveling or staying in that IFA. Claimants are not compelled to hide out in an isolated region like a cave or a desert or a jungle. See: *Thirunavukkarasu*, supra at para. 14; and
>
> 6. The fact that the refugee claimant has no friends or relatives in the proposed IFA does not make the proposed IFA unreasonable. The refugee claimant probably does not have any friends or relatives in Canada. The fact that the refugee claimant may not be able to find suitable employment in his or her field of expertise may or may not make the IFA unreasonable. The same may be true in Canada.

[17] I am of the opinion that the RPD's findings are reasonable with respect to the adequacy of the IFA**.** The jurisprudence establishes a high threshold which the applicant must satisfy on the balance of probabilities to prove that an IFA is not reasonably available. To paraphrase the jurisprudence, it requires the existence of conditions which would jeopardize the life and safety of a claimant in traveling or temporarily locating in a safe area. At the hearing, the RPD Member, on numerous occasions, asked how the applicant's husband would be able to locate her. The applicant responded at line 15 of the transcript:

> Because if I go to Tbilisi, I need to pay rent and to sustain myself and I need resources for this. Sooner or later, Georgia is a small country and my husband will find out. I even – I'm almost sure that my husband would ask in the airport or other border services that if I show up somewhere to let him know, because this is very shameful for him, what I did, and he will never let this situation go, go away like this.

[18] The applicant's counsel at the hearing submitted that the applicant must register herself with authorities in Tbilisi in order to work:

> […] because he is her husband, could very easily simply go to the registration office and tell him that he was looking for his wife and they would give him the information as to where she was now registered. Therefore, it would be very easy for him to track her, no matter where she is in Georgia, but certainly even if she went to Tbilisi.

[19] The applicant provided no evidence to substantiate her fear of tracing, or explain how or why her husband would be interested in pursuing her several years after her departure. It was reasonably open to the RPD to assign little weight to the applicant's testimony in this regard. Moreover, Tbilisi is 3 hours away from the applicant's hometown and is a large city of 1.4 million people.

[20] The applicant submits that the RPD ignored a number of pieces of documentary evidence with respect to state protection. The RPD may not have mentioned every document on the record but it did rely on the on the United States Department of State 2008 Report (DOS Report) on Human Rights in Georgia which stated that Georgia was taking steps to ameliorate the problem of domestic abuse. There is no basis upon which the Court can determine that the RPD reached its decision without regard to the evidence: see *Cepeda-Gutierrez v. Canada* (1998), 157 F.T.R. 35, at para. 16.

[21] The DOS Report states that 2,576 cases of domestic abuse were reported to the police in 2008, and restrictive orders were issued in 141 cases, and that the police in Tbilisi are trained for dealing with domestic abuse and issuing restrictive orders.

[22] Accordingly, the Court finds that the RPD conclusion that Tsibili was a viable IFA for the applicant was reasonably open to the RPD on the evidence before it.

Issue No. 2: Did the Board err in its analysis of state protection and its lack of analysis of s. 97 of IRPA?

[23] In light of the Court's conclusions with respect to IFA, it is unnecessary to consider the question of state protection.

CERTIFIED QUESTION

[24] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

The application for judicial review is dismissed.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mr. Marvin Moses	FOR THE APPLICANT
Ms. Ada Mok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Marvin Moses Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Myles Kirvan, Q.C. Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT