Federal Court  Cour fédérale

Date: 20130530

Docket: IMM-6773-12

Citation: 2013 FC 582

Ottawa, Ontario, May 30, 2013

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

GYORGYNE SALAMON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant brings this application pursuant to section 18.1 of the *Federal Courts Act* (RSC, 1985, c F-7) to review and set aside a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) that the applicant is not a Convention refugee or person in need of protection.

[2] Applying the standard of reasonableness this application for judicial review is granted.

[3] The Board erred in concluding that state protection was adequate by reason of "serious efforts" being undertaken by Hungary to stop persecution of the Roma. The adequacy of the protection available was largely unexplored, and to the extent that it was, the conclusion that it was adequate is unsupported by the evidence.

[4] The applicant is a Roma citizen of Hungary. Her experience with discrimination and violence as a result of her ethnicity was accepted by the Board. She was raped by four men who she believed to be members of the paramilitary Hungarian Guard. She was assaulted after a car accident and the police took no action. Her home was broken into and vandalized with threatening, racist language. Each instance was reported to the police by either the applicant or her mother. All of this evidence was accepted by the Board.

[5] There is a presumption that states are willing and able to protect their citizens. This presumption can only be rebutted with clear and convincing evidence. Claimants must exhaust all courses of action reasonably available to them before seeking refugee protection.

[6] The applicant reported the sexual assault to the police. Her evidence that they did not collect any evidence, such as her torn clothing, or bring her to the hospital was accepted. However, the Board concluded that "just because the police did not collect further evidence, it does not in itself establish that the police did not initiate an investigation."

[7] This conclusion is unreasonable. While it is possible that the police conducted an investigation unknown to the applicant, this is speculation and has no basis in the record. Moreover,

any sexual assault investigation conducted without the victim's participation would be deficient, and the failure to take the most elementary of investigative measures to collect and preserve evidence is indicative of incompetence, the unwillingness or indifference of a state to protect a minority, or both.

[8] Further, the Board found that even if the police discriminated against the applicant she had other avenues to seek redress, such as the Independent Police Complaints Board (IPCB). The IPCB is an independent body, comprised of legal experts, appointed for six-year terms. A review of the evidence with respect to this agency does not support the conclusion that the redress mechanisms are adequate. The evidence cited points in the opposite direction. For example, of 157 violations of fundamental human rights found by the IPCB, the National Chief of Police accepted 1 case, and partially accepted 27 other cases.

[9] The Board also relied on Hungary's four Ombudsmen who accept complaints of racism or discrimination. The Ombudsmen cannot issue binding decisions, only encourage consensus and advocate for policy changes. While the Ombudsmen may play a valuable role, they, like the IPCB and Hungarian Helsinki Committee, have no mandate or capacity to provide protection.

[10] The Board considered it reasonable to expect the applicant to approach additional agencies and community organizations and activists. In the case of sexual assault and other serious crimes of physical violence, state protection is measured by the response of the police, not by secondary agencies such as complaints bodies or organizations which help victims cope with the consequences of the crime. The two are not to be conflated. Nor does the existence of a review mechanism *per se*

mean state protection is adequate. It is an *indicia* of state protection, but no more. Further, there is no direct connection between recourse for a past instance of police inaction and the provision of protection on a forward looking basis.

[11] With regards to the three instances of vandalism and property damage, the Board found that the police took reports and that the applicant's mother could not provide information to identify the perpetrators. Even assuming no misconduct or neglect on the part of the police, the fact that the police are apparently unable to prevent the reoccurrence of these incidents was not considered by the Board in assessing the adequacy of state protection.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. There is no question for certification.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6773-12
STYLE OF CAUSE:	**GYORGYNE SALAMON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Toronto, ON
DATE OF HEARING:	May 15, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
DATED:	May 30, 2013

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