Federal Court  Cour fédérale

Date: 20140526

Docket: IMM-1551-13

Citation: 2014 FC 498

Ottawa, Ontario, May 26, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MIKLOS LASZLO IVANCSIK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] There is widespread discrimination against Roma in Hungary; of that there can be no doubt. However, the issue in this judicial review is whether the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada which held that Mr. Ivancsik was neither a refugee within the meaning of the United Nations Convention and s. 96 of the *Immigration and Refugee Protection Act*, nor a person in need of Canada's protection under s. 97 of the Act, was unreasonable.

[2] In brief, it was found that the discrimination faced by Mr. Ivancsik did not amount to persecution and because of the availability of state protection, he would not be at undue risk should he be returned to Hungary.

[3] The decision turns upon the distinction between discrimination on the one hand and persecution on the other, as well as on the availability of state protection. However, counsel for the applicant points out that between paragraphs 7 and 8 of the reasons, the Member had inserted the heading "Determinative Issues" and that paragraph 8 reads: "The determinative issues are credibility, discrimination vs. persecution, and state protection."

[4] However, there were no actual adverse findings of credibility set out in the Reasons. There is reference to the recounting of an event concerning Mr. Ivancsik's neighbour being unreliable because the information was hearsay, but that is a far cry from a finding that he was not credible.

[5] Counsel for the applicant submits that we must take the words at face value. It follows that credibility issues must have permeated the Member's thinking, even though she did not set out what those issues were. Therefore, the decision is unreasonable in accordance with *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[6] I find this reasoning to be somewhat circular. Credibility has to be considered in every refugee claim. The Member was merely stating the obvious. Furthermore, one begins with the rebutable presumption that the applicant is telling the truth (*Maldonado v Canada (Minister of*

Citizenship and Immigration), [1980] 2 FC 302, [1979] FCJ No 248 (QL)). The Member never said that this presumption was rebutted.

[7] This leaves us with discrimination versus persecution, and state protection.

I. Discrimination versus Persecution

[8] Although Mr. Ivancsik, as a Roma, may well have been denied educational opportunities, and did not go past grade 8, he was employed more or less regularly. The Member cannot be faulted for holding that, looking forward, those events in the distant past did not forecast persecution.

[9] He was attacked in 2009 on his way home from work by a group of Neo-Nazis and again in 2011. In his amended Personal Information Form, he added that in the summer of 2010 he had been thrown off a bus by three members of the Hungarian Guard (the record shows that although the Hungarian Guard had been banned by that time its successors carried on).

[10] It was not unreasonable for the Member to hold that these criminal assaults based on race did not add up to persecution. However, even if they did, her analysis of state protection was satisfactory.

II. State Protection

[11] While good intentions to protect its citizens are not enough, one cannot demand absolute perfection. The issue is adequacy, and there is a presumption that must be rebutted with clear and convincing evidence that the state was unwilling or unable to protect Mr. Ivancsik (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689).

[12] Counsel submitted a number of cases in which this Court has held that the analysis done by various members of the RPD of state protection in Hungary was inadequate. These cases depend on the personal history of the applicants, country conditions, the rationale of the member, and this Court's assessment of those reasons.

[13] The analysis of state protection is very detailed. Although in one incident Mr. Ivancsik was shunned and insulted by the local police, and in the other they refused to investigate on the basis that there were no witnesses; he did not pursue the matter further. The record shows there were NGOs available to assist him in pressing on, and that in many such cases this assistance had been effective.

[14] The Member's reasoning in this case differs from *Biro v Canada (Citizenship and Immigration)*, 2012 FC 1120, [2012] FCJ No 1282 (QL) and *Pinter v Canada (Citizenship and Immigration)*, 2012 FC 1119, [2012] FCJ No 1204 (QL). In those cases, the applicants' credibility was put in issue because the Member considered it was unreasonable for the claimants to say the police did nothing.

[15] One can find almost anything one wants in the country conditions pertaining to Hungary. The question is whether the Member was "cherry picking". In my view, she was not. The United States Department of State Reports on Human Rights Practices dealing with Hungary in 2012 points out the government's effective mechanisms to investigate and punish abuse and corruptions. In its 2012 Report, Amnesty International reiterates that discrimination against Roma remained entrenched. However, the Hungarian Civil Liberties Union submitted complaints to the prosecutor regarding cases in which the police had failed to investigate. The prosecutor ordered the police to reopen some investigations. Canada's Documentation Package with respect to the Hungarian Guard shows steps that had been taken by the police, and some favourable reaction by Roma and Jewish Groups.

[16] While it is true that one need not be a hero, and be killed to prove a point, it was not unreasonable for the member to find that Mr. Ivancsik had prematurely simply walked away.

[17] The Member referred to a 2008 report which was not in the country conditions indicating that there had been 12 reported attacks against Roma in that year. She was of the view that this was a fairly low percentage given the population of the country. She should have referred to later reports. However, those reports do not really change the situation. Although the numbers are higher, they are spread out over a longer period and do not indicate much of an increase in reported violence.

[18] In conclusion, and considering the deference owed to the Member, it cannot be said that the decision was unreasonable.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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