Federal Court Cour fédérale

Date: 20140707

Docket: IMM-5063-13

Citation: 2014 FC 658

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 7, 2014

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

ALEX PETROV

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision dated July 11, 2013, by Haig Basmajian, a member of the Refugee Protection Division of the Immigration and Refugee

Board of Canada (RPD), that the applicant is not a Convention refugee under section 96 of the IRPA or a person in need of protection under section 97 of the IRPA.

II. **Facts**

[2] The applicant, who declares himself stateless, arrived in Canada on July 6, 2009, and claimed refugee protection that same day.

[3] Before the RPD, the applicant alleged the following facts. He was born in Russia and moved to Latvia with his family when he was one and a half years old. He never obtained Latvian citizenship, and his parents and grandparents were Russian citizens. After the collapse of the USSR, residents of Latvia who did not have citizenship in that country became second-class citizens. The applicant argued that he had a fear of persecution at the hands of someone named Ulys Dundurs, a mafia leader in Latvia, who apparently tried to extort his residence. The applicant claimed that the authorities were of no assistance. The applicant purportedly contacted the Russian embassy in Latvia to acquire Russian citizenship, but was told that that would take at least two years. The applicant allegedly then left Latvia for Canada.

III. **Impugned decision**

[4] The RPD was satisfied as to the identity of the applicant.

[5] Ultimately, the RPD found that the applicant could acquire Russian citizenship by means of a simple formality. One of the explanations for that finding is the existence of programs and

temporary statuses that the applicant could prevail himself of in Russia. In fact, the RPD noted that the applicant was born in Russia to Russian parents, that he speaks the country's language and lived there for a certain amount of time, and that, in that country, in addition to various financial and social assistance programs and a fast-track naturalization process, there is a program called the State Program for Assisting Compatriots Residing Abroad in Their Voluntary Resettlement in the Russian Federation (State assistance program), which helps people in situations similar to that of the applicant. In addition, the applicant could have obtained a temporary resident permit in Russia to work there while his citizenship application was being processed. Acquiring Russian citizenship would certainly involve a few administrative constraints, but the applicant, who only contacted the Russian embassy once without necessarily inquiring into the steps involved in a possible citizenship application, did not prove that his application would be refused.

[6] Furthermore, the applicant did not actually provide other reasons as for why he could be persecuted in Russia, even though he seemed to recognize the low likelihood of being chased by the Latvian mafia in Russia. For these reasons, the RPD rejected the applicant's refugee claim.

IV. **Issues**

[7] This case raised the following issue, which can be divided into two sub-issues:

A. Did the RPD err by rejecting the applicant's refugee claim on the ground that he could acquire Russian citizenship by means of a simple formality?

1. Did the RPD err by finding that the applicant could acquire Russian citizenship by means of a simple formality?

2. Is the fact that the applicant did not apply for Russian citizenship, and thus did not seek protection from Russia, sufficient for the RPD to reject his refugee claim?

V. **Standard of review**

[8] The first sub-issue is one of fact that is therefore reviewable on the standard of reasonableness (see *Williams v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 126 at paragraph 17, [2005] FCJ No 603 (*Williams*)). This Court must therefore show considerable deference with respect to that finding by the RPD.

[9] The second sub-issue is one of law because it concerns the interpretation of the provisions of the IRPA and must be reviewed on the standard of correctness (*Williams*, above, at paragraph 18). The RPD's finding in that respect is not entitled to deference by the Court.

VI. **Arguments of the applicant**

[10] The applicant states that the RPD's decision is unreasonable because it does not rely on all of the evidence, but on elements that are not relevant or determinative in the record.

[11] First, it was wrong to conclude that the applicant could, by means of a simple formality, acquire Russian citizenship. The applicant could not have availed himself of the State assistance

program in Russia because it does not apply to people like him, that is, Russian speakers without legal status in their country of residence, and because he is not necessarily comfortable with the Russian society. The applicant would have been forced to stay in Latvia, which was not an option.

[12] Second, the RPD failed to analyze the issue of the ability of the Latvian authorities to protect the country's residents, especially in the case of people of Russian origin who are having problems with the Latvian mafia. Furthermore, the applicant fears for his life notably because of Latvia's inability to protect its residents.

VII. **Argument of the respondent**

[13] According to the respondent, because the RPD found that the applicant could acquire Russian citizenship by means of a simple formality, it examined the applicant's fear with respect to that country in particular. The applicant himself stated that it is unlikely that be would be sought in Russia by the people he fears in Latvia, and he also did not submit any evidence in that regard. Furthermore, the fact that the applicant did not take steps to acquire Russian citizenship shows a lack of subjective fear in respect of Russia.

[14] According to the case law, it is completely reasonable to reject an applicant's refugee claim if it is established that the applicant could acquire the citizenship of a country with respect to which the applicant has no fear of persecution. The RPD's decision is also reflective of the meaning given to the concept of "mere formality" by the case law. In addition, the applicant does

not raise any valid argument to support a finding that the State assistance program would not be available to him.

VIII. **Analysis**

[15] The application for judicial review in this case will be dismissed.

1. *Did the RPD err by finding that the applicant could acquire Russian citizenship by means of a simple formality?*

[16] Relying on the evidence before it, the RPD found that the applicant "did not demonstrate that his application for Russian citizenship would be refused" and that he "could obtain Russian citizenship by means of a simple formality." (RPD's Reasons for Decision, at paragraphs 30 and 33). For the following reasons, that finding is reasonable given the evidence in the record and the applicant's testimony before the RPD.

[17] In *Williams*, *supra*, the Federal Court of Appeal summarized the applicable law in a case such as this:

> **[21]** In another decision rendered before the Supreme Court of Canada rendered its own in *Ward*, *Bouianova v. Minister of Employment and Immigration* (1993), 67 F.T.R. 74, Rothstein J. (sitting then in the Trial Division of the Federal Court of Canada) broadened the holding of our Court in *Akl*. He held that <u>if, at the time of the hearing, an applicant is entitled to acquire the citizenship of a particular country by reason of his place of birth, and if that acquisition could be completed by mere formalities</u>, thereby leaving no room for the State in question to refuse status, <u>then the applicant is expected to seek the protection of that State and will be denied refugee status in Canada unless he has demonstrated that he also has a well-founded fear of persecution</u> in relation to that additional country of nationality.

[22] I fully endorse the reasons for judgment of Rothstein J., and in particular the following passage at page 77:

> The condition of not having a country of nationality must be one that is beyond the power of the applicant to control.

The true test, in my view, is the following: if it is within the control of the applicant to acquire the citizenship of a country with respect to which he has no well-founded fear of persecution, the claim for refugee status will be denied. While words such as "acquisition of citizenship in a non-discretionary manner" or "by mere formalities" have been used, the test is better phrased in terms of "power within the control of the applicant" for it encompasses all sorts of situations, it prevents the introduction of a practice of "country shopping" which is incompatible with the "surrogate" dimension of international refugee protection recognized in *Ward* and it is not restricted, contrary to what counsel for the respondent has suggested, to mere technicalities such as filing appropriate documents. This "control" test also reflects the notion which is transparent in the definition of a refugee that the "unwillingness" of an applicant to take steps required from him to gain state protection is fatal to his refugee claim unless that unwillingness results from the very fear of persecution itself. Paragraph 106 of the *Handbook on Procedures and Criteria for Determining Refugee Status* emphasizes the point that whenever "available, national protection takes precedence over international protection," and the Supreme Court of Canada, in *Ward*, observed, at p. 752, that "[w]hen available, home state protection is a claimant's sole option."

[23] The principle enunciated by Rothstein J. in *Bouianova* was followed and applied ever since in Canada. Whether the citizenship of another country was obtained at birth, by naturalization or by State succession is of no consequence provided it is within the control of an applicant to obtain it. (The latest pronouncements are those of Kelen J. in *Barros v. Minister of Citizenship and Immigratio*n, 2005 FC 283 and Snider J. in *Choi v. Canada (Solicitor General)*, 2004 FC 291.)

[Emphasis added.]

(*Williams*, above, at paragraphs 21-23.)

[18] Thus, according to that decision, in order for an applicant to be denied his or her refugee claim on the basis that he or she could acquire the citizenship of another country, (1) it must be within the control of the applicant to acquire the citizenship and (2) the applicant must not have a well-founded fear of persecution in that country.

[19] POWER TO ACQUIRE CITIZENSHIP IN RUSSIA – To that end, decisions that cite *Williams* have established that the extent to which an applicant has control over a possible citizenship application is a critical issue (see, for example, *Kim v Canada (Minister of Citizenship and Immigration)*, 2010 FC 720 at paragraphs 8-9, [2010] FCJ No 870). The RPD therefore had to consider whether, given the measures in place in Russia, it was within the control of the applicant to obtain citizenship in Russia.

[20] In its reasons, the RPD listed a series of measures potentially available to the applicant, and the applicant seems to disagree with only one of them, that is, the State assistance program. In this case, the applicant claims that the RPD erred by stating that he could acquire Russian citizenship by means of a simple formality, namely by availing himself of that program, and he raises two arguments in that respect that these reasons will address in the following paragraphs.

[21] First, the applicant argues that he could not participate in the State assistance program because he left Russia when he was very young and, consequently, that he is not necessarily comfortable with the Russian society. I find that that is an argument that the applicant did not submit to the RPD when he had the opportunity to do so and that that statement does not appear in the applicant's affidavit.

[22] Second, the applicant claims that the State assistance program cannot apply to him because the program does not apply to Russian speakers who do not have legal status in their country of residence. The respondent correctly points out that, according to one of the Responses to Information Requests prepared by the Research Directorate of the Immigration and Refugee Board, a document that was before the RPD at the time of its decision, a "compatriot", for the purposes of the State assistance program, is described namely as "former USSR citizens who are living in states that were part of the USSR, regardless of whether they became citizens of another state or are stateless" [Emphasis added.] (Responses to Information Requests (RIR) – RUS103900.E, certified tribunal record, at page 161). That definition applies directly to the situation of the applicant, who declares himself stateless, but who lived in the USSR after leaving Russia.

[23] As a result, I am of the opinion that it was reasonable for the RPD to find that the applicant could avail himself, as one of the measures available, of the State assistance program to acquire Russian citizenship, especially since, according to the evidence in the record, the applicant could have applied for a temporary residence permit in Russia and worked there while his citizenship application was being processed, thus avoiding spending the application processing period in Latvia (RIR – RUS103900.E, certified tribunal record, at page 161).

[24] The Court notes that, in any event, the applicant simply did not have the intention to acquire Russian citizenship or remain in Russia (see the certified tribunal record, at page 283). He could have filed an application in that regard, but decided not to because his intention was to go elsewhere.

[25] Consequently, this Court is of the opinion that it was reasonable for the RPD to find that the applicant could have acquired Russian citizenship, that is, that it was within his control to acquire it given the measures in place in that country.

[26] NO WELL-FOUNDED FEAR OF PERSECUTION IN RUSSIA – Having reached the conclusion that the applicant could acquire Russian citizenship, the RPD had to then determine whether the applicant established that he would face a well-founded fear of persecution in Russia. The RPD found that he had not and this Court agrees.

[27] The applicant was questioned on a possible fear of persecution or threat to his life in Russia—and not Latvia—and was unable to submit evidence concerning the profiles of people who could search for him in Russia. Furthermore, the applicant did not provide reasons, apart from the Latvian mafia, as to why he could be persecuted in Russia. The threat from the applicant's persecutor existed as long as he stayed in Latvia. For the applicant, it was important to leave that country. As long as he stays outside Latvia, be it in Russia or elsewhere, he is safe (see the certified tribunal record, at page 336).

[28] As raised by the respondent, it was therefore reasonable to conclude from such statements that the applicant does not have a fear of persecution in Russia.

[29] Because the applicant did not have a fear of persecution in Russia and because it was within his control to obtain citizenship in that country, it was completely reasonable for the RPD

to find that the applicant could have acquired Russian citizenship by means of a simple formality. That finding cannot warrant the Court's intervention.

[30] Alternatively, it should be noted that, having already found that it was reasonable to expect the applicant to take steps to acquire citizenship in Russia, where he would not be at risk of persecution, the RPD was under no obligation to consider the issue of persecution in Latvia or that country's ability to protect its residents.

2. *Is the fact that the applicant did not apply for Russian citizenship, and thus did not seek protection from Russia, sufficient for the RPD to reject his refugee claim?*

[31] As noted above, that issue has already been determined by previous jurisprudence: in fact, the rejection of an applicant's refugee claim is justified if the applicant could have acquired citizenship in another country and if the applicant did not face a well-founded fear of persecution in that country. In this case, the analysis of the first sub-issue already supports the finding that the applicant's situation meets those criteria. I am therefore of the opinion that the RPD was correct when it rejected the applicant's refugee claim.

[32] As a result, this Court finds that the applicant's submissions are unfounded.

[33] The parties were invited to submit a question for certification but none were proposed.

ORDER

THE COURT ORDERS that the application for judicial review is dismissed. No question is to be certified.

"Simon Noël"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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