Federal Court Cour fédérale

Date: 20140915

Docket: IMM-7927-13

Citation: 2014 FC 881

Ottawa, Ontario, September 15, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

VYACHESLAV TALANOV
KARINA BRISSOVA
NATALIA BRISOVA
MIKHAIL TALANOV

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] **UPON** an application for judicial review made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA];

[2] **AND UPON** review of the application and the documentation presented in support of the said application;

[3] **AND UPON** considering carefully the arguments put forward by counsel for the parties, the Court must conclude that the application for judicial review has to be dismissed. Here are the reasons for that conclusion.

[4] The decision which is the subject of the application for judicial review was made by the Refugee Protection Division [RPD] which concluded that the applicants are not Convention refugees because they lack a nexus to the Convention refugee definition and they are not persons in need of protection under section 97 of the IRPA as they lack credibility and had an internal flight alternative. The standard of review in matters of this nature is reasonableness (as for the nexus to the Convention, see *Balachandran v Canada (Citizenship and Immigration)*, 2014 FC 800; *Servellon Melendez v Canada (Citizenship and Immigration)*, 2014 FC 700; as for credibility findings, see *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155; *Lakatos v Canada (Citizenship and Immigration)*, 2014 FC 785; as for the existence of a viable internal flight alternative, see *Leon Jimenez v Canada (Citizenship and Immigration)*, 2014 FC 780; *Sandoval Aramburo v Canada (Citizenship and Immigration)*, 2013 FC 984).

[5] It follows that a standard of review of reasonableness "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law." (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190)

[6] I believe the facts of this case speak for themselves and lead inexorably to the conclusion reached by the Court. The applicants are citizens of Kazakhstan and resided in that country prior to coming to Canada and claiming refugee status. The applicants base their claim on a fear of Mr Talanov's brother, Igor, who at one time was romantically involved with Ms Brissova. The applicants allege that Ms Brissova began dating Igor Talanov in 2000. In 2001, Ms Brissova moved into the family apartment. They claim that Igor Talanov demanded money from Mr Talanov, Ms Brissova, and his mother (Natalia Brisova) on multiple occasions in order to support a drug addiction. The applicants also allege that Igor Talanov physically and verbally abused Ms Brissova on a regular basis. The applicants claim that Igor Talanov stabbed Mr Talanov on New Year's Eve in 2003 when Mr Talanov attempted to protect Ms Brissova from an assault by the brother. The stabbing was not reported to the police.

[7] Following a robbery in 2003, Igor Talanov was sent to prison and Mr Talanov and Ms Brissova began their relationship. They married in October 2003 and son Mikhail was born in December of that year. The applicants allege that, following Igor Talanov's release from that prison sentence in 2005 and despite their relocation to a different town in Kazakhstan (where they lived with Ms Brisova), the brother continued to threaten them and demand money. The applicants claim to have contacted the police, but were told to settle the problem themselves. In 2007, Igor Talanov was again incarcerated for robbery with his sentence running to August of 2012. The applicants did not approach the police for protection during this period of imprisonment.

[8] In 2007, the applicants decided that their lives were at risk from him. In anticipation of his release, the applicants began planning to claim refugee status in Canada. Mr Talanov arrived in Canada, via the United States, and made his claim on May 30, 2011. The other applicants arrived in Canada later, on August 31, 2011; they also arrived via the United States.

[9] I would readily agree with the RPD that the claim in the circumstances can only be examined on the basis of section 97 of the IRPA, that is that these applicants are persons in need of protection. Section 96 of the IRPA could not apply because the claim is on the basis of criminality, including vendettas and blood feuds, which are not connected to the grounds listed in section 96 (*Zefi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 636).

[10] The RPD was not satisfied with the evidence provided by the claimants to support their claim and repeatedly made negative findings regarding their credibility. It felt that the applicants had not presented "sufficient credible and trustworthy evidence" to show they had approached the police for protection nor to support the allegation that Mr Talanov had been stabbed by his brother.

[11] Furthermore, the RPD did not find the applicants' behaviour to be credible noting that while Igor Talanov was incarcerated they failed to seek police protection and that two of the applicants (Ms Brissova and Ms Brisova) left and returned to Kazakhstan after they had decided their lives were at risk.

[12] The RPD also conducted what it described as an "alternative analysis" for its decision, the existence of a viable internal flight alternative in the Kazakh capital of Astana. At the hearing, the panel member raised the possibility of the applicants relocating to Astana with Mr Talanov. In its decision, the RPD held that it was "not provided with sufficient credible and trustworthy evidence that an address bureau is administered by the government and that the persecutor could easily locate the claimants in the proposed IFA" nor was it provided with "sufficient credible and trustworthy evidence that police as well as other law enforcement authorities could not provide the claimants with adequate state protection" even if Igor Talanov were to locate the applicants in Astana. The RPD concluded that, notwithstanding the difficulties in finding employment, it would not be unreasonable to expect the applicants to relocate to the internal flight alternative. In spite of the valiant effort of counsel for the applicants, the application for judicial review must be dismissed because none of the conclusions reached by the RPD are unreasonable, on the facts of this case, and the record before this Court.

[13] We must not lose sight of the reason why these applicants want to seek refuge in Canada. This stems from their fear of revenge from the principal applicant's brother. There is no indication that the principal applicant's sibling is either omnipotent or omnipresent. He is someone with a criminal past who holds a grudge against family members. The Supreme Court of Canada set the bar appropriately high for those who seek international protection. In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, one reads the following:

> The international community was meant to be a forum of second resort for the persecuted, a "surrogate", approachable upon failure of local protection. The rationale upon which international refugee law rests is not simply the need to give shelter to those persecuted by the state, but, more widely, to provide refuge to those whose

> home state cannot or does not afford them protection from persecution. (Page 716)

[14] In the case at hand, the RPD had significant concerns about the credibility of the story being told by the principal applicant. There were good reasons to be reluctant to accept that story. But even if the story were accepted, it remains that these applicants, instead of coming to Canada, had the ability to relocate in their home country. The evidence is clear that the capital city, located some 2000 kilometres from where the alleged events took place, could be an alternative to seeking refuge in Canada.

[15] The Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 required that the issue of an internal flight alternative be raised before a determination can be made. Such was done in this case. Once a potential internal flight alternative is raised, it is then the burden of the applicant to establish on the balance of probabilities that there is a serious possibility of persecution in the capital city, 2000 kilometres away from where the alleged persecutor lives (see also *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589).

[16] The RPD in this case applied the test and the conclusion that the applicants have not discharged their burden is reasonable. There was no evidence offered by the applicants, or even a plausible argument based on past experience, that could justify a finding that Mr Talanov's brother could have the inclination and the means to locate the applicants some 2000 kilometres from where he is and that, if he were able to locate them, the local authorities could not give the applicants the kind of protection required in those circumstances. Indeed, if the principal

applicant's brother had the inclination and the means to locate them in his country some 2000 kilometres from where he lives, he might as well be able to locate them where they have found refuge. In the circumstances of this case, the conclusion reached by the RPD has not been shown to be unreasonable and that is sufficient to dispose of this case.

[17] The applicants have also made submissions to the effect that the reasons given by the RPD were not adequate. The applicants relied on case law which has been overtaken by the Supreme Court of Canada decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708. It will suffice, for our purposes, to quote the first few words of paragraph 14 of that decision:

> Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses - one for the reasons and a separate one for the result.

[18] Accordingly, the application for judicial review is dismissed. There is no question for certification.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. There is no question for certification.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7927-13
STYLE OF CAUSE:	VYACHESLAV TALANOV, KARINA BRISSOVA, NATALIA BRISOVA, MIKHAIL TALANOV v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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