Federal Court  Cour fédérale

Date: 20141208

Docket: IMM-5140-13

Citation: 2014 FC 1183

Ottawa, Ontario, December 8, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

LJUCA JUNCAJ, DIELL LUCA (A.K.A. DIELL JUNCAJ), VINCE JUNCAJ AND VIKTOR JUNCAJ

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

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

[2] **AND UPON** reviewing the record and receiving the representations of counsel;

[3] For the reasons that follow, the application for judicial review is granted.

[4] This case brings forth the tension between insufficient reasons for a decision and what appears to be significant confusion in the reasons for the decision.

[5] On one hand, the Supreme Court of Canada states unequivocally that inadequate reasons are not a stand-alone basis for quashing a decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Nurses' Union*]). Indeed, reviewing judges are invited to consider "the record for the purpose of assessing the reasonableness of the outcome" (at para 15).

[6] On the other hand, it must be possible for the reviewing judges to ascertain the reasonableness of a decision. Repeated mistakes on important issues affect the reasonableness of the decision (*Nurses' Union*, at para 22).

[7] In its reasons, the RPD made many serious errors and mistakes about the evidence presented before it by the applicants, as reflected in the hearing transcripts. Multiple events and circumstances are incorrectly attributed to the wrong adult applicant, such that the narrative laid out by the RPD simply does not make sense. The nationalities of the two adult applicants are confused. Some events which the applicants testified as occurring in Montenegro are presented by the RPD as happening in Albania. The overall, combined effect of these errors is that the decision was drafted and rendered without consideration and appreciation of the evidence before it.

[8] A reasonableness review is "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process": *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47. In my view, these mistakes go to the heart of the matter and lead to an unreasonable result; the RPD decision is neither transparent nor intelligible. Without substituting the Court's view of the evidence for that of the RPD, which is not permissible on judicial review, it is not possible to decipher with any measure of precision if the decision under review is reasonable.

[9] The comments of the Federal Court of Appeal more than 22 years ago in *Uddin v Canada (Minister of Employment and Immigration)*, [1992] ACF No 445 appear to me to be apposite:

> -- Despite the admirable submissions by counsel for the respondent, we are all of the opinion that the decision *a quo* cannot be upheld.
>
> The number of inaccuracies and errors counsel for the appellant was able to identify in the statement of facts as set out in the decision, some of which were of major importance, leave the Court with the impression that the members had difficulty following the claimant's testimony, and that accordingly their analysis of the evidence and their assessment of the appellant's credibility are too suspect not to require the intervention of this Court.

[10] The Crown, in a valiant effort to salvage the impugned decision, argues that the RPD's decision on the availability of state protection is reasonable and that, all by itself, is enough to dispose of the matter.

[11] There is something to be said for that argument. The presumption of availability of state protection can only be rebutted by clear and convincing evidence (*Canada (Attorney General) v*

Ward, [1993] 2 SCR 689). The law does not require that there be perfect protection. I share the view expressed by the Chief Justice of this Court that "[i]t is not unreasonable to expect a person who wishes to seek the assistance and generosity of Canada to make a serious effort to identify and exhaust all reasonably available sources of potential protection in his or her home state, unless there is such a compelling or persuasive basis for refraining from doing so" (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004, at para 50).

[12] However, in view of the numerous mistakes made throughout the decision, it would be unsafe to dispose of this matter on the basis that the decision on the availability of state protection is satisfactory. In my estimation, it is not. Even the passage of the transcript referred to specifically in the Crown's memorandum of fact and law on the issue of state protection tends to show a measure of confusion on the part of the RPD. Its decision also reveals what would appear to be *non sequitur*. The same confusion about the facts appears to transpire in the reasons given to support the availability of state protection, in spite of the acknowledgement that the phenomenon of "blood feuds" may not have been eradicated.

[13] The adjudication of this matter was deficient and it is in the interests of justice that it be sent back to the RPD for redetermination by a different panel. These reasons should not be taken as supporting a view as to whether the applicants are entitled to refugee status. That issue is entirely in the province of the new RPD panel to consider.

ORDER

THIS COURT ORDERS that the application for judicial review is granted and the matter is sent back for redetermination by a different panel. No question is certified.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5140-13
STYLE OF CAUSE:	LJUCA JUNCAJ, DIELL LUCA (A.K.A. DIELL JUNCAJ), VINCE JUNCAJ AND VIKTOR JUNCAJ v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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