

Federal Court



Cour fédérale

Date: 20150410

Docket: IMM-7203-13

Citation: 2015 FC 447

Ottawa, Ontario, April 10, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

**EKREM BECIREVIC, IVANA BECIREVIC,
JASMIN BECIREVIC, SAMIR BECIREVIC,
EMINA BECIREVIC AND EKREM
BECIREVIC**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter and Background

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] in respect of a decision of the Refugee Protection Division [RPD] dated October 14, 2013, which rejected the Applicants' claim for

protection under sections 96 and 97(1) of the *Act*. The Applicants ask this Court to set aside the RPD's decision and return their claims to another member of the RPD for re-determination.

[2] The Applicants are a family from Serbia, consisting of the principal Applicant, his wife, and their four minor children. They all came to Canada on May 1, 2012, and sought refugee protection some two weeks later. Their claim was based on two grounds. First, both the principal Applicant and his wife come from mixed marriages; the principal Applicant's mother was Hungarian and his father was a Muslim Serbian, while his wife's mother was also Hungarian and her father was of mixed Hungarian and Croatian ethnicity. They said that this ethnicity has led to discrimination against them and their children in Serbia. Second, the principal Applicant said that his father had discovered and spoken out about illegal quarrying of sand, in which "a number of high-ranking persons in Serbia were involved." As a result, he says that he and his family were targeted by the Serbian mafia. At one point, the principal Applicant was threatened with a gun in front of his son, and despite reporting this incident and other threats the police in Serbia refused to help them. After their youngest child was allegedly neglected at her kindergarten, the Applicants decided to flee from Serbia. The principal Applicant explained in his narrative that "[w]e had an opportunity based on our ancestry to get Hungarian citizenship, and with the passports came to Canada."

II. The RPD's Decision

[3] The main issue addressed by the RPD was whether the Applicants were citizens of Hungary. Although they had genuine passports and all their written materials indicated that they were citizens of Hungary, the principal Applicant said at the hearing before the RPD that they

had obtained this status fraudulently and would likely be deported if they tried to live in Hungary. Specifically, he said that neither he nor his wife could speak Hungarian, which was one of the requirements for citizenship, and that they bribed a connection at the Hungarian embassy in Subotica in order to secure the passports. The RPD rejected that argument and determined that the Applicants were all citizens of Hungary. Since they also were nationals of Serbia, the RPD further determined that because “the claimants have citizenship of both Hungary and Serbia, they must establish a fear to return to each country.”

[4] The RPD then assessed the Applicants’ claims in relation to Hungary, finding that there would be adequate state protection for them in that country, and thus concluded as follows:

[36] The claimants have failed in establishing that should they return to Hungary, they would face more than a mere possibility of persecution, or that it would be more likely than not, that they would face a risk to their lives or cruel and unusual punishment or torture.

[37] Because of this finding, I do not need to analyze the claimants’ fear of return to Serbia.

III. Standard of Review

[5] I disagree with the Applicants’ submissions that ignoring relevant evidence is a breach of the duty of procedural fairness which should be reviewed on a standard of correctness. The decisions relied upon by the Applicants in this regard, notably *Djama v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 531 (QL) (CA) and *Ellis-Don Ltd v Ontario (Labour Relations Board)*, 2001 SCC 4 at para 65, [2001] 1 SCR 221, Binnie J, dissenting, do not support that characterization of the issue at all. Rather, an assertion that the RPD overlooked evidence is nothing more than an allegation that the RPD made an erroneous finding of fact

“without regard for the material before it,” which is a separate ground of review under paragraph 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7 (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 45-46, [2009] 1 SCR 339; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at paras 14-17 (TD) [*Cepeda-Gutierrez*]).

[6] Accordingly, the Applicants are only challenging the RPD’s findings of fact and of mixed fact and law, and those findings are entitled to deference (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at paras 13-14 (available on CanLII); *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]). The RPD’s assessment of the evidence and its decision should therefore not be disturbed so long as it was justifiable, intelligible, transparent and defensible in respect of the facts and the law (*Dunsmuir* at para 47). Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

IV. Issues and Analysis

[7] The central issues in this case were the RPD’s assessment of the Applicants’ status as citizens of Hungary and whether that country could afford them adequate state protection.

[8] I agree with the Respondent that the RPD reasonably assessed the Applicants’ Hungarian citizenship and determined that they had failed to rebut the presumption of such citizenship. In

this regard, this Court's decision in *Yah Abedalaziz v Canada (Citizenship and Immigration)*, 2011 FC 1066, deserves note:

[42] Paragraph 93 of the *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, September 1979, recognizes the existence of a *prima facie* presumption that a passport holder is a national of the country of issue. The mere assertion by the passport holder that it was issued as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality (*Mathews v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387, 127 A.C.W.S. (3d) 528 at paragraph 11; *Adar v. Canada (Minister of Citizenship and Immigration)* (1997), 132 F.T.R. 35, 71 A.C.W.S. (3d) 1151).

[9] In this case, the Applicants travelled to Canada on genuine Hungarian passports and repeatedly confirmed their Hungarian citizenship in their initial refugee claim forms and later personal information forms. Although the Applicants raised questions at the hearing before the RPD as to the manner by which their Hungarian passports had been obtained, the RPD reasonably found that they had not rebutted the presumption of citizenship that holding the genuine Hungarian passports conferred. The Applicants now claim that the RPD failed to consider documents issued to them by Canada on May 24, 2012, that stated their citizenship was unknown, but that evidence is too ambiguous to warrant an inference that the RPD overlooked it (*Cepeda-Gutierrez* at para 17).

[10] It also was reasonable for the RPD to find that the objective country condition evidence was such that the Applicants would be afforded adequate state protection if they were to have problems in Hungary from the Serbian mafia or by reason of their Muslim ethnicity.

[11] Lastly, it was reasonable for the RPD not to analyze the Applicants' fear of being returned to Serbia. The Applicants were found to be citizens of Hungary and would be afforded adequate state protection should they return there. If a refugee claimant has the right to live in a country that can protect him or her, then Canada's obligation to provide surrogate protection is not engaged. In this regard, a claimant's burden to prove that he or she is a Convention refugee "includes a showing of well-founded fear of persecution in all countries of which the claimant is a national" (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 751, 103 DLR (4th) 1 (emphasis added)). This principle has also been endorsed more recently by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Williams*, 2005 FCA 126 at paras 20, 22, [2005] 3 FCR 429, and *Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 at para 38, 291 DLR (4th) 68.

[12] Thus, the RPD was not required to assess the Applicants' fear of returning to Serbia. Since the RPD reasonably found that the Applicants were citizens of Hungary and would be safe there, there was no need to consider the existence of any threat in Serbia or whether state protection was adequate there.

[13] The RPD's decision in this case was justifiable, understandable, transparent and defensible in respect of the facts and the law. It is within the range of possible, acceptable outcomes.

V. Conclusion

[14] In the result, therefore, the Applicants' application for judicial review is hereby dismissed. Neither party suggested a question for certification; so, no such question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, and that there is no serious question of general importance certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7203-13

STYLE OF CAUSE: EKREM BECIREVIC, IVANA BECIREVIC, JASMIN BECIREVIC, SAMIR BECIREVIC, EMINA BECIREVIC AND EKREM BECIREVIC v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 19, 2015

JUDGMENT AND REASONS: BOSWELL J.

DATED: APRIL 10, 2015

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