Federal Court  Cour fédérale

Date: 20150925

Docket: IMM-1994-15

Citation: 2015 FC 1119

[UNREVISED ENGLISH TRANSLATION]

Ottawa, Ontario, September 25, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

LATIFA MORSLI
REDA BALACHE
RAYANE MOHAMED FEGHOUL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The applicants, Latifa Morsli and her two sons, are Algerian citizens. They left Algeria for Canada in December 2012 due to incidents that had led Ms. Morsli's former husband, Fouad Feghoul, who is also the father of co-applicant Rayne Mohamed Feghoul (Rayne), to flee the country a few weeks earlier to seek refuge in Canada.

[2] Immediately upon joining Mr. Feghoul in Canada, the applicants and Mr. Feghoul claimed refugee protection. The claim was based on difficulties encountered by Mr. Feghoul in the months preceding his leaving Algeria. As magistrate and examining judge at the El Bayadh tribunal in the Saida Court, Mr. Feghoul apparently, in February 2012, ordered the detention of four repentant terrorists charged with smuggling, weapons trafficking and forced marriages of minors. Following this decision, Mr. Feghoul purportedly received death threats. The situation reached its apex in October 2012 when Mr. Feghoul was allegedly attacked by three individuals very close to the family's home. His life was reportedly saved thanks to the intervention Ms. Morsli's brother, who was with him at the time.

[3] There is one particular twist in the matter. Since their arrival in Canada, Ms. Morsli and Mr. Feghoul have divorced; Mr. Feghoul withdrew his claim for refugee protection as well as that of his son, Rayne (for which Ms. Morsli later re-applied); Mr. Feghoul left Canada for what the applicants believe to be Spain and is apparently no longer an examining judge.

[4] The applicants fear that in the event they were to return to Algeria, their lives would be threatened by a desire for vengeance on the part of the group of criminals that had targeted Mr. Feghoul. In a decision dated April 10, 2014, the Refugee Protection Division [the RPD] of the Immigration and Refugee Board rejected their claim for refugee protection, being of the opinion that they did not meet the definition of refugees or of persons in need of protection within the meaning, respectively, of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act").

[5] The applicants submit that the RPD erred in finding that they were not persons in need of protection within the meaning of section 97 of the Act. The RPD concluded in this regard that the applicants had not established that the alleged threat was prospective and that, in any event, an internal flight alternative was available to them in the country's capital, Algiers.

[6] Authorized, pursuant to subsection 72(1) of the Act, to seek judicial review of this decision, they are asking that it be set aside and that the matter be referred back for redetermination before a differently constituted RPD.

[7] The issue to be decided here is whether the RPD, in making its findings, committed an error that would warrant the Court's intervention, in accordance with section 18.1 of the *Federal Courts Act*, RSC (1985), c F-7. It is well established that the standard applicable to this type of issue is reasonableness (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 [*Dunsmuir*].

[8] According to this standard of review, the Court must show deference to the RPD's findings and will therefore only intervene if those findings lack justification, transparency or intelligibility and fall outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at para47). Also according to this standard, it is not the Court's role to substitute its own assessment of the evidence in the record for the assessment made by the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 59).

[9] In this case, I find that the RPD's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law and that, accordingly, there is no need to intervene.

[10] It is well established that those who seek Canada's protection under section 97 of the Act must, in order to succeed, establish that the risk or threat they purport to face is personalized and of a prospective nature. This is a central element of the right to protection set out in section 97 and in the analytical approach developed in the Court's case law (*Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678, 409 FTR 290, at para 40; *Acosta Acosta v Canada (Citizenship and Immigration)*, 2009 FC 213, at para 13; *Cessa Mancillas v Canada (Citizenship and Immigration)*, 2014 FC 116, 447 FTR 162, at para 25).

[11] The applicants therefore needed to establish that they would face a personalized risk, if they were to return to Algeria, of threats to their lives or a risk of cruel and unusual treatment or punishment at the hands of the individuals who had targeted Mr. Feghoul. However, the RPD was of the view that this had not been demonstrated on the grounds:

a. That two and a half years had elapsed since Mr. Feghoul was attacked;

b. That the applicants had not been subjected to any direct or personalized threats prior to leaving Algeria to join Mr. Feghoul in Canada, whether during the period in which he was receiving threats, following his assault, or during the period between the moment Mr. Feghoul left Algeria on November 5, 2012, and when the applicants left to join him one month later;

c. That they have not been the subject of such threats since then; and

d. That the members of Ms. Morsli and Mr. Feghoul's families, who remain in Algeria, had not been threatened or harassed at all by the group of criminals either before or after the departure of Mr. Feghoul and the applicants.

[12] In short, the RPD concluded that nothing in the evidence adduced by the applicants showed that the individuals who had threatened and attacked Mr. Feghoul had the slightest interest in tracking them down to seek revenge against Mr. Feghoul, who, the RPD noted, no longer lives in Algeria and has been relieved of his functions as an examining judge.

[13] Having examined the evidence in the record, I cannot say that the RPD made unreasonable findings, quite the contrary. The applicants nonetheless insist that they remain random targets and that the Court should, on the basis of *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, 128 DLR (4th) 213 [*Chan*], a matter that deals with the scope of the definition of a refugee within the meaning of the *Convention on Refugees*, give them the benefit of the doubt. However, this argument cannot be retained. In the first place, the applicants do not dispute before this Court that they are not Convention refugees. Second, this argument is founded upon the opinion of dissident Justices of the Supreme Court of Canada in *Chan*, which lends it limited weight. In any event, it is important to state that it is not enough, in this case, to establish the existence of a subjective fear, even with the benefit of the doubt given; the alleged threat or fear must also be objectively well-founded. This is what the majority in *Chan* thought important to recall at paragraph 133 of the judgment:

> Nevertheless, even if the appellant is given the benefit of the doubt on the question of a subjective fear, the existence of a subjective fear of persecutory treatment is not sufficient to meet the statutory definition of a Convention refugee. It is the responsibility of the claimant at a refugee determination hearing to lay an evidentiary foundation upon which the Board can conclude not only that the fear existed in the mind of the claimant but also that it was objectively well-founded.

[14] As the respondent points out, the onus was on the applicants to provide evidence to support their allegations on a balance of probabilities (*Shire v Canada (Citizenship and Immigration)*, 2014 FC 795 at para 3; *Scott v Canada (Citizenship and Immigration)*, 2012 FC 1066, at paras 30-32). In the absence of tangible evidence indicating that the applicants would personally face, should they return to Algeria, the vengeance of the group of individuals that had targeted Mr. Feghoul, it was reasonable for the RPD to reject the claim based on section 97 of the Act. After all, according to the evidence in the record, neither the applicants, nor the extended family they left behind, were ever threatened by anyone both during and after the incidents Mr. Feghoul was victim to, and he himself, who was the sole target of the group of individuals he had ordered detained, no longer lives in Algeria.

[15] This appears to me to be quite sufficient, based on an assessment on a standard of reasonableness, to lead me to conclude that there is a lack of prospective fear. In other words, it will not suffice, to meet the definition of "person in need of protection" within the meaning of section 97 of the Act, to claim that one is a potential random victim on the basis of purely random evidence. As in cases in which it must be determined whether a refugee claimant meets the definition of a Convention refugee, a minimum objective basis is required.

[16] Lastly, the applicants submit that to the extent that the RPD did not question the credibility of the narrative of events that served as a basis for the refugee protection claim, namely those which led Mr. Feghoul to leave Algeria, it should have, based on *Gonzales v Canada (Citizenship and Immigration)*, 2013 FC 426, 431 FTR 268, at para 12), "conduct[ed] an individualized and thorough analysis of the facts presented". In my view, this is exactly what the RPD, based on the evidence that was before it, did. Its analysis is complete. The fact that the applicants disagree with the RPD's conclusion is not sufficient to justify the intervention of the Court.

[17] I am therefore satisfied that the RPD, in determining that the applicants had not succeeded in establishing the existence of a prospective risk, made findings on the basis of the evidence that, in accordance with Dunsmuir, above, fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Given this conclusion, it is not necessary to determine whether the RPD erred in finding, alternatively, that the applicants, supposing that risk had been established, had an internal flight alternative available to them.

[18] The parties agreed that this case did not raise any serious question of general importance, within the meaning of subsection 74(d) of the Act. I agree.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"

Judge

Translation

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1994-15
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