Federal Court Cour fédérale

Date: 20160114

Docket: IMM-3430-15

Citation: 2016 FC 40

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, January 14, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

KATERYNA MYKYTINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD] dated June 18, 2015.

[2] The applicant is a citizen of Ukraine and originally from the Donetsk area; her mother tongue is Russian. She is retired and claims a fear of the Ukrainian army and Russian-speaking

rebels fighting in her native region. She left Ukraine in July 2014, coming to Canada, where her sister lives, and claimed refugee protection in August 2014. In a decision dated January 2, 2015, the Refugee Protection Division [RPD] determined that the applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], hence this application for judicial review.

[3] First, the legality of the RAD's preliminary determination on the inadmissibility of some evidence and the determination not to hold an oral hearing are not at issue.

[4] Second, after examining its role as an appellate tribunal and reviewing the Federal Court case law in this regard (including *Alvarez v Canada (Citizenship and Immigration)*, 2014 FC 702; *Eng v Canada (Citizenship and Immigration)*, 2014 FC 711; *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799; and *Spasoja v Canada (Citizenship and Immigration)*, 2014 FC 913), the RAD made its own assessment of the evidence before the RPD and of the admissible evidence presented before it in order to determine whether the RPD had committed a palpable and overriding error. The member's approach does not constitute a reviewable error as the Federal Court of Appeal still has not ruled on the issue of the scope of an appeal or the applicable test before the RAD (*Alyafi v Canada (Citizenship and Immigration)*, 2014 FC 952).

[5] Regarding the merits of the appeal itself, the RAD then examined the RPD's review of the IFA in light of the factors identified by the Federal Court of Appeal in *Rasaratnam v Canada*, [1992] 1 FC 706 (CA), and *Thirunavukkarasu v Canada* [1994] 1 FC 589 (CA), which can be summarized as follows:

1. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.
2. Moreover, in all the circumstances including circumstances particular to the applicant, conditions in the part of the country to which the Board finds an IFA exists are such that it would not be unreasonable for the applicant to seek refuge there.

[6] First, the RAD found that the evidence adduced by the applicant did not establish that, on a balance of probabilities, she faced a serious possibility of persecution or that it was likely that she would be subjected to a risk to her life or to a risk of cruel and unusual treatment or punishment, or to a danger of torture if she were to move to Kiev, Ukraine. The RAD noted that the applicant did not think that the people she feared in her home city of Donetsk would be able to find or attack her in the city of Kiev. The applicant is not challenging the reasonableness of the conclusion that there was no personalized risk or a serious possibility of persecution before this Court.

[7] Second, the RAD examined whether it was unreasonable for the applicant to seek refuge in Kiev. Here, the RAD considered the applicant's testimony that she would have trouble finding work in Kiev—neighbours from Donetsk who had moved to Kiev having returned to Donetsk and having told her that it was difficult to find a job there—and that she would have to work in Kiev—because she did not have a big pension and would need to pay for housing in Kiev.

[8] The RAD also noted that the new UNHCR document on Ukraine dated January 2015, filed by the applicant on appeal and accepted into evidence by the RAD, indicates that the Ukrainian government has established a registration system for Ukrainians displaced from areas of conflict so that they could obtain their state pensions and other benefits, and that the

February 1, 2015, deadline for registering would not apply to the applicant. The same document also reports that, in October 2014, the Ukrainian parliament adopted a law to protect the rights of displaced persons and to simplify access to social services and employment. The RAD found that the mere fact that the applicant's neighbours had said that they had trouble finding work in Kiev did not establish that it would be impossible for the applicant to work there, especially if one considered her many years' experience as an educator. Consequently, the RAD determined that the financial difficulties described by the applicant did not make the IFA unreasonable.

[9] But the RAD's analysis did not stop there. The RAD also considered other relevant factors, such as the fact that the applicant no longer has any close family in Ukraine and that she would prefer staying with her sister in Canada. The RAD found, however, that the absence of family members in Kiev did not make the IFA unreasonable since the applicant had already been living in Ukraine without her sister and had not been receiving any help from her family. Lastly, the RAD noted that the applicant argued that Kiev residents would know that she comes from the eastern part of the country because of her accent when she speaks Ukrainian and that some of these residents might therefore [TRANSLATION] "think ill of her". However, the RAD noted that a reading of the documentary evidence revealed that most Kiev residents speak Russian—the applicant's mother's tongue.

[10] For all these reasons, the RAD found that the IFA in Kiev was not unreasonable for the applicant and that the RPD had not erred in its analysis of the IFA.

[11] Having considered the applicant's arguments, I am not satisfied that the RAD committed a reviewable error in its analysis, and the RAD's general conclusion seems an acceptable outcome in light of the applicable law, the RAD's reasons and all the evidence on the record.

[12] I accept the arguments for dismissing the application for judicial review made by the respondent in his factum and reiterated orally at the hearing. Specifically, I reject the applicant's general argument that the RAD did not consider all the evidence on the record. On the contrary, the RAD could reasonably conclude that the financial difficulties claimed by the applicant did not make the IFA unreasonable. The RAD did consider the evidence on the record, including the fact that the applicant was retired and that the authorities had taken measures so that displaced persons could receive their pension and access social services and employment. The RAD also considered that most residents of Kiev speak Russian and that a lack of family in Kiev did not make the IFA unreasonable. Although the applicant does not agree with the RAD's conclusion, she did not seriously challenge the evidence in the record on which the RAD based its reasoning. Regarding the documentary evidence on the overall situation of women in Ukraine, the RAD is presumed to have reviewed it, and this evidence alone does not support an inference that there is a particularized risk.

[13] This application for judicial review is dismissed. Counsel agree that the application raises no question of general importance.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Luc Martineau"
Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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