Federal Court  Cour fédérale

Date: 20230511

Docket: IMM-9288-21

Citation: 2023 FC 670

Ottawa, Ontario, May 11, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

HRVOJE VALIDZIC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 37 year-old citizen of Croatia. In March 2010, shortly after arriving in Canada as a visitor, he made a claim for refugee protection jointly with his two older brothers, Damir and Boris.

[2] Unbeknownst to the applicant, his counsel of record at the time, Artem Djukic, repeatedly delayed bringing the matter forward to a hearing. Eventually, in November 2017, Mr. Djukic

filed documents with the Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada purporting to withdraw the applicant's claim for protection along with that of his brother Damir. Subsequently, the RPD declared Boris's claim abandoned after neither he nor Mr. Djukic appeared for a hearing in December 2017.

[3] According to the applicant, Mr. Djukic withdrew his claim for protection without his knowledge or instructions. After he learned that this had happened, the applicant applied successfully to re-open his claim. His claim was finally heard by the RPD on October 28, 2021.

[4] Meanwhile, following complaints by several former clients, Mr. Djukic's membership in the Immigration Consultants of Canada Regulatory Council was revoked on the basis of professional misconduct. It appears that he is also facing criminal charges relating to his practice as an immigration consultant and the misappropriation of client funds.

[5] The applicant's claim for protection was based on his fear of persecution because of his participation in anti-government protests in Croatia in 2009. According to the applicant, while the protests were ongoing, he received a military call-up notice, despite having completed six months of mandatory military service in 2004. The applicant believed he was sent the call-up notice in retaliation for his involvement in the protests and he feared he would be subjected to abusive treatment if he reported for duty. As a result, he went into hiding for several months before leaving Croatia for Canada. The applicant claimed that another call-up notice was sent to him in 2014. The applicant fears that he will be required to serve as a military reservist if he

returns to Croatia. He also fears that he may be subject to prosecution amounting to persecution for having failed to report for duty.

[6] The RPD rejected the applicant's claim in a decision dated November 8, 2021. The RPD concluded that the claim is not well-founded because objective country conditions evidence established that military service in Croatia is now entirely voluntary. The RPD noted the applicant's submission that it should take into account that he had been taken advantage of by an unscrupulous immigration consultant, that his claim had been delayed for nearly 10 years through no fault of his own, and that during this time conditions in Croatia may well have improved compared to how they were when he first sought protection in Canada. The RPD stated that while it was sympathetic to the applicant's situation, "unfortunately humanitarian and compassionate considerations are beyond the scope of the panel." Accordingly, the RPD found that the applicant is neither a Convention refugee nor a person in need of protection.

[7] The RPD did not address the applicant's contention that he may be subject to prosecution amounting to persecution for having failed to report for duty in 2010 or 2014.

[8] The applicant now applies for judicial review of the RPD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). As I will explain, I am not persuaded that there is any basis to interfere with the RPD's decision. This application will, therefore, be dismissed.

[9] The parties agree, as do I, that the RPD's decision should be reviewed on a reasonableness standard. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[10] In my view, the RPD's determination that there is no longer forced conscription in Croatia is altogether reasonable. This finding is supported by objective country condition evidence, which indicated that conscription was suspended as of January 1, 2008. The applicant submits that the RPD misapprehended the evidence because, even if forced conscription in the regular armed services was now abolished, he had received a call-up notice to the military reserve and there was no evidence that forced conscription in the reserves had been abolished. I do not agree. The burden was on the applicant to establish this fact and he led no evidence capable of doing so.

[11] As the RPD noted, the applicant claimed to have received call-up notices in 2010 (while he was still in Croatia) and again in 2014 (after he was in Canada) but he could not produce

either of these documents. Even though it did not do so, it would have been open to the RPD to reject this evidence given the change in the law in 2008. It is also noteworthy that the applicant's original Basis of Claim narrative, which was completed in April 2010, did not mention his having received a call-up notice a few months earlier or the fears allegedly stemming from this. In any event, the RPD specifically asked the applicant if he could point to any evidence that he would be required to join the reserves if he returned to Croatia. He was unable to do so. On the record before it, the RPD reasonably determined that the applicant had failed to provide sufficient evidence to establish that his claim is well-founded.

[12] I agree with the applicant that the RPD should have addressed his submission that he was at risk of prosecution amounting to persecution for having failed to report for duty in 2010. However, I am not persuaded that this renders the decision unreasonable. This is because the fundamental premise of the argument is without support in the record: there is no evidence that, in the intervening 11 years, any legal process had been commenced against the applicant or that the authorities even have any interest in doing so. It is also far from clear that the provision of the Croatian Criminal Code the applicant cites (Article 367) would even apply. It concerns a failure to report for military service "in a state of war or imminent threat to the independence and unity of the Republic of Croatia" and there is no evidence that this was the case in 2010 or 2014. As well, there is no information in the country conditions documentation suggesting that state authorities had used call-up notices as retaliation for participation in anti-government protests.

[13] Furthermore, the applicant has not persuaded me that the RPD erred in rejecting the claim despite the fact that it may well have been accepted had it been heard in a timely way. I agree

with the RPD that the applicant's circumstances are sympathetic. However, the RPD reasonably – indeed, correctly – found that it had no jurisdiction to accept the claim on the basis of the sort of humanitarian and compassionate considerations raised by the applicant.

[14] Finally, the applicant submits that the RPD erred in failing to consider subsection 108(4) of the *IRPA*. I do not agree. Rather, I agree with the respondent that this provision applies only where the RPD has found that the claimant suffered past persecution and that the reasons for which the person sought refugee protection have since ceased to exist: see *Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at para 5. The RPD made no such finding here. As a result, it did not err in failing to consider whether subsection 108(4) applied.

[15] For these reasons, the application for judicial review will be dismissed.

[16] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-9288-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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