Date: 20071221

Docket: IMM-2085-07

Citation: 2007 FC 1351

BETWEEN:

MAJEWSKA, Sylwia
MAJEWSKA, Anna Maria
MAJEWSKI, Piotr Marek

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), in which it decided that the applicants were not "Convention refugees" or "persons in need of protection" as defined in sections 96 and 97 respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicants are a mother and her two children, citizens of Poland who claim refugee status based on the discrimination they have experienced as Roma.

[3] After recognizing that cumulative acts of discrimination and harassment can amount to persecution, the Board determined that, because of a lack of credibility, such that the applicants had not demonstrated a well-founded fear, and the availability of state protection, the applicants' claim should be rejected.

[4] The Board pointed to a number of inconsistencies between Mrs. Majewska's Personal Information Form ("PIF") and the medical report she provided, including the omission from the PIF of the cracked ribs mentioned on the medical report, and the medical report's failure to mention Mrs. Majewska's husband's injuries or the fact that she was unconscious when she arrived at the hospital. Additionally, the medical report states that Mrs. Majewska came to the hospital, while her PIF states that she was brought there by ambulance. The Board did not find Mrs. Majewska's explanation of these discrepancies, that the doctor who filled out the report was "just being mean to not include all the information," and that she had omitted the cracked ribs from her PIF because she gets very excited when reading about the attack, to be persuasive. On this basis, the Board determined that Mrs. Majewska lacked credibility with regard to the alleged attack. This lack of credibility extended to Mrs. Majewska's claim that the police had no report or refused to help when she went to them in April 2006.

[5] With regard to the difficulties the applicants faced in the fields of education and employment, the Board reviewed the documentary evidence and noted:

> It appears to me from reading these DOS reports that the government authorities in conjunction with the Romani leaders are taking steps to implement new laws and put them into practice with a view to gradually improving the lives and opportunities for Romani both in the field of employment and education and to educate the police forces to recognize and deal with racially motivated violence and discrimination against Romani.

[6] Finally, the Board noted that, although the documentary evidence demonstrates occasional incidents of racially motivated violence and harassment,

> . . . It is apparent that the objective evidence discloses that every Polish citizen (including Roma) feeling discrimination, harassment or ill treatment may use legal means to seek justice.
>
> The principal claimant has failed to seek that type of justice available to her because of either her mistrust or lack of faith in the police authorities. I find that such mistrust or lack of faith in the police or court process in this particular instance is not justified. I find that there is adequate (although not perfect) state protection available to the principal claimant and her children in Poland. I find that the principal claimant (on behalf of herself and her children) has failed to present "clear and convincing" proof of Poland's inability to protect her and her family.

[7] The applicants first submit that the Board was unreasonable in what it expected the medical report to contain, and that therefore its findings on credibility cannot be upheld.

[8] The standard of review of the Board's decision with regard to the credibility of claimants is patent unreasonableness. Factual findings of the Board are not to be interfered with by the Court unless they were made in a perverse or capricious manner or without regard to the material before the Board (*Akhigbe v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249, [2002] F.C.J. No. 332 (T.D.) (QL); *Akinlolu v. Canada (Minister of Citizenship and Immigration)* (1997),

70 A.C.W.S. (3d) 136, [1997] F.C.J. No. 296 (T.D.) (QL); *R.K.L. v. Canada (Minister of Citizenship and Immigration)* (2003), 228 F.T.R. 43, and paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. 1985, c. F-7). Omission of a significant or important fact from a PIF can ground an adverse credibility finding (see *Akhigbe*, *supra*). Furthermore, the Board's decision should not be read microscopically, but rather should be understood as a whole and in the context of the evidence. Errors on the part of the Board must be material before the Court's intervention can be justified (*Miranda v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 81).

[9] In this case, I find the Board's inference that the medical report should have contained reference to Mrs. Majewska's husband's injuries, and the fact that Mrs. Majewska was brought to the hospital by ambulance, to be unreasonable. There is no evidence to indicate that a medical report from Poland would contain that kind of information, which is not directly related to Mrs. Majewska's medical treatment.

[10] Nevertheless, I find that the Board's credibility assessment is supported by its findings with regard to the medical report's failure to mention that Mrs. Majewska was unconscious on her arrival at the hospital, as stated in her PIF, and Mrs. Majewska's failure to mention that she had suffered cracked ribs in her PIF. In my opinion, these inconsistencies are sufficiently material to ground the Board's finding of credibility with regard to Mrs. Majewska's allegations about the incident in January 2006. Furthermore, in my opinion, the Board's finding on this issue was sufficient to ground its finding that Mrs. Majewska was also not credible with regard to her attempt to seek police protection.

[11] Secondly, the applicants point out that the Board incorrectly stated that they had invited a comparison between the U.S. Department of State ("DOS") reports from 2003 and 2005. Rather, as is clear from the transcript of the hearing, counsel for the applicants had sought to contrast the DOS reports from 2002 and 2005 with the DOS report from 2006, which demonstrate what the applicants claim is a noticeable change in the country conditions. According to the respondent, however, the Board conducted a careful analysis of the documentary evidence, and although the Board referred to the wrong exhibit, this is not fatal to its decision.

[12] Generally speaking, the onus is on the refugee claimant to demonstrate, clearly and convincingly, an absence of state protection when the state is not the agent of persecution, unless there is evidence that the state has completely broken down (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). Failure to mention a specific piece of evidence is not, in itself, fatal to the Board's decision. Furthermore, documentary evidence that state protection may be imperfect will not be sufficient to rebut the presumption of state protection (see, for example, *Woolaston v. Canada (Minister of Manpower and Immigration)*, [1973] S.C.R. 102 and *Pitrowski v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 784, [2005] F.C.J. No. 1001 (T.D.) (QL)).

[13] In this case, I find the Board's assessment of the availability of state protection to be reasonable despite the Board's confusion with regard to the DOS reports. The Board took account of the existence of "occasional incidents of racially motivated violence," and the "failure of police to investigate and prosecute racially motivated crimes," but generally concluded that the applicants had "failed to seek that type of justice available." In my opinion, the 2006 DOS report, while it does note "reports of increasing intolerance," does not demonstrate a change in conditions such that the

applicants could be considered to have rebutted the presumption of state protection. Therefore, I will not interfere with the Board's conclusion on this issue.

[14] For all the above reasons, the application for judicial review is dismissed.

"Yvon Pinard"
Judge

Ottawa, Ontario
December 21, 2007

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

Mr. Mike Bell	FOR THE APPLICANTS
Ms. Alysia Davies	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mike Bell Ottawa, Ontario	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT