Date: 20090414

Docket: IMM-3447-08

Citation: 2009 FC 373

Ottawa, Ontario, April 14, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

GALINA SUVOROVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (Act) for judicial review of a decision of a Board of the Refugee Protection Division of the Immigration Refugee Board (Board), dated July 15, 2008 (Decision), refusing the Applicant's application to be deemed a Convention refugee or person in need of protection under section 96 and section 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of Russia and was the principal of a school in Ostashkov, Russia. In January 2006, she became aware that some of her students were using illegal drugs. When she confronted them, they revealed that they had become involved with individuals who had promised them lucrative modelling jobs overseas.

[3] The Applicant was concerned about the drug use and that the students involved were at risk of becoming victims of human trafficking. She reported her concerns to the authorities, including the Head of the Municipal Education of the town of Ostashkov and the Head of the Municipal Department of the Ministry of Internal Affairs of the Town of Ostashkov.

[4] The Applicant told the police about the students who were involved in drugs and the dangers of human trafficking. The police attended the school and made a report, which the Applicant signed, and they promised to begin an investigation.

[5] Criminals later broke into the Applicant's house and, when she picked up the phone to call the police, the intruders told the Applicant not to bother. They showed her a copy of her own letter to the police. The Applicant assumed that this meant the criminals were working with someone in the local police. When the Applicant brought this concern directly to the attention of the chief of the local police he was dismissive.

[6] The Applicant then wrote to a higher municipal authority, Mr. Pavlov, who had jurisdiction over the police force. He reacted quickly and invited the Applicant to a meeting that took place two days after she wrote the letter. During the meeting, the Applicant described her concerns regarding the criminal activities and possible local police involvement. The Applicant alleges that Mr. Pavlov was interested in her allegations and asked her for "every detail." He then promised to investigate the matter carefully and punish the person responsible. He told her he would take the situation under his control and form a special investigative committee to review the criminal case stemming from her original complaint to the police.

[7] Later, the Applicant received more threats. She again contacted Mr. Pavlov and he promised to follow up. The Applicant asked Mr. Pavlov for police protection and told him that she should be assigned a police guard. She was told by Mr. Pavlov that he did not have enough staff to do that. After the Applicant had left Russia, she learned that the local police chief had been removed from his position.

[8] The Applicant alleges that, as a result of her actions, her residence was broken into on March 15, 2006 late at night by men she suspected to be members of the Russian Mafia. They showed her a copy of her petition to the police. The Applicant also alleges that death threats were made against her and her children by the leader of the "criminal group" and that he would kill her and her children if she meddled in their trade. The Applicant received threatening phone calls, and was followed and monitored by an unknown individual whom she suspected was a mafia member

sent to harm her. On several occasions the police promised to look into and investigate the death threats but nothing was done to arrest or dissuade the individuals involved.

[9] The Applicant alleges that she has become the target of organized crime as a result of her opposition to, and interference with, drug and human trafficking activities.

[10] The Applicant arrived in Canada by air on August 15, 2006 in Toronto. She filed her inland refugee protection application on September 5, 2006 in Etobicoke, Ontario.

DECISION UNDER REVIEW

[11] The Board held that the Applicant was not a Convention refugee or person in need of protection.

[12] The Board found that the determinative issues were whether there was a nexus between the alleged fear and a Convention ground and whether there was an objective basis for the Applicant's fear of harm upon her return to Russia.

Credibility

[13] The Board held that the Applicant's testimony was credible in respect to the alleged acts that she had suffered. She was "spontaneous, forthright, and internally consistent." However, the Board

did not accept the Applicant's testimony regarding the risks she would face if she had to return to Russia.

Nexus

[14] The Board stated that in order for a Convention refugee claim to succeed, the alleged persecution must be linked to a Convention ground. A vendetta by organized crime does not necessarily constitute persecution. Counsel submitted that the nexus could be found in the Applicant's membership in a particular social group: women who are victims of human trafficking. However, the Board disagreed. There was no evidence to suggest that the Applicant was at a risk of being trafficked. She had interfered with criminals who were selling drugs to students and grooming them for possible trafficking. The Board concluded that the Applicant's opposition to a criminal organization does not in itself create a nexus to a Convention ground and she did not establish any other nexus. Therefore, the Applicant's section 96 claim failed.

Person in Need of Protection

[15] The Board held that the evidence presented in support of the Applicant's claim did not establish that she would be subject to a risk to life or a risk of cruel and unusual treatment or punishment if she were to return to Russia. It was not plausible to the Board that the criminal organization she feared would attempt to harm her. Even if there was a risk, the Board found that

there was state protection. The Board questioned the Applicant's testimony on the risks she would face upon returning to Russia as follows:

1) The Applicant did not know at all whether she had negatively disrupted criminal attempts at human trafficking. There was no evidence to suggest that criminal organizations specifically target education officials who oppose criminal activities in schools. The Applicant acted as any school principal would. She had resigned and, two years later, this criminal organization would not seek to harm her;

2) The Applicant's family members have been left unharmed and have not been subjected to threats since she left Russia, despite the organization previously threatening her family. The Board concluded that this showed the criminal organization no longer sought to harm her.

State Protection

[16] The Board held that, even if the Applicant would face a risk of harm from the criminal organization, she had not rebutted the presumption of state protection. Even if the local police were involved with organized crime, the Applicant had access to a higher-level authority that was interested in her complaint and had promised her action. The Applicant had not suggested that Mr. Pavlov did not take any action; she simply didn't know whether he had taken the steps he had promised. The Applicant did know that the local police chief, about whom she had complained, had been removed from office after her departure from Russia. The Board concluded that there was no reason why the Applicant, after her arrival in Canada, could not have sought more information

about the actions Mr. Pavlov had taken in response to her concerns. The Board felt there was very little evidence about how the authorities had acted, or failed to act, in response to her concerns beyond evidence that suggested that the authorities took her concerns seriously.

ISSUES

[17] The Applicant submits the following issues on this application:

1) Was the Board's overall assessment of the totality of the evidence unreasonable, perverse and capricious? Did the Board misstate, misapprehend or disregard material evidence properly before it to the extent that the Board committed an error of law?

2) Did the Board err in its findings with respect to the nexus of the persecutory acts suffered by the Applicant to any or one of the Convention grounds? In the alternative, was the Board under an obligation to consider all possible grounds of a refugee claim, even those not specifically raised by the Applicant to the extent that the Board committed an error of law?

3) Was the conclusion made by the Board that the Applicant had not rebutted the presumption of state protection and that a state is presumed capable of protecting its citizens, unless it is in complete breakdown, properly made, in light of both the oral testimony of the Applicant and the documentary evidence before the Board.

STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel

subject them personally	elle avait sa résidence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait

as being in need of protection is also a person in need of protection.	partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[19] Erroneous findings of fact that are made in a "perverse or capricious manner or without regard to the material," have, pre-*Dunsmuir*, been reviewed on the patent unreasonableness standard: *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, [2004] 3 F.C.R. 523 (F.C.) at paragraph 51; *Powell v. Canada (Minister of Human Resources Development)*, [2000] F.C.J. No. 1008 (F.C.A.); *Mugesera v. Canada (Minister of Citizenship and Immigration)* 2003 FCA 325 at paragraph 25; and *Harb v. Canada (Minister of Citizenship and Immigration)* 2003 FCA 39 at paragraph 18.

[20] When the Court is reviewing a decision involving state protection, the standard of review is reasonableness *simpliciter*: *Sanchez v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 76, except when reviewing the existence of an internal flight alternative, when patent unreasonableness is used: *Rosales v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 404 at paragraphs 12 and 13.

[21] In relation to the credibility of the Applicant, *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (*Aguebor*) at paragraph 4 states: "[a]s long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings

are not open to judicial review." In other words, the RPD's credibility findings in the present case are entitled to a high degree of deference and the burden rests upon the Applicant to show that the inferences drawn by the RPD could not reasonably have been drawn.

[22] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[23] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[24] Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issues raised to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable

outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENT

The Applicant

[25] The Board concluded that the Applicant's testimony about the persecutory acts she had suffered was credible. However, the Board's conclusion about the lack of nexus was "perverse, capricious and cannot stand the scrutiny of this Court." The Applicant says that the Board wrongly focused its analysis of the existence of a nexus by only considering if the Applicant herself was at risk of being trafficked.

[26] The Applicant submits that the Board is under an obligation to consider all possible grounds of a refugee claim, even those not specifically raised by an applicant: *Vilmond v. Canada (Minister of Citizenship and Immigration)* 2008 FC 926 (*Vilmond*).

[27] The Applicant relies on *Flores v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1167 (F.C.T.D.) which states at paragraph 10 that "sufficient nexus to sustain a claim to be a Convention refugee may be established where the motivation for persecution is mixed, but at least partially related to a Convention ground."

[28] The Applicant submits that her evidence and the objective evidence before the Board was clearly indicative of an apparent nexus between the persecutory acts suffered by the Applicant to the Convention grounds. It was incumbent upon the Board to consider all the possible grounds of the refugee claim, even those not specifically raised by the Applicant. The Board failed to do this and thus committed a reviewable error: *Vilmond*.

[29] The Applicant cites *Zhu v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1408 (F.C.T.D.) where the Court considered whether the actions of a Chinese citizen testifying in Canada against individuals alleged to be involved in human smuggling constituted an expression of a political opinion under the refugee Convention. The Court endorsed that it was not necessary for the applicant to present evidence of state complicity in the activities of the "snakeheads" in order to establish nexus. It was sufficient that the activities of the "snakeheads" engage the state apparatus.

[30] The Applicant also cites *Klinko v. Canada (Minister of Citizenship and Immigration)*, [2000] 3 F.C. 327 (F.C.A.) for the proposition that *Klinko* overruled earlier jurisprudence which held that persecution resulting from the condemnation of criminal activity could only be grounded in political opinion if the evidence established that state corruption was endemic, or that the state was complicit in, or condoned, the criminal activity.

State Protection

[31] The Applicant submits that Board misapplied the law and the legal test in its assessment and analysis of the availability of state protection to the Applicant in Russia. The Board imposed too onerous a burden of proof upon the Applicant and failed to undertake a thorough and satisfactory analysis of the Applicant's claim. The Applicant states that it was incumbent upon the Board to set out why her numerous attempts to seek state protection were insufficient to establish that she had taken all reasonable steps in the circumstances. The Board's failure to do this makes the Board's Decision unreasonable, and the Decision lacks justification and transparency.

[32] The Applicant says that there was abundant objective evidence before the Board to indicate the sophisticated nature of organized crime in Russia and the state's complicity with organized crime. The Applicant points to several pieces of documentary evidence that were before the Board and submits that the Board ignored this evidence. There was no examination of evidence as to how Russia could effectively protect victims of sophisticated organized crime.

[33] The Applicant submits that, in order for adequate state protection to exist, a government must have both the will and the capacity to implement effectively its legislation and programs. The Applicant cites *Streanga v. Canada (Minister of Citizenship and Immigration)* 2007 FC 792 at paragraphs 14 to 19:

> **14.** Public pronouncements and public awareness, as well as services for women who have already been victimized, do not amount to state protection. In light of the evidence of the serious inadequacies of the Romanian police (particularly concerning the

amount of corruption in the police force) in combating and preventing human trafficking, the PRRA Officer's reliance on the standard of "serious measures" is wrong.

15 The Applicant submits that the PRRA Officer has erred in viewing the legal test as one of "serious measures". The Federal Court in *Elcock v. Canada (MCI)*, [1999] F.C.J. No. 1438 (T.D.) (QL), at paragraph 15, established, that for adequate state protection to exist, a government must have both the will and the capacity to effectively implement its legislation and programs: Ability of a state must be seen to comprehend not only the existence of an effective legislative and procedural framework but the capacity and the will to effectively implement that framework.

16 In *Mitchell v. Canada (MCI)*, [2006] F.C.J. No. 185, 2006 FC 133, the Federal Court determined that the evaluation of state protection involves evaluating a state's "real capacity" to protect its citizens. The Court noted that it is an error to look to a state's good intentions and initiatives, if the real capacity of the state to protect women from violence was still inadequate.

17 In *Garcia v. Canada (MCI)*, [2007] F.C.J. No. 118, 2007 FC 79, the Federal Court held that a state's "serious efforts" to protect women from the harm of domestic violence are not met by simply undertaking good faith initiatives. The Court stated at paragraph 14:

> It cannot be said that a state is making "serious efforts" to protect women, merely by making due diligence preparations to do so, such as conducting commissions of inquiry into the reality of violence against women, the creation of ombudspersons to take women's complaints of police failure, or gender equality education seminars for police officers. **Such efforts are not evidence of <u>effective state protection</u> which must be understood as the current ability of a state to protect women...**

Garcia elaborates on the meaning of "serious efforts" at paragraph 16:

> ... **the test for "serious efforts" will only be met where it is established that the force's capability and expertise is developed well enough to make a credible, earnest attempt to** do so, from both the perspective of the woman involved, and the concerned community. The same test

> applies to the help that a woman might be expected to receive at the complaint counter at a local police station. That is, are the police capable of accepting and acting on her complaint in a credible and earnest manner? Indeed, in my opinion, this is the test that should not only be applied to a state's "serious efforts" to protect women, but should be accepted as the appropriate test with respect to all protection contexts.
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> **18** Justice La Forest stated in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 724 that "it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness."
>
> **19** Evidence of improvement and progress by the state is not evidence that the current response amounts to adequate, effective protection. As held in the Federal Court decision of *Balogh v. Canada (MCI)*, [2002] F.C.J. No. 1080 (QL) at paragraph 37, a state's willingness to provide protection is not enough:
> I am of the view that the tribunal erred when it suggested a willingness to address the situation...can be equated to adequate state protection.

[34] The Applicant also cites *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 724 for the proposition that "it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness."

[35] The Applicant concludes on this issue that the evidence of improvement and progress by a state is not evidence that the current response amounts to adequate, effective protection. The Court in *Balogh v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1080 at paragraph 37 stated that "I am of the view that the tribunal erred when it suggested a willingness to address the situation…can be equated to adequate state protection."

The Respondent

Allegation of Risk Not Credible

[36] The Respondent submits that the Court should not interfere with the Board's assessment of credibility where an oral hearing has been held and where the Board has had the advantage of seeing and hearing the witness. When the Board draws inferences and conclusions that on the record are reasonable, the Court should not interfere, whether or not it agrees with the inferences drawn: *Aguebor; Chen v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 551 (F.C.A.) at paragraph 7 and *Krishnapillai v. Canada (Minister of Citizenship and Immigration)* 2007 FC 563 at paragraph 11.

No Nexus to Convention Ground

[37] The Respondent submits that the Applicant did not establish a nexus to a Convention ground. Firstly, there was no evidence that the Applicant was in danger of being trafficked. Secondly, the Board found that the Applicant's opposition to a criminal organization did not in itself create a nexus to a Convention ground.

[38] The Respondent states that an applicant must fear persecution on the basis of one of the grounds set out in the definition of Convention refugee, "for reasons of race, religion, nationality, membership in a particular social group or political opinion": *Rizkallah v. Canada (Minister of*

Employment and Immigration), [1992] F.C.J. No. 412 (F.C.A.). The persecution must be directed towards the individual personally or as a member of a targeted group: section 96 of the Act.

[39] The Applicant's objective fear stems from the fact that unsettled and dangerous conditions exist within Russia. Merely proving that there are dangerous and unsettled conditions in the Applicant's country does not bring her within section 96 of the Act: *Darwich v. Canada (Minister of Manpower and Immigration)*, [1979] 1 F.C. 365 (F.C.A.).

[40] The Respondent also says that indirect persecution does not constitute persecution within the meaning of the definition of Convention refugee as there is no personal nexus between the applicant's alleged fear and a Convention ground: *Pour-Shariati v. Canada (Minister of Employment and Immigration)*, [1997] F.C.J. No. 810 (F.C.A.) and *Kanagalingam v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 243 (F.C.T.D.).

[41] The Respondent points out that the Applicant's fear was of a personal vendetta by a criminal organization and she has failed to demonstrate that the Board's finding of a lack of nexus to a Convention ground was unreasonable.

[42] The Respondent submits that numerous decisions of this Court have held that victims of criminal activity, including victims of organized crime, do not meet the definition of Convention refugees. A person's fear of persecution by criminals cannot be the basis of a valid refugee claim: *Ward; Mason*; *Calero v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No.

1159 (F.C.T.D.); *Suarez v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1036 (F.C.T.D.); *Valderrama v. Canada (Minister of Citizenship and Immigration)* (1998), 153 F.T.R. 135; and *Karpounin v. Canada (Minister of Employment and Immigration)* (1995), 92 F.T.R. 219.

[43] The Respondent also submits that in the context of political opinion, this Court has held that the reporting of a crime does not, in and of itself, provide a nexus to a Convention ground. It is not an expression of political opinion that would attract Convention refugee protection: *Ivakhnenko v. Canada (Solicitor General)* 2004 FC 1249 at paragraph 65; *Yoli v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1823; *Serrano v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 570 and *Marvin v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 38 at paragraph 19.

[44] The Respondent points out that, in *Ward,* the Supreme Court of Canada held that not just any dissent to any organization will unlock the gates to Canadian asylum; the disagreement has to be rooted in a political conviction. The Applicant's motives in reporting to the police could have been the result of a variety of factors other than a political conviction, including her responsibility as a principal of a school.

[45] The Respondent notes that the Applicant relies heavily on *Zhu*. However, in that case, the Court upheld the Board's findings with respect to the Applicant's fear of persecution as a person who had reported a crime and feared retaliation. By applying *Ward*, the Court upheld the Board's

decision that persons who inform on criminal activity do not form a particular social group. Therefore, *Zhu* does not stand for the proposition that persons who oppose crime can establish a nexus to the ground of political opinion. The reviewable error that the Court identified in that case was that the Board gave too narrow a construction as to what constitutes a political opinion when it found that Zhu was not expressing a political opinion when he left China illegally. That is not the issue in the case at bar.

Applicant Received Adequate State Protection

[46] The Respondent also submits that the Board's finding on state protection is clearly an alternative finding. After analyzing the Applicant's nexus and whether she was a person in need of protection, the Board considered state protection. Should the Court find any reviewable error with the state protection finding, such an error would not be fatal to the Board's Decision.

[47] The Respondent submits that local failures to provide effective policing do not amount to a lack of state protection: *Carillo v. Canada (Minister of Citizenship and Immigration)* 2008 FCA 94 at paragraph 32; *Zhuravlvev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 at paragraph 31 and *Soberanis v. Canada (Minister of Citizenship and Immigration)* 2007 FC 985 at paragraph 11.

[48] The burden of proof on an applicant is directly proportional to the level of democracy in the state in question: *N.K. v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No.

1376 at paragraph 5 and *Hinzman v. Canada (Minister of Citizenship and Immigration)* 2007 FCA 171 at paragraph 45 and that state protection needs to be adequate, not perfect: *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 and *Santiago v. Canada (Minister of Citizenship and Immigration)* 2008 FC 247 at paragraph 21.

[49] The Respondent points out that the Applicant approached a higher authority and received adequate state protection. Mr. Pavlov met with the Applicant within days of receiving her letter, asked for her story in detail, promised to investigate, and took her complaint seriously. He also told her that he would form a special investigative committee to review her case and the local police chief was removed from his position. The Respondent submits that this is evidence that state protection efforts were adequate and effective in this case.

No Error in Assessment of Evidence

[50] The Respondent submits that the Board is not required to refer in its reasons to each and every piece of evidence submitted. The Board is presumed to have weighed and considered all of the evidence presented to it unless the contrary is shown: *Hassan v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 946 (F.C.A.) and *Sanchez v. Canada (Minister of Citizenship and Immigration)* 2008 FC 134 at paragraph 10.

[51] The documentary evidence cited by the Applicant does not address the effectiveness of the police force in Russia; nor does it discuss whether there is corruption in the Russian police force.

The evidence does not contradict the Board's findings on state protection and the Board was not required to address it in its reasons: *Jean v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1414 and *Lopez v. Canada (Minister of Citizenship and Immigration)* 2007 FC 1341.

[52] The Respondent notes that the Board's reasons are not to be read microscopically. The Respondent relies upon *Lazcano v. Canada (Minister of Citizenship and Immigration)* 2007 FC 1242 at paragraph 30, where the court upheld a decision in which the Board did not make any specific reference to the case law or to the documentary evidence. In that case the court accepted that the Board could reasonably find, as it did, based on the questions that the applicant was asked and the analysis of the evidence in the record.

[53] The Respondent states that in *Ayala v. Canada (Minister of Citizenship and Immigration)* 2008 FC 1258 at paragraphs 11-12 the panel was required to look at the evidence provided by the applicant and weigh it against the other evidence in the case and give an indication in its reasons that it had done so, providing at least some examples with sufficient particularity as to the evidence which it found persuasive. Quite often the evidence will be documentary evidence. The court must determine whether, taken as a whole, the findings and conclusions are reasonable. The court may wish to intervene when material evidence has been overlooked or misunderstood. The Respondent says, however, that the evidence that the Applicant has pointed to would not have had a material effect on the conclusions of the Board in this case. Therefore, there is no need for the court's intervention.

ANALYSIS

[54] The Board accepted the Applicant's subjective fears and her narrative but concluded that she had not established a nexus to a Convention ground or objective risk.

[55] The Applicant now says that the Board failed to consider that she was persecuted for her political opinion. She says that the totality of her actions and the steps she took to draw attention to a corrupt militia, as well as the complicity of the state in the persecution she faces from the crime mafia engaged in trafficking, engaged her political opinion.

[56] At the hearing before the Board, the Applicant submitted that the nexus of her experiences to a Convention ground lay in her membership in a particular social group: women who are victims of human trafficking. Although I agree with the Applicant that the Board is obliged to consider all possible grounds for protection, even if they are not raised by a claimant, it is significant that the "political" ground was not immediately apparent to the Applicant and her counsel when characterization issues were raised at the hearing. Political opinion is something that the Applicant has decided to use as a means of attacking the Decision after she has seen that the Board could not accept that she was in danger of being trafficked.

[57] A reading of the Decision as a whole makes it clear that the Board both accepted and considered all of the Applicant's actions and dealings with the authorities but could not connect them to <u>any</u> Convention ground.

[58] The Board specifically addressed the nexus group put forward by the Applicant, but the reasons make it clear that the Board considered her narrative from the perspective of all Convention grounds and could not accept there was a nexus.

[59] As always, it is possible to disagree with the Board's findings in this regard and it is obvious that, because the Applicant does disagree, she now feels that the Board did not address her actions and the complicity issues that she raised. Given the reasons and the facts of this case, however, the Court cannot say that the Board either overlooked material evidence or came to an unreasonable conclusion regarding nexus on the basis of that evidence. As the Applicant says, the basis of persecution can be mixed, but on the particular facts of this case, the Board cannot be faulted for its conclusion that the Applicant was simply a school principal who bravely did her duty and engaged the state authorities by reporting her drug and trafficking concerns and asking them to do something. Her actions did not make her someone who was at risk of trafficking herself and, looking at the evidence, it was not unreasonable for the Board to conclude that she was someone who had reported a crime to the authorities. The Court has held on numerous occasions that victims of criminal activity, even victims of organized crime, do not meet the definition of Convention refugees. See, for example *Ward*; *Mason*; *Calero*; *Suarez*; *Valderrama*; and *Karpounin*.

[60] The Board also found that, on a balance of probabilities, the Applicant had not proven that she faced a risk of harm from the criminals she feared. In other words, the Applicant did not convince the Board on the objective basis of her claim.

[61] In this application, the Applicant does not directly take issue with this part of the Decision and attacks the Board's handling of state protection, which is clearly an alternative ground.

[62] However, after reviewing the reasons and the evidence, the Court cannot say that the Board's conclusions on the objective basis of her claim were unreasonable. There is no evidence that the Board overlooked any aspect of the claim. The Board does not fault the Applicant for not knowing the impact of her actions on the business interests of the criminal group in question; there is simply no evidence to suggest that the Applicant caused the criminals so much damage that they will harm her if she returns. Once again, this is not to question the Applicant's subjective fears, which the Board accepted as real and sincere. It is simply a finding that, on the facts of this case, no objective basis for those fears was established. It is possible to disagree with that finding but the Court cannot say it is unreasonable within the meaning of *Dunsmuir*.

[63] On state protection, the Board accepted the Applicant's narrative concerning threats, break-ins and possible police complicity but, in the context of the Applicant's dealings with, and response from Mr. Pavlov, it was not unreasonable for the Board to conclude that the Applicant had been able to elicit a response from the authorities and that, because she had left Russia and had not followed up with inquiries, she could not really say how adequate or inadequate the response was to the risks she had raised.

[64] The response involved an investigation into, and action concerning, the drug and human trafficking problems reported by the Applicant, as well as an investigation into the threats made

against the Applicant and her family. When it came to effective police protection, Mr. Pavlov made it clear that he did not have the staff to assign a police guard to the Applicant.

[65] There is not enough evidence to show that a full-time personal police guard was what the circumstances required, and I do not think that the Applicant has shown that, because she was denied a police guard, the presumption of state protection was rebutted in this case. The case law is clear that state protection does not need to be perfect. See, for example, *Rosales* at paragraph 16 and *Villafranca*.

[66] All in all, then, I can certainly understand the Applicant's fears, given what she has experienced in the past, but I cannot say that the Board made reviewable errors of a kind that warrant the Court's interference.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	Toronto, Ontario
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