Federal Court  Cour fédérale

Date: 20100422

Docket: IMM-4050-09

Citation: 2010 FC 438

Ottawa, Ontario, April 22, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

ZANETA DUNOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a Pre-Removal Risk Assessment (PRRA) Officer, dated June 26, 2009, in which the Applicant's claim to refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act* was rejected.

[2] The Applicant, who is a citizen of the Czech Republic and of Roma ethnicity, seeks judicial review of the decision on the following three grounds:

i. The Officer erred by relying on erroneous findings of fact;

ii. The Officer erred by ignoring, misconstruing or failing to analyze important evidence regarding the ineffectiveness of state protection in the Czech Republic; and

iii. Comments made by the Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, in April 2009 “raise a serious concern over an apprehension of bias”.

[3] For the reasons that follow, this application is dismissed.

I. Background

[4] The Applicant first arrived in Canada with her parents in April 1997 when she was 12 years old. Her family made a refugee claim shortly thereafter which was withdrawn in December 1997, when she and her parents returned to the Czech Republic.

[5] The Applicant returned to Canada on February 3, 2009 with her common-law partner, Mr. Joseph Pospisil, and her two daughters. She sought refugee protection upon her arrival. However, she was found to be ineligible to claim refugee status because she had previously made a refugee claim that had been subsequently withdrawn. The claims of her common-law partner and her daughters have not yet been determined.

[6] The grounds for the Applicant's claims in her PRRA application were set out in a narrative prepared by Mr. Pospisil. Among other things, that narrative describes a number of verbal and physical attacks on the Applicant and Mr. Pospisil that allegedly occurred in 1999, 2001, 2003, 2005 and 2008. It also describes an event in 2008 when unknown attackers allegedly threw burning bottles of gasoline into their home.

[7] Mr. Pospisil claims that reports of these attacks were made to the police on a number of occasions and that the police never followed up on those reports. He further claims that, on one occasion, after he and the Applicant reported an incident in which they were verbally attacked and spat upon, they were told not to bother the police with such reports. As a result, he and the Applicant came to Canada with their daughters to seek protection.

II. The decision under review

[8] After setting out the background facts in this matter, the Officer stated that all evidence tendered to establish a ground of protection had been accepted because the Applicant's previous refugee claim had been abandoned in 2007 and, therefore, none of her allegations of risk had ever been rejected, as contemplated by paragraph 113(a) of the IRPA.

[9] The Officer then turned to the evidence regarding the treatment of Roma in the Czech Republic. After stating that she had reviewed the Applicant's submissions on that issue, the Officer noted that (i) Roma face discrimination and even attacks by extremist groups; and (ii) Neo-Nazism is reported to be on the rise in recent years in the Czech Republic.

[10] The Officer then quoted several passages from a document entitled *2008 Human Rights Report: Czech Republic*, published by the U.S. Department of State (DOS), which is an authoritative recent source on conditions in that country. Among other things, the quoted passages:

a. identified ongoing widespread discrimination faced by Roma in that country;

b. noted that the latent societal discrimination occasionally manifested itself in violence, most frequently at the hands of members of skinhead organizations and their sympathizers;

c. discussed a significant range of recent initiatives that have been taken in that country to safeguard the rights of Roma; and

d. identified a number of examples of results that have been achieved in this latter regard.

[11] Based on her review of the evidence, the Officer concluded that "state protection is available to the applicant".

[12] The Officer further concluded that (i) there is not more than a mere possibility that the Applicant would be subjected to persecution if she returns to Czech Republic; (ii) there are not substantial grounds to believe that the Applicant would face a risk of torture; and (iii) there are not reasonable grounds to believe that she would face a risk to life or of cruel and unusual treatment or punishment, if required to return to her country.

III. Issues

[13] The Applicant seeks judicial review of the decision on the three grounds described in paragraph 2 above.

[14] At the hearing, the Applicant raised a fourth issue, namely, whether the Officer had relied on the wrong test for state protection. The Respondent takes the position that this issue was improperly raised at the hearing and that she was prejudiced by not having had an opportunity to respond.

[15] The Respondent acknowledges having briefly mentioned the appropriate test for state protection in her written submissions, but claims that this was only done so in the context of defending against the Applicant's allegation that the state protection findings in the decision were unreasonable. The Respondent submits that prior to the hearing, there was no reason to make submissions regarding the correct test for state protection, and therefore she did not proceed on the basis that the test for state protection was a disputed issue.

[16] At the hearing, the Respondent did not suggest that the state protection issue had been raised improperly. However, after being requested to address the issue of the appropriate test for state protection, which had been raised in the Applicant's oral submissions, the Respondent agreed to provide cases addressing that test and to provide a copy of those cases to the Applicant.

[17] In a cover letter, dated March 24, 2010, that accompanied those cases, the Respondent took care not to make any further submissions regarding the appropriate test for state protection. However, she reiterated that this issue had not been raised in the written pleadings and that she was

only provided with the Applicant's Book of Authorities at the commencement of the hearing before this Court.

[18] In a response of the same date, the Applicant stated that the issue of the correct test for state protection was raised in the Respondent's written submissions. The Applicant then made additional submissions regarding that test.

[19] After reviewing the record, I am satisfied that neither of the parties raised the issue of the correct test for state protection prior to the hearing and that the Respondent did not have proper notice to prepare to address this issue.

[20] Accordingly, I find that this issue is not properly before the Court and therefore need not be addressed (*Radha v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1040, at para. 18).

[21] However, I will note in passing that the test of "effective" state protection has been rejected in favour of the test of "adequate" state protection in a line of recent cases. (See, for example, *Cosgun v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 400, at paras. 44 to 54; *Espinoza v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 806, at para. 30; *Cueto v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 805, at paras. 27-28; *Flores v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 723, at para. 8; *Samuel v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 762, at para. 13; *Mendez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, at para. 23; and *Canada (Minister of Citizenship and Immigration) v. Carrillo*, 2008 FCA 94, at para. 30. See also *Resulaj v. Canada*

(Minister of Citizenship and Immigration), 2006 FC 269, at para. 20; and *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 Imm. L.R. (2d) 130 (F.C.A.), leave to appeal dismissed, [1993] 2 S.C.R. xi.)

IV. Standard of review

[22] The first two issues that have been raised by the Applicant are reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; and *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 53).

[23] In *Khosa*, at para. 59, reasonableness was articulated by Justice Ian Binnie as follows:

> Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

[24] The third issue, namely, whether the Officer's decision was made in breach of the duty of fairness, including the requirement of impartiality, is determined on a standard of correctness (*Geza v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124, at para. 44; *Dunsmuir*, above at paras. 55 and 90; and *Khosa*, above at para. 42).

V. Analysis

A. *Did the Officer err by relying on erroneous facts?*

[25] The Applicant alleges that, in the course of reaching her decision, the Officer erred by relying on erroneous facts, namely, that the Applicant's claim had been abandoned in 2007, rather than withdrawn in 1997. The Applicant concedes that, for her, the technical consequences of an abandoned claim are identical to those of a withdrawn claim. However, she claims that the Officer drew a negative inference from the mistaken belief that her 1997 refugee claim had been abandoned, because abandonment "signals disrespect for the process", and the Applicant was an adult in 2007, but only a twelve year-old child in 1997.

[26] I disagree. In an affidavit dated September 3, 2009, the Officer stated that the reference to 2007 rather than 1997 was an inadvertent typographical error. She added: "I have been informed and believe to be true, that the December 22, 1997 date is reflected in the FOSS notes." (FOSS is the Field Operations Support System – an online system in which immigration officials record a claimant's immigration history within Canada.) With respect to the alleged negative inference, she stated that she drew no such inference.

[27] In a second affidavit dated January 29, 2010, the Officer stated that there is conflicting information in the FOSS notes regarding the disposition of the Applicant's initial refugee claim. Nevertheless, she stated:

> 8. I drew no negative inference from the disposition of the Applicant's previous refugee claim. My only consideration was whether or not the Applicant's previous claim had been heard by the Refugee Board. I drew no negative inference as to why the claim had not been heard.

9. My decision was based on a complete and thorough assessment of all of the evidence before me and presented to me by the Applicant.

[28] Based on this sworn testimony from the Officer and my review of her decision, I am satisfied that the Officer did not draw a negative inference from either her typographic error regarding the date of the Applicant's withdrawn refugee claim or her uncertainty as to whether that claim had been withdrawn or abandoned. I am also satisfied that these errors in the Officer's decision were not material to the conclusions she reached with respect to the Applicant's application (*Miranda v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 81). Notwithstanding those errors, the Officer's decision still falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47).

B. *Did the Officer err by ignoring, misconstruing or failing to analyze important evidence regarding the ineffectiveness of state protection?*

(1) The Evidence of Past Attacks on the Applicant

[29] The Applicant alleges that the Officer erred by summarily disposing of facts that spanned many years, in a few sentences of the decision.

[30] I am unable to conclude that this aspect of the Officer's decision was unreasonable. In my view, the Officer clearly accepted that the attacks on the Applicant, which are specifically mentioned in the decision, took place. Given that the focus of the decision was upon the extent to which state protection would be available to the Applicant, there was no need for the Officer to

discuss the attacks in greater detail or to specifically refer to the injuries that were suffered by the Applicant.

(2) Reliance on selected excerpts from the 2008 DOS report

[31] The Applicant further alleges that the Officer erred by relying on selected excerpts from the 2008 DOS report.

[32] I am not satisfied that it was unreasonable for the Officer to fail to refer to additional passages from that report which did not support the ultimate conclusion she reached regarding the availability of state protection in the Czech Republic.

[33] At page 4 of her decision, the Officer specifically noted that Roma in the Czech Republic continue to face discrimination and even attacks by extremist groups. She also mentioned reports on the rise of Neo-Nazism in the Czech Republic in recent years. She then quoted a passage from the 2008 DOS report which explicitly noted that "[l]atent societal discrimination against the country's Romani population occasionally manifested itself in violence" and that members and sympathizers of skinhead organizations are the most frequent perpetrators of interethnic violence, particularly against Roma. That quoted passage also discussed the "widespread discrimination" faced by various minority groups, including Roma, from potential employers and school officials as well as in accessing housing and other accommodations.

[34] This quote was followed by three other quotes from that same document which described (i) sentences that were imposed on perpetrators of an attack on a Romani man in May 2007; (ii)

charges that were filed against a former vice mayor in respect of alleged racist remarks; (iii) potentially troublesome situations initiated by skinheads or neo-Nazis vis-à-vis Roma that the police had prevented in September, October and November 2007; (iv) various initiatives that the government of the Czech Republic has pursued to improve the situation of Roma; and (v) the efforts that the government has made to address allegations of forced sterilization of Roma during the period 1973-1991.

[35] I am satisfied that the four long passages that the Officer quoted from the 2008 DOS report reasonably reflect the significant amount of information in that report regarding the state protection available to Roma in the Czech Republic. There was no requirement on the Board to go further than it did in quoting information from the report that either supported the conclusion it ultimately reached or tended to support the opposite conclusion regarding the availability of state protection in the Czech Republic (*Zhou v. Canada (Minister of Employment and Immigration)* (1994), 49 A.C.W.S. (3d) 558 (F.C.A.); *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317, at para. 3 (F.C.A.); *Ayala v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1258, at para. 10).

(3) Failure to consult additional sources

[36] The Applicant also alleges that the Officer erred by failing to consult additional recent sources regarding country conditions in the Czech Republic. In oral argument, counsel for the Applicant identified a number of documents that were in the Certified Tribunal Record and submitted that the Officer had an obligation to at least consider those documents.

[37] However, the Officer specifically stated that she had reviewed the Applicant's submissions, which contained approximately 100 pages of materials. As mentioned above, she then took note of that fact that those materials contain information reporting "that Roma face discrimination and even attacks by extremist groups" and that Neo-Nazism has been on the rise in the Czech Republic in recent years.

[38] At the end of the decision, it was confirmed that the sources consulted were (i) File #3412-3006; (ii) the Applicant's PRAA application and associated submissions; and (iii) the aforementioned 2008 DOS report, which is generally recognized to be an authoritative report on country conditions in the Czech Republic.

[39] I am satisfied that the Officer did in fact consult the various sources mentioned above and that it was not unreasonable for the Officer to have failed to specifically quote from those other sources regarding country conditions in the Czech Republic.

[40] The Officer was not required to "detail every piece of evidence provided and every argument raised", so long as the decision reached was within the bounds of reasonableness. (*Rachewiski v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 244, at para. 17.)

[41] Having reviewed the Certified Tribunal Record, I am satisfied that the Officer did not ignore any information that was so different from the information that she explicitly recognized in her decision as to render that decision unreasonable. On the contrary, the decision reached by the

Officer was well within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

[42] It was not sufficient for the Applicant to provide evidence demonstrating that the government of the Czech Republic has not always been effective at protecting its Roma citizens from random acts of violence. (*Zhuravlvev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3, at para. 19. See also the various cases cited, at para. 21 above.)

[43] Rather, the onus was on her to rebut the presumption of state protection by demonstrating, with clear and convincing evidence, that the government of the Czech Republic is so weak or corrupt that there are extensive shortcomings in its ability or willingness to provide protection either to the public at large or to persons similarly situated to her, as demonstrated by "a broad pattern of state inability or refusal to extend protection" (*Zhuravlvev*, at para. 31). (See also *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at 724-725; *Villafranca*, above; *Resulaj*, above; and *Alfaro v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 92, at paras. 43-45.) Ultimately, the Applicant failed to discharge this burden.

C. Did comments made by the Minister give rise to a reasonable apprehension of bias?

[44] In April 2009, an article published by Canwest News Service reported that the Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, had commented, while travelling in Europe, that "it is hard to believe that the Czech Republic is an island of persecution in Europe." This was followed by a second article, published in *Embassy Magazine* in July 2009. That article reported that the Minister had stated, in discussing a report that had just been prepared by the

Immigration and Refuge Board: “If someone comes in and says the police have been beating the crap out of them, the IRB panellist can then go to their report and say, ‘Well, actually, there’s been no evidence of police brutality’.”

[45] The Applicant alleges that the foregoing comments “raise a serious concern over an apprehension of bias.” Although, she did not make any reference to these comments in her application, which was received on May 12, 2009, she stated in an affidavit dated September 8, 2009 that she believes that the Officer “could hardly avoid being influenced by his own Minister’s comments about the legitimacy of Roma refugee claims.”

(1) The Test for Assessing Allegations of Bias

[46] Allegations of bias are serious. They impugn the impartiality of the decision-making process in question and the integrity of the person who made the decision.

[47] It is trite law that all administrative bodies, no matter what their function, owe a duty of fairness to the regulated parties whose interests they must determine. The duty to act fairly includes the duty to provide procedural fairness. In turn, an unbiased decision-maker is an essential component of procedural fairness (*Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 at 636).

[48] The classic articulation of the test for what constitutes a reasonable apprehension of bias was enunciated by Justice de Grandpré in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at 394. In the course of dissenting on the issue of whether the

facts in that case gave rise to a reasonable apprehension of bias, Justice de Grandpé observed that "the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information." He added that the "test is what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude…"

[49] In *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at paras. 111 to 113, Mr. Justice Cory adopted Justice de Grandpré's statement of the test, observed that "the threshold for a finding of real or perceived bias is high", and emphasized that "the reasonable person must be an informed person."

[50] In *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259, at para. 76, the high test to be met when alleging bias was confirmed. In a unanimous judgment, the Supreme Court observed that "the standard refers to an apprehension of bias that rests on serious grounds, in light of the strong presumption of judicial impartiality." The Court then proceeded to approvingly note that Justice de Grandpré added to "the now classical expression of the reasonable apprehension standard" when he observed: " The grounds for this apprehension must, however, be substantial, and I … refus[e] to accept the suggestion that the test be related to the 'very sensitive or scrupulous conscience'."

[51] In *Geza*, above, at paras. 52 -53, it was held that the approach described above applies to the determination of refugee claims by the Board, given the Board's independence, its adjudicative procedure and functions, and the fact that its decisions affect the rights of claimants under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B

to the *Canada Act 1982* (U.K.), 1982, c. 11. Based on this reasoning, the same approach should apply to the determination of refugee claims by PRRA Officers.

(2) Application of the test to the facts of this case

[52] In support of her allegation, the Applicant submitted statistics from the Immigration and Refugee Board. In her abovementioned affidavit, she alleged that those statistics demonstrate that the acceptance rate for claims for refugee protection from the Czech Republic declined from 94%, over the course of 2008 to 80%, over the first six months of 2009. In a subsequent affidavit, dated January 12, 2010, the Applicant further alleged that this acceptance rate declined from 81%, in the quarter preceding the comment that the Minister made in April 2009, to 30%, in the first full quarter following that comment.

[53] In *Zrig v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1043, aff'd 2003 FCA 178, the applicant alleged, among other things, that a panel of what was then the Refugee Division was biased and lacked independence. This allegation was based on the fact that the two members of that panel had been selected because they were less accepting of claimants from the Maghreb region of Northern Africa. In rejecting this claim, Justice Tremblay-Lamer stated (at para. 130):

> Each claim stands on its own merits and the members of the Refugee Division have to assess each case based on the evidence and applicable law. Such an assertion reflects directly on the integrity of the members in question and cannot be accepted unless there is good evidence. Mere suspicion based on "rates" does not meet the applicable standard of the well-informed individual considering the matter in depth in a realistic and practical way.

[54] This scepticism of the relevance of statistics is particularly warranted in this case for three important reasons. First, and most importantly, after conducting a fact-finding mission of conditions faced by the Roma in the Czech Republic, the Board released a report on those conditions during the period between the two comments that were reported to have been made by the Minister. It is entirely possible that the content of that report affected the number of accepted, rejected, abandoned and withdrawn refugee claims by Roma from the Czech Republic. Second, the statistics adduced by the Applicant are statistics of the Immigration and Refugee Board. The PRRA Unit in which the Officer works is not part of the Board. Third, those statistics are for all claims from the Czech Republic. Apart from the Applicant's bald statement that 99% of such claimants are Roma, no evidence was adduced on this point.

[55] It is also important to note that, in contrast the situation that arose in *Geza*, above, the Officer in this case was completely independent of the circumstances that gave rise to the allegation of bias.

[56] In *Geza*, the Federal Court of Appeal placed considerable significance on the fact that a member of the Immigration and Refugee Board, who participated in the initiation and planning of a lead case strategy with respect to refugee claims by Hungarian Roma, ultimately participated on the panel that heard the Applicant's refugee claim. In concluding that the circumstances were such as to give rise to a reasonable apprehension of bias, the Court observed at (para. 65) that the panel became tainted by the Board's motivation for adopting a lead case strategy when the Board member in question decided to become one of the two members of the panel that heard the applicant's case.

By comparison, in this case, there is no such link between the Officer and the comments reported to have been made by the Minister.

[57] There are two other important differences between facts in *Geza* and the facts in the case at hand. First, in *Geza*, an explicit strategy was adopted by the Board. On this point, the Court concluded (at para. 61) that:

> …a person could reasonably conclude that the lead case strategy was not only designed to bring consistency to future decisions and to increase their accuracy, but also to reduce the number of positive decisions that otherwise might be rendered in favour of the 15,000 Hungarian Roma claimants expected to arrive in 1998, and to reduce the number of potential claimants.

[58] By contrast, as discussed below, in this case, the comments by the Minister that form the basis of the Applicant's allegation appear to have been spontaneous and not made pursuant to or in relation to any strategy.

[59] Second, in *Geza*, the Board selected both the lawyer and the cases that would serve as "lead cases", without any consultation with the immigration and refugee bar. The Court observed that this fact would also "trouble the reasonable observer."

[60] In addition to the fact that the Officer was completely independent of the comments reported to have been made by the Minister, no evidence whatsoever was adduced to demonstrate that the Officer was in any way influenced by those comments.

[61] The Officer must be presumed to be impartial, absent serious grounds for concluding that a reasonable and informed person, viewing the matter realistically and practically, would believe that the Officer was not impartial. It cannot simply be inferred solely from the political nature of the Minister's comments that they give rise to a reasonable apprehension of bias (*Fehr v. Canada (National Parole Board)* (1995), 93 F.T.R. 161, at para. 22**,** quoting with approval *Bertillo v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1617).

[62] Apart from the above-noted statistics, which have little probative value, the only additional evidence submitted by the Applicant in support of her allegations of bias were the two aforementioned articles published by Canwest News Service and in *Embassy Magazine*.

[63] Those articles provide important information regarding the context in which the Minister's impugned comments were made. It is readily apparent from reading those articles that the Minister's comments were spontaneous, rather than official statements of policy. Moreover, the first comment was made in the context of discussing what the article in Canwest News Service characterized as "a staggering 993 per cent increase" in the number of Czech nationals who sought refugee protection in Canada in 2008, relative to 2007. (The visa requirement for visitors from that country was lifted towards the end of 2007.) This dramatic surge in applications from the Czech Republic is reported to have led the Board to send a fact-finding mission to the Czech Republic in March 2009, to help the Board assess the conditions faced by Roma in that country.

[64] According to the Canwest News Service report, the Minister was concerned that "unscrupulous commercial operators" might be behind the dramatic surge in refugee applications.

In this regard, the Minister is reported to have stated: "If indeed there are commercial operations, I would hope the Czech authorities are able to identify those and crack down on them" (emphasis added). When this latter statement is considered together with the general context in which the Minister's comment was made, it is apparent that the Minister and the Board were still struggling to understand and explain why there had been such a surge in refugee claims by Roma from the Czech Republic.

[65] As to the alleged comment of the Minister that was reported in *Embassy Magazine* in July 2009, that comment was reportedly a quote from a statement made by the Minister to the *Toronto Star* on June 24, 2009. In turn, the *Toronto Star* article made it clear that the Minister's comment was made in the context of discussing a report that the Board had just released regarding conditions faced by the Roma minority in the Czech Republic, following the fact-finding mission mentioned above.

[66] In this overall context, the spontaneous comments made by the Minister while travelling in Europe were less potentially problematic than had they been made in a different context or as statements of official policy (*Pelletier v. Canada (Attorney General)*, 2008 FCA 1, at para. 63).

[67] In addition to reporting on the comment allegedly made by the Minister, the article in *Embassy Magazine* also reported statements questioning the propriety of the Minister's comments by the Applicant's counsel and a number of other persons. One of those persons was Peter Showler, a former Chairman of the Board, who was reported to have alleged that the Minister had "introduced institutional bias" into the Board's decision-making process.

[68] However, the Applicant adduced no other evidence to provide any basis for concluding that there are serious or substantial grounds for believing that a reasonable and informed person, viewing the matter realistically and practically, would believe that the Officer had been influenced by the Minister's comments. Indeed, there is no evidence that the Officer was even aware of the Minister's comments.

[69] Even if a reasonably informed person, viewing the matter realistically and practically, might reasonably apprehend the Minister to be biased based on the comments that he was reported to have made, that does not provide a sufficient basis for concluding that such a person also would reasonably apprehend the Officer to be biased. The Officer is a member of the Public Service of Canada. It is well accepted that the Public Service of Canada is independent of the executive branch of government. Absent evidence to the contrary, the Officer also should be presumed to be independent and impartial. No such evidence to the contrary was presented by the Applicant.

[70] In the course of addressing the applicant's allegations of bias in *Zrig*, above, Justice Lamer-Tremblay discussed Justice Joyal's decision in *Van Rassel v. Canada (Superindentant* [*sic*] *of the RCMP*), [1987] 1 F.C. 473. In that case, the applicant alleged the existence of a reasonable apprehension of bias on the basis that members of a disciplinary tribunal had been appointed by the Commissioner of the RCMP, whom the applicant suspected of having made negative statements about him. In dismissing the claim, Justice Joyal observed (at 487):

> The Commissioner of the RCM Police is not the tribunal. It is true that he has appointed the tribunal but once appointed, the tribunal is as independent and as seemingly impartial as any tribunal

> dealing with a service-related offence. One cannot reasonably conclude that the bias of the Commissioner, if bias there is, is the bias of the tribunal and that as a result the applicant would not get a fair trial.

[71] The foregoing statement applies *a fortiori* to decisions made by PRAA Officers, who are not appointed by the Minister.

[72] Based on all of the foregoing, I have concluded that a reasonably informed person, viewing the matter realistically and practically, would not reasonably apprehend the Officer to have been biased against Roma refugee claimants from the Czech Republic, as a result of the comments that were reported to have been made by the Minister.

[73] Finally, the Respondent submitted that the Applicant was required to raise her allegations of bias at the earliest opportunity (*Geza*, above, at para. 66). The Respondent claims that this opportunity was the time when the Applicant submitted her PRRA application, which was dated April 30, 2009 and received on May 12, 2009. In the absence of any evidence that the Applicant was aware of the comments reported to have been made by the Minister on April 15, 2009, at the time she submitted her application, I am not satisfied that the Applicant was in a position to have raised her allegations of bias at that time.

VI. Conclusion

[74] This application for judicial review is dismissed.

[75] The Applicant suggested that consideration be given to certifying a question regarding whether comments by the Minister questioning the well foundedness of refugee claims from a particular country, in the context of a high acceptance rate of those claims by the Board, would create a reasonable apprehension of bias by refugee claim decision-makers.

[76] However, assessments of bias allegations invariably are highly dependent on the specific facts and context of each particular case. That will be especially true in situations of the type contemplated by the proposed question. Accordingly, I do not believe that the proposed question raises “a serious question of general importance”, as contemplated by paragraph 74(d) of the *Immigration and Refugee Protection Act*.

[77] Accordingly, there is no question for certification.

ORDER

THIS COURT ORDERS that this application for judicial review is dismissed.

"Paul S. Crampton"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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