

Federal Court



Cour fédérale

Date: 20120203

Docket: IMM-4929-11

Citation: 2012 FC 142

Ottawa, Ontario, February 3, 2012

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

OLGA KHABIBULINA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a 21 year old citizen of Ukraine and is ethnically Roma. She challenges the legality of a decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dismissing her asylum claim. The applicant has failed to convince the Court that the negative credibility findings made by the Board, and its conclusion that there is no personalized risk in case of return to Ukraine, are unreasonable.

[2] The applicant alleges to have been the victim of persecution as a Roma in Ukraine. She also claims to fear both Ukrainians and Roma due to her marriage to a non-Roma. She alleges that she was verbally mistreated by fellow students and teachers including into college and university where she attained a degree. This harassment included verbal and minor physical abuse. The applicant states that in April 2008, when she resided with her parents, drunken neighbours broke into their apartment accusing her mother of stealing from them the night before when her mother had visited them as a fortune teller. The neighbours demanded that her family leave the area and attacked them with a knife. The attack put her father in the hospital for a month and he lost the use of his left arm. The applicant's mother complained to the police but they did not investigate the incident.

[3] The applicant met her husband, who is of half-Ukrainian and half-Tatar descent, and the two married in August of 2008. After the latter moved into the family's apartment, the family began to receive threats from both Roma and Ukrainians. The applicant alleges that on October 18, 2009, three Ukrainian neighbours broke into their apartment with knives, metal rods and chains and told the family to move out of the area. Her husband was cut on his arm and the applicant was pushed out the window of their ground-floor apartment. Both received medical attention. At the time of the attack, the applicant was pregnant and miscarried. The police were contacted but did not arrest any individuals and suggested that it would be best for the family to leave the area. The following month, the windows of the apartment were smashed in the middle of the night and a graffiti painted on the door threatened the family with death if they did not move.

[4] In March 2010, the applicant and her husband moved into a dormitory in Kyiv, Ukraine, but the other residents soon discovered that she was Roma and forced them to leave. The pair received

forged Israeli passports and arrived in Canada on March 30, 2010. They claimed refugee protection in April 2010. The applicant is currently separated from her husband and has not communicated with him since he decided to return to Ukraine in late-September or early-October 2010.

[5] The Board found that the applicant's story was not credible, primarily because there was no corroborating documentary evidence provided and because the most serious incidents were not mentioned in her point of entry (POE) document or her original Personal Information Form (PIF) narrative. The Board noted that the PIF narrative as submitted on May 13, 2010 made no mention of the events that took place in April 2008 or on October 18, 2009, which were only mentioned in the amended narrative submitted in September 2010. The Board also found that although the documentary evidence indicates that there is some discrimination against Roma in education, the applicant was able to complete her schooling, college and university and her experiences did not cumulatively amount to persecution. Moreover, the Board concluded that the applicant's fear of persecution from other Roma was not reasonable since she does not have a continuing relationship with her husband and no evidence was submitted to demonstrate that Roma may harm those who marry outside of their ethnicity.

Are the Board's conclusions regarding credibility unreasonable?

[6] The Board's findings on credibility rest on a lack of documentary evidence and the applicant's failure to mention the incidents alleged in her original PIF narrative. The Board's reliance on these grounds is, in the Court's view, reasonable in the circumstances.

[7] The applicant's POE application and original PIF narrative do not mention the culminating incidents of April 2008 or October 2009. However, the applicant argues that it is the applicant's right to submit amendments to her original documents and that this fact should not be used against her in following proceedings. The applicant submits that she failed to include major segments of her story in her original PIF due to her distress at the time.

[8] At the hearing before the tribunal, the applicant and her counsel explained that the amended PIF narrative did not contradict the original PIF narrative but only expanded upon it. The applicant's counsel explained that they had met in June 2010 to discuss amending the PIF and mentioned that the further delay in submitting the amendment was due to a lack of urgency. This explanation was considered and rejected by the Board who noted that the same counsel was engaged as the counsel of record at the time the original PIF was submitted. The Board also pointed out that the counsel's representative had translated the documents, the applicant had declared that the information provided was complete, true and correct, and there was no mention that a more detailed narrative would be forthcoming. This conclusion is not unreasonable in the Court's opinion.

[9] Furthermore, the applicant argues that the Board erred in requiring corroborative evidence and in dismissing the applicant's explanations. However, as stated in *Castrañeda v Canada (Citizenship and Immigration)*, 2010 FC 393 at para 18, "...the panel may make adverse findings based on the fact that applicants failed to produce evidence corroborating their testimony or make any efforts to obtain such corroborating documentation". The fact that the applicant was only 18 years old when she left Ukraine does not allow the Court to re-evaluate the evidence. Indeed, the Board considered the applicant's explanation for not having any documentation supporting her

claim that her father was injured in the April 2008 attack and was receiving a pension as a result. The Board then found, reasonably, that a document from the hospital did exist and although the original was needed by her father to collect a pension, a copy of the report could have been provided by the applicant. This conclusion is reasonable in the Court's opinion.

[10] It should be reminded that, as mentioned by the Supreme Court of Canada, "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, 2008 SCC 9 at para 47). I am of the opinion that the above mentioned findings of fact were well within the range of possible and acceptable outcomes that the Board could reasonably reach.

Did the Board err by finding that the applicant lacked an objective fear of persecution?

[11] Besides the negative credibility finding, the Board also found that the applicant's fear was not objectively founded based on the problems she had during her education, her treatment by other Roma, and her treatment by Ukrainians. The Board specifically noted at paragraph 9 of the decision that "[w]hile there may be some discrimination against Roma at educational institutions, based on the evidence adduced, the panel does not find that the claimant was persecuted by her fellow students and the teachers while she was at her educational institutions." The Board then found that due to the credibility concerns, the applicant did not demonstrate and the evidence did not support a finding that she will be subjected to a personalized risk of persecution.

[12] The applicant argues notably that the Board erred in fact by coming to the conclusion that the treatment received by her during her schooling did not amount to persecution, and in finding that she was not at risk as a Roma in Ukraine. The applicant submits that harassment can be physical, verbal or nonverbal and that the law does not require that persecution be of a physical nature. Several reports have been submitted by the applicant to demonstrate that Roma are targeted because of their ethnicity, especially while at educational institutions. However, these reports were not before the Board and the applicant has not demonstrated that the Board ignored any relevant evidence that was made available to it.

[13] Again, the applicant simply disagrees with the Board's weighing of evidence and does not demonstrate that the Board committed a reviewable error. The Court is satisfied here that the Board considered the documentary evidence available and the evidence provided by the applicant and reasonably concluded that the specific experiences of the applicant did not amount to an objective fear of persecution. Again, the Board's final conclusion that the applicant failed to demonstrate any personalized risk of returning to Ukraine falls well within the reasonable range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

[14] For all these reasons, the present application for judicial review shall be dismissed. No question of general importance has been proposed by counsel to the Court.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4929-11

STYLE OF CAUSE: **OLGA KHABIBULINA**
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: January 30, 2012

REASONS FOR JUDGMENT
AND JUDGMENT: MARTINEAU J.

DATED: February 3, 2012

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