Federal Court  Cour fédérale

Date: 20120720

Docket: IMM-9812-11

Citation: 2012 FC 924

Ottawa, Ontario, July 20, 2012

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

NUSHE DUHANAJ
SIMONE DUHANAJ
PREN DUHANAJ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The primary applicant, Nushe Duhanaj, is a citizen of Albania. The other two applicants are her children and are American citizens. The primary applicant left Albania in 1993, when she was a teenager. She asserts that her parents sent her to the United States because Albania had become very unsafe for young women. When in the U.S., the principal applicant met and married her husband and they had two children, who are the other two applicants in this judicial review application.

[2] The principal applicant made an asylum claim in the United States that was denied. In 2007, the principal applicant returned to Albania with her daughter, Simone. Pren remained in the United States with his father. After they returned to Albania, the principal applicant and her daughter lived with the principal applicant's parents. In 2009, the principal applicant's husband came to visit her and then went to Switzerland for medical treatment. He died there of cancer in September 2009.

[3] Shortly thereafter, the principal applicant and her children came to Canada, where they made refugee claims. The principal applicant claims that one of her brothers, who is a Canadian permanent resident, had in the interim sponsored her parents and younger brother to come to Canada. She claims that she has no other family in Albania and that, accordingly, if she is returned to Albania, she will be forced to reside alone because the sponsorship applications will be granted. She asserts as a woman without a male protector in Albania she would be at risk, due to the level of violence faced by women in Albanian society and to the risk of becoming a victim of human trafficking.

[4] In a decision dated December 2, 2011, the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD or the Board] rejected the applicants' claims. The Board held that as American citizens Simone and Pren were not vulnerable. With regard to the principal applicant, the RPD found her claim to be speculative and also held that she had failed to rebut the presumption of state protection. The Board accordingly determined that none of the applicants was a Convention refugee or person in need of protection, within the meaning of sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act].

[5] In this application for judicial review, the principal applicant argues that the RPD committed three reviewable errors in rejecting her refugee claim. More specifically, she alleges that the RPD erred in:

a. finding the claim that she would be left alone in Albania to be speculative. She asserts in this regard that, as her testimony was generally believed, the Board ought to have accepted her evidence that her brother had sponsored her parents and younger brother to come to Canada. The principal applicant further asserts that the Board erred in considering that the outcome of the sponsorship applications is uncertain;

b. failing to give adequate consideration to the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993, Updated November 1996, as continued in effect by the Chairperson on June 28, 2002 Pursuant to Section 159(1)(h) of the *Immigration and Refugee Protection Act*, or the so-called "Gender Guidelines"; and

c. failing to properly assess the information contained in the country documentation regarding risks faced by women in Albania and state protection available to them.

The applicable standard of review

[6] The three errors alleged by the applicant all engage the reasonableness standard of review as they are either errors of fact or of mixed fact and law and it is well-settled that the reasonableness standard applies to both (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190 [*Dunsmuir*]; *Dunkova v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1322 at para 17, 377 FTR 306). In several cases like the present, where this Court was called upon to review the RPD's application of the Gender Guidelines in relation to factual determinations that the Board had made, this Court has applied the reasonableness standard of review (see e.g. *Evans v Canada (Minister of Citizenship and Immigration)*, 2011 FC 444 at para 8, [2011] FCJ No 589; *Duhanaj v Canada (Minister of Citizenship and Immigration)*, 2010 FC 199).

[7] The reasonableness standard is an exacting one and requires the reviewing court afford deference to the tribunal's decision; a court cannot intervene unless it is satisfied that the reasons of the tribunal are not "justified, transparent or intelligible" and that the result does not fall "within the range of possible, acceptable outcomes which are defensible in respect of facts and law" (*Dunsmuir* at para 47). In applying this deferential standard, it matters not whether the reviewing court agrees with the tribunal's conclusion, would have reached a different result, or might have reasoned differently. So long as the reasons are understandable and the result is one that is rational and supportable in light of the facts and the applicable law, a court should not overturn an inferior tribunal's decision under the reasonableness standard of review.

[8] Moreover, in assessing the reasonableness of a tribunal's factual findings, it is trite law that the reviewing court cannot and should not re-weigh the evidence (*Khosa v Canada (Minister of*

Citizenship and Immigration), 2009 SCC 12 at para 64, [2009] 1 SCR 339; *Nekoie v Canada (Minister of Citizenship and Immigration)*, 2012 FC 363 at para 40, 214 ACWS (3d) 572; *Matsko v Canada (Minister of Citizenship and Immigration)*, 2008 FC 691 at para 11). That, though, is precisely what the applicants seek to have me do in this application and, in short, is why their application cannot succeed. Each of the alleged errors is discussed more fully below.

The Board did not err in finding the applicant's claim she would be left alone to be speculative

[9] As noted, the RPD held that the principal applicant failed to establish she would be at risk because her claim that she would be left alone is speculative. The Board premised this finding on two points. First, it held that the documentation filed did not support the claim because the sponsorship application did not contain any information indicating who was being sponsored. Second, the RPD held that any sponsorship applications that might have been made were still pending and, thus, it was not certain they would be granted. The Board accordingly afforded the sponsorship application little weight.

[10] This conclusion was reasonably open to the Board. The documentary evidence did not establish that the sponsorship applications had been made and, in any event, the Board was correct in stating that, even if the applications had been made, their outcome was not certain. The same must be said of any pending application before any tribunal; to conclude otherwise would turn the adjudicative process into a mere rubber stamp, which it is not. Therefore, the first basis upon which the principal applicant alleges the decision is flawed is without merit.

The RPD did not misapply the Gender Guidelines

[11] The second ground of review advanced is similarly without merit. The principal applicant's assertion that the Board incorrectly applied the Gender Guidelines amounts to no more than a claim that the RPD ought to have weighed the evidence differently because the principal applicant is a woman. In this regard, the principal applicant does not point to any specific point at which the Board misused the Guidelines but instead invokes them, like some sort of touchstone, and asserts that the Board should have weighed the country documentation differently by reason of the Guidelines. Such claims have been found to be without merit upon numerous occasions by this Court (see e.g. *Baksh v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1500 at para 25, 211 ACWS (3d) 192; *Karanja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 574 at para 5 [*Karanja*]; *N(F) v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 738, 182 FTR 294 at para 17). As was stated by Justice Pinard in *Karanja*, the Guidelines are not "a cure for all deficiencies in the applicant's claim or evidence. The applicant bears the onus of proving her claim," which the Board found the principal applicant did not do in this case.

The Board did not err in its assessment of the county documentation on Albania

[12] The principal applicant finally asserts that the RPD erred in concluding that she had not discharged the burden of establishing that state protection in Albania is inadequate. The applicant filed no evidence on this point related to her particular situation, and instead relied on the general documentation before the RPD. She asserts that the RPD's decision is unreasonable because it did not specifically refer to a few passages in the documentation that reference problems with domestic violence in Albania or that reference the risks in that country in respect of human trafficking. Counsel for the applicants further argues that the Board failed to correctly assess the significance of

the fact that Albania is on the "Tier 2 Watch List" in respect of the risk of human trafficking, as noted by the UK Border Agency in its 2008 Operational Guidance Note. More specifically, he alleges that the placing of Albania on this list means that young, single women in Albania are at risk of human trafficking.

[13] The documentary evidence before the RPD, however, establishes no such thing. Indeed, the UK Border Report referred to by counsel for the applicants is much more nuanced and notes that trafficking has decreased in recent years, that its victims tend to be poor and lack education (which cannot necessarily be said of the principal applicant) and, most importantly, that the government has cracked down on human traffickers and has engaged in effective prosecutions of those involved in the practice. The Report concludes that a "grant of asylum will not ... be appropriate" for most of those who claim to fear becoming victims of human trafficking in Albania because "in general, sufficiency of protection is available" in Albania (Certified Tribunal Record at p 119). In the absence of any particular risk alleged by the principal applicant, this conclusion must likewise apply to her.

[14] Insofar as concerns the risk of being a victim of domestic violence, even if such a risk exists for women in conjugal relationships in Albania, it is completely irrelevant to the principal applicant's case as she is now widowed and premises her claim on the risks she says she will be exposed to as a single woman.

[15] Thus, neither of the bases alleged for finding a flaw in the RPD's state protection analysis has any merit.

[16] The RPD's state protection analysis, far from being flawed, was both careful and balanced and accordingly reasonable. The Board referred to and fairly considered the portions of the documentation that highlighted the challenges and risks women face in Albania and also referred to the fact that a number of avenues are open to Albanian women to obtain redress from violence they might encounter. Accordingly, the RPD's conclusion that the principal applicant failed to discharge the burden of establishing that state protection in Albania is inadequate is reasonable.

[17] For these reasons, this application for judicial review will be dismissed.

[18] No question for certification under section 74 of the IRPA was presented and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;

2. No question of general importance is certified; and

3. There is no order as to costs.

"Mary J.L. Gleason"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9812-11
STYLE OF CAUSE:	*Nushe Duganaj et al v MCI*
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