

Federal Court



Cour fédérale

Date: 20121207

Docket: IMM-3837-12

Citation: 2012 FC 1447

Ottawa, Ontario, December 7, 2012

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ALEXANDRU MORTOCIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA* or the Act] of the decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] made on January 13, 2012, wherein the Board determined that the Applicant was not a Convention Refugee pursuant to section 96 of *IRPA*, nor a person in need of protection pursuant to section 97 of the Act. For the reasons that follow the application is dismissed.

Background

[2] The Applicant is a Romanian national of Roma ethnicity who sought protection in Canada due to his experiences of discrimination. The Applicant asserted that he suffered discrimination throughout his life including in education, employment, housing and socially. He highlighted the discrimination he faced in the employment context, and argues that if he returns to Romania he will face persecution as he will not be able to work in his area of skill and will be paid at a much lower wage than other, non-Roma, workers. The Applicant worked for 20 years as a crane operator in Romania but was laid off in 2000, which may have been due to the availability of young Romanians for this work. The Applicant subsequently worked as a temporary foreign worker in Germany, Israel, Spain and Canada, and would return to Romania between these jobs and work as a labourer.

[3] The Applicant also claimed discrimination in housing, noting that the land for his home had to be purchased by his wife, a non-Roma Romanian, and that following her death he had to sell the home to pay medical bills at a low price due to interference from the town's mayor who demanded that he sell it to a Romanian. As a Roma he could not purchase a home in the town and he subsequently purchased a small apartment outside the town.

[4] The Applicant also highlighted an incident in 1987 in which he was attacked and stabbed and spent eight months recovering in hospital. The Applicant indicated that the prosecutors did nothing and warned him not to pursue the matter.

[5] The Board found the Applicant to be credible but found that while he may have suffered discrimination, the discrimination did not amount to persecution and, therefore, he was not a

Convention Refugee or a person in need of protection. With regard to the 1987 incident, the Board noted that the attack occurred over 20 years ago and was initially directed at his wife, who was not Roma, and that the Applicant was harmed when he came to her defence.

[6] The Board recognized the “dire” situation facing some Roma in Romania, but noted that the Applicant’s circumstances appeared to be better than others as documented in the country evidence as he had owned a home with his wife, acquired training in a trade, and had worked for 20 years for the same employer.

[7] The Applicant submits that the Board made its decision without regard to the Applicant’s real and future circumstances and failed to consider critical parts of his claim. Specifically, the Applicant argues that the Board erroneously found that he had not faced housing difficulties, improperly weighed the Applicant’s job opportunities outside of Romania and his ability to work at a lower wage on the basis of his ethnicity, failed to consider the likely impact of his wife’s death on his future circumstances, and failed to consider evidence of his children, who are “similarly situated individuals” and who cannot find employment, which demonstrates the situation he will face.

[8] The Respondent submits that the Board did consider these issues and its analysis and decision were reasonable.

Issue and Standard of Review

[9] The issue in this judicial review is the reasonableness of the Board's determination that the discrimination faced by the Applicant did not rise to the level of persecution and that he was, consequently, not a refugee or a person in need of protection.

[10] I have therefore considered the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59. The Court will intervene only where it finds that the decision is not reasonable and falls outside the range of possible, acceptable outcomes.

Analysis

[11] In my view, the Board's decision falls within the range of possible acceptable outcomes which the Board justified in its reasons with clear findings and references to the evidence before it.

[12] With respect to housing, contrary to the Applicant's submission that the Board misstated the Applicant's housing issues, the Board did not find that the Applicant did not face any problems, but rather found that he did not face the extreme problems noted in the country documentation such as "denial of access to adequate housing" and "forced evictions". The Board acknowledged the dismal conditions for Roma in Romania and that the Applicant faced social and economic discrimination but concluded that the Applicant's experiences did not rise to the level of persecution.

[13] In terms of the Applicant argument that the Board did not fully consider the impact of the wife's death on his future life and risk of persecution in Romania, while the Applicant did not provide evidence of additional risks he might face, and the Board is not required to speculate on possible future risks, the Board was aware that the Applicant had relied upon his wife to obtain better treatment in Romania, including the purchase of land for their home. The Board did not ignore the impact of his wife's unfortunate death but still determined that his experiences of discrimination did not constitute a risk of persecution. It was open to the Board to come to this conclusion.

[14] As noted, the Applicant also submits that the Board failed to consider the letters from his children and friend which described their bleak employment opportunities, which he argues are reflective of what he will experience upon his return. The decision indicates that the Board did consider this evidence. In addition, the Board noted the country condition documents that described denial of access to adequate housing, and the broad spectrum of social disadvantages, including with respect to employment. While the Applicant may suggest that insufficient weight was given to this evidence, it is not the role of the Court to re-weigh the evidence considered by the Board.

[15] Regarding discrimination in employment, the Applicant submits that the Board, in essence, relied on an External Flight Alternative, suggesting that the Applicant could be employed elsewhere in the European Union. In addition, the Applicant submits that the Board failed to consider that the Applicant would be forced to work at menial jobs and or at a lesser wage in Romania and that this constitutes persecution.

[16] With respect to the notion of an External Flight Alternative, I agree with the Applicant that there is no such requirement. An Applicant need not demonstrate that they are unable to go to any country where they may have the right to work in order to establish that they satisfy the Convention refugee definition. Despite the increased mobility within the European Union [EU], those who work in other countries do not enjoy all the privileges of nationals and while they may be permitted to work, the periods of employment are limited. The European Union is a union of several distinct countries and is not one country. Whether this argument is cast as an Internal Flight Alternative within the EU or an External Flight Alternative beyond the country of origin, there is no requirement on an Applicant to exhaust employment opportunities in other countries.

[17] However, I do not find that the Board made such a determination. The Board's reference at paragraph 24 of the decision to the Applicant's past work both in Romania at a lower wage and abroad is simply a statement of fact of the options that have been exercised by the Applicant in the past and does not change the Board's conclusion that the Applicant's experience of discrimination did not rise to the level of persecution.

[18] With respect to the issue of whether the current and prospective under-employment of the Applicant constitutes persecution, I have carefully considered *Horvath v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1350, 2011 FCJ No 1649 [*Horvath*]. In *Horvath*, Justice Mandamin found that the Board had failed to consider whether the Applicant's inability to do the work he was trained to do, because of discrimination on the basis of his ethnicity, amounted to persecution. Justice Mandamin found that the Board merely referred to the situation but had not

analysed the Applicant's evidence or the country conditions and the impact on the Applicant's livelihood.

[19] This case differs from *Horvath* in that the Board's reasons indicate that it did consider the country conditions and the lack of employment opportunities. In addition, the Board noted that the Applicant had been able to work within Romania and abroad. While the Applicant may not have been able to return to his preferred work as a crane operator, he was employed in other trades.

[20] In *Horvath*, Justice Mandamin noted the guidance provided by the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the Status of Refugees* (Re-edited, Geneva, January 1992) in considering the distinction between discrimination and persecution. The Handbook states that, "It is only in certain circumstances that discrimination would amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities".

[21] As the Respondent submits, the Board is further guided in its determinations of persecution by the definitions established by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (QL). Persecution within the Convention Refugee definition means a "sustained or systemic violation of basic human rights demonstrative of a failure of state protection" (*Ward* at para 63(QL)).

[22] The Board's decision reveals that after considering all the evidence related to the incidents of discrimination experienced by the Applicant, in particular related to his employment, the Board did not find that the discrimination in employment amounted to persecution. This was a determination that was open to the Board, is supported by the evidence and communicated in the reasons, and is consistent with the definitions noted above.

Conclusion

[23] The Court's judgment is that the application for judicial review is dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Court's judgment is that the application for judicial review is dismissed. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3837-12

STYLE OF CAUSE: ALEXANDRU MORTOCIAN v. MCI

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: November 27, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANEJ.

DATED: December 7, 2012

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