Federal Court  Cour fédérale

Date: 20130327

Docket: IMM-6134-12

Citation: 2013 FC 314

Toronto, Ontario, March 27, 2013

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ZUZANA MINYUOVA, MILAN MINYU, KLAUDIA FOGELOVA AND KAROL MINYU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision refusing their claim to refugee or protected person status.

[2] The principal applicant, Zuzana Minyuova, and her family members are Roma from Slovakia. Her mother was a Czech Jew and, as a result, she claimed to have experienced double

discrimination growing up and living in a Slovak village. There are discrepancies between the narratives recounting this discrimination due, in part, to interpretation problems. The principal applicant's narrative was handwritten in Slovak, then translated to and typed up in Czech, then retranslated to English. To correct the record, a later narrative by her husband was submitted. The original Slovak document was misplaced. The claims of the other family members were dependent on that of the principal applicant.

[3] The Member's determinative finding was that the applicants had not established on a balance of probabilities that state protection was unavailable to them in the Slovak Republic. Issues of state protection are reviewable on a reasonableness standard: *Horvath v Canada (MCI)*, 2013 FC 95 at paras 29-32.

[4] The test for state protection is adequacy, rather than effectiveness. Where the state in question, as here, is a functioning democracy with an official state protection apparatus and functioning security forces there is a strong presumption in favour of the state's ability to protect: *Carillo v Canada (MCI)*, 2008 FCA 94 at paras 32, 36.

[5] The applicants contend that the Member erred in failing to assess the quality of the state's efforts and ignored objective documentary evidence. It was not enough, they argue, that the country was making serious efforts to address criminality, corruption, and deficiencies in its laws and procedures. Protection would not be forthcoming when needed and it would be unreasonable for them to seek protection from the Slovak state given their experience, they contend.

[6] Each case must be determined on its own facts as established by the evidence. This is not a case such as *Cervenakova v Canada (MCI)* 2012 FC 525 where the Board had failed to properly weigh the documentary evidence, its analysis was vague and there was an insufficient basis for the adequacy conclusion.

[7] Here the Board conducted a forward-looking analysis, considered the mixed country condition evidence before it and was clearly aware of the shortcomings of the protection available to Roma in the Slovak Republic. Its conclusion that the protection was adequate was open to it on the basis of the evidence. It is trite law that the Board does not have to cite every piece of evidence in the decision. There is no indication that it ignored evidence which was contrary to its findings. Its analysis was thorough and well-reasoned.

[8] The Board clearly set out and applied the correct "clear and convincing evidence" test for state protection. The onus was on the applicants to satisfy the test on a balance of probabilities. This they did not do. It did not help their case that they left the country in search of surrogate protection just a few days after the last incident complained of and before the police could properly investigate it. There cannot be said to be a failure of state protection where a government has not been given an opportunity to respond: *Castro v Canada (MCI)*, 2006 FC 332 at paras 19-20. Moreover, a claimant cannot rebut the presumption of state protection by asserting only a subjective reluctance to engage the state: *Molnar v Canada (MCI)*, 2012 FC 530 at para 92.

[9] The Board Member made a number of negative credibility findings which stemmed from discrepancies between the narrative and the applicants' testimony at the hearing. The existence of

contradictions in the evidence is a well established basis for finding a lack of credibility and the weighing, interpretation and assessment of evidence are within the Board's domain.

[10] In this instance, the Member clearly outlined his reasons for the negative credibility finding and there were valid reasons to doubt the truthfulness of the testimony. This is not a case in which the presumption of truthfulness arises, as there were reasons to doubt the applicants' evidence: *Goshi v Canada (MCI),* [2000] FCJ No 735 (QL) (TD) at para 14. Nonetheless, the Board considered the allegations of persecution despite its concerns, and found that the state response had been adequate.

[11] The police had responded to a 1992 incident outside a school and to another when an object was thrown through a window. An incident involving a gun was described by the press as a clash between mothers of adolescents, to which the police had responded. The police had said that they would investigate the November 2009 bus stop incident but the applicant and her family left the country before they could do so.

[12] The Member also found that several of the incidents related by the applicants did not amount to persecution. Cumulative discrimination may amount to persecution in some cases but the Court should not interfere with the Board's finding on the evidence unless it appears to be unreasonable: *Sagharichi v Canada (MEI)* (1993), 182 NR 398 (FCA) at para 3. There is no basis for such a finding in this case.

[13] In the result I find that the Board came to a conclusion that is transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 46.

[14] No questions were proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6134-12
STYLE OF CAUSE:	ZUZANA MINYUOVA, MILAN MINYU, KLAUDIA FOGELOVA AND KAROL MINYU v. MCI
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