

Date: 20020426

Docket: IMM-3711-00

Neutral Citation: 2002 FCT 476

BETWEEN:

EVA BENCIC, ROMAN BENCIC,

ROLAND SPAIS, ROMAN BENCIC

Applicants,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent.

REASONS FOR ORDER

KELEN J.:

[1] This is an application for judicial review of the decision of the Immigration and Refugee Board, Convention Refugee Determination Division ("CRDD"), dated June 1, 2000 that the applicants are not Convention refugees.

FACTS

[2] The main applicant, Eva Bencic, born January 2, 1958, is a citizen of the Slovak Republic. The other applicants are her husband and two sons.

[3] In 1993, the applicant's husband started a used car business adjacent to two nightclubs. Because Mr. Bencic knew that patrons of the nightclubs were connected to the "underworld", he

hired two night guards to watch over his car lot. Nevertheless, three of his cars were damaged, his friend was beaten while on the lot, and his business was robbed of cash, documents, and his most expensive American car.

[4] Mr. Bencic reported the theft, assaults, and vandalism to the police. Mr. Bencic alleges that he was subsequently summoned to the police station where three plain-clothes policeman beat him and told him to withdraw the charge.

[5] After withdrawing the charge, Mr. Bencic was beaten at the car lot by two thugs who "thanked" him for withdrawing the charge and told him that he had to pay a fine of 300,000 crowns (about US\$10,000). When he could not raise the money these thugs came to his house and took his personal car.

[6] Mr. Bencic learned from reliable sources that he was to be "liquidated". At this point, his family was being harassed and threatened at their home. The family went into hiding, before departing for Canada and making this refugee claim.

[7] The CRDD conducted hearings on August 16, 1999 and March 13, 2000.

DEFINITION OF CONVENTION REFUGEE

[8] "Convention refugee" is defined in section 2 of the *Immigration Act*, R.S.C. 1985, c I-2 as follows:

"Convention refugee" means any person who

(a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

"réfugié au sens de la Convention" Toute personne:

a) qui, craignant avec raison d'être persécutée du fait de sa race, de sa

(i) is outside the country of the person's nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, or

(ii) not having a country of nationality, is outside the country of the person's former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country, and

(b) has not ceased to be a Convention refugee by virtue of subsection (2),

but does not include any person to whom the Convention does not apply pursuant to section E or F of Article 1 thereof, which sections are set out in the schedule to this Act;

religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

(i) soit se trouve hors du pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays,

(ii) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ou, en raison de cette crainte, ne veut y retourner;

(b) qui n'a pas perdu son statut de réfugié au sens de la Convention en application du paragraphe (2).

Sont exclues de la présente définition les personnes soustraites à l'application de la Convention par les sections E ou F de l'article premier de celle-ci dont le texte est reproduit à l'annexe de la présente loi.

DECISION OF THE CRDD

[9] The main issue is whether there is a nexus or link between the claimants' fear of persecution by the criminals and any one of the grounds in the definition of a Convention refugee: race, religion, nationality, political opinion, or membership in a particular social group. At page 2 of the decision the CRDD held:

The panel finds that the determinative issue in this case is nexus. Is there a link between the claimants' fear of persecution and any one of the grounds listed in the definition of a Convention refugee: race, religion, nationality, political opinion or membership in a particular social group?"

[...] At first, the claimants based their claims on membership in a particular social group: persons targeted by the Mafia in the Slovak Republic. Is there nexus for such feared harm to a Convention ground?"

[10] The CRDD held that the harm from the Mafia is that of crime, not persecution as defined in the Convention. At page 3 the CRDD held:

The harm feared of targeting by the Mafia by the claimants in this case as first presented by the claimants is that of crime, not persecution, as defined in the Convention. Extortion is a common crime. Successful businessman and their families may be targeted by extortionists, but the case law is clear that if the individuals' only fear of persecution is as a victim of crime, they do not fit the definition of a Convention refugee.

And at page 5:

The panel concludes that the persecution that the claimants feared related to criminal activity in the Slovak Republic, the successful car business that attracted extortion, and that the extortionist was attracted by their visible success. The goal of the persecution was the assets visibly available in the car lot and readily available by means of sales in cash transactions or access to the cars themselves. The motive of the feared agent of persecution was not related to membership in a particular social group related to fundamental human rights and anti-discrimination and the purpose for Convention protection.

[11] The CRDD also considered whether there was evidence that the claimants were persecuted for their actual or perceived political opinion; that the state or police are involved with organized crime and accordingly would not take any action against the extortionists, thieves, or perpetrators of the violence. The CRDD held that there was no clear evidence that the male claimant was targeted by the officials or the police because of his attempts to report the crime and corruption to the police. The CRDD held at page 8:

In other words, there was no clear evidence that the male claimant was targeted by anyone because of his attempts to report crime and corruption to the police, as was the case in Kinko.

STANDARD OF REVIEW

[12] With regard to a finding of a nexus between a fear of persecution and a Convention ground, the standard of review is reasonableness *simpliciter*, as per *Jaysekara v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1393, 2001 FCT 1014 (F.C.T.D.) at paragraph 24:

Against the "pragmatic and functional approach" to the determination of standard of review as elaborated in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 (S.C.C.) and again more recently in *Baker V. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.), I am satisfied that the appropriate standard of review of the finding by the CRDD that is here before the Court regarding "nexus" is not patent unreasonableness or whether the finding was made in a perverse or capricious manner or without regard to the material before the CRDD, but rather reasonableness *simpliciter*.

[13] The standard of review of the CRDD for questions of law is that of correctness, as per *Bela v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 902, 2001 FCT 581 (F.C.T.D.) at paragraph 13:

All questions of law, in such applications, are governed by the standard of correctness, as enunciated by Mr. Justice Bastarache in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R., 982 (S.C.C.).

ANALYSIS

[14] Based on the standard of reasonableness *simpliciter*, the CRDD did not err in concluding that there is no nexus between the claimants' persecution and a Convention ground. In this case, the CRDD reasonably concluded that the persecution is directly linked to criminal activity.

[15] The second ground for arguing nexus is that the claimants were persecuted for their political opinion. Following the Federal Court of Appeal decision in *Klinko v. Canada (Minister of Citizenship and Immigration)*, [2000] 3 F.C. 327, a denunciation of corruption in the police can be characterized as an expression of "political opinion". Based on *Klinko, supra*, the claimants said that they were persecuted because the state was complicit with the criminal activity, and because the state took no action to stop the extortionists or protect the claimants. In *Klinko, supra*, the Court held that the denunciation of the state officials' corruption led to the reprisals against Mr. Klinko. At paragraph 34 the Court held:

The opinion expressed by Mr. Klinko took the form of a denunciation of state officials' corruption. This denunciation of infractions committed by state officials led to reprisals against him. I have no doubt that the widespread government

corruption raised by the claimant's opinion is a "matter in which the machinery of state, government and policy may be engaged."

[16] Therefore, Mr. Klinko suffered persecution in retaliation for his denunciation of corruption in the government. In this case, the CRDD found that there was no evidence that the male claimant was targeted or persecuted by officials because of his attempts to report crime and corruption. For this reason, the *Klinko case, supra*, is distinguishable from the case at bar, and does not apply.

[17] Refusal to bow to extortion, threats, and violence due to Mr. Bencic's status as a financially successful person in Slovak does not qualify him as a refugee under the Convention. The Convention only protects refugees with a reasonable fear of persecution due to their religion, race, nationality, political opinion and membership in a particular social group. Victims of crime are not protected by the Convention.

[18] Accordingly, I am of the view that the CRDD reasonably held that the persecution experienced by the claimants was directly related to criminals seeking to extort money and automobiles, and not their political opinion. The fact that the police did not protect the claimants from this criminal activity, and according to the claimants, were complicit with the criminals, does not connect the claimants' fear of persecution to any of the grounds under the Convention in order to qualify for refugee status. In the absence of an error, there is no basis for judicial interference with the CRDD decision.

[19] There was no request for a question to be certified, and I am of the view that this case does not raise a question of general importance which ought to be certified under subsection 82(3) of the *Immigration Act*.

[20] For these reasons, this application for judicial review is dismissed.

(signed) Michael A.

Kelen _____

JUDGE

OTTAWA, ONTARIO

April 26, 2002

FEDERAL COURT OF CANADA TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

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REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE KELEN DATED: April 26, 2002

APPEARANCES:

Mr. John Weisdorf FOR THE APPLICANTS

Mr. Jeremiah Eastman FOR THE RESPONDENT

SOLICITORS ON THE RECORD:

Weisdorf Waud & McCallum FOR THE APPLICANTS Toronto, Ontario

Mr. Morris Rosenberg FOR THE RESPONDENT Deputy Attorney General of Canada