

Federal Court



Cour fédérale

Date: 20090604

Docket: IMM-5352-08

Citation: 2009 FC 589

Toronto, Ontario, June 4, 2009

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

NADIYA KROHMALNIK

Applicant

and

**THE MINISTER OF CITIZENSHIP, IMMIGRATION
and MULTICULTURALISM**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Nadiya Krohmalnik seeks judicial review of the negative decision made in relation to her application for a Pre-removal Risk Assessment.

[2] For the reasons that follow, I find that the immigration officer erred in the assessment of Ms. Krohmalnik's PRRA application. As a consequence, the application will be allowed.

Background

[3] Ms. Krohmalnik is a 32-year-old Ukrainian citizen, who arrived in Canada on a visitor's visa some 11 years ago. In 2003, Ms. Krohmalnik married Haim Krohmalnik, a Canadian citizen. The couple had a son, David, that same year. Unfortunately, Mr. Krohmalnik died the following year.

[4] Mr. Krohmalnik had attempted to sponsor Ms. Krohmalnik. There is some disagreement between the parties as to what happened to that application, but it is common ground that it was not successful.

[5] After her husband died, Ms. Krohmalnik filed an application for a Pre-removal Risk Assessment, as well as an application for a humanitarian and compassionate exemption. Both applications were rejected by the same officer. Ms. Krohmalnik's application for judicial review in relation to her negative H&C decision was heard at the same time as this application, and is the subject of a separate set of reasons.

[6] Ms. Krohmalnik's PRRA application was based upon the risk that Ms. Krohmalnik says that she and David would face in Ukraine, based upon their Jewish surname, the perception that she had betrayed her roots by marrying a Jew, David's Jewish faith, and her status as the mother of a Jewish

child. Ms. Krohmalnik also says that she would be at risk in Ukraine because she is a woman who would face discrimination amounting to persecution in the workplace.

[7] Finally, Ms. Krohmalnik submitted that she would be at risk of extortion in Ukraine because she had inherited a large sum of money from her late husband. No issue is taken by Ms. Krohmalnik with respect to the officer's negative finding in relation to the last type of alleged risk.

Analysis

[8] In relation to the risk allegedly posed by anti-Semitism in Ukraine, the officer referred to a 2006 Immigration and Refugee Board report indicating that anti-Semitic events in Ukraine had not changed the lives of Jews in a number of Ukrainian cities. The officer also cited the director of a Jewish organization in Kiev, who stated that "it would be incorrect to assert that today there exists a direct threat to the existence of Jews or the Jewish community as a whole".

[9] While noting that there had been an increase in acts of violence against Jews in 2007, the officer referred to the creation of a special unit within the Ukrainian Security Service to combat racial hatred. The officer then concluded that "[D]espite the incidents of anti-Semitism in Ukraine, the sources do not show that all individuals of [the] Jewish religion or those associated with them have been subject to discrimination or aggressions systematically and that they face a risk in that country. Furthermore, the sources show that the Ukrainian government continues taking steps to fight this problem".

[10] There are several difficulties with the officer's findings in relation to the issue of anti-Semitism in Ukraine.

[11] Firstly, the officer's statement that "the sources do not show that *all individuals of [the] Jewish religion or those associated with them* have been subject to discrimination or aggressions systematically and that they face a risk in that country" is very troubling. It is clearly not necessary for a PRRA applicant to demonstrate that every member of the applicant's religious group who is living in the country in question has been subject to persecution. By making the statement cited above, it appears that the PRRA officer may have placed much too heavy a burden on Ms. Krohmalnik in relation to the issue of risk.

[12] The second concern is with the officer's findings with respect to the frequency of anti-Semitic attacks, and the steps taken by the Ukrainian government to fight the problem of anti-Semitism.

[13] There was recent evidence before the officer in the form of a 2008 Amnesty International report dealing with racial discrimination in Ukraine, which paints a much gloomier picture of conditions for Jews in Ukraine than the older country condition information referred to by the officer. This report documents the alarming rise in violent attacks against religious minorities, including Jews, over the previous two years. The report also notes that these attacks were carried out not just by members of the public, but also by public officials such as police officers.

[14] Although the officer does not make an explicit finding that state protection is available to members of the Jewish minority in Ukraine, such a conclusion is implicit in the officer's statement that the government is taking steps to combat the problem of Anti-Semitism in that country. While this statement may be true, as far as it goes, there was evidence before the officer which raised serious questions as to whether these steps have resulted in adequate protection being available to members of the Jewish community in Ukraine.

[15] That is, the 2008 Amnesty International report concludes by observing that "The failure to apply existing legislation, combined with the failure of the police to acknowledge the gravity of racially motivated crimes and to respond adequately, have led to a situation of *virtual impunity* for the perpetrators" [my emphasis]. The report then goes on to state that "The police must play a positive role in combating racial discrimination, yet in Ukraine people are at risk of human rights violations at the hands of the police because of their racial, ethnic or religious identity".

[16] It is clearly the role of the PRRA officer to weigh the available information relating to the issues of risk and the availability of state protection. However, where, as here, there is important evidence that runs directly contrary to the officer's finding on a central issue, there is an obligation on the officer to analyse that evidence, and to explain why he or she prefers other evidence on the point in question: *Cepeda-Gutierrez v. Canada (M.C.I.)* (1998), 157 F.T.R. 35 (F.C.T.D.). The failure of the officer to do so means that the decision lacks the justification, transparency and intelligibility required of a reasonable decision.

[17] Given my conclusion in relation to this issue, it is not necessary to address Ms. Krohmalnik's remaining submissions.

Conclusion

[18] For these reasons, the application for judicial review is allowed.

Certification

[19] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a different officer for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5352-08

STYLE OF CAUSE: NADIYA KROHMALNIK v. THE MINISTER OF
CITIZENSHIP, IMMIGRATION and
MULTICULTURALISM

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: June 4, 2009

APPEARANCES:

Jeremiah Eastman	FOR THE APPLICANT
Alison Engel-Yan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Eastman Law Office Professional Corporation Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT