

Federal Court



Cour fédérale

Date: 20140722

Docket: IMM-2928-13

Citation: 2014 FC 726

Ottawa, Ontario, July 22, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**KAROLY ZOLTAN STABEL
ANDREA AGNES ORI
BRENDON TIBOR STABEL
KAROLY MARK STABEL
NIKOLETT MARIA STABEL
KAROLYNE STABEL
RAMONA ESZTER STABEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] It is incumbent on the Refugee Protection Division of the Immigration and Refugee Board [RPD] to ensure that it analyzes cases as a comprehensive whole in an integral manner,

wherein it considers the personal narratives of each applicant and then to analyze such integrally, as a whole, together with the country condition evidence.

II. Introduction

[2] The Applicants seek a judicial review of a decision by the RPD, dated March 19, 2013, wherein, it was determined that the Applicants were not Convention refugees under section 96 nor persons in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA].

III. Background

[3] The Principal Applicant, Mr. Karoly Zoltan Stabel, and his common-law partner, Mrs. Andrea Agnes Ori, their two sons, Karoly Mark and Brendon Tibor, their two daughters, Nikolett Maria and Ramona Eszter, and the Principal Applicant's mother, Karolyne, are citizens of Hungary who are seeking refugee protection in Canada. The Principal Applicant is of Roma and of Jewish origin, his mother, Roma, and his common-law spouse, Hungarian.

[4] The Principal Applicant claims that, between 2005 and 2012, he and his family were victims of numerous acts of discrimination due to their ethnicity, including:

- a) Being arrested and assaulted by the police for allegedly stealing a vehicle that belonged to him (1998);
- b) Being stopped and assaulted by security guards uttering anti-Roma slurs (2005);

- c) Receiving threats from individuals and organizations by telephone and on social media (2005-2012);
- d) Being involved in a serious car accident with individuals who had yelled anti-Roma slurs at him (2006) and having their car set on fire by unknown perpetrators (2008);
- e) Being severely attacked by members of the Hungarian Guard (2010).

[5] It is after a last incident, which involved his son having been injured, that the Principal Applicant explains he decided to leave Hungary with his family.

[6] The Applicants arrived in Canada almost a year later, on September 13, 2011, and submitted a refugee claim on October 3, 2011.

[7] On March 19, 2013, the RPD refused the Applicants' refugee claim which is the underlying application before this Court.

IV. Decision under Review

[8] In its decision, dated March 19, 2013, the RPD refused the Applicants' claim based on lack of credibility and state protection.

[9] With respect to the Applicants' credibility, the RPD firstly noted a number of contradictions and omissions in the Applicants' testimony and written representations. For instance, the RPD noted that the Principal Applicant had provided contradictory information in regard to whether or not he had returned to the police station after the 2010 attack to follow up

on the investigation of the matter. Given that these submissions went to the rebuttal of State protection, the RPD attributed significantly less weight to these portions of their testimony. Accordingly, the RPD found that the Applicants' argument that the police only investigated certain incidents because innocent third parties were involved was merely speculative. There was no corroborative evidence provided that the police would not have acted, had only the Applicants been involved in the accident. The RPD also found it problematic that the Principal Applicant's wife would not have had any communication with police during the three-month period after her husband's car accident of 2006, given the serious nature of the accident.

[10] Furthermore, the RPD found it improbable that the Principal Applicant could have been identified and targeted as a Roma due to his appearance alone during the 2006 and 2008 incidents; as he, according to the RPD, self-admittedly, allegedly, specifies that he does not appear to be Roma due to his dual ethnicity (although nowhere in the transcript nor in any part of the file is that assertion made on the part of the principal Applicant). The RPD found it equally improbable that the Applicants were being threatened by strangers on the Principal Applicant's Facebook page, as he lacked knowledge of key elements of his account. The RPD concluded that this evidence had been adduced in an attempt to embellish the merits of his claim.

[11] The RPD then discussed, in great length, the current country documentation regarding Hungary, and concluded that the Applicants had not provided clear and convincing evidence of the State's inability to protect them. The RPD acknowledged that the documentation does indicate reporting of widespread incidents of intolerance, discrimination and persecution of the Roma in Hungary; however, the RPD found that there was also persuasive evidence that

Hungary was making serious efforts to address these problems, and that the police and the government were both willing and able to protect them upon their return.

V. Issue

[12] Is the RPD's credibility determination reasonable?

VI. Relevant Legislative Provisions

[13] The following legislative provisions of the IRPA are relevant:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;

or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

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

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son

nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care

(2) A person in Canada who is a member of a class of persons prescribed by the

renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au

<p>regulations as being in need of protection is also a person in need of protection.</p>	<p>Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.</p>
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VII. Arguments between the two parties in respect of their positions

[14] The Applicants claim that the RPD misapprehended the evidence which it used to form the basis of its negative credibility findings. The Applicants argue that the RPD erred by drawing a negative inference from a perceived omission of information in their Personal Information Form [PIF], as the information in question was in fact included in their PIF. The Applicants also argue that the RPD erred in misconstruing the Principal Applicant's evidence regarding his 2006 accident. The Applicants note that their PIF clearly indicated that the racial slurs made in this incident were made to the Principal Applicant before he got into his car, not afterward.

[15] The Applicants further state that the RPD erred in its decision by not referring to the many personal documents provided by the Applicants to corroborate the numerous incidents and a lack of State protection.

[16] On the question of State protection, the Applicants argue that the RPD used the wrong test in determining whether the level of protection was adequate. They argue that the RPD failed to assess State protection as a spectrum and at the operational level. The Applicants state that the RPD instead engaged in a lengthy discussion about the police and governmental organizations; despite significant documentary evidence pointing to the State's inability to provide protection to Roma citizens, whatever its intention may be. The Applicants believe that the focus on only part

of the documentary evidence constituted a complete mischaracterization of the evidence. The Applicants state that the RPD was required, at the very least, to mention the documentary evidence that contradicted its findings, thus, demonstrating that protection in their regard was not forthcoming, no matter what general intentions may have been asserted in regard to efforts made by the Hungarian government. The facts on the ground, based on the evidence, show a very different picture.

[17] The Respondent submits that the Applicants did not discharge their burden of showing that the RPD erred in determining that State protection was available. The Respondent states that the RPD considered the evidence supporting the Applicants' allegations; however, the RPD weighed against persuasive evidence indicating Hungary is making serious efforts to address the treatment of minorities in the country. Efforts and intentions, in and of themselves, are not facts on the ground. It was not reasonable for the RPD to conclude that State protection was adequate and would be available. The RPD's findings were not supported by the objective documentary evidence before it.

[18] The Respondent asserts that the Applicants' disagreement on the issue of State protection essentially amounts to the RPD's weighing of the evidence, which does not give a legal basis for the Court to intervene. Relying on *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, the Respondent submits that the RPD was not required to canvass every single piece of evidence before it. That is accurate; however, according to the Applicants, the RPD did not examine the evidence, either that of a subjective or that of an objective nature as a whole, comprehensively; thus, the objective

evidence in respect of the country conditions, as well as the specific testimony of the Applicants had not been analyzed in an adequate integral manner, demonstrating that the case was not considered according to a comprehensive whole. The decision of *Newfoundland and Labrador Nurses' Union*, above, necessitates, at the very least, that the subject matter be reviewed as a whole in context. It was not.

VIII. Standard of Review

[19] It is established jurisprudence that credibility findings are findings of fact that are reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 46).

[20] Similarly, the issue of State protection is a question of mixed fact and law and is reviewable on the standard of reasonableness (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004).

IX. Analysis

[21] In order to rebut the presumption of State protection, it is well-established that a claimant “must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that state protection is inadequate” (*Canada (Minister of Citizenship and Immigration) v Flores Carillo*, 2008 FCA 94, [2008] 4 FCR 636 at para 30). State protection need not be perfect, but it must be adequate; as this case demonstrates, it was not. Although a few years have elapsed, the particular circumstances of the Applicants, themselves, on their

respective merits, cannot be said to have altered due to either a change in country conditions or State protection (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2010 FC003; *Bors v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1004, 377 FTR 132).

[22] In the Court's view, the RPD did not reasonably find that the Applicants failed to rebut the presumption of State protection in the present matter. The RPD made negative credibility findings in selecting evidence for the decision rather than examining the case as a whole.

[23] In support of their allegations, the Applicants attempted to rely on voluminous documentary evidence of the general treatment of Roma citizens in Hungary; they, also linked the general country conditions to their personal situation. As stated by this Court in *Alakozai v Canada (Minister of Citizenship and Immigration)*, 2009 FC 266, 176 ACWS (3d) 821, the onus was on the Applicants to demonstrate the link between their personal situation and the objective evidence, and they did. Country condition documents alone dealing with the treatment of Roma citizens in Hungary are not an adequate basis for a positive determination (at para 35-37); however, their own testimony and evidence, when clearly comprehensively and integrally analyzed, brings out a very different narrative. Accordingly, the RPD simply took the entire case out of context and did not recognize the thread of the factual elements to the Applicants' personal situation as the evidentiary circumstances describe, as was brought forward by the Applicants.

[24] The Court does not agree with the RPD that the Applicants' allegations were based on speculation. The evidence of country conditions on the record of abuse and discrimination of

Roma citizens in Hungary, the Principal Applicant did provide explanations as to how his attackers may have known he was a Roma citizen, or how the police did fail to provide him adequate protection. It is apparent as is suggested by the Applicants, that the incidents complained of were as a result of their presumed Roma ethnicity and that the police actually only responded to these incidents because there were innocent third parties involved. The key facts in respect of the most pertinent evidence are directly on file (Application Record at p 187; Tribunal Record, Book 3 at pp 494-496 and 497; Amnesty International Report 2010 in regard to country conditions in Hungary). The Court acknowledges that the RPD did not recognize the serious danger therein in respect of the Applicants (*Bors*, above at para 67). Past experience in respect of country condition evidence reflects a lack of adequate analysis by the RPD in respect of this continuing situation in the circumstances, similar to that of the Applicants.

[25] With regard to the first point, the Court notes that the Principal Applicant did not state in his testimony that he does not look Roma; that was a perception by the RPD, as the record does not bear out that he had ever stated such. The Court finds it problematic that a member of the RPD, by looking at someone, would presume that he is not Roma, by his appearance. Members of ethnic groups do not necessarily look as their stereotype would suggest erroneously; this type of assertion can, at times, be considered to appear to have racial overtures; great care must be taken for that presumption not to be asserted. His wife is, in fact, Hungarian as was noted by the RPD from the testimony and evidence. It is not difficult to conceive how either could be regularly targeted as Roma citizens by unknown individuals and persecuted based on the circumstances described as demonstrated in the country conditions, coupled with the Applicants' specific testimony.

[26] With regard to the second point, the evidence on the record shows that the police did take action upon receiving certain complaints filed by the Applicants and even apprehended certain individuals who had victimized the Applicants; however, the Court does not find, in and of itself, that these facts demonstrate a willingness of the State to protect the Applicants as Roma; that shows that it is not the case necessarily for the Applicants when their Roma designation is brought into consideration by the authorities therein as is seen, both by the personal and country condition evidence of the Applicants when linked together. It is then that the description of allegations which they assert constitutes persecution. The error of the RPD is due to nuancing only the Principal Applicant's reliance on general country conditions without recognizing the personal testimony of all the Applicants who brought their narrative before the RPD allegation without taking the country conditions into consideration in comprehensive context. No change in country conditions is evident from the actions of the police in their regard, although the intentions of the government in its legislative provisions and declared policies, may be different but that did not signal a change in circumstances for the Applicants. It is actually a misconstrual of the facts in context by the RPD.

[27] The RPD erred in ignoring the "personal evidence" of the Applicants in its reasons. If the Applicants' narrative would be taken in comprehensive, integral context, the outcome would appear to be entirely different.

[28] Due to a lack of consideration of the comprehensive narrative, the RPD's conclusions must be overturned on this ground (*Hosseini v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 402, 116 ACWS (3d) 95 (TD)); although there is a presumption that the

RPD considered all the evidence that was put before it (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, 36 ACWS (3d) 635 (FCA); *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL/Lexis) (FCA)). It is evident to this Court that the evidence was neither considered nor analyzed as a whole. The Principal Applicant's narrative should be read together with that of his wife and, also, that of the Principal Applicant's mother which was not at all assessed on an individual basis of each of the respective persons and then adequately reflected and considered as per *Newfoundland and Labrador Nurses' Union*, above, to demonstrate that the evidence had been considered integrally as a whole.

[29] The RPD's decision in drawing inconsistencies from the Applicants' submissions leading to the RPD's negative credibility findings, were a result of a mischaracterization of the evidence. In the Court's view, the Applicants' reliance on deficiencies in the RPD's reasoning is both understandable and reasonable. These deficiencies would, in and of themselves, be sufficient to result in a different disposition of this application. The RPD's credibility determination was very clearly not cumulative; it was based on a number of credibility concerns throughout the Applicants' narrative due to an analysis which is out of context, picking and choosing that which appeared in the RPD's decision. It is therefore likely that the RPD would have reached a different conclusion about the Applicants' overall credibility, had the RPD read the case in context by considering each of the Applicant's respective narratives, and then, combined in a comprehensive manner, in a reading of the whole. The decision of the RPD is unreasonable and lacks transparency as to how the Applicants actually would have received protection from hate crimes.

X. Conclusion

[30] For all of the above reasons, the Applicants' application for judicial review is granted and the matter is returned for determination anew before another member of the RPD.

JUDGMENT

THIS COURT'S JUDGMENT is that the Applicant's application for judicial review be granted and the matter be returned for determination anew (*de novo*) before another member of the RPD with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: KAROLY ZOLTAN STABEL, ANDREA AGNES ORI, BRENDON TIBOR STABEL, KAROLY MARK STABEL, NIKOLETT MARIA STABEL, KAROLYNE STABEL, RAMONA ESZTER STABEL
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