

Federal Court



Cour fédérale

Date: 20150421

Docket: IMM-2529-14

Citation: 2015 FC 508

Toronto, Ontario, April 21, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**JANOS LAKATOS
JANOSNE LAKATOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of a Member of the Refugee Protection Division dated March 6, 2014 wherein the Applicants' claim for refugee protection was rejected.

[2] The Applicants are husband and wife. Both are Hungarians of Roma ethnicity. They have four children and several grandchildren. Some of their children and grandchildren have been granted refugee protection in Canada.

[3] When the Applicants came to Canada in March 2014, they did not make a claim for refugee protection right away. They waited until August 2014 to make their claim stating that they were hoping that their son would come from Hungary and they could all make a claim together. He never came.

[4] The Applicants' claim was based on two grounds. One was a series of unconnected incidents in Hungary dating back to 1976 through to 2013 where one or the other of them was struck or cursed for being Roma. The other basis was fear of a person who they describe as mafia, who kidnapped one of their sons and held him hostage for a few days in 2004 until he escaped, and harassment from such person following that escape.

[5] The principal basis for rejection of the Applicants' claim was that the Applicants had, on prior occasions, visited the United States and Canada and made no claim for asylum or refugee protection; instead, they re-availed themselves to Hungary. Both Applicants visited the United States in 2012. The female Applicant visited Canada in 2009. Each time they returned to Hungary.

[6] When the Applicants' claim was rejected, they were ordered to be removed from Canada. They sought a stay which was unsuccessful and they were removed to Hungary on June 6, 2014. As a consequence, the Respondent has brought a motion heard at the outset of the hearing that this application be dismissed as being moot given the removal of the Applicants to Hungary.

[7] I will not deal with this motion for several reasons. First, it was brought only two business days before the hearing notwithstanding that the matter had been set down for some time. Second, the issue has been dealt with by Justice Fothergill in *Molnar v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 345 wherein a question has been certified and an appeal taken. Third, given my disposition of this matter, it is unnecessary for me to deal with the motion.

[8] The Applicant raised four issues at the hearing:

- did the Member err in the assessment of subjective fear?
- did the Member err in respect of the Applicants' failure to claim asylum in a safe third country?
- did the Member err in finding re-availment?
- did the Member fail to have due regard to the successful claims of the Applicants' son and daughter?

[9] All of these issues are to be dealt with on the standard of reasonableness.

[10] A further issue, that of bias, was raised in the written material but not pursued by the Applicants' Counsel at the hearing.

[11] The first three issues, while separately addressed at the hearing, all relate to the fact that the Applicants have endured some low level harassment infrequently on occasion over a period of several years. The Member found that those incidents, taken separately or together, did not

rise to the level required for a successful refugee claim. I find that decision to be within the bounds of reasonableness established by cases such as *New Brunswick v Dunsmuir*, [2008] 1 S.C.R. 190. The Applicants had several opportunities to claim asylum or make a refugee claim in the United States or Canada and failed to do so. The excuse that they were waiting to see if things would get better in Hungary is not sustainable.

[12] The argument that the Member failed to give sufficient consideration to the fact that the Applicants' son and daughter had successfully made claims in Canada a few years earlier is equally non-sustainable. The son had, in addition, factors dealing with his wife's religion; the daughter had gender orientation issues. The fact that a family member has made a successful claim for refugee protection does not, in itself, mean that other family members must, of necessity, succeed.

[13] I find the conclusion reached by the Member was reasonable and will not be set aside.

[14] No question needs to be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2529-14

STYLE OF CAUSE: JANOS LAKATOS, JANOSNE LAKATOS v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 20, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: APRIL 21, 2015

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