

Federal Court



Cour fédérale

**Date: 20150417**

**Docket: IMM-6208-13**

**Citation: 2015 FC 488**

**Ottawa, Ontario, April 17, 2015**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**RICHARD REZMUVES**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review initially brought by Karoly Rezmúves (the principal applicant) under subsection 72(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the Act] of a decision by the Immigration and Refugee Board of Canada, Refugee Protection Division [the Board], dated September 5, 2013, wherein the Board determined that the applicants were not Convention refugees nor persons in need of protection.

[2] The applicants seek a declaration that the applicants are Convention refugees or person in need of protection, or both, and in the alternative, an order setting aside the negative decision and returning the matter to a different member of the Board for redetermination.

[3] On November 1, 2013, the applicants filed a notice of discontinuance except for the principal applicant's son, Richard Rezmuves (the remaining applicant or the applicant), who continued with the application for leave challenging the Board's decision.

I. Background

[4] The principal applicant is a Roma citizen of Hungary. The other applicants are also Roma citizens of Hungary and were all born in Hungary. They are the principal applicant's son, Richard Rezmuves, his wife, Erzsebet Rezmuves, and his three daughters, Melissza Rezmuves, Dorina Rezmuves and Diana Rezmuves.

[5] On October 9, 2010, the principal applicant fled Hungary with his son. They arrived in Canada on the same day and claimed refugee protection upon arrival.

[6] The principal applicant's wife and the rest of their children arrived in Canada on December 9, 2012 and claimed refugee protection on December 13, 2012.

[7] The principal applicant's parents arrived on November 16, 2010 and claimed refugee protection on November 27, 2010.

[8] On March 15, 2012, the principal applicant's refugee claim was heard together with his parents' refugee claim.

[9] On June 15, 2012, the principal applicant's parents withdrew their refugee protection claim. On September 5, 2013, the Board rejected the applicants' refugee protection claims.

[10] The applicants filed an application for leave and judicial review in this Court on September 27, 2013.

[11] On November 1, 2013, the applicants filed a notice of discontinuance except for the principal applicant's son (Richard Rezmoves or the applicant) who continued with the application for leave challenging the Board's decision.

[12] The application for leave was granted on July 23, 2014.

## II. Decision under Review

[13] The Board was satisfied with the applicants' identities.

[14] The Board found that the applicants were not Convention refugees nor were they persons in need of protection. The determinative issue was credibility and in the alternative, state protection.

III. Credibility

[15] The Board had issues with the applicants' credibility, including:

1. All four of the principal applicant's children were attending the same school, yet only one incident which involved one of the four children was reported. The applicants provided no evidence that the single pushing incident in 2006 was anything more than schoolyard bullying.
2. The principal applicant could not remember the date of the event that triggered their decision to flee Hungary, that being the arrival of Hungarian guards in their village.
3. There was no mention of the arrival of Hungarian guards in the principal applicant's PIF.
4. The principal applicant had no medical documents to corroborate his story of an alleged attack by Hungarian guards in the spring of 2010. He testified that he forgot the medical records at home. However, the Board noted that on a balance of probabilities, this incident likely occurred.
5. The principal applicant testified never having gone to the state to complain about discrimination and racist attitudes because "at my workplace there were not such problems."
6. The applicants all received education from their state. The principal applicant's allegation that he was denied higher education is unsupported by any objective evidence.
7. The principal applicant was never denied employment.

8. The applicants were never denied medical care.
9. The principal applicant agreed with the fact that the Hungarian government was aware of the serious problem that anti-Roma sentiment posed in Hungary and that the government was taking steps to correct the situation.

[16] The Board found that the applicants' fears were not well founded and that this finding alone was fatal to their claims.

#### IV. State Protection

[17] The Board noted that the police took the principal applicant's son to the hospital when he was assaulted in 2010. Also, the principal applicant could afford medical care and obtain state protection following the assault by guardsmen on him in 2010.

[18] The Board noted that the principal applicant was asked several times if the police would help and he said "yes I can go to the police." When asked if he went back to his country and faced violence from guardsmen and other racists could the police give him protection, he answered "in my opinion, yes." He also testified that he did not know if the police would help him.

[19] After reviewing the law on state protection and reviewing the situation in Hungary based on the National Documentation Package, the Board concluded that on a balance of probabilities, given the objective evidence and the principal applicant's own testimony, the applicants failed to rebut the presumption of state protection. They failed to present clear and convincing evidence to

establish that adequate, albeit imperfect, state protection would not be available to them upon returning to Hungary. This finding alone was also fatal to their claims.

V. Issues

[20] The remaining applicant raises three issues for my consideration:

1. Did the Board err in the findings regarding the availability of state protection in Hungary for those of Roma ethnicity?
2. Did the Board err by failing to find that the discrimination experienced by the applicant amounts to persecution?
3. Did the Board err by failing to conduct a full and separate analysis of the risks of return pursuant to section 97 of the Act?

[21] The respondent raises one issue in response: has the applicant failed to show an arguable issue of law upon which the proposed application for judicial review might succeed?

[22] In my view, there are three issues:

1. What is the standard of review?
2. Did the Board commit a reviewable error in assessing the applicant's credibility?
3. Did the Board commit a reviewable error in finding that the applicant had failed to rebut the presumption of state protection?

VI. Applicant's Written Submissions

[23] First, the applicant submits the Board's determination on state protection is unreasonable because it relied on evidence of measures taken by the government to determine adequate state protection. He argues that recent decisions of this Court show disagreement with the Board decisions where the decision-maker decided that adequate state protection for Roma in Hungary exists based upon evidence of what measures the government has taken to provide state protection (*Hercegi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 250, [2012] FCJ No 273; and *Rezmuves v Canada (Minister of Citizenship and Immigration)*, 2012 FC 334, [2012] FCJ No 374).

[24] Second, the applicant submits that based on the evidence, the Board was unreasonable in failing to find that the discrimination experienced by the claimant amounted to persecution.

[25] Third, the applicant submits that the Board committed a reviewable error by failing to conduct a section 97 analysis. The applicant argues that here, the Board did not address the evidence regarding country conditions with a view to determine whether the objective evidence indicated that the ill treatment of people sharing the applicant's profile would subject the applicant personally to a section 97 risk in Hungary. He cites excerpts from multiple documents for support, such as the U.S. Department of State 2012 Human Rights Report and the report on the Role of the Police and Security Apparatus.

VII. Respondent's Written Submissions

[26] The respondent submits the applicable standard of review in this case is the standard of reasonableness and the Board's factual findings are owed deference (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraphs 16 to 18, [2011] 3 SCR 708).

[27] The respondent submits that a negative credibility finding is determinative *per se* and the applicant's failure to prove that it is unreasonable is sufficient to defeat the application (*Salim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1592 at paragraph 31, [2005] FCJ No 1963; and *Cienfuegos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262 at paragraphs 25 and 26, [2009] FCJ No 1591).

[28] First, the respondent argues that this is not a case where the Board made "replete statements regarding the Hungarian government's intentions to assist the Romani population." Based on the objective evidence and the oral evidence in the present case, the applicant failed to demonstrate that he could not rely on state protection.

[29] Second, the respondent argues the applicant did not provide evidentiary support to his challenge of the Board's appreciation of current country conditions in Hungary; rather, the applicant re-pleads the merits of some of the evidence before the Board.



[30] Third, the respondent argues the Board was not required to conduct an independent analysis under section 97 for this case. Here, the Board found there was adequate state protection and this is applied equally under sections 96 and 97. Where there is no evidence before the Board that would support a claim under section 97, no separate section 97 analysis would be required (*Racz v Canada (Minister of Citizenship and Immigration)*, 2012 FC 436 at paragraphs 6 and 7, [2012] FCJ No 497; *Csaba Racz v Canada (Citizenship and Immigration)*, 2013 FC 702 at paragraph 7, [2013] FCJ No 747; and *Horvath v Canada (Minister of Citizenship and Immigration)*, 2014 FC 670 at paragraph 25, [2014] FCJ No 692).

[31] The respondent submits therefore, the Board's findings were reasonable and this Court's intervention is not warranted.

#### VIII. Preliminary Issue

[32] At the commencement of the hearing of this matter, the applicant requested that the Court grant a hearing *de novo* for Richard Rezmuves' claim for refugee protection as the Board's file had been lost and the Board had provided a "recreated certified copy of the Tribunal Record" (transcript of judicial review hearing at page 4). This recreated record contained the Board decision, the Board reasons, the National Documentation indexed for Hungary and the transcription of the Board hearing held on March 15, 2013. No Personal Information Form or affidavit were contained in the recreated record.

[33] Counsel for the respondent did not dispute the fact of the incomplete record.

[34] In my view, it is always important to have a complete record when deciding a judicial review application. In some cases, a missing part of the record may not be significant. However, in a case such as the present case where credibility was the determinative issue, I believe it is necessary to have a record which includes Personal Information Forms and any filed affidavits.

[35] As a result, I am of the opinion that this judicial review must be allowed and the matter remitted to a different panel of the Board for redetermination by way of a hearing *de novo*.

[36] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

[37] Because of my finding on the preliminary issue, I need not deal with the other issues.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision of the Board is set aside and the matter is remitted to a different panel of the Board for rehearing by way of a hearing *de novo*.

"John A. O'Keefe"

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Judge

ANNEXRelevant Statutory Provisions*Immigration and Refugee Protection Act, SC 2001, c 27*

<p>72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.</p> <p>...</p> <p>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,</p> <p>(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</p> <p>(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.</p> <p>97. (1) A person in need of protection is a person in Canada whose removal to their</p>	<p>72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.</p> <p>...</p> <p>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 :</p> <p>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;</p> <p>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.</p> <p>97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait</p>
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country or countries of 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.

personnellement, par son 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.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6208-13

**STYLE OF CAUSE:** RICHARD REZMUVES v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 21, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'KEEFE J.

**DATED:** APRIL 17, 2015

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