

Federal Court



Cour fédérale

Date: 20171101

Docket: IMM-376-17

Citation: 2017 FC 976

Ottawa, Ontario, November 01, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**JOZSEF ZSOLT VIDA
ROBERT GYORGY VIDA
AGNES RENATA VIDA
JAZMIN DZESSZI VIDA**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are four children (ages 14, 13, 9, 8) from Hungary and of Roma ethnicity. They have been in Canada since 2009. The Pre-Removal Risk Assessment [PRRA] Officer [the Officer], determined that they would not be at risk if returned to Hungary based upon a decision of the Refugee Protection Division [RPD] four years earlier. For the reasons that follow, this

judicial review is allowed as the Officer's approach to the state protection analysis is unreasonable.

I. Background

[2] The Applicants came to Canada with their mother in November 2009 and claimed refugee status. Their claim was based upon discriminatory treatment towards them in school and with healthcare services. In June 2012, the RPD rejected the refugee claims of the Applicants and their mother on the basis of credibility. The children's mother was removed from Canada in July 2013. The children have since been in the care of their grandmother.

II. PRRA Decision

[3] On November 25, 2016, the PRRA Officer rejected the Applicants' claim on the basis that they relied upon the same facts that were considered and rejected by the RPD.

[4] The Officer found, considering the country conditions in Hungary, that while Roma experience discrimination in all aspects of life, the state continues to attempt to improve the situation for Roma through various programs.

[5] The Officer found that the Applicants failed to overcome the RPD findings that adequate state protection was available to them and the Officer concluded that there were no significant changes in country conditions.

III. Issue

[6] Although the Applicants raise various issues, the issue of state protection is dispositive of this judicial review application.

IV. Standard of Review

[7] The Officer's decision is reviewed on the reasonableness standard, (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). However with respect to the application of the proper test for state protection, the standard of review is correctness (*G.S. v Canada (Citizenship and Immigration)*, 2017 FC 599 at para 11).

V. Analysis

[8] The test for state protection is operational, focused on whether the state actually provides protection on the ground (*Meza Varela v Canada (Citizenship and Immigration)*, 2011 FC 1364 at para 16; *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 at paras 11-12). The Applicants argue that the Officer applied the incorrect test for state protection by commenting on Hungarian best efforts rather than focusing on operational effectiveness.

[9] While I am not satisfied the Officer applied the proper test for state protection, the Officer's misapprehension of evidence pertaining to state protection is unreasonable, regardless of the test applied.

[10] The Officer states that there was no evidence that the availability of state protection had drastically changed between the time of the RPD decision and the PRRA consideration. The RPD concluded that police are held accountable for actions which are discriminatory against Roma. The Officer found that there was no change in country conditions, thus the RPD findings of state protection were still applicable.

[11] However, the Applicants rely upon the evidence which was provided to the Officer which shows that state protection is not forthcoming. It is this evidence which the Officer failed to adequately consider, particularly regarding the changes in Hungary since the state protection analysis by the RPD and the changes in the nature of the risk to be assessed. The RPD was considering the issue of risks with respect to combined claims of the mother and her children. However, the issue before the Officer was the availability of state protection for the four children alone. The same considerations may not apply. Therefore, it was not reasonable for the Officer to simply rely upon the state protection analysis by the RPD and assume it applies to the circumstances of the minor Applicants.

[12] I do not agree with the Applicants that there is a higher duty on an Officer when considering risk factors in relation to children. However, in these particular circumstances, where the RPD analysis had taken place four years earlier, and where the application no longer included the children's mother, it would have been appropriate for the Officer to do a more holistic assessment rather than rely on the RPD assessment.

[13] This Court has found some of the avenues of redress insufficient in Hungary (*Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326 at paras 14-18). Given these findings, and the changing situation in Hungary, the Officer should have reconsidered state protection anew, referring to the specific fact that the Applicants are minors.

[14] The Officer's approach to state protection in the circumstances was not reasonable. Therefore, this judicial review is allowed.

JUDGMENT in IMM-376-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision of the Officer is set aside and the matter is remitted for redetermination by a different officer;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-376-17

STYLE OF CAUSE: JOZSEF ZSOLT VIDAK ET AL v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 14, 2017

JUDGMENT AND REASONS: MCDONALD J.

DATED: NOVEMBER 01, 2017

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