Federal Court  Cour fédérale

**Date: 20190402**

**Docket: IMM-4247-18**

**Citation: 2019 FC 397**

**Ottawa, Ontario, April 2, 2019**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**LASZLO RUSZO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision of a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada, dated May 31, 2018.

[2] For the following reasons, this application is granted.

**Background**

[3] The Applicant is a citizen of Hungary. In March 2010, the Applicant, his wife and their two children entered Canada and claimed refugee status alleging persecution and discrimination in Hungary due to their Roma ethnicity. In February 2012, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected the family's claim, finding that state protection was available to them. Leave to judicially review the RPD's decision was subsequently refused by this Court. The family was required to return to Hungary and did so in December 2012.

[4] On October 6, 2016, the Applicant returned to Canada by himself. He claims that the family could only afford one plane ticket and his wife and children plan to eventually follow him to Canada, if possible.

[5] The Applicant was not eligible to make another refugee claim, but applied for a PRRA in November 2016. He claimed that when making their refugee claim, his family was improperly represented by their lawyer, Viktor Hohots, who has since been found guilty of professional misconduct by the Law Society of Ontario regarding his representation of Roma refugee claimants.

[6] The Applicant also claimed that the situation for his family in Hungary had not improved since their return in December 2012. They had struggled to re-enroll their children in school. The Applicant's oldest son was refused entry to a number of schools and, as a result, began working

rather than finishing his education. His younger son was also refused entry to a number of schools and was eventually accepted into a remedial school. His son reported to the Applicant that he is mistreated there due to his ethnicity, including that his teachers spit on him and call him a “stinky gypsy”.

[7] The Applicant claimed that due to ethnic discrimination, he was unable to find work when he first returned to Hungary. He eventually found work through the Public Works program, including street sweeping, trimming hedges and cutting grass. He stated that the work is irregular and the program, made available by municipalities to offer employment to those struggling to find work, is only for three or six month periods. He stated that it pays less than minimum wage and the monthly wage paid was less than the cost of family’s monthly utilities. When that work was no longer available, he would be directed to social assistance, which offers an even lower monthly income. The Applicant turned to manual labour side jobs to supplement his income and support the family, but alleged that such work was irregular and undependable.

[8] The Applicant also claimed that he had been physically attacked twice by racists in Hungary. The first attack was before the family came to Canada. The second attack was after his return, although he does not provide a specific date. The Applicant claimed that men beat him when he was walking home from the store, calling him a dirty gypsy and threatening that they were going to kill him. He claimed that he awoke in an ambulance and has no recollection of the attack. Paramedics told him that the police had been called, but that his attackers had run off before the police arrived. He later went to the police station to report the attack, but was told that

the police could not do anything because the attackers were “unknown perpetrators.” He later returned to the police station for an update, but was rebuffed.

[9] The Officer rejected the Applicant’s PRRA application on May 29, 2018.

[10] The Applicant filed an application for leave and for judicial review on August 29, 2018. On September 11, 2018, Justice Heneghan granted him a stay of removal until his application has been dealt with by this Court.

**Decision Under Review**

[11] The Officer acknowledged that the Applicant claimed that he was improperly represented by Mr. Hohots throughout his family’s refugee claim made to the RPD and that the Applicant had filed a complaint against Mr. Hohots with the Law Society of Ontario. However, the Officer found that the Applicant had not identified any specific problems that he had experienced in providing testimony or adducing evidence to the RPD, nor had he offered examples of how he believed that the family’s evidence was misconstrued during the refugee hearing.

[12] The Officer found that the documentary evidence provided indicated that Roma people in Hungary had suffered from discrimination, but that the evidence did not support that the discrimination suffered by the Applicant rose to the level of persecution. The Officer recognized that there is discrimination against Roma in education, healthcare and employment, however, he found that the Applicant “presented insufficient objective evidence that he was personally denied

the right to earn a livelihood, his right to basic health care, he was were [sic] denied social services and his children were denied an education".

[13] The Officer noted that the evidence before him, which he described as "IMM5669, dated October 20th, 2016", indicated that the Applicant was employed as a street maintenance worker from October 2006 to March 2010, and from December 2012 to October 2016. The Officer stated that the Applicant had provided insufficient objective evidence as to why he was not able to resume his employment as a street maintenance worker and that there was insufficient evidence that he would be prevented in any way from obtaining employment in another field upon return to Hungary.

[14] The Officer noted that the Applicant claimed he had difficulty registering his children in school after they returned to Hungary in 2012. However, the Officer found that apart from the Applicant's statements, there was no corroborative evidence that this occurred and that the children had been denied an education. Nor had the Applicant provided any evidence pertaining to any redress he pursued in that regard.

[15] Next, the Officer considered the issue of the availability of state protection. The Officer found that the preponderance of the objective evidence shows that while state protection may not be perfect, it is adequate for Roma who are victims of crime, police abuse and discrimination. The Officer inserted lengthy quotes from the U.S. Department of State Country Report on Human Rights Practices for 2015 as well as from other documentary sources and found that it was clear from the documentary material researched that the government of Hungary "is making

serious efforts to protect its citizens, even if it not always successful [sic], since a government cannot guarantee the protection [sic] to its citizens at all times".

[16] The Officer found that there are several mechanisms, such as the Independent Police Complaints Board, The Equal Right Treatment Authority and The Commissioner for Fundamental Rights, available to receive complaints submitted by the Romani community. Further, that Hungary is a democracy and therefore the burden of proof rests on the Applicant to establish that he had exhausted all avenues of domestic recourse in Hungary. The Officer found that the Roma community continued to face discrimination in housing, employment, education and health care and the government has faced challenges in providing protection to Roma citizens and that this protection is not perfect. However, the Officer concluded that the documentary evidence before him indicated that "Hungary is making efforts to correct its historical discrimination against the Roma people".

[17] The Officer rejected the Applicant's PRRA.

**Issues and Standard of Review**

[18] The Applicant states the issues as being:

i. Whether the PRRA Officer's finding that the Applicant's allegations do not rise to the level of persecution is unintelligible;

ii. Whether the PRRA Officer's state protection analysis is unreasonable?

[19] In my view, the sole issue in this matter is whether the Officer's decision was reasonable. Reasonableness is a deferential standard concerned mostly with the existence of justification,

transparency and intelligibility within the decision making process, but also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

**Analysis**

*Did the Officer reasonably find that the Applicant's allegations do not rise to the level of persecution?*

[20] The Applicant argues that the Officer's finding that he is facing discrimination, not persecution, is unreasonable for the following reasons:

1) In finding that the Applicant's allegations do not rise to the level of persecution, the Officer ignored the Applicant's allegations that he had been physically attacked solely due to his ethnicity;

2) The Officer ignored the cumulative aspect of the mistreatment the Applicant suffered in Hungary;

3) The Officer erred in law by stating that a PRRA applicant must show that they have been personally denied an absolute right to employment, education, healthcare and social services in order to establish discrimination amounting to persecution.

In my view, the Officer's finding that the Applicant had experienced discrimination, not persecution, is unreasonable.

[21] In support of his PRRA application, the Applicant provided an affidavit in which, amongst many other things, he described a physical assault which occurred before the family came to Canada in 2010, and a second attack which he claimed occurred after his return to Hungary, both because of his ethnicity. As the Applicant submits, the Officer in his reasons does

not address the Applicant's evidence about the assaults. The Respondent points out that the Applicant provided no date for the alleged second assault and that this could have led the Officer to doubt its credibility or to find that more corroborative evidence was required.

[22] However, the Officer did not make such a finding. Rather, there is simply no analysis or acknowledgement of this evidence. As stated by the Court in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paragraph 17, "the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact 'without regard to the evidence.'" The allegation that the Applicant had been physically assaulted following his return to Hungary in 2012 is at least directly relevant to whether his experiences amounted to persecution, as opposed to discrimination (see *Bayrak v Canada (Citizenship and Immigration)*, 2013 FC 1056 at para 14; *Mrda v Canada (Citizenship and Immigration)*, 2016 FC 49 at para 40 [*Mrda*]).

[23] Further, and although not raised directly by the Applicant, the Officer's analysis concerning the Applicant's ability to find work is unintelligible in view of the evidence. In that regard, the Officer states that the evidence before him, "IMM 5669, dated October 20, 2016", states that the Applicant was employed as a street maintenance worker in the past. This appears to be a reference to the Schedule A, Background/Declaration, filed by the Applicant when he made his PRRA application, as found in the certified tribunal record. The Officer found that there was insufficient objective evidence as to why the Applicant was unable to resume this employment. However, the Applicant's affidavit provided in support of his PRRA application

indicates that he was employed with the Public Works program prior to coming to Canada. When he returned to Hungary in 2012, he began looking for work and eventually returned to that program. He described the treatment that the mostly Roma workforce received there. He noted that workers are hired for a three or six month term during which the work is not consistent. In the program, he alternated between street sweeping, hedge trimming and grass cutting and had both full-time and part-time work. He further stated that it did not pay a livable wage. The Officer went on to find that there was insufficient evidence that the Applicant would be prevented in any way from obtaining employment "in another field" upon return to Hungary. Yet, his affidavit evidence was that when he returned in December 2012, he began looking for work right away, that it took 6-8 months before he found anything, that no employer would hire him once they saw his skin colour and, that he eventually found work again with the Public Works program.

[24] In short, the Officer did not indicate that he did not accept the credibility of the Applicant's statements concerning employment as found in his affidavit, that this evidence contradicted other evidence in the record before the Officer, or that it did not support his claim of discrimination. The Officer simply did not address the evidence, rendering his finding as to the Applicant's ability to find work unintelligible.

[25] Further, and significantly, as the Applicant submits, there is also simply no analysis to indicate that the Officer considered whether the cumulative effects of the discrimination faced by the Applicant rose to the level of persecution. As stated by Madam Justice Dawson in *Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 and adopted by the Federal

Court of Appeal in *Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 at paragraph 41, "where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of that conduct." The Applicant's affidavit spoke to experiences of discrimination he faced as a child, difficulties he experienced in enrolling his children in school, teachers insulting and spitting on his son, challenges his family members faced with the health care system, barriers to finding work, discriminatory treatment by municipal officials, verbal threats, and physical assaults. The Officer made a general statement that he had read and carefully considered all of the information submitted by the Applicant. He also considered the evidence regarding the children's enrolment in school and the Applicant's work, the latter albeit in a flawed manner, but he went no further in his analysis.

[26] This Court has held that it is insufficient for a decision-maker to simply say that it considered incidents cumulatively; an applicant is entitled to know why they did not rise to the level of persecution (*Balog v Canada (Citizenship and Immigration)*, 2015 FC 414 at para 14). Here, the Officer did not consider or analyze the cumulative nature, if any, of the incidents described by the Applicant (*Petrovic v Canada* (*Citizenship and Immigration*), 2016 FC 637 at para 17; *Mrda* at para 40).

[27] In my view, the Officer's treatment of the evidence, as described above, results in a reviewable error and renders unreasonable his finding that the Applicant's allegations to not rise to the level of persecution.

*State Protection*

[28] The Applicant also submits that the Officer's finding that the Applicant did not rebut the presumption of state protection is unreasonable as the Officer failed to consider the Applicant's attempts to access state protection. The Applicant also argues that the Officer erred in law in relying on Hungary's efforts to protect the Roma as evidence of adequate state protection, while ignoring the bulk of the documentary evidence which shows that these efforts have had little effect.

[29] Given my finding above, I need not address this issue. However, I agree with the Applicant that the Officer's state protection analysis can fairly be described as "boilerplate." The decision includes close to twelve pages of cut and copied country conditions documents with almost no analysis of the actual facts of this case. In fact, despite the lengthy and detailed affidavit provided by the Applicant, the Officer's only individualized finding is that the Applicant did not provide corroborative evidence that he had difficulty in enrolling his children in school upon his return and that he did not provide any evidence as to what recourse or redress he pursued in that regard. And even this is not directly tied to the Officer's state protection findings.

[30] Further, as discussed above, the Officer does not mention, analyze, or make any findings in regards to the Applicant's efforts to seek state protection after he was allegedly physically assaulted a second time. Yet, the Applicant's attempts to seek out state protection are directly relevant to the analysis of whether the state is unable or unwilling to provide state protection. It

also goes to the issue of whether it was objectively reasonable for the Applicant not to have exhausted all sources of state protection before seeking asylum (*Juhasz v Canada (Citizenship and Immigration)*, 2015 FC 300 at para 34).

[31] Findings on state protection must be tied to the individual claimant in the claim under consideration. That is, while a general analysis may suffice where an applicant argues the general situation, more is required when an applicant has provided evidence that directly relates to his own individualized circumstances and his claim that state protection is not available to him (*Horvath v Canada (Citizenship and Immigration)*, 2011 FC 1350 at paras 57-58). In failing to do so, the Officer has erred in law. This issue is also sufficient to find the decision unreasonable.

[32] In my view, the Officer also erred in failing to consider the operational adequacy of the state's efforts. The Respondent submits that the Federal Court of Appeal in *Villafranca* articulated the measure of assessing state protection as the state's "serious efforts to protect its citizens" (*Canada (Minister of Employment and Immigration) v Villafranca*, [1992] 99 DLR (4th) 334, 1992 CanLII 8569). However, there is significant subsequent jurisprudence from this Court, some of which is relied upon by the Applicant, which holds that a decision-maker cannot simply rely on the efforts of the state, without actually considering the adequacy of state protection. As Justice Diner states in *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367:

> [21] In considering whether state protection is adequate, a decision-maker must focus on actual, operational adequacy, rather than a state's "efforts" to protect its citizens (*Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 20 (CanLII) at para 12 [Lakatos]). Efforts must have actually translated into adequate protection at the present time (see *Hercegi v Canada (Citizenship and Immigration)*, 2012 FC 250 (CanLII) at para 5). In other

> words, lip service does not suffice. The protection must be real, and it must be adequate.

(See also *Gjoka v Canada (Citizenship and Immigration)*, 2018 FC 292 at para 30; *Kumati v Canada (Citizenship and Immigration)*, 2012 FC 1519 at paras 27-28; *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 20 at paras 13-16; *Olah v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 899 at paras 25-35; *Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421 at para 18; *Csurgo v Canada (Citizenship and Immigration)*, 2014 FC 1182 at para 26).

[33] Here, the Officer stated at various points throughout his reasons that the state "has made efforts", "took steps" and "is making serious efforts." The Officer ultimately concluded that the documentary evidence indicates that Hungary "is making efforts" to correct its historical discrimination against the Roma people.

[34] It was open to the Officer to find that the Applicant had failed to put forward clear and convincing evidence of the state's inability to provide protection or that the Applicant was not credible, although the latter finding would trigger the requirement for an oral hearing. The Officer could also have considered whether the evidence submitted in support of the PRRA was sufficient to ground a finding on state protection that differed from the prior determination on this point by the RPD, although issues remain relating to the Applicant's previous representation at the RPD. However, the Officer did none of these things. Instead, he simply reviewed efforts that the Hungarian government is making to improve conditions for Roma people, without

providing an analysis of the adequacy of protection for the Applicant in his particular circumstances.

[35] For all of these reasons, the decision is unreasonable.

**JUDGMENT in IMM-4247-18**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4247-18 |
| **STYLE OF CAUSE:** | LASZLO RUSZO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MARCH 25, 2019 |
| **JUDGMENT AND REASONS:** | STRICKLAND J. |
| **DATED:** | APRIL 2, 2019 |

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