

Federal Court



Cour fédérale

Date: 20190503

Docket: IMM-5058-18

Citation: 2019 FC 580

Toronto, Ontario, May 3, 2019

PRESENT: Mr. Justice Diner

BETWEEN:

**ATTILA GALAMB
RENATA PUTNOKI
ATTILA GALAMB
KRISZTIAN GALAMB
DANIEL PUTNOKI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, a Roma family of five, consist of the Principal Applicant, his wife, and their three children. They allege a fear of persecution based on their ethnicity.

I. Overview

[2] This application judicially reviews a decision [Decision] of the Refugee Appeal Division [RAD] confirming the Refugee Protection Division's [RPD] decision which found that the Applicants are neither Convention refugees nor persons in need of protection. For the reasons that follow, this application for judicial review is dismissed.

[3] The RPD initially found the Applicants were not credible witnesses and determined they had not rebutted the presumption of state protection, and accordingly dismissed their claim. The RAD, in its Decision, agreed with the RPD, noting that the Principal Applicant omitted a number of the thirteen incidents of assault or threats contained in his Basis of Claim narrative [BOC] from his oral testimony before the RPD. When questioned by the RPD on these omissions, he failed to provide an explanation. As a result, the RAD found that the Applicants were not credible with respect to the assaults and threats.

[4] Further, the RAD observed that the Applicants provided the RPD with documents they said they had obtained personally in Hungary. However the documents described events which occurred in 2015 when the Applicants were already in Canada. When faced with this discrepancy, both tribunals found the Applicants failed to provide an acceptable explanation, resulting in further credibility issues.

[5] Finally, the RAD determined that the Applicants' experience did not amount to persecution. It further found that the Applicants had not established a link between the general

documentary evidence indicating that the Roma community in Hungary suffers persecution, and their specific circumstances.

II. Issues and Standard of Review

[6] Two issues are raised by the Applicants. First, they assert that the RAD erred by failing to hold an oral hearing. There is some debate on the standard of review on this issue (see, for instance, *Mofreh v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 97 at paras 24 and 28, referencing *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93). However, I agree with the authorities holding that the standard of review applicable to the RAD's Decision not to hold an oral hearing is reasonableness as it involves the RAD's interpretation of its own statute (*Al-Abayechi v Canada (Citizenship and Immigration)*, 2018 FC 360 at para 11).

[7] Second, the Applicants impugn the RAD's assessment of (a) credibility and (b) well-founded fear of persecution. A reasonableness analysis also applies to the RAD's assessment of evidence and credibility findings (*Ba v Canada (Citizenship and Immigration)*, 2019 FC 233 at para 4).

III. Analysis

A. *Did the RAD err by failing to hold an oral hearing?*

[8] The Applicants argue that the RAD should have held an oral hearing in light of the new evidence before it and the credibility issues arising from the RPD hearing.

[9] In its Decision, the RAD examined the Applicants' new evidence pursuant to the test set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96. It noted that the new evidence consisted of newspaper articles and a Humanitarian and Compassionate notice of approval in principle with respect to a Mr. Horvath (who is not one of the Applicants). The RAD observed that the notice of approval in principle was general in nature and did not discuss what relied-on evidence might pertain to the Applicants. Accordingly, the RAD gave it no evidentiary weight. It further observed that certain newspaper articles were readily available to the Applicants prior to the RPD hearing, and as a result, did not admit them as new evidence.

[10] With respect to other newspaper articles, dated after the RPD hearing and admitted as new evidence, the RAD explained as follows:

[30] [...] The RAD acknowledges that documentary evidence, including new evidence, indicates that members of the Roma community do suffer persecution in Hungary. However, a refugee claim must be specific to the experience of the Appellants. Simply being a member of a Roma community does not, in and of itself, establish that the Appellants would face persecution if they were to return to Hungary.

[11] A hearing is not granted simply because "new" evidence is admitted before the RAD (*Singh* at para 71). Rather, the new evidence must satisfy the criteria at subsection 110(6) of IRPA before a hearing may be held (*Mofreh* at para 26).

[12] While the RAD did not list or repeat verbatim the subsection 110(6) criteria in determining an oral hearing was not required, it nonetheless considered the essence of the rule when it considered the post-RPD documentation submitted, concluding that the newly admitted

evidence was not specific to the Applicants' experience. I note that in any event, the RAD has discretion not to hold an oral hearing even when the criteria under section 110, read as a whole, are met (*Siddiqui v Canada (Citizenship and Immigration)*, 2015 FC 1028 at para 104).

[13] Applicants' counsel argued that the RAD nonetheless erred in failing to hold an oral hearing in light of their statement provided to the RAD that they did not request a hearing except if the RAD was unable to substitute its decision for that of the RPD. Counsel urged the Court to follow Justice Mosley's ruling in *Horvath v Canada (Citizenship and Immigration)*, 2018 FC 147 at paragraph 16 which noted the same request of the RAD.

[14] *Horvath* differs from this situation, however, given the nature of the new evidence submitted to the RAD, which was personal to the *Horvath* Applicants, and "was directly contradictory to the RPD's findings regarding the Applicants' residence and which went to the core of their credibility" (at para 20). This evidence addressed both medical and residency issues which had been central to the RPD's findings. The same cannot be said in the instant case regarding the new evidence presented to the RAD, in relation to the previous credibility findings. As explained above, the new evidence did not attack the fundamental credibility findings of the RPD, which were different in nature to those of the *Horvath* case. Indeed, even if I were to side with counsel on the RAD's first major credibility finding (regarding the Applicants' failure to address the items in their narrative spontaneously, and only after several prompts), that still leaves other contradictions regarding the Applicants' testimony that counsel conceded could not be easily explained away.

[15] As a result, whether reviewed on the basis of correctness or reasonableness, I do not find the RAD erred proceeding only in writing and with no oral hearing (see by analogy *Mofreh* at para 28).

B. *Was the Decision as a whole reasonable?*

(1) *Credibility*

[16] The Applicants acknowledge that the RAD enjoys a particular advantage in certain circumstances, but submits that the RAD was microscopic in its assessment of the evidence which renders its credibility assessment unreasonable.

[17] I disagree, and find, as already noted above, the RAD's credibility determination was reasonable, in light of its observations regarding the Applicants' testimony on (a) incidents of abuse and assault and (b) receipt of eviction documents personally in Hungary when they were actually in Canada. On (a), after listening to the recording of the RPD hearing and specifically excerpting exchanges where the RPD asked the Principal Applicant about his fear and the alleged threats, the RAD noted that the RPD's credibility concern was that the Principal Applicant failed to mention the incidents of assault provided in his BOC narrative and only provided details after being asked by the RPD why he had failed to do so. There was no explanation submitted for this other than the Applicants' lack of education and sophistication.

[18] Regarding (b), the Applicants failed to provide an explanation as to why the Principal Applicant testified about obtaining documents pertaining to the eviction personally when the Applicants were in fact living in Canada.

[19] I am not convinced that the RAD's analysis was "microscopic" or that it focused on small differences or inconsistencies – faulting decision-makers for making "microscopic" assessments relate to situations where issues irrelevant to the case or peripheral to the claim were examined (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 22). Here, the RAD examined facts that dealt with specific incidents at the very heart of the Applicants' claim – particularly with respect to item (b), even if I were to find that characterizing (a) as an "omission" was unreasonable.

(2) *Well-founded fear of persecution*

[20] The Applicants argue that the RAD failed to look at their particular circumstances, their family members' positive decisions, and the country condition documentation confirming Hungary's practice of illegal, racially motivated evictions and its inability to protect Roma – evidence demonstrating that they face a well-founded fear of persecution as Roma in Hungary.

[21] In response to the Applicants' argument that some of their family members have received positive decisions and have been accepted as refugees, I note that each case is to be decided on its own merits and on the basis of the particular evidence before the decision-maker. The RPD is not bound by the conclusion reached in another claim, even if the claim involves a relative (*Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at para 11).

[22] The RAD expressly acknowledged that the documentary evidence demonstrates widespread reports of “incidents of intolerance, discrimination and persecution” of members of the Roma community in Hungary. However, it noted that simply being a member of the Roma community was insufficient to establish they would face persecution if they were to return to Hungary. In my view, the tribunals reasonably found that the Applicants had failed to establish a credible link between the documentary evidence and their specific circumstances.

[23] Given the negative credibility findings pertaining to their allegations of persecution, the RAD’s only remaining assessment was of the documentary evidence. However, this Court has held that applicants cannot rely solely on country condition evidence to establish their claim, as Justice Boswell recently observed in *Sharawi v Canada (Citizenship and Immigration)*, 2019 FC 74 at paragraph 28, including citing to Hungarian Roma decisions (see also Justice Kane’s reasons on this point at paragraphs 71–73 of *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446).

[24] I would be remiss concluding these Reasons without thanking Applicants’ counsel for his very able and respectful submissions. He did the best he could have done within the constraints of this judicial review.

IV. Conclusion

[25] This application for judicial review is dismissed. No questions are certified and no costs are ordered.

JUDGMENT in IMM-5058-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and none arise.
3. There is no award of costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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