

Federal Court



Cour fédérale

Date: 20191108

Docket: IMM-279-19

Citation: 2019 FC 1400

Ottawa, Ontario, November 8, 2019

PRESENT: Madam Justice Simpson

BETWEEN:

**LAJOS MILAK
JUDIT MILAKNE OLAH
ALEX NOEL MILAK**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on October 16, 2019)

I. Proceeding

[1] This application is for a judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD], dated December 20, 2018, on a redetermination following an earlier decision in 2012. The Member refused the Applicants' refugee claim [the Decision]. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicants are a Roma family composed of a husband and wife and their son Alex. They are all Hungarian citizens. There is also a second son who is a Canadian citizen and therefore not an applicant.

[3] The RPD's conclusions about state protection and whether the discrimination the Applicants faced amounted to persecution turned on credibility. I will deal first with state protection.

[4] The RPD found that the Applicants had not offered clear and convincing evidence of a lack of state protection for the following three reasons:

1. The Applicants failed to produce police or hospital reports without a credible explanation.
2. The documents they did produce were not reliable.
3. Following several serious attacks, they did not contact police.

[5] I will consider each reason in turn.

A. *No Reports*

[6] Approximately, two weeks before the redetermination hearing, the husband's brother, Norbert went to the hospital where the female Applicant was treated after she was attacked in December 2009. The attack led to premature labour. He also visited a police station and asked for documents which related to the time the Applicants were attacked in their home on September 11, 2010. Norbert explained that he was told at the hospital that he could not have the

documents because he was not the victim and the police denied him the document he sought because he had no association with the case.

[7] On October 30, 2018, which again was about two weeks before the hearing, the wife's sister, Monika tried to obtain police records relating to an attack at a gas station in 2009. She also tried to obtain a hospital report for a sexual assault which the female Applicant suffered in June of 2008. She explained that she was told in both cases that only the victim could obtain the records.

[8] The RPD rejected Monika and Norbert's explanations because country condition documents indicated that police and hospital records were available to adult relatives. The Applicants' counsel conceded in the hearing before me that the Applicants did not follow the correct procedures for obtaining the police and hospital reports. They are described in Responses to Information Requests dated August 10th and 11th, 2016.

B. *Documents were unreliable*

[9] The Applicants did produce two documents. One was rejected because it was unsigned although two spaces were provided for a signature. If it had been accepted it would have shown that a victim statement was given to police after the Applicants' house was broken into on September 11, 2010.

[10] The second document was a hospital report which purported to deal with the incident on June 28, 2009. The Applicants testified that they had been pulled from their car and assaulted

while stopped at a gas station. This document was rejected because it contradicted the Applicants' testimony. It indicated that the Applicants had been in a car accident.

C. *No reports were made to Police*

[11] A review of the transcript shows that the Applicants did not testify that they contacted police about the following events which I will define as the Serious Events:

- An attack by skinheads armed with bottles;
- A sexual assault on the wife;
- An attack at a gas station which resulted in a hospital visit;
- An attack on the wife as she and her husband returned from the movies which caused her to experience premature labour;
- An attack during which a liquid was poured over the Applicants.

[12] In my view, in the absence of testimony about police reports for these Serious Events, it was reasonable of the RPD to conclude that there was no clear and convincing evidence to rebut the presumption of state protection.

[13] Turning now to the question of whether acts of harassment cumulatively amount to persecution in this case, the RPD concluded at paragraphs 34 and 39 of the Decision that, given its concerns with the credibility of the claim, it found that there was insufficient trustworthy evidence to conclude that the claimants' experiences amounted to persecution. The RPD also

concluded that the documentary evidence in the country file did not indicate that the Applicants would face persecution on their return to Hungary. In my view, for the reasons given above, these were reasonable conclusions.

[14] For all these reasons, the application will be dismissed.

II. Certification

[15] No question was posed for certification for appeal.

JUDGMENT IN IMM-279-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-279-19

STYLE OF CAUSE: LAJOS MILAK, JUDIT MILAKNE OLAH, ALEX MILAK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 16, 2019

JUDGMENT AND REASONS: SIMPSON J.

DATED: NOVEMBER 8, 2019

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