

Federal Court



Cour fédérale

Date: 20211124

Docket: IMM-6460-20

Citation: 2021 FC 1294

Ottawa, Ontario, November 24, 2021

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

KRISZTIAN VARGA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application is for judicial review of a decision of an Immigration Officer [the Officer], dated November 17, 2020, in which he reached a negative conclusion on the Applicant's application for a Pre-Removal Risk Assessment [a PRRA]. The Applicant is a Romani citizen of Hungary, who was born on January 27, 1989. At birth, his surname was Vatai. However, he legally changed it twice. First, in 2010, to the surname Szuhai, and later, in 2019, to the surname Varga. He did not explain these name changes.

[2] The Applicant has been living with his wife since May of 2016. They have one daughter.

[3] The Applicant fled from Hungary to Canada for the first time in 2000. He filed a refugee claim which he later withdrew in order to return to Hungary to visit his dying grandmother.

[4] In 2010, after the Applicant changed his surname for the first time, he returned to Canada and made a second refugee claim. However, he did not disclose his prior name or earlier refugee claim on arrival. When discovered, his earlier refugee claim was used as a basis for deporting him to Hungary in 2010.

[5] After his return to Hungary, the Applicant had difficulty finding work. He therefore travelled to Manchester, England, in May of 2016. He stayed there for several months and then returned to Hungary. He did not claim asylum in the U.K.

[6] In September 2017, the Applicant experienced the first incident described in his PRRA. He was beaten with brass knuckles and his back was injured [the First Incident]. He later required surgery.

[7] The Applicant travelled to England again in July of 2018 seeking work. His wife accompanied him, and their daughter was born in Manchester on September 27, 2018. Again, during this visit to the U.K., the Applicant did not make an asylum claim.

[8] In January of 2019, the Applicant returned to Hungary with his wife and daughter.

[9] The second incident described in the PRRA occurred on August 2, 2019, while the Applicant was taking his sister to a doctor. After leaving their bus, they were followed and harassed by neo-Nazis until they reached home.

[10] The third incident occurred on August 4, 2019. The Applicant noticed noises coming from his garden and when he investigated he found two masked men preparing a Molotov cocktail [the Garden Incident]. He confronted them and was assaulted. The men jumped over the fence and ran away.

[11] Immediately following the Garden Incident, the Applicant called police headquarters in the nearby town of Miskolc to make a complaint. The operator hung up on him as soon as he learned that the Applicant wanted to report a neo-Nazi attack.

[12] The Applicant then called the National Police Headquarters in Budapest to file his complaint. The police took down his information and said they would follow up but did not do so.

[13] In early October of 2019, the fourth incident occurred. At that time, six or seven masked men broke into the Applicant's home at 3:00 a.m. The men grabbed the Applicant's wife and molested her and attempted to rape her. The Applicant states that he fought back and managed to stop the rape. Thereafter, the men left.

[14] The next day, the Applicant went to the local police station and asked to see the Commander in Chief to file a report. Duty Officers laughed at him and he recognized the voices of two officers as being members of the group that attacked his home the previous night. They refused to help the Applicant and sent him away.

[15] The Applicant then called the National Police Headquarters in Budapest. An officer took the Applicant's information and said he would add the current details to his existing file and follow up with him shortly. He did not do so.

[16] The Applicant then travelled to Budapest to make a police report in person. He filed his report with the Hungarian Police National Investigation Bureau on October 16, 2019, stating that he was afraid to leave his home and that he suspected his attackers were local police officers.

[17] The fifth and final incident occurred on November 3, 2019. While the Applicant was walking home with his wife and daughter, two masked men ambushed them outside their home. The men pepper sprayed the Applicant and knocked his wife over and kicked her. They then left.

[18] The Applicant travelled to Budapest once again to make a police report.

[19] The Applicant, his wife, and infant daughter, arrived in Canada on November 29, 2019. The wife and daughter made refugee claims which were later accepted, and the Applicant was offered a PRRA.

I. THE PRRA DECISION

[20] The negative PRRA decision is based on the following two findings:

1. The Applicant's lack of subjective fear, which the Officer said was illustrated by:
 - i. the Applicant's reavailment to Hungary twice after trips to the United Kingdom during which he did not claim asylum;
 - ii. the fact that the Applicant did not relocate his home in Hungary in spite of the four incidents in the Fall of 2019; and
 - iii. the fact that the Applicant was apparently comfortable dealing with state agencies.
2. The Applicant's failure to demonstrate a lack of state protection.

II. DISCUSSION

[21] The first issue is the reasonableness of the Officer's conclusion that the Applicant had failed to establish a subjective fear. The conclusion was based in part on the fact that the Applicant twice tried to claim refugee status in Canada, but, thereafter, when he went to England on two occasions, he failed to claim asylum and returned to Hungary. In my view, his return to Hungary in 2016 may be explained by his job loss in the U.K. and the fact that his mother and sister in Hungary needed care. However, there is no explanation for his failure to claim asylum in the United Kingdom in 2018 other than his lack of a subjective fear. This is especially so given that he had experienced the First Incident in 2017, and given that he could have claimed with his wife and child who were with him at the time.

[22] The question then is whether a subjective fear developed in 2019. The Officer found that the Applicant's continuing lack of subjective fear was evident because he failed to relocate his home between August and early November of 2019 when incidents two to five occurred.

[23] In my view, this conclusion was unreasonable. Given the short timeframe and given that the Applicant was living in his parents' home, it can reasonably be presumed that he could not afford to relocate.

[24] Finally, the Officer appeared to conclude that the Applicant did not fear assault at the hands of the neo-Nazis because he sought medical care, passport services, and change of name services, from government officials. In my view, this conclusion was also unreasonable, because it was unsupported by the evidence. There was no suggestion that medical and government services were the source of neo-Nazi, anti-Roma aggressors. It was police officers and others whom the Applicant believed were involved in the incidents.

[25] The second finding was that the Applicant did not demonstrate a lack of state protection. The Officer reached an unreasonable conclusion about state protection when he said that the Applicant made complaints to the local police and to the Independent Police Complaints Board. In fact, the evidence was that the Applicant had also complained to the national police in Budapest on three occasions, although there were no records of these complaints. The complaints were described by the Officer when he recited the facts, but they did not appear in his conclusion. If the Officer concluded that these approaches had not been proven, it was open to him to make the finding, but without a negative credibility finding, it was unreasonable of the

Officer to overlook the approaches to the national police when he was summarizing the Applicant's attempt to secure police assistance.

[26] Further, the Officer criticized the Applicant for his failure to complain:

1. to the Office of the Commissioner for Fundamental Rights. The Commissioner is described as an ombudsman; and
2. to the EBH [the Equal Treatment Authority] which the Officer describes as a body which investigates complaints of discrimination.

[27] For these reasons, there was no evidence before the Officer that either of these bodies were effective in providing protection. Indeed, the evidence was to the contrary. In my view, neither of these complaints would have led to the provision of effective protection, and the Officer's criticism of the Applicant on this basis was also unreasonable.

III. CONCLUSION

[28] The Application will be allowed. The PRRA decision will be set aside and the PRRA is to be reconsidered by another officer.

IV. CERTIFICATION

[29] No question was posed for certification.

JUDGMENT IN IMM-6460-20

THIS COURT'S JUDGMENT is that:

1. The Application is hereby allowed; and
2. The PRRA is to be reconsidered by a different officer.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6460-20

STYLE OF CAUSE: KRISZTIAN VARGA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE USING ZOOM

DATE OF HEARING: OCTOBER 13, 2021

JUDGMENT AND REASONS: SIMPSON J.

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