

Federal Court



Cour fédérale

Date: 20211123

Docket: IMM-2012-20

Citation: 2021 FC 1283

Ottawa, Ontario, November 23, 2021

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**JENO RACZ
MATILD HUMENSZKI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a re-determination decision by the Refugee Protection Division [RPD] following the Applicants' successful judicial review of the RPD's original decision rejecting the Applicants' refugee protection application. The Applicants were represented by new counsel.

Their previous counsel had been disciplined by the Law Society for the manner in which he handled Roma files.

[2] The Applicants contend that the RPD erred in its persecution versus discrimination analysis, and in its consideration of both state protection and an internal flight alternative [IFA]. They argue that the RPD overlooked contradictory supporting evidence.

[3] The Respondent counters that the Applicants' evidence was not ignored but that the Applicants did not provide sufficient evidence to establish that the decision was unreasonable.

II. Background

[4] The Principal Applicant and his spouse are citizens of Hungary. They base their immigration applications on the grounds of their Roma ethnicity and fear of being harmed by a gang from whom Mr. Racz borrowed money. The debt having been paid, Mr. Racz claimed the gang continued to extort money and when he failed to pay, the gang beat him up. He claimed that the police would not help him.

[5] In their second RPD decision, the Panel found that the Applicants likely faced discrimination and harassment in Hungary and further found Mr. Racz's narrative about extortion from the gang to be credible. However, the RPD found that the Applicants failed to rebut the presumption of state protection because they had not reported the discriminatory incidents to police. It also found the IFA to be reasonable.

[6] The RPD recognized that Roma in Hungary, and the Applicants in particular, had suffered discrimination and that it was a general problem in Hungary but that being Roma did not itself establish more than a possibility of persecution.

[7] The RPD looked at specific elements of where persecution against the Applicants could occur: employment, housing, education, health care. It either found none or only discrimination.

[8] The RPD concluded that while state protection was not perfect and sometimes discriminatory, the Applicants had not rebutted the presumption in favour of the existence of state protection and it concluded that the police and related agencies would provide adequate protection in their particular circumstances. It cited such matters as the Hungarian Supreme Court precedent for holding police officers accountable where they had been discriminatory against Roma, that police prosecute crimes and that there existed structured recourse if the police response was unsatisfactory.

[9] The RPD found that although Hungary remained a democracy, that democracy was in decline.

[10] With respect to the IFA, the RPD found that the Applicants were not the type of individuals likely to be targeted by a national or international criminal organization and so they could reasonably relocate to Debrecen.

III. Analysis

[11] There is no issue that the standard of review is “reasonableness” as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The Court is to conduct a robust but deferential review. The Court is to review the reasoning, the process and outcome while refraining from deciding the issue itself (this Court’s emphasis).

A. *Persecution/Discrimination*

[12] While considerations of state protection and an IFA can be separated from the matter of discrimination/persecution, in this case the latter issue tinges the analysis of the two former issues. However, the critical flaw in the Applicants’ case is their failure to engage the agencies of law enforcement when there is insufficient evidence to establish that to do so was dangerous, not possible or would be futile.

[13] It is not accurate to allege that the RPD ignored the ethnic element in the criminal activity. It had the ethnic profile – the problems of Roma – in mind throughout its analysis, both the individual elements and cumulatively.

[14] The Applicants question the RPD’s weighing of the evidence and in effect asks this Court to substitute its conclusion for that of the RPD. If deferential review is to have any meaning, it must allow for a difference of conclusions so long as the process and conclusions are reasonable.

[15] Based on this record, it was open to the RPD to reach its conclusion on discrimination versus persecution.

B. *State Protection*

[16] The Applicants concede, properly so, that the RPD articulated the correct test for state protection but quarrels with the consideration of the evidence, particularly as to the effectiveness of state protection. This Court has consistently held that it is not enough for a state to simply have in place mechanisms for protection – there must also be an operational reality and effectiveness to such mechanisms: see *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 at para 11.

[17] However, in this case, the Applicants did not establish ineffective mechanisms nor did they establish actual ineffectiveness. On this record, there is insufficient evidence to reasonably conclude that state protection does not exist for Roma such that attempting to engage state protection would likely be futile.

[18] Equally important is the Applicants' failure to make any efforts to engage the organs of state protection.

[19] Justice Zinn in *Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421 at para 10, accurately put it that seeking state protection is not a legal requirement for refugee protection. It goes to whether a claimant has provided the “clear and convincing” evidence needed to displace the presumption of state protection. It also goes to the issue of the

reasonableness of a claimant's fear of persecution – the genuineness of the fear from a subjective and objective point of view.

[20] I cannot find anything unreasonable in the RPD's reasoning or conclusions. It pointed to the problems of state protection in Hungary and the contradictory evidence presented. It was within its mandate to reach the conclusion it did.

C. *IFA*

[21] While it is unfair to ask a claimant to establish that an illegal group/gang would behave rationally, there must be some basis for the conclusion that the gang in question would likely pursue these Applicants to collect money – of which the amount and its relative importance has not been established. There is no rationale advanced as to why these individuals would be pursued across the country to be extorted for money when there is a large population and other Roma might be targets as well.

[22] Further, the RPD recognized that the Applicants could face discrimination at the IFA but not at the level of persecution. Given the RPD's finding on the discrimination versus persecution issue, there is nothing to suggest why that which is not persecution in their resident city would become persecution in a new locale.

[23] I can find nothing unreasonable in the RPD's conclusion on an available IFA.

IV. Conclusion

[24] For these reasons, this judicial review will be dismissed.

[25] There is no question for certification.

JUDGMENT in IMM-2012-20

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

There is no question for certification.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2012-20

STYLE OF CAUSE: JENO RACZ, MATILD HUMENSZKI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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