

Federal Court



Cour fédérale

**Date: 20220407**

**Docket: IMM-6902-19**

**Citation: 2022 FC 495**

**St. John's, Newfoundland and Labrador, April 7, 2022**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**ZENO ROSTAS  
CINTIA PAROS  
LINA ROSTAS (A MINOR)  
NINETTA ROSTAS (A MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Zeno Rostas (the “Principal Applicant”), his common law wife Cintia Paros and their minor children Lina Rostas and Ninetta Rostas (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), denying their claim for protection pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are Roma from Hungary. They allege fear of persecution in respect of access to employment, health care, education for the minor Applicants, and that they do not have adequate protection from police.

[3] The RPD determined that the Applicants suffer discrimination that, cumulatively, does not rise to the level of persecution. It found that state protection was available to the Applicants, citing a decision of the Hungarian Supreme Court, finding that the police have been held accountable.

[4] The RPD's decision is reviewable on the standard of reasonableness, according to the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[5] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[6] The Applicant submits that the decision is unreasonable on the grounds that the RPD ignored objective evidence that supports their claim, without saying why it declined that evidence. In this regard, the Applicants refer to Response to Information requests found in the Certified Tribunal Record (the "CTR") and to a report from the United States Department of State, also found in the CTR.

[7] The Applicants argue that the RPD took a retrospective view of the evidence and country conditions in Hungary, and failed to assess their claim with a forward-looking analysis of the evidence submitted.

[8] The Minister of Citizenship and Immigration (the “Respondent”) submits that the decision meets the applicable legal test of reasonableness and that there is no basis for judicial intervention.

[9] I disagree.

[10] In my opinion, the RPD erred by failing to address the objective documentary evidence about social conditions for Roma in Hungary, including access to employment and the segregation of Roma children in schools apart from non-Roma children.

[11] I refer to the decision in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 F.C. 53. In that decision, the Court found that where a decision maker fails to address contradictory evidence, an inference can be drawn that the contradictory evidence was not considered.

[12] I refer also the finding as to the availability of state protection.

[13] In my opinion, the conclusion on this issue also fails the test of reasonableness. It was not enough for the RPD to consider only one decision of the Hungarian Supreme Court, dealing with

a situation from a different town than the Applicants, as evidence that the police have been held accountable for discriminatory behaviour against Roma. Redress for police misconduct is not equivalent to state protection.

[14] I agree with the submissions of the Applicants that while the RPD wrote that it had conducted a forward – looking analysis of the risks alleged by the Applicants, that the RPD failed to do so.

[15] Considering the decision of the RPD as a whole, the decision does not meet the test of justification, transparency and intelligibility.

[16] The application for judicial review will be allowed, the decision of the RPD will be set aside and the matter will be remitted to a differently constituted panel of the RPD for redetermination. There is no question for certification proposed.

**JUDGMENT in IMM-6902-19**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision of the Refugee Protection Division is set aside and the matter is remitted to a differently constituted panel of the Refugee Protection Division for redetermination. There is no question for certification proposed.

“E. Heneghan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6902-19

**STYLE OF CAUSE:** ZENO ROSTAS, CINTIA PAROS, LINA ROSTAS (A MINOR), NINETTA ROSTAS (A MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE BETWEEN TORONTO, ONTARIO AND ST. JOHN'S, NEWFOUNDLAND AND LABRADOR

**DATE OF HEARING:** MARCH 21, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** APRIL 7, 2022

**APPEARANCES:**

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Nicole Rahaman FOR THE RESPONDENT

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