

Federal Court



Cour fédérale

Date: 20130605

Docket: IMM-8783-12

Citation: 2013 FC 606

Ottawa, Ontario, June 5, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**TIBOR OLAH
KATALIN LAJHO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is a judicial review of a decision by a Member of the Immigration and Refugee Board [Member] to deny the refugee claim of a Hungarian Roma husband and wife. The central issue is state protection in Hungary and the reasonableness of the Member's conclusion.

II. BACKGROUND

[2] The facts of this case are not in dispute. The Applicants suffered multiple incidents of discrimination based on their Roma ethnicity, in their living conditions, schooling, work environment and general social interaction with other non-Roma Hungarians.

[3] The violent incidents involved skinheads on one occasion and the Hungarian guard (a right wing group) on the other. The male Applicant reported the first violent incident to the police who laughed at him and to the Roma Association who expressed an inability to do anything. The second incident went unreported. Both Applicants confirmed a general feeling of helplessness due to the state's unwillingness to provide real assistance.

[4] The Member accepted the Applicants' story, found them to be generally credible and as having established a nexus to the race/ethnicity Convention ground. The refugee claim was dismissed solely on the grounds that Hungary would provide state protection to the Applicants – or better put, the Applicants had not refuted the presumption of state protection.

[5] The Member discounted the Applicants' distrust of Hungarian authorities as their interaction with police had been minimal.

[6] The Member then did a review of the steps that Hungary has taken to address various problems suffered by the Roma. This analysis included the state of criminal law, the ban on membership in the Hungarian Guard, the enactment of various laws to protect ethnic minorities,

efforts at Roma integration, the creation of the European Roma Rights Centre, the role of the police and their training and compliance/enforcement mechanisms.

[7] The Member acknowledges that things are not perfect, but places considerable attention on efforts to address discrimination and to improve Roma education and housing. The Member's ultimate conclusion is "... if they returned to Hungary, I find on a balance of probabilities that, while they may continue to face discrimination or even an assault, there are state protection mechanisms available to them".

III. ANALYSIS

[8] The standard of review for this type of decision is reasonableness (see *Alvarez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 197, 185 ACWS (3d) 726).

[9] In my view, a fair read of the decision discloses a fulsome exploration of the various institutions in place in Hungary and a dearth of consideration of effectiveness of those institutions. The Member did not ask whether state protection was adequate in real terms.

[10] Justice Mosley in *Meza Varela v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364, 209 ACWS (3d) 648, summarized what must be done after a consideration of the institutional structures for state protection and efforts made by government – "[a]ny efforts must have 'actually translated into adequate state protection' at the operational level ..." (at para 16).

[11] The evidence of improvements and progress by a state may take one partway through the analysis of state protection but, in and of itself, this is not sufficient to establish that the improvements and progress amount to effective state protection.

[12] The Member did not consider the effectiveness of the state protection mechanism. The conclusion referred to in paragraph 7 of these Reasons is but one example of a focus on mechanisms and not on effectiveness. Further, the Member did not address the contradictory evidence from reputable third parties that called into question the effectiveness of many of the mechanisms available for addressing the problems facing Romas.

[13] There were, in the documentary record including the Immigration and Refugee Board's own reports, numerous reports and comments on the inadequacy of state protection for Romas, evidence of systemic failures to protect and of the gap between laws and their implementation.

[14] To the extent that some of these inadequacies were mentioned, there is little or no indication of how the Member reconciled this contrary evidence with the conclusion that there was state protection. The Member was obliged to explain how this evidence was assessed given the ultimate conclusion reached against the Applicants.

[15] Therefore, this decision must be quashed. However, there are two further points deserving of comment; neither of which would necessarily have been determinative.

[16] The Member noted the minimal contact the Applicants had with the Hungarian authorities. It was not determinative of the Member's decision. The Member did not have the benefit of Justice Zinn's decision in *Majoros v Canada (Minister of Citizenship and Immigration)*, 2013 FC 421, 2013 CarswellNat 1112, which very usefully addresses issues of Romas seeking state protection in situations where there is widespread and indiscriminate persecution in the relevant country. Seeking state protection is an element in the state protection analysis as it may be establishing fear of persecution, but it is not necessarily determinative.

[17] Finally, the Court has concerns regarding the documentary record relied upon by the Member. The Member relied on a reference to an internal police disciplinary proceeding as evidence that police take their responsibility to protect Romas seriously. No such reference is contained in the United States, Department of State, *2010 Human Rights Report: Hungary* (April 8, 2011) referenced by the Member. That reference can be found in an earlier Department of State Report on Hungary which was not part of the record in this case.

IV. CONCLUSION

[18] For the reasons given, this judicial review will be granted, the decision quashed and the matter remitted back to the Immigration and Refugee Board to be determined by a different member.

[19] There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is to be remitted back to the Immigration and Refugee Board to be determined by a different member.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8783-12

STYLE OF CAUSE: TIBOR OLAH
KATALIN LAJHO

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: June 3, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** PHELAN J.

DATED: June 5, 2013

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