

Federal Court



Cour fédérale

Date: 20130729

Docket: IMM-6111-12

Citation: 2013 FC 829

Ottawa, Ontario, July 29, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

NIKOLETT STARK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a young Hungarian Roma whose refugee protection claim was rejected by a member [Member] of the Immigration and Refugee Board [Board] on grounds of lack of persecution and the existence of state protection.

II. BACKGROUND

[2] The Applicant is a 20 year old Hungarian Roma (or Roma Hungarian). She was beaten up in 2009 and 2010. In 2011 she awoke to find a swastika painted on the outside of her family home with the words "Gypsy, you are going to die".

[3] She left with six other relatives. Her refugee protection claim was separated from those of her relatives.

[4] The Member held that the determinative issues were (1) discrimination versus persecution and (2) the availability of state protection.

[5] On the matter of discrimination/persecution, the Member relies on the fact that in 2008 a report claimed that there were only 12 violent attacks against members of national, ethnic, racial or religious groups. Therefore, the Member finds this is not suggestive of racial violence that is sustained or systemic, and the only issue was the availability of state protection.

[6] On the issue of state protection, the Member notes that the Applicant's failure to report the incidents to police was explained by the fact that she was a minor and followed the advice of her brother (a Roma police officer) that reporting to police would be useless. The Member recognizes that as a minor, the Applicant was not in a position to rebut the presumption of state protection.

[7] The Member concludes that the Applicant was never denied such human rights as housing, education, health care or social services. The Member then reviews other political and

administrative structures of Hungary, the structure of the police organization and other governmental organizations. As a result, the Member concludes that there is state protection for Romas.

III. ANALYSIS

[8] The standard of review for this type of decision is reasonableness (*Salinas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 558, 2013 CarswellNat 1692).

[9] There are a number of problems with the state protection analysis including the inconsistency of recognizing that as a minor, the Applicant was not required to go to the police as evidence of the absence of state protection and then retracting that finding (at paragraph 61 of the Member's decision).

[10] The more fundamental problem with the decision is the failure to consider the adequacy or effectiveness of state protection. This was particularly important where there was substantial evidence that Hungary was having considerable problems with implementing the protections to be afforded to Romas. Neither the problems of implementation of protection nor the backlash against Romas was discussed.

[11] As held by Justice Hughes in *Hercegi c Canada (Minister of Citizenship and Immigration)*, 2012 FC 250, 211 ACWS (3d) 946, the central issue is what state protection is actually provided rather than whether there are serious and genuine efforts to address the problem of protection for Romas.

[12] In *Olah v Canada (Minister of Citizenship and Immigration)*, 2013 FC 106, 2013 CarswellNat 146, I expressed the view that effectiveness was a critical element of the state protection analysis.

[13] The Member's analysis did not go beyond the consideration of the structures put in place by the Hungarian government. Further, the Member did not personalize the analysis to that of the Applicant and whether effective state protection would be available for her.

[14] There have been a number of decisions where this Court has expressed its concern that the Board's state protection analysis is incomplete. The matter is well-summarized by the decision in *Rezmuves v Canada (Minister of Citizenship and Immigration)*, 2012 FC 334 at para 11, 9 Imm LR (4th) 329:

The Board's state protection analysis is also problematic. The Board reviews evidence related to arbitrary detention in Hungary, the structure of the Hungarian police forces, police corruption, the Roma Police Association and its protection of Roma members of the police and military, other related police associations in Hungary and Europe for Roma military and police officers, the Independent Expert, and the body responsible for the monitoring of the implementation of legislation dealing with anti-discrimination. However, the Board fails to focus on the relevant question: Is there adequate state protection available for Roma in Hungary?

[15] Therefore, the decision is not reasonable.

IV. CONCLUSION

[16] This judicial review will be granted, the Board's decision will be quashed and the matter remitted back for a new determination by a different Board member.

[17] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the Board's decision is quashed and the matter is to be remitted back for a new determination by a different Board member.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6111-12

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AND IMMIGRATION

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AND JUDGMENT:** PHELAN J.

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