

Federal Court



Cour fédérale

Date: 20140527

Docket: IMM-1823-13

Citation: 2014 FC 510

Ottawa, Ontario, May 27, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MARIO GYULA VARGA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] What does it take to be a refugee? Is it enough to simply prove that one is a Hungarian Roma? Mr. Varga's counsel came perilously close to making that submission. One of the reasons Mr. Varga's asylum claim was dismissed was that the Member of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada was of the view that there was adequate state protection in Hungary. Counsel submits that the analysis of state protection was unreasonable. Indeed, it seems to me that her submission is that the only reasonable assessment

of country conditions in Hungary is that each and everyone one of its 200,000 to 500,000 citizens of Roma background has a well-founded fear of persecution for reasons of race, and that on the balance of probabilities, each and every one's life is at personal risk, or that each and every one is at risk of cruel and unusual treatment or punishment.

[2] If it be so, then Hungary is a failed state. Yet it is not.

[3] The Board Member, who heard Mr. Varga's case, as well as that of his mother and half-brother, dismissed his application on two grounds: credibility and state protection. This is the judicial review of that decision.

I. Standard of Review

[4] There is no controversy as to the standard of review. The Board Member's findings with respect to credibility and assessment of state protection are based on reasonableness. This means that the Member is entitled to deference, even if another member might have come to a different conclusion. That, in itself, does not make the decision under review unreasonable.

[5] Mr. Varga's application, together with that of his mother, Agnes Kiss, and his half-brother, Rafael Kiss, were heard together. Two grounds were asserted. They were all victims of domestic violence at the hands of Mr. Varga's father, who had been Ms. Kiss' common-law partner until 1999. They also feared persecution by the Hungarian Guard, or its successors, Neo-Nazis and skinheads.

[6] Although it is not in the record, counsel agreed that the claims of Ms. Kiss and her son Rafael were accepted on the grounds of domestic violence. While the Member's finding that Mr. Varga was not at serious risk from his father, her findings of credibility in that regard have considerable bearing on her doubts that the racially motivated attacks he recounted actually occurred.

[7] During the hearing, Mr. Varga vacillated back and forth with respect to his relationship with his father, who indeed assisted him in obtaining a passport. He, now an adult, conceded that he did not personally fear his father but rather feared for his mother and younger brother.

[8] One of the reasons he is no longer in touch with his father is because (a variation on an old theme) his dog ate his cell phone in which his father's number was stored.

[9] Turning to matters of race, the Member found, quite justifiably, that Mr. Varga's story improved with time. It began by being bullied at school. He was then attacked and spent time in a hospital. He reported his attack to the doctors. They, or he, may have reported it in turn to the police. They may or may not have taken a report. He claims his efforts to obtain a copy of the medical report were futile. It was not unreasonable for the Member to reject that allegation.

[10] Mr. Varga's credibility was properly put in doubt, and the Member was entitled to call for corroboration (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, [1979] FCJ No 248 (QL); *Ahortar v Canada (Minister of Employment and Immigration)*, (1993) 65 FTR 137, [1993] FCJ No 705 (QL).

[11] The Member was not satisfied that the attacks asserted by Mr. Varga actually occurred. Consequently, there is nothing in his past history in Hungary which would suggest that he would be personally at risk if returned to Hungary. His claim has to be based on similarly situated individuals.

II. State Protection

[12] One incident of note is that Mr. Varga's father beat his mother some years after they had separated. She complained to the police and a criminal charge was laid. It appears that the matter did not proceed because although subpoenaed, Mr. Varga's father did not appear in court. It seems he could not be convicted *in absentia*. Ms. Kiss was unable to provide the authorities with his then current address. He is a violent pimp who spent his time in Hungary and neighbouring countries.

[13] Although this attack may not have been racially motivated, it does serve as evidence that the police do come to the aid of Roma citizens.

[14] James C. Hathaway, *The Law of Refugee Status*, 1991, amply summarizes in a headnote, "persecution as the sustained or systemic violation of basic human rights resulting from a failure of state protection."

[15] In this case, factions within the country are the alleged perpetrators, and not the State itself. In *Rajudeen v Canada (Minister of Employment and Immigration)*, [1984] FCJ No 601 (QL), a decision of the Federal Court of Appeal, Mr. Justice Heald, both for himself and Mr.

Justice Hugessen, reverted to dictionary definitions of persecution, as the *Immigration and Refugee Protection Act* contains none. He said:

Accordingly, ordinary dictionary definitions may be considered. The Living Webster Encyclopedic Dictionary defines "persecute" as:

"To harass or afflict with repeated acts of cruelty or annoyance; to afflict persistently, to afflict or punish because of particular opinions or adherence to a particular creed or mode of worship."

The Shorter Oxford English Dictionary contains *inter alia*, the following definitions of "persecution":

A particular course or period of systematic infliction of punishment directed against those holding a particular (religious belief); persistent injury or annoyance from any source.

[16] In concurring reasons, Mr. Justice Stone said:

It is, I think, proper that this expression of underlying policy be taken account of in determining whether refugee status has been extended to cover a particular case. Obviously, an individual cannot be considered a "Convention refugee" only because he has suffered in his homeland from the outrageous behaviour of his fellow citizens. To my mind, in order to satisfy the definition the persecution complained of must have been committed or been condoned by the state itself and consist either of conduct directed by the state toward the individual or in it knowingly tolerating the behaviour of private citizens, or refusing or being unable to protect the individual from such behaviour.

[17] This case turns, as Mr. Justice Stone said, on whether Hungary refuses or is unable to protect Mr. Varga. This leads us to the seminal decision of the Supreme Court in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, and the many cases which follow. Although some are concerned with current trends, Hungary is a functioning democracy, and it was

incumbent upon Mr. Varga to establish with clear and convincing evidence that the State was unwilling or unable to protect him in a meaningful way.

[18] Counsel for Mr. Varga has cited fourteen recent cases of this Court which have been granted judicial review with respect to Hungarian Roma (*Hercegi v Canada (Citizenship and Immigration)*, 2012 FC 250; *Balogh v Canada (Citizenship and Immigration)*, IMM-1892-12; *Sebok v Canada (Citizenship and Immigration)*, 2012 FC 1107; *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438; *Varadi v Canada (Citizenship and Immigration)*, 2013 FC 407; *Budai v Canada (Citizenship and Immigration)*, 2013 FC 552; *Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421; *Muntyan v Canada (Citizenship and Immigration)*, 2013 FC 422; *Beri v Canada (Citizenship and Immigration)*, 2013 FC 854; *Moczo v Canada (Citizenship and Immigration)*, 2013 FC 734; *Gulyas v Canada (Citizenship and Immigration)*, 2013 FC 254; *Ignacz v Canada (Citizenship and Immigration)*, 2013 FC 1164; *Horvath v Canada (Citizenship and Immigration)*, 2013 FC 95 and *Molnar v Canada (Citizenship and Immigration)*, 2013 FC 296).

[19] The Minister has only been able to muster up five recent decisions in which judicial review has been dismissed (*Botragyi v Canada (Citizenship and Immigration)*, IMM-13187-12; *Dudu v Canada (Citizenship and Immigration)*, IMM-6686-13; *Horvath v Canada (Citizenship and Immigration)*, 2012 FC 253; *Riczu v Canada (Citizenship and Immigration)*, 2013 FC 888 and *Ruszó v Canada (Citizenship and Immigration)*, 2013 FC 1004).

[20] What conclusion, if any, can we draw from these statistics? Each case turns on the particular history of the claimant, the record, the adequacy of the analysis by the Tribunal and, indeed, the appreciation of that evidence by various judges of this Court (*Banya v Canada (Citizenship and Immigration)*), 2011 FC 313, [2011] FCJ No 393 (QL), at para 4.

[21] The Member dealt with state protection issues in 42 carefully reasoned paragraphs. It is not necessary to analyze each and every fact she cited.

[22] She has been criticized for her use of statistics. She referred to a report where the European Roma Rights Centre registered 61 attacks against Roma or their property between January 2008 and September 2012. She acknowledged that there may well have been under-reporting. It was submitted that she should have referred to other documentation which indicates that violence is on the rise. However, on a thorough read of the record, the tipping point of serious possibility has not been reached.

[23] She noted there is a rise of right wing extremist groups such as the disbanded Hungarian Guard and the rhetoric of one particular party, Jobbik.

[24] She recognized ongoing challenges with societal racism, as well as the response of the Government. Her assessment of Hungary was mixed. There were local failures to provide effective policing but this does not amount to a lack of state protection unless it is part of a broader pattern of state inability or refusal to provide protection. There was no such pervasive evidence in her opinion.

[25] There was evidence of police orders putting an end to the marching of vigilante groups and the persecution of those involved in racial acts of violence.

[26] The Member did not simply rely on good intentions, which have not come to fruition, but concluded that there is, objectively, at the present time, adequate state protection.

[27] Counsel for the Minister submits that I am being asked to reweigh the evidence. I agree.

[28] The issue is not whether another Member of the RPD may have come to a different conclusion. The issue is whether the decision is reasonable. I find that it is.

JUDGMENT

FOR REASONS GIVEN;

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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