

Federal Court



Cour fédérale

Date: 20150401

Docket: IMM-6448-10

Citation: 2015 FC 413

Ottawa, Ontario, April 1, 2015

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**MILAN LASAB, MILADA LASABOVA, AND
ELVIS KULASIC**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review concerns three individuals whose refugee protection claims were denied by the Refugee Protection Division [RPD] on the basis of adverse credibility findings and the existence of state protection.

[2] This case was argued together with IMM-5543-10 apparently because the state protection findings were similarly deficient in both cases.

[1] However, each case stands on its own merits and must be assessed as such. This is not a class claim. With due respect to counsel, each case deserved separate analysis and argument and one cannot be allowed to piggyback on the other or undermine the strength of the other. The fact that each case involved Romas living in the Czech Republic does not create inextricable co-mingling.

II. Background

[2] The Applicants are a family from the Czech Republic. The female Applicant is a Roma and the minor shares partial Roma ethnicity.

[3] The male Applicant, Milan Lasab, did not face any discrimination or violence until he met the female Applicant, who is ethnically Roma. Lasab claimed they experienced racial insults, problems with co-workers, his own demotion, pay reduction and forced employment relocation. He also claimed that they faced problems when shopping, and ostracization when swimming. The female Applicant had a bottle smashed over her head by a skinhead. Lastly, the claim included allegations that the son suffered psychological and physical abuse at school.

[4] In the RPD's decision the Member noted a number of serious discrepancies in the Applicants' evidence when the oral testimony is compared with the PIF and other available

documents. For example, Milan Lasab omitted mention of being disowned by his family, of his mother praying that the relationship would end, and of his sister living with a skinhead.

[5] While asserting that the minor Applicant was verbally and physically assaulted at school, no mention of the assault was made to immigration officers. Similarly, the assault by a skinhead and the breaking of a bottle over the female Applicant's head was not mentioned at the POE.

[6] Further, the female Applicant claimed a number of problems with police following the beer bottle incident, yet the PIF makes no mention of these problems. She also failed to mention in her PIF that her then boyfriend was roughed up by a "large racist man".

[7] While the Applicants attempted to explain the discrepancies, the RPD did not accept the excuses. The RPD found the Applicants lacked credibility and concluded that the incidents did not occur.

[8] Further, the RPD found that the Applicants had not rebutted the presumption of state protection. The Member referred to the Czech Republic's functioning democracy, its control of its territory, and its Constitution (which prohibits discrimination). The RPD relied on current state protection documentation. While recognizing that Roma were subject to discrimination, the RPD noted that the Czech government was making "serious strides" to having this discrimination overcome.

III. Analysis

[9] It is, by now, trite law that the RPD's decision on credibility and state protection is subject to the reasonableness standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[10] The weakest area of the RPD's decision is its examination of the operational adequacy of state protection. The subject of state protection only becomes relevant if a claimant makes out a case that they have been persecuted or were otherwise in need of protection, which protection was not forthcoming from their home state.

[11] The Applicants' difficulty is that their story was found not to be credible. The RPD's conclusion on the credibility issue is subject to considerable deference. Its finding is reasonable in all respects. The discrepancies and omissions were major and the explanations offered by the Applicants were weak. It was entirely within the RPD's mandate to reject the explanation.

[12] Therefore, the Applicants having failed to establish the events leading to the claim, the issue of state protection is moot. Nevertheless, the RPD did consider state protection, considered the Applicants' submission and, as it had the right to do, favoured more recent objective evidence in reaching its conclusion.

IV. Conclusion

[13] Therefore, this decision, read as a whole, is reasonable. This judicial review will be dismissed. There is no question for certification.

JUDGMENT

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

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6448-10

STYLE OF CAUSE: MILAN LASAB, MILADA LASABOVA, AND ELVIS KULASIC v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 20, 2015

JUDGMENT AND REASONS: PHELAN J.

DATED: APRIL 1, 2015

APPEARANCES:

Zakir Mashadi FOR THE APPLICANTS

Prathima Prashad FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rocco Galati Law Firm FOR THE APPLICANTS
Professional Corporation
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario