

Federal Court



Cour fédérale

Date: 20150716

Docket: IMM-7396-14

Citation: 2015 FC 873

Ottawa, Ontario, July 16, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ILEANA LENGYEL
ZSOLT LENGYEL
TEFIK SECIRI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, a Roma family from Croatia, seek to overturn the decision of the Refugee Protection Division [RPD] that denied their refugee claims. That decision was based on the finding that the applicants lacked credibility, their failure to overcome the presumption of state protection, and the finding that there was an internal flight alternative [IFA] available to them.

[2] Despite counsel's forceful submissions, I am not persuaded that the RPD's decision was unreasonable.

[3] The applicants are a wife and husband, Ileana Lengyel and Tefik Seciri, and the son of Ileana, Zsolt Lengyel. Ileana is a citizen of Croatia, Romania and Kosovo. Tefik is a citizen of Croatia, Serbia and Kosovo. Zsolt is a citizen of Croatia and Romania. For ease of reference I shall refer to each only by their first name.

[4] The applicants say that their problems began around 2006, when Zsolt noticed that he was being followed around by black cars. Between 2007 and 2009 their vehicles and home were vandalized numerous times, anti-Roma messages were spray-painted on their property, and Molotov cocktails were thrown but did not ignite.

[5] Zsolt travelled and worked in the UK, while on a tourist visa between July 2007 and March 2008.

[6] On October 2, 2009, they say that the Gusani gang stole their van, but it was later recovered.

[7] On October 3, 2009, the applicants travelled to Belgium and made a refugee claim. They later abandoned the claim and returned to Croatia in March 2010.

[8] Subsequent to their return, the applicants say that they received threatening phone calls from the Gusani gang demanding that Tefik pay 16,000 EU. He was beaten and given 7 days to pay, or the amount would double.

[9] The applicants arrived in Canada on May 25, 2011 and claimed refugee protection.

[10] The RPD in an lengthy decision made a number of findings, the more significant of which are the following:

- Zsolt lacked subjective fear because he failed to claim refugee status in the UK and reavailed to Croatia after his UK trip. Zsolt also stated on his Port of Entry form that the purpose of him coming to Canada was to accompany his mother and step-father.
- The applicants initially gave incomplete Personal Information Forms [PIF]. They waited approximately 3 years before submitting the updated more complete PIFs.
- The applicants postponed the RPD hearing twice, and tried to delay it further.
- The applicants reavailed to Croatia after claiming protection in Belgium.
- The applicants delayed in departing from Croatia after the incidents they allege.
- Tefik gave inconsistent testimony regarding his Serbian citizenship and access to Romanian citizenship.
- The applicants' testimony regarding vandalism of their property had discrepancies.

- The applicants did not provide clear testimony regarding who extorted them between 2009 and 2011 and they failed to provide corroborating evidence regarding the existence of the Gusani gang.
- The applicants did not mention in their PIF that Ibrahim Gusani of the Gusani gang was convicted of extorting and threatening them as they testified at the hearing.
- There were inconsistencies concerning the applicants' evidence with respect to the theft of their van.
- The applicants submitted documents stating that Tefik received treatment for injuries from an assault on May 20, 2010, but this incident was not mentioned in the applicants' PIFs.
- The applicants admitted that the police did provide assistance when requested on most occasions.
- The applicants had a viable IFA in the cities of Zagreb, Split and Medimurje.

[11] The applicants take issue with some of the findings of the RPD. They argue that rather than focusing on the "macro-issue" of whether as Roma they are at risk in Croatia, the RPD focused on microscopic and tangential issues. The respondent argues that the cumulative weight of the credibility findings, even if the court found some to be unreasonable, is sufficient to maintain the decision. I agree.

[12] The RPD is required to assess risk based on the personal experience of a claimant or persons similarly situated. These applicants attempted to support their claim based on their personal experiences. The RPD found them not to be credible. The respondent's memorandum of argument contains a chart on pages 12 – 13 laying out the various inconsistencies in the evidence of the applicants. Having read the transcript and the numerous areas where the applicants provided conflicting or inconsistent evidence, the view the RPD took of their evidence, as summarized by the respondent, was reasonable.

[13] The evidence of Zsolt, in particular, merited the finding that he was not credible and lacked subjective fear. At the hearing he testified that if he were required to return to Croatia his life would be a nightmare and he would probably end his life. But what did he say when he entered Canada and age 21? The Port of Entry Notes reveal a much different story. To the question of which country he feared persecution, he responded "no where." To the question who are you afraid of, he responded "no one, I have light skin and nobody bothers me." To the question why are you making a refugee claim in Canada if you have no fear of returning anywhere, he answered "because I am with my parents, I cannot leave them."

[14] Like the RPD, I too reject as unbelievable his explanation for the contradiction. He said it was because he was speaking over the phone to a translator and the officer did not understand the translator. This flies in the face of the form he signed which, unlike that of his mother and step-father, indicates that there was no translator involved in the taking of his evidence.

[15] The applicants further submit that it was unreasonable for the RPD to draw negative inferences from the fact that it took them three years to provide amended and complete PIF narratives. In my view, when a claimant (on behalf of his family) submits one PIF stating that he will provide a “fuller narrative ... soon after this” and he does not, and his family members provide their PIF narratives three years later and one week before the hearing date (which has been rescheduled numerous times), the RPD is entitled to view them with scepticism.

[16] In my view, it was fatal to the claims of the applicants that they had sought refugee protection in Belgium but abandoned that claim and returned to Croatia, only leaving for Canada 14 months later. It was reasonable for the RPD to conclude that had they subjective fear they would not have abandoned their claims, they would have remained in Belgium, and they would not have reavailed themselves to Croatia.

[17] I reject their submission that the RPD failed to consider their claims at the macro level as Roma in Croatia. In the absence of any credible evidence that they experienced persecution in Croatia on account of their Roma ethnicity, they were entitled to have the RPD consider the situation of similarly situated persons. The country condition evidence simply does not establish that all Roma in Croatia are persecuted even though some may be. Moreover, they admitted that whenever they sought the protection of the state, it was provided. On this basis alone, their claims cannot succeed.

[18] Neither party proposed a question to be certified; there is none on these facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7396-14

STYLE OF CAUSE: ILEANA LENGYEL ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 9, 2015

JUDGMENT AND REASONS: ZINN J.

DATED: JULY 16, 2015

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