

Federal Court



Cour fédérale

Date: 20160608

Docket: IMM-7227-13

Citation: 2016 FC 635

Ottawa, Ontario, June 8, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

**ATTILA MOLNAR, GERGO MOLNAR,
SZILVIA JANO, MILAN MOLNAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD), dated October 17, 2013, which found that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the Act).

II. Background

[2] The Applicants are common-law partners and their two minor sons. They are Roma from Miskolc, Hungary.

[3] The principal Applicant, Attila Molnar (Mr. Molnar), alleges that he has suffered discrimination amounting to persecution because of his inability to secure permanent employment in Hungary, which he alleges is due to the fact that he is Roma.

[4] Mr. Molnar alleges that he and his family were attacked by Hungarian Guardsmen in August 2010 and that one of his son's was discriminated at school due to a policy of segregating Roma from non-Roma students.

[5] In June 2011, two police officers stopped Mr. Molnar on the street and proceeded to beat him with a rubber baton for no apparent reason. He alleges having filed several complaints with various authorities following the beating such as the police, an oversight unit in the city of Debrecen, a Roma organization and the military persecution office. A few weeks after reporting the assault to the police, Mr. Molnar began receiving threatening notes in his mailbox. Fearing for his life, he moved out of his home to live with different family members before fleeing to Canada with his son Gergo in November 2011.

[6] Mr. Molnar's wife, Szilvia, alleges that after her husband left, paramilitaries from a nearby neighbourhood came to their home several times looking for her husband. They kicked in the gate of the family residence and verbally assaulted her with anti-Roma comments.

[7] Szilvia and Mila joined Mr. Molnar and Gergo in Canada in December 2011.

[8] Mr. Molnar's adult son Attila, came to Canada in March 2012 and made a refugee claim, but then withdrew his claim to return to Miskolc, Hungary the following July to be with his common-law partner who had just given birth to their child.

[9] As a preliminary matter, the RPD dismissed the Applicants' application pursuant to Rule 50 of the *Refugee Protection Division Rules*, SOR/2012-256 (RPD Rules), seeking among other requests, that the RPD make a fair determination, that the RPD not endorse the actions of the then Minister of Citizenship and Immigration, that the designation of Hungary as a Designated Country of Origin contradicts significant country evidence and jurisprudence and that it will not be a factor in the assessment of Hungarian Roma refugee claims. Counsel for the Applicants wanted the RPD to determine the former Minister of Citizenship and Immigration to be engaged in inappropriate behaviour when signs were erected in certain locations in Hungary, inhabited by Romas, with a view of discouraging such persons and/or others in making refugee claims that were not genuine and that such actions had an influence on the RPD's processing of Hungarian refugee claims.

[10] The RPD found that credibility and state protection were dispositive of the matter and made the following credibility findings:

- a. The Applicants submitted insufficient credible and trustworthy evidence demonstrating that Mr. Molnar suffered acts of discrimination tantamount to persecution in regard to his inability to secure permanent employment since he did not know if only Romas were unable to secure permanent construction work or if this problem extended to non-Romas

as well. Moreover, Mr. Molnar was never denied the opportunity to receive social assistance;

- b. No credible or trustworthy evidence was put forward by the adult son to support Mr. Molnar's claims of being harassed by the police. Moreover, Mr. Molnar testified that his adult son has not had any problems from the police who allegedly beat him or from any other authority since returning to Hungary;
- c. The RPD found that it was not credible for Mr. Molnar to not have made arrangements to provide a medical report to the RPD from the time he was treated for being beaten with the rubber baton;
- d. The Applicants provided insufficient credible and trustworthy evidence showing that the police failed to take appropriate action and investigate the alleged attack;
- e. The Applicants provided no proof that they sought the assistance of a Roma organization following the attack. Moreover, Mr. Molnar was unable to recall when he sought assistance and was unable to recall when he received the threatening letters by mail; and
- f. The Applicants failed to demonstrate that they made reasonable efforts to obtain corroborating evidence that a complaint was filed with the military prosecution office.

[11] The RPD also found that the Applicants could reasonably seek and obtain state protection. The RPD recognized that Romas in Hungary suffer discrimination and racist attacks. However, the RPD found that the Applicants submitted insufficient evidence to conclude that they had contacted the police for assistance and that adequate assistance was not provided.

[12] The Applicants submit that the RPD violated procedural fairness in three ways. First, by failing to provide a written response to their application pursuant to Rule 50 of the RPD Rules within the prescribed timelines. Second, by questioning the Applicants' motivation to get off social service support in Hungary and Mr. Molnar's expectation to avoid social support and obtain employment in Toronto with only a grade 8 education. Third, in demonstrating bias by questioning Mr. Molnar's ability to sustain himself in Canada.

[13] The Applicants also contend that the RPD erred in its credibility analysis and failing to apply the correct test for determining state protection and for rebutting the presumption of state protection.

[14] The Applicants were ordered to leave Canada in November 2014. They sought, but were denied, a stay of their removal order on the grounds that while there is evidence of discrimination and persecution in Hungary, based on Roma ethnicity, the Applicants failed to establish that they would personally suffer irreparable harm upon return to Hungary (*Molnar v Minister of Public Safety and Emergency Preparedness*, (November 14, 2014), Toronto IMM-7594-14 (FC)).

III. Issue and Standard of Review

[15] The issue to be determined in this case is whether the RPD committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC 1985 c F-7.

[1] It is well-established that decisions of the RPD as to questions of fact and credibility are reviewed on the reasonableness standard (*Nava Flores v Canada (Citizenship and Immigration)*),

2010 FC 1147, at paras 25-26, 378 FTR 95 [*Nava Flores*]; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]). Moreover, considerable deference is owed to the RPD's credibility findings because decisions concerning credibility lie within the "heartland of the discretion of triers of fact" (*Siad v Canada (Secretary of State)* (1996), [1997] 1 FC 608, at para 24, 123 FTR 79; see also *Nava Flores*, at para 26; *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 274, at para 33 [*Navaratnam*]; *Roy v Canada (Citizenship and Immigration)*, 2013 FC 768, at para 15 [*Roy*]).

[2] Questions regarding procedural fairness are reviewed on the standard of correctness (*Navaratnam*, at para 32; *Roy*, at para 14; *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, at para 43, [2009] 1 SCR 339).

IV. Analysis

A. *No breach of procedural fairness*

[3] Rule 51 of the RPD Rules states that a party responding to a written application must provide the RPD and the other party with a response no later than 5 days after the date on which the party receives the copy of the application. I therefore agree with the Respondent's position that Rule 51 of the RPD Rules does not oblige the RPD to respond to a Rule 50 application within 5 days. Rather, Rule 51 applies to a party seeking to respond to a written application. Since the RPD is not a party to the application but the decision-maker, the timeline set out in Rule 51 does not apply to it. The RPD is therefore not obliged to respond to a written application within 5 days of it being filed.

[4] Moreover, the RPD thoroughly assessed the Applicants' application pursuant to Rule 50 of the RPD Rules before dismissing the application. The RPD noted that while the Applicants may have concerns regarding the new refugee determination system, the matter was being assessed under the former legislation, which does not have the same timelines imposed for the processing of claims. In response to the Applicants' submissions that the RPD not endorse the actions of the then Minister of Citizenship and Immigration, the RPD explained that it is an independent tribunal that assesses each claim on its own merits and provides reasons for its decisions in a fair and independent manner. In support of this, the RPD cited Chief Justice Crampton's decision in *Cervenakova v Canada (Citizenship and Immigration)*, 2010 FC 1281, 381 FTR 74, where he indicated at paragraphs 49 and 60 that statements made by the Minister do not compromise the RPD's independence nor do they give rise to a reasonable apprehension of bias.

[5] I am also of the view that the Applicants' submissions regarding bias on the part of the RPD panel member are unfounded. The test for bias is "what would an informed person, viewing the matter realistically and practically- having thought the matter through-conclude" (*Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369, at 394). In my view, while questioning Mr. Molnar about his job prospects in Canada and whether the Applicants are living off welfare in Canada may be inappropriate and irrelevant to determining whether the Applicants fall under sections 96 and 97 of the Act, the line of questioning is not indicative of bias on the part of the RPD. I do not agree with the Respondent's submissions that it was open to the panel to ask Mr. Molnar questions about his situation in Canada to assess the allegations of discrimination in Hungary relating to his inability to find stable work there because of his Roma ethnicity. However, as indicated in *Chamo v Canada (Minister of Citizenship and*

Immigration), 2005 FC 1219, “energetic questioning by a Board member and frequent interruptions will not necessarily give rise to a reasonable apprehension of bias” (at para 12). Further to reviewing the decision as a whole, it is clear that the RPD considered the Applicants’ testimony in light of the country documentation when assessing the Applicants’ claims of persecution, discrimination and lack of state protection, thus keeping an open mind.

B. *RPD’s decision is reasonable*

[6] Applicants are presumed to be telling the truth when testifying before the RPD (*Puentes v Canada (Citizenship & Immigration)*, 2007 FC 1335, at para 16; *Valtchev v Canada (Minister of Citizenship & Immigration)*, 2001 FCT 776, at paras 6-8, 208 FTR 267; *Aguirre v Canada (Citizenship and Immigration)*, 2008 FC 571, at para 15 [*Aguirre*]). Thus, where an applicant’s claims are not corroborated by any documentation, the jurisprudence has established that the failure to file corroborating documentation “cannot be related to the applicant’s credibility, in the absence of evidence to contradict the allegations” (*Ahortor v Canada (Minister of Employment & Immigration)*, 65 FTR 137, at para 46, 41 ACWS (3d) 863). Yet, where the RPD has valid reasons to doubt an applicant’s credibility, an applicant’s failure to provide corroborating documentation may be considered by the RPD if it does not accept the applicant’s explanation for their failure to produce that evidence (*Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12, at para 10; *Singh v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 556, at para 9, 233 FTR 166). Moreover, the Federal Court of Appeal found in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, that where the RPD makes a general negative credibility finding, “that determination is sufficient to dispose of the

claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim” (at para 3).

[7] Further to a review of the record, including the transcript of the hearing, I find that the RPD reasonably found that Mr. Molnar lacked credibility and, as a result, that it was reasonably open for the RPD to reject the Applicants’ claim in the absence of corroborating documentation. In my view, the RPD’s finding that it was reasonable to expect some credible and trustworthy evidence from the Mr. Molnar’s adult son to support allegations of persecution as he would likely have been aware of the problems of the claimants since he lived with the Applicants at the time the persecution occurred and had attempted to claim refugee status in Canada for the same grounds, was not unreasonable.

[8] Moreover, Mr. Molnar claimed to have filed several reports and complaints with various persons in positions of authority. Notably, he alleged that he obtained a medical report following being beaten by police, which he used to file a police report. When asked if he had proof of the medical report, Mr. Molnar replied by saying, “I do not have any papers like that here with me in Canada.” When asked if he had the police report, he told the RPD that he did not, but that he was advised by the police that the file was closed since they did not know who the perpetrators were. Mr. Molnar also testified that he sought the assistance of a Roma organization. When asked if he had proof that he sought assistance of the organization, he testified that he did not. When asked when he asked for the organization’s help, he testified that he could not remember. Mr. Molnar also testified that he filed a complaint with the military prosecution office. Again, when asked if he had proof of this complaint, Mr. Molnar said he did not and that in order to acquire proof, he would have to go to the military prosecution office personally. In my view, it was not

unreasonable for the RPD to reject Mr. Molnar's reasons for not providing corroborating evidence and as a result find that Mr. Molnar, who was represented by counsel before the RPD, did not make reasonable efforts to obtain corroborating evidence from the military persecution office, the hospital or the police.

[9] In my view, the central allegation of the Applicants' refugee claim is the police attack and subsequent harassment from the police. The RPD's finding that Mr. Molnar's account of the attack was not credible since no reasonable explanations were provided for the Applicants' failure to provide corroborating evidence was determinative to the disposition of the Applicants' claim as no other evidence was submitted to establish that the Applicants face greater discrimination than other Romas in Hungary. The Applicants bore the burden of proving their claim and it was well within the RPD's discretion to reject the Applicants' explanations for failing to produce evidence in support of their claim (*Singh*, at para 9). Therefore, I am of the opinion that the RPD's negative credibility finding falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. (*Dunsmuir*, at para 47).

[10] As I find that the RPD's decision regarding the lack of credibility of the Applicants' refugee claim is reasonable, there is no need for me to decide the question of the adequacy of state protection. I will add however, without commenting on the substance of the RPD's decision in this respect, that this Court has, in several instances, refused to interfere with RPD findings that although not perfect, state protection is available to Romas in Hungary (see *Molnar v Canada (Citizenship and Immigration)*, 2012 FC 530; *Paradi v Canada (Citizenship and Immigration)*, 2013 FC 996; *Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056).

[11] For these reasons, the application for judicial review is dismissed. No question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed; and
2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7227-13

STYLE OF CAUSE: ATTILA MOLNAR, GERGO MOLNAR, SZILVIA
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