Date: 20160912

Docket: IMM-497-16

Citation: 2016 FC 1025

Ottawa, Ontario, September 12, 2016

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

GYULA MEZEI, GYULANE MEZEI, EDINA MEZEI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1]   This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] of the decision by a Senior Immigration Officer [the Officer] to reject a Pre-Removal Risk Assessment [PRRA] application.

I.   Facts

[2]   The applicants are a family of three from Hungary. The principal applicant is of Roma

ethnicity. The family came to Canada in September 2011 and claimed refugee protection on the

basis of the Roma ethnicity of the principal applicant and his daughter.

[3]   The applicants' refugee claims were refused by the Refugee Protection Division [RPD] of

the Immigration and Refugee Board of Canada on October 26, 2012 because it found they had

not rebutted the presumption of state protection. The applicants were not granted leave to apply

for judicial review of the RPD decision.

[4]   The applicants subsequently applied for a PRRA which was denied because they had

again rebutted the presumption of state protection.

[5]   The Officer acknowledged that Hungarian Roma face discrimination, abuse, intimidation

and violence, and that they "require state intervention and strong measures to be taken by the

state to provide protection to minority groups, especially the Roma, in Hungary". However, the

Officer held that the objective documentary evidence demonstrated that the government was

making efforts to protect the Roma which although not perfect, are in practice.

II.   Standard of Review

[6]   The standard of review for the findings of fact with respect to state protection is

reasonableness (*The Minister of Citizenship and Immigration v Flores Carillo*, 2008 FCA 94 at

para 36 [*Carillo*]; *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 22).

III.   Analysis

[7]   The only issue raised by the applicants is that of state protection. There have been several

cases involving Roma from Hungary in this Court in recent years. Justice Russell summed up the

jurisprudence briefly in *Tar v Canada (Citizenship and Immigration)*, 2014 FC 797 [*Tar*] at

paras 75-76:

> [75]   As decisions of the RPD and the case law of this Court
> demonstrate, the issue of whether Hungary can or will provide
> adequate protection for its Roma citizens is controversial and
> highly problematic. We have decisions going both ways. Everyone
> appears to agree that, notwithstanding efforts by the central
> government in Hungary to improve the lives of Roma people, they
> continue to suffer widespread discrimination and racist violence at
> the hands of at least some bigoted and disreputable Hungarians.
> The cases often focus upon whether government efforts to alleviate
> this problem have translated into adequate protection at the
> operation level. See, for example, *Hercegi v Canada (Minister of
> Citizenship and Immigration),* 2012 FC 250 and *Orgona*, above;
> cf. *Matte* and *Banya*, both above.
>
> [76]   In assessing this issue, a lot seems to depend upon the
> evidence and submissions that come before the RPD and, upon
> review before the Court, the issues of concern that applicants and
> their counsel choose to raise.

[8]   I do not accept the respondent's suggestion that the PRRA decision is reasonable because

the Court has found state protection to be available in Hungary in the past. There are indeed

cases both ways. The respondent does however accurately canvass the law with respect to state protection: clear and convincing evidence is required to rebut the presumption of state protection (*Ward* at 724-725), and it requires more than showing state protection is not perfect or always effective (*Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189, 150 NR 232 (FCA)).

[9]   That being said, I agree with the applicants that the state protection analysis must consider operational adequacy and not just governmental aspirations. In *Kanto v Canada (Citizenship and Immigration)*, 2014 FC 628, I found that the Officer had unreasonably failed to examine the operational level of state protection available. (See also *Tar*; *Molnar v Canada (Citizenship and Immigration)*, 2015 FC 273; and *Bakos v Canada (Citizenship and Immigration)*, 2016 FC 191.

[10]   While it is not up to this Court to reweigh the evidence, the evidence cited by the Officer did not support finding that state protection was available. The Officer specifically relied on three reports, yet in my opinion, these do not support the Officer's findings.

[11]   The portion of the 2014 Response to Information Request, which was cited as evidence of Hungary's initiatives to better its police force, does not state that the improved police training was yielding results for the Roma community. This is particularly unreasonable in light of the contradictory evidence. For instance, the paragraph of the US DOS Report [Report] which immediately precedes the part cited by the Officer suggests the contrary:

> The [Hungarian Helsinki Committee] continued to report that the sanctioning of practice of the police especially in cases of petty

offenses committed in the poorest regions of the country indicated extensive ethnic disproportionality that could not be reasonably justified and was often based on ethnic profiling, a form of racial discrimination. On July 15, six human rights NGOs initiated the establishment of a working group against ethnic profiling, with the participation of police authorities. On August 15, the national police chief rejected the proposal and rejected allegations of ethnic profiling.

[12]   The 2015 Response to Information Request was cited as evidence of police effectiveness, yet the Report does not document any such effectiveness. The first part which was cited indicates that corruption in the police force is being addressed; I fail to see how this is germane to the applicants' claims. The second part deals with the IPCB [Independent Police Complaints Board]. It does support the Officer's conclusion that the applicants could address a higher authority, but it is does not show that state protection is available in practice.

[13]   Finally, the US DOS Report deals solely with the economic situation of the Roma community. The effectiveness of public works programs has no bearing on the finding that there is adequate state protection against racially motivated violence.

[14]   Upon reviewing the record and the Officer's reasons, I do not find that the Officer's findings were justified or supported by the evidence. On the one hand, the Officer found that strong measures needed to be taken in light of the evidence of discrimination, violence and abuse faced by Romani people in Hungary. On the other hand, the Officer makes findings based on reports about police training programs and economic development programs, which have no bearing on the adequacy of state protection and are not strong measures to curtail violence.

[15]   For the reasons stated above, this application for judicial review is allowed. The matter is

returned for redetermination. Neither party proposed a question of general importance for

certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed

and the matter is remitted back for redetermination.

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"Danièle Tremblay-Lamer"
Judge
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