Federal Court  Cour fédérale

Date: 20180314

Docket: IMM-3634-17

Citation: 2018 FC 291

Ottawa, Ontario, March 14, 2018

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ATTILA LAKATOS
ANITA OLCSVARI
KIARA IRISZ LAKATOS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] On March 6, 2017, the Applicants appealed a decision of the Refugee Protection Division (RPD) to dismiss their refugee claim, finding they are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [IRPA]. On July 26, 2017, the Refugee Appeal Division (RAD) dismissed their appeal, and they now ask for judicial review of that decision.

[2] Because I find the RAD decision is transparent, justifiable, and intelligible, I am dismissing this judicial review for the reasons that follow.

II. Background

[3] Attila Lakatos, his common-law wife, Anita Olcsvari, and their 7 year old daughter Kiara Lakatos (the Applicants) are Roma and citizens of Hungary. In September 2016, they came to Canada and filed refugee claims saying they wanted to escape the racism and violence they faced in Hungary. As an example, the Applicants say that while living in Hungary, Mr. Lakatos was assaulted twice in race-based attacks. The first attack occurred in 2007 and was not reported to the police. The second attack happened on April 9, 2016, and was reported to the police. Mr. Lakatos's Basis of Claim (BOC) says during this attack, two men severely assaulted him (he was stabbed in the stomach and attacked with a machete) while calling him a "dirty gypsy." The police investigation in the attack that was reported to the police resulted in an arrest, but it turned out the people arrested were not the perpetrators. The police still have the case open.

[4] A typographical error in the RAD's analysis cites the attack occurring in April of 2009 when the date should be April 9, 2016. At the judicial review hearing the parties confirmed that nothing turns on the typographical error.

[5] The family say they faced discrimination that amounts to persecution in regards to healthcare, education, and housing, but it was the attempt on Mr. Lakatos' life that made them flee to Canada.

[6] Their refugee hearing took place on January 6, 2017. In a decision dated February 16, 2017, the RPD determined the Applicants are not convention refugees or persons in need of protection, and refused their refugee claim. The RPD found they would have access to state protection in Hungary. The RPD also found insufficient credible evidence to support a serious possibility of future persecution.

[7] On March 6, 2017, the Applicants appealed the RPD's decision to the RAD. No new evidence was submitted on appeal, and no hearing took place.

[8] The RAD listened to a recording of the RPD hearing, and found the RPD had not been aggressive or insensitive to the Applicants. The RAD found that the RPD had not erred as alleged by the Applicants to have erred by not following the gender and child guidelines.

[9] The RAD found that there was state protection. The RAD stated that the burden of proof is proportional to the level of democracy, and since Hungary is a democratic nation, the Applicants needed to do more to prove inadequate state protection. After reviewing the evidence, the RAD found the Applicants failed to meet their onus to prove, on a balance of probabilities, that the state protection was inadequate.

[10] On July 26, 2017, the RAD dismissed the Applicants' appeal.

III. Issues

[11] The issues are:

A. Did the RAD err in the assessment of the adequacy of state protection?

B. Did the RAD err in fact or law in failing to assess or apply the gender and child guidelines?

IV. Standard of Review

[12] The standard of review of a RAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30, 35).

V. Analysis

A. *Did the RAD err in the assessment of the adequacy of state protection?*

[13] As this Court has held previously, the dispositive issue is the state protection analysis. State protection is dispositive if the decision maker reasonably determined there is adequate state protection, because any errors made in regards to any other matter will not change the outcome (*Sarfraz v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 1974 (FC); *Victoria v Canada (Minister of Citizenship and Immigration)*, 2009 FC 388 at para 15; *Kudar v Canada (Minister of Citizenship and Immigration)*, 2004 FC 648 at para 12; *Kharrat v Canada (Minister of Citizenship and Immigration)*, 2005 FC 106 at para 8).

[14] Although there is a presumption that state protection is available, this can be rebutted by the applicant on a balance of probabilities using clear and convincing evidence (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724-725; *Canada (Minister of Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94 at para 30). In particular, the evidence must establish that the state protection is inadequate; the test is not whether it is ineffective (*Samuel v Canada (Minister of Citizenship and Immigration)*, 2008 FC 762 at para 13; *Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584 at para 23).

[15] In this case, the Applicants say the RAD ignored evidence that rebutted this presumption. For example, the Applicants had explained that the police in Hungary did not find the suspects who assaulted Mr. Lakatos. They submit this is evidence that the state has inadequate resources to stem racial crimes and extremist action. They also relied on a pre-removal risk assessment decision, *Bozik v Canada (Citizenship and Immigration*), 2017 FC 920, to say that evidence of similarly situated people was ignored, but should have been used as objective evidence of the inadequacy of state protection.

[16] Further case law was relied on by the Applicants to say the RAD's decision is unreasonable because it did not assess whether state protection would be available operationally to the Applicants: *Majoros v Canada (Minister of Citizenship and Immigration)*, 2017 FC 667 at paragraph 76; *Castro v Canada (Minister of Citizenship and Immigration)*, 2017 FC 13 at paragraph 6; *Guthrie v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1087 at paragraphs 9-11; *Famurewa v Canada (Citizenship and Immigration)*, 2016 FC 409 at paragraph 21; *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004; *Kemenczei v*

Canada (Citizenship and Immigration), 2012 FC 1349; *Kumati v Canada (Citizenship and Immigration)*, 2012 FC 1519; *Meza Varela v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364 at paragraph 16.

[17] Finally, the Applicants argued that the decision maker ignored documentary evidence that Roma children are segregated in the education system, and evidence that demonstrated the health care for Romas is lacking.

[18] The RAD curiously notes at paragraph 9 of their reasons that the RPD did not analyze state protection, so it asked for written submissions to conduct its own analysis. Yet when I reviewed the RPD decision there is an entire section (starting at paragraph 33) that does analyze state protection and stated that "[s]tate protection does not have to be perfect but it does have to be operationally adequate."

[19] The RPD then went on to review the documentation and found:

> The panel acknowledges Counsel's submission as supported by the country documents that the protection is not perfect and there are many areas that require improvement including in regard to the corruption of some police. However, the objective evidence confirms that Hungary is a functioning, multi-party democracy with free and fair elections. It has a functioning security force to uphold the laws and constitution of the country.

The RPD concludes that "… the claimants would have access to operationally effective state protection in Hungary."

[20] The RAD's own complete analysis of state protection addresses the particular circumstances of the Applicants, including the two attacks. One attack of which was reported to the police and one of which was not.

[21] Regarding the 2016 attack, the RAD found that the police did investigate and did make arrests. The investigators concluded the arrested individuals were not the assailants, but the RAD found that does not mean that the state refused protection to the Applicants. Regarding the earlier attack, the RAD noted it was not reported to the police. The RAD found that failing to report the first incident was inconsistent with "a well- founded fear or indicative of any genuine attempt to obtain state protection."

[22] The RAD cited to jurisprudence illustrating that usually an applicant must do everything within his power to obtain state protection, unless there is a compelling explanation not to seek it. After further analyzing the Applicants' allegations regarding employment, health care, education, and housing, the RAD found no evidence that the Applicants were prevented by Hungarian authorities from obtaining employment, housing, or health care. The RAD did not mention education in their conclusion but the RPD did canvas the minor child's experience of discrimination at school. The RPD found that "… there is also persuasive documentary evidence that indicate Hungary will not deprive the minor claimants of their fundamental rights to an education." The RPD acknowledged that the Applicants will need to advocate on their daughter's behalf but also found there have been positive changes in the education situation in Hungary for Roma children.

[23] The RPD and RAD's decisions both canvased the cumulative discrimination as alleged by the Applicants given the evidence that was before them. The RAD did not ignore evidence, but found there was insufficient evidence regarding segregation specific to the child in question.

[24] The evidence contained in Mr. Lakatos' BOC narrative included his remark that he and his common-law wife went to a mixed school but were segregated in the classroom, not given attention, and not encouraged to learn. The parents worried that their daughter would also be segregated, ignored, and become an uneducated Roma living in poverty. The Applicants' evidence is that their daughter Kiara started kindergarten at age 3. As the kindergarten is in a Roma area, she is with other Roma children, and is happy and fine there, but they are concerned because they feel that Roma schools do not provide a good education. This evidence is not at odds with what the RPD found: that with her parents advocating on her behalf (and there was no evidence that they could not advocate) she would be educated. The fact the family live in an area where Roma live and the children at the kindergarten are also Roma children does not mean that their child is only able to attend that school and it does not mean she us unable to obtain an education. The documentary evidence and the findings before the RPD support its conclusion that though there are problems, the child will not be deprived of her rights to an education.

[25] The RAD's conclusion that there was insufficient evidence that they would be denied those benefits is reasonable. Though the RAD could have been more in-depth, given the RPD reasons and evidence in the Certified Tribunal Record, it is not an unreasonable determination.

[26] I find that the RAD reasonably determined the Applicants failed to meet their onus of rebutting the presumption of state protection on a balance of probabilities. The finding that the state protection analysis was reasonable is determinative of this matter. Thus the other issues raised by the Applicants are not necessary to address in this decision.

[27] Though I may not have made the same determination, that is not what is required of me when judicially reviewing this matter. In sum, reasonableness requires that the decision must exhibit justification, transparency, and intelligibility within the decision making process and also the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12). This decision is within the range of acceptable outcomes and I will dismiss this application.

[28] No question was presented for certification and none arose.

JUDGMENT in IMM-3634-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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