Federal Court  Cour fédérale

Date: 20180628

Docket: IMM-5015-17

Citation: 2018 FC 674

Ottawa, Ontario, June 28, 2018

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

ZSOLT VENTER
KITTI VENTERNE VARNAI
GERGO GABOR MARSOVSZKI
JAZMIN VIRAG VENTER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a Hungarian family of mixed Hungarian and Roma ethnicities. Mr. Venter and his wife, Ms. Varnai, are the parents of their daughter, Jasmin, age 6, and Ms. Varnai is the mother of Gergo Gabor Marsovszki, age 11. Fearing persecution from anti-Roma racists and far-right activists, they left Hungary for Canada on November 17, 2011 and, upon arrival, filed claims for refugee protection. The Refugee Protection Division [RPD] of the Immigration

and Refugee Board of Canada rejected their claims in a decision dated November 1, 2017, with the availability of an internal flight alternative [IFA] in Budapest being the determinative issue. The Applicants have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the RPD's decision. They ask the Court to quash the RPD's decision and return the matter for redetermination by another member of the RPD.

I. The RPD's Decision

[2] In its decision dated November 1, 2017, the RPD considered the definition of a viable IFA as articulated in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172, [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*]; *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 31 ACWS (3d) 139 (FCA) [*Rasaratnam*]; and *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2118, [2001] 2 FC 164. The RPD summarized the jurisprudence as establishing that, if an IFA exists within the country of origin, claimants are expected to avail themselves of it unless they can show it is unreasonable or unduly harsh to do so. The RPD noted that the two-pronged test emanating from *Rasaratnam* and *Thirunavukkarasu* requires a decision-maker to be satisfied on a balance of probabilities that there is no serious possibility a claimant will be persecuted or harmed in the proposed IFA, and also that it would not be unreasonable in all the circumstances, including those particular to a claimant, for the claimant to seek refuge there.

[3] The RPD remarked that the Applicants were not aware of any problems Mr. Venter's mother encountered as a Roma in Szigetszentmiklós, where the Applicants lived prior to their

arrival in Canada, or any his brother might have had due to his mixed ethnicity. The RPD considered the adult Applicants' testimony and submissions, notably that they could not safely reside anywhere in Hungary due to its small size, their persecutors had located them after they moved within Szigetszentmiklós, the threats continued even after they fled Hungary, and news of their mixed ethnicity would spread quickly even if they moved elsewhere in Hungary. The RPD found, on balance of probabilities, that Mr. Venter's last name did not identify him as Roma. Noting that the evidence and the adult Applicants' testimony showed that Szigetszentmiklós is a small town where residents generally know each other, the RPD further found that Mr. Venter was recognized as Roma in Szigetszentmiklós because his mother was known to be Roma. In contrast, the RPD observed that Budapest is a large city with over 1.7 million people, and while large cities cannot be considered an IFA by virtue of size alone, the Applicants would not be recognized as Roma in Budapest due to the Roma ethnicity of Mr. Venter's mother.

[4] In addressing the first stage of the IFA test, the RPD noted the Applicants' onus to show there was a serious possibility of persecution throughout Hungary, including the proposed IFA. The RPD considered the Applicants' particular circumstances, noting that Mr. Venter and his daughter Jazmin had ethnic Hungarian last names, and found there was no significant evidence that persons with this profile would face persecution by skinheads, by the far-right Jobbik party, or by racist Hungarians or police officers. The RPD also considered the Applicants' submission that people would learn of Mr. Venter's Roma ethnicity upon his mother's visit to the Applicants' house or from a co-worker or someone at the children's school. In the RPD's view, the Applicants' alleged fear of harm, in their particular situation and circumstances, was

speculative and not objectively well founded such that they would be pursued and persecuted in Budapest.

[5] The RPD then considered whether state protection would be available for the Applicants in Budapest, noting the presumption that a state is capable of protecting its citizens unless the state was in complete breakdown, and also that the burden of overcoming the presumption increased in proportion to the strength of a state's level of democracy. After reviewing country condition documentation, the RPD found that, although the alleged persecutors had discovered the Applicants when they moved within and around their hometown, they provided insufficient reliable and satisfactory probative evidence to establish that the alleged persecutors would pursue them in Budapest to harm them or that any of the alleged persecutors would have influence with the authorities in Budapest such that they would not be provided adequate protection from the police if they were to need it. The RPD acknowledged that, while the Applicants had not received police assistance in Szigetszentmiklós since the police were unable to pursue their complaints in the absence of information about the assailants' identities, it was reasonable to expect them to seek redress by reporting corruption or the alleged inaction by the police to other appropriate security organizations mandated to look into corruption or unjustified inaction by the police, especially if they believed they were being denied protection due to their alleged Roma ethnicity. The RPD found that, although racism and discrimination exists throughout Hungary, the documentary evidence demonstrated that adequate state protection would be reasonably forthcoming for the Applicants if they were to need it and their alleged fear of harm in Budapest had no objective basis.

[6] As to the second prong of the IFA test, the RPD noted that the threshold for finding an IFA unreasonable was a high one which could not be met by the ordinary hardship associated with dislocation and relocation. The RPD further noted that Mr. Venter had 12 years of formal education, including vocational training, as well as varied work experience, making it not objectively unreasonable for the Applicants to seek refuge in Budapest with its greater work opportunities compared to their small town. The RPD considered medical evidence concerning the physical and psychological impact on Ms. Varnai of returning to Hungary, and found that the Applicants, including Ms. Varnai, would be able to access essential medical treatment and other services and amenities in Budapest.

[7] The RPD concluded that there was no serious risk of persecution, or a risk of harm, if the Applicants were to return to Hungary and relocate to Budapest and, accordingly, dismissed their claims under sections 96 and 97 of the *IRPA*.

II. Was the RPD's assessment of whether the Applicants had a viable IFA reasonable?

[8] Determinations on the availability of an IFA are reviewed on the reasonableness standard (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14, 285 ACWS (3d) 143); and, as the Court noted in *Lebedeva v Canada (Citizenship & Immigration)*, 2011 FC 1165 at para 32, [2011] FCJ No 1439, such determinations "warrant deference because they involve not only the evaluation of the applicant's circumstances, …but also an expert understanding of the country conditions involved" (also see: *Rodriguez Diaz v Canada (Citizenship and Immigration)*, 2008 FC 1243 at para 24, [2009] 3 FCR 395, and *Sivasamboo v Canada (Minister of Citizenship and Immigration)*, [1995] 1 FC 741 at para 26, [1994] FCJ No 2018).

[9] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708). So long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; nor is it "the function of the reviewing court to reweigh the evidence" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339).

[10] The Applicants argue that the RPD erred in finding a viable IFA in Budapest for several reasons. Firstly, the RPD failed to consider whether Mr. Venter would be recognized as Roma due to his appearance. Given that he was recognized as Roma in Szigetszentmiklós, the Applicants maintain it is reasonable to assume he would be similarly recognized in Budapest based on his appearance. Secondly, the RPD unreasonably found state protection would be afforded to the Applicants in Budapest through a selective analysis of the country condition evidence, while ignoring the general message of the evidence that state protection was inadequate and failing to mention or assess highly relevant passages which directly contradict the RPD's findings. Thirdly, the RPD unreasonably focused on legislative changes to show adequate

state protection while failing to consider whether these changes were operationally effective. According to the Applicants, all of the legislative changes cited by the RPD are from 2011 and older, whereas recent country condition evidence shows there has not been any increase in the operational adequacy of state protection, and the presence of police complaint mechanisms and pro-Roma NGOs in Hungary is not evidence of adequate state protection. Lastly, with respect to the second prong of the *Thirunavukkarasu* test, the Applicants submit that, given the RPD's earlier finding that racism and discrimination exists throughout Hungary, it was incumbent upon the RPD to assess whether this would prevent them from accessing medical or other services in Budapest. In the Applicants' view, it was unreasonable for the RPD not to address the discrimination which they would likely face in Budapest.

[11] According to the Respondent, the onus is upon the Applicants to provide sufficient evidence to meet the high threshold for showing that an IFA is unreasonable. Noting that the question of whether a Roma citizen of Hungary will face persecution must be assessed on a case-by-case basis, the Respondent says the Applicants are asking the Court to re-weigh the evidence assessed by the RPD. In particular, the Respondent contends that the Applicants' submission that the RPD failed to consider the operational effectiveness of legislative changes is without merit, as the RPD explicitly noted that the Hungarian government's initiatives are "producing results on the ground" or are "actually having an impact operationally on the ground." In the Respondent's view, the Applicants' recitation of excerpts from the country condition evidence does not demonstrate an error or a selective review of the evidence, since the RPD was not required to cite every piece of contradictory evidence but only to reasonably ground its findings in the evidence

before it. In any event, the Respondent says the RPD's finding that the Applicants could access state protection in Budapest if needed was determinative of their claims.

[12] In my view, it was reasonable for the RPD to find the Applicants had a viable IFA in Budapest. It is true, as the Applicants point out, that the RPD referenced documentation and legislative changes from 2011 and prior to then, and that the presence of police complaint mechanisms and pro-Roma NGOs in Hungary is not evidence of adequate state protection. However, the RPD also considered more recent evidence, including a National Documentation Package [NDP] dated August 31, 2017. The fact that the RPD may have relied upon information from the October 31, 2011 NDP does not render its decision unreasonable on that basis alone.

[13] Moreover, I disagree with the Applicants that the RPD unreasonably found state protection would be afforded to the Applicants in Budapest through a selective analysis of the country condition evidence by failing to mention or assess highly relevant passages in such evidence which directly contradict its findings. It is well-established that administrative decision-makers, including the RPD, do not have to reference every piece of evidence in their decisions (see, e.g.: *Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at paras 42 to 45, [2018] FCJ No 553). The presumption that a decision-maker has considered all of the evidence after making a general statement that they have done so applies to the RPD's assessment of a claimant's refugee claim. RPD members are not required to refer to every piece of evidence so long as they state in making their findings that they have considered all of the evidence.

[14] In this case, the RPD had ample evidence before it to support its conclusion that the Applicants have a viable IFA in Budapest. Although the RPD did not specifically mention various passages in the country condition evidence highlighted by the Applicants as contradicting the availability of adequate state protection for them, it is presumed to have considered all of the evidence. Indeed, the RPD reasonably found "after a thorough review of all of the evidence …that adequate state protection would be reasonably forthcoming" for the Applicants in Budapest.

[15] In *Lakatos v Canada (Citizenship and Immigration)*, 2014 FC 785 at para 33, [2014] FCJ No 842, the Court remarked that:

> …It is insufficient for applicants to rely solely on documentary evidence of flaws in state protection apparatus if they have failed to avail themselves of whatever protection is available. Applicants must approach their state for protection where state protection might reasonably be forthcoming, and it is only in a situation of complete breakdown of the state apparatus that this requirement will be lifted…

[16] In this case, the Applicants failed to establish that the police would not assist them should they face racially-based violence in Budapest. The Applicants never attempted to access state protection anywhere outside their hometown, and even within Szigetszentmiklós the RPD was not convinced the police's failure to act was due to Mr. Venter's ethnicity. The RPD found the police in Szigetszentmiklós "were not in a position to investigate, given the lack of identification that these claimants appeared to have had about the alleged perpetrators" of the attacks against them. This finding by the RPD was reasonable, especially in view of an incident discussed during the hearing in which Mr. Venter's father (an ethnic Hungarian) had made a police report

after receiving a threatening letter and the police did not follow up, suggesting that the police's failure to act was not based on ethnicity.

[17] Furthermore, the RPD did not, as the Applicants contend, consider the legislative measures taken by the Hungarian government without considering their operational effectiveness. On the contrary, the RPD specifically found that:

> …the government has enacted legislation, and put in place many tactical initiatives across several departments… [that] are producing results on the ground. The documentary evidence shows that the claimants have recourse to obtain state protection, or to seek redress if they are denied state protection services due to their alleged Roma ethnicity…
>
> …the evidence demonstrates that Hungary's progressively evolving legislation/measures/actions to provide protection for its citizens, including Roma, are actually having an impact operationally on the ground. The evidence also demonstrates that police do investigate crimes against Roma and that perpetrators are being held responsible when there is sufficient evidence.

[18] As this Court observed in *Mudrak v Canada (Citizenship and Immigration)*, 2015 FC 188 at paras 55 and 56, [2015] FCJ No 180:

> …it is…incorrect to, in effect, reverse the presumption of adequate state protection in a democratic society when a country enacts legislation, or when there is evidence of increasing acts of violence, thereby requiring the Board to demonstrate the operational adequacy of measures taken to prevent incidents of persecution in its reasons. …
>
> Nor should the fact that a democratic government enacting legislation and putting other measures in place to combat persecution, somehow be seen as an admission of a failure of state protection. The Court starts from the presumption of adequate state protection in a democratic nation (*Ward* at 724-726). …extensive and substantial legislation and other measures being undertaken should be treated as evidence supporting the democratic foundations of the country, thereby enhancing the presumption of

> adequate state protection as opposed to requiring the Board to demonstrate operational adequacy. …the Board's conclusion in this case that the legislation and other measures taken by the Hungarian government to protect Roma citizens strengthens the presumption of adequate state protection and escalates the challenge facing an applicant. This is particularly true when an applicant is unable to provide clear and convincing evidence of a subjective well-founded fear of persecution or an objective need for protection.
>
> [Emphasis in original]

[19] The RPD's decision in this case was reasonable. It was not incumbent upon the RPD to address the discrimination which the Applicants might face in Budapest given its determination that the Applicants' alleged fear of harm was speculative and not objectively well-founded such that they would be pursued and persecuted in Budapest. The RPD reasonably concluded that the Applicants had not provided sufficient evidence either to rebut the presumption of adequate state protection in Budapest or to show relocating to Budapest would be unreasonable in view of the Applicants' particular situation and circumstances.

III. Conclusions

[20] The RPD's reasons for rejecting the Applicants' claims for refugee protection are intelligible, transparent, and justifiable, and its decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicants' application for judicial review is therefore dismissed.

[21] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-5015-17

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed, and no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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