

Federal Court



Cour fédérale

Date: 20180810

Docket: IMM-369-18

Citation: 2018 FC 823

Ottawa, Ontario, August 10, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**SILVIA SALAJOVA
JAN SALAJ
JAN SALAJ
MAREK SALAJ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant family are citizens of Slovakia. They ask for review of a decision of the Refugee Protection Division [RPD] refusing their refugee claims as they could not establish their identities as Roma. For the reasons that follow this judicial review is dismissed as the decision of the RPD is reasonable and the Applicants simply failed to meet the burden upon them to establish their identities.

I. Background

[2] Silvia Salajova, her husband Jan Salaj, and their two children claim refugee protection on two main grounds. First, they claim to be the target of a well-known anti-Roma politician in Slovakia. This politician apparently has a personal vendetta against the Applicants because they are Roma and are related to him by marriage.

[3] They also rely upon incidents of violence. Ms. Salajova describes collapsing during pregnancy at a bus station and no one coming to her aid. In another incident, a dog attacked her, and the owner told her that she deserved to be attacked because she is Roma.

[4] The incident which caused the Applicants to flee for Canada was when Mr. Salaj and his son were attacked by Neo-Nazis in December 2011. Mr. Salaj required medical treatment and was unable to work for three weeks.

[5] The Applicants made refugee protection claims under ss. 96 and 97 of the *Immigration and Refugee Protection Act* [IRPA].

II. RPD Decision

[6] In its decision of December 21, 2017, the RPD concluded that the Applicants failed to establish their identity as Roma, and therefore their claims could not succeed under ss.96 and 97 of the IRPA.

[7] With respect to establishing their Roma identity, Mr. Salaj confirmed that there were no documents from the Slovakian government which could confirm their Roma status. Mr. Salaj also confirmed that they were not living in a Roma majority city in Slovakia, and they were not living in a Roma district. The children did not attend schools specifically for Roma children. The RPD also noted that Mr. Salaj and Ms. Salajova do not speak a Romani language.

[8] The RPD noted the lack of documentary evidence confirming their Roma identity. The RPD noted that there are a number of non-governmental organizations [NGOs] involved with Roma issues in Slovakia who could have helped the Applicants obtain acceptable identity documents. Further the RPD noted that government agencies, could have also assisted the Applicants.

[9] Considering the lack of evidence, the RPD found that the Applicants failed to establish their identity as Roma and their claims were denied.

III. Issues

[10] Although the Applicants raise a number of issues in their application, the only real issue is if the RPD erred in its identity analysis.

IV. Analysis

A. *Standard of Review*

[11] I agree with the parties that the standard of review of the RPD's identity findings is reasonableness (*Nikolova v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 382 at para 8).

[12] Further, deference is owed to the RPD on identity findings as such findings are at the core of the RPD's expertise (*Diarra v Canada (Citizenship and Immigration)*, 2014 FC 123 at para 22).

B. *Did the RPD err in its identity analysis?*

[13] The Applicants argue that their identities have been sufficiently established based upon the fact that they are sought out by an anti Roma politician as confirmed in letters from a family member that they are being sought out by this anti Roma politician. This, the Applicants argue, should have been sufficient evidence to establish their identity before the RPD as Roma.

[14] Section 106 of IRPA states as follows:

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les

provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

mesures voulues pour s'en procurer.

[15] Rule 11 of the Refugee Protection Division Rules provides as follows:

11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

11 Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

[16] As the above provisions illustrate, the first step for the Applicants before the RPD was to establish their Roma ethnicity. A claimant's identity is a question of fact "entirely within the jurisdiction of the Board" and, if reasonable, is determinative of the claim (*Balde v Canada (Minister of Citizenship and Immigration)*, 2006 FC 438 at para 26 [*Balde*]; *Hadi v Canada (Citizenship and Immigration)*, 2018 FC 590 at para 14).

[17] In the context of claims based on Roma ethnicity, as in this case, establishing their identity is "central" to their refugee claim. In *Skoric v Canada (Citizenship and Immigration)*, 2013 FC 617 at para 9 [*Skoric*], the Court noted that the issue of identity as Roma was determinative, and "[h]aving failed to satisfy the Board that he was indeed of Roma descent, it was reasonably open to the Board to reject the claim."

[18] In *Skoric*, the Court noted that the applicant did not speak the Roma language, lived in an area not heavily populated by Roma, and only offered some evidence about Roma holidays. The general failure of the applicant to offer evidence establishing identity was determinative.

[19] Here, the RPD made similar findings, noting that the adult Applicants did not speak the Roma language, the family did not live in a Roma area, and the children did not attend a Romani school. Like in *Skoric*, it was open to the RPD to conclude, based on the evidence, that the Applicants failed to establish their Roma identity.

[20] Although the Applicants did not succeed in establishing Roma identity as claimed, the RPD nonetheless considered the documentary evidence that could have been presented by the Applicants. In this context the RPD noted that there are both NGO and governmental sources of identity documents in Slovakia which could have provided the Applicants with the documentary evidence as required by s.106 of the IRPA. Here the RPD noted both the lack of such documents and the lack of any explanation for absence of such documents.

[21] Further the letters from a family member noting that the Applicants are sought after by a politician were not offered as identity documents to the RPD and were not considered as such by the RPD.

[22] The issue of identity was determinative of the Applicants' claim and if identity has not been established, the RPD is not required to analyze the merits of the claim (*Balde*, at para 28).

[23] Overall, the RPD considered the issue of identity fully. The RPD did not analyze the merits of the claim, because the identity issue was dispositive. In doing so, the RPD did not make an error. The decision of the RPD is therefore reasonable and this judicial review is dismissed.

JUDGMENT in IMM-369-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the RPD decision is dismissed.
2. No question of general importance is certified.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-369-18

STYLE OF CAUSE: SILVIA SALAJOVA, JAN SALAJ, JAN SALAJ,
MAREK SALAJ v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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APPEARANCES:

Ms. Aurina Chatterji FOR THE APPLICANTS

Jarvis Stephen FOR THE RESPONDENT

SOLICITORS OF RECORD:

Max Berger Professional Law Corporation FOR THE APPLICANTS

Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario