

Federal Court



Cour fédérale

Date: 20190129

Docket: IMM-2435-18

Citation: 2019 FC 119

Ottawa, Ontario, January 29, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**JOZSEF PEIMLI
ROLAND PEIMLI
GEORGINA PEIMLI
MARK JOZSEF PEIMLI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Jozsef Peimli, his daughter, Georgina, and his minor sons, Roland and Mark Jozsef, seek judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB]. The RPD found they are neither Convention refugees nor persons in need

of protection pursuant to s 96 and s 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The RPD concluded that the Applicants had experienced discrimination in Hungary, rather than persecution. It nevertheless proceeded to assess the adequacy of state protection in Hungary, and whether the Applicants have a viable internal flight alternative [IFA] in Budapest.

[3] The RPD's conclusion regarding the adequacy of state protection in Hungary was reasonably supported by the evidence. Its analysis of Budapest as a viable IFA may be vulnerable to criticism. However, given the RPD's findings respecting the absence of persecution and the adequacy of state protection, this is not sufficient to undermine its decision. The application for judicial review is dismissed.

II. Background

[4] The Applicants are citizens of Hungary. They left Hungary because of discrimination they experienced due to their Roma ethnicity. Mr. Peimli says he was the victim of racially-motivated attacks in July 2011 and January 2012.

[5] Mr. Peimli came to Canada in March 2012, leaving his family in the care of a shelter. His wife, Augusztá Peimline Virag, and their children followed in April 2012. Mr. Peimli and his children claimed refugee protection. Their claims were referred to the IRB in April 2012 and later combined. Mr. Peimli's wife was not eligible to claim refugee protection, because she had

previously made an unsuccessful claim in Canada. She requested a pre-removal risk assessment, which was decided against her. Mr. Peimli and his wife have been separated since February 2018.

[6] The RPD heard the Applicants' claims on April 3, 2018 and rejected them on May 2, 2018.

III. Decision under Review

[7] The RPD expressed some concern regarding Mr. Peimli's credibility, but held that this did not affect the core of the claims. The RPD accepted the Applicants' identities and their Roma ethnicity.

[8] The RPD held that the discrimination the Applicants faced in Hungary did not amount to persecution. The Applicants provided no evidence they had been denied social services or health care. Mr. Peimli had both employment and housing in Hungary. The RPD found that the Hungarian government is undertaking various initiatives to improve the circumstances of the Roma people. The RPD rejected Mr. Peimli's assertion that he would be imprisoned in Hungary due to homelessness. The RPD therefore concluded that the discrimination the Applicants faced in Hungary affected the quality of their lives, but did not threaten their basic human rights.

[9] The RPD nevertheless considered the adequacy of state protection. The RPD observed that Hungary is a democracy, and there was therefore a heavy burden on the Applicants to

demonstrate that state protection is inadequate (citing *Canada (Citizenship and Immigration) v Kadenko*, [1996] FCJ No 1376 (CA) at para 5). The RPD held that refugee claimants from democratic countries must show they have taken all reasonable steps to obtain protection (citing *Peralta v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 989 at para 18).

[10] Mr. Peimli recounted two incidents of race-based violence, and the authorities' failure to charge the perpetrators. The RPD held that localized failures of law enforcement to protect individuals do not constitute inadequate state protection unless the evidence indicates this is part of a larger pattern (citing *Zhuravljev v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 3 (TD) at para 31).

[11] The RPD also found that Mr. Peimli had not taken all reasonable steps to obtain state protection. Based on country condition reports, the RPD concluded there are several independent police oversight bodies in Hungary, and individuals may file complaints if they believe the police have not handled their cases appropriately. The RPD found that the existence of police oversight agencies supported the adequacy of state protection (citing *Mudrak v Canada (Citizenship and Immigration)*, 2015 FC 188 at para 81).

[12] The RPD held that Budapest was a viable IFA for the Applicants, applying the two-prong test in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 710 (FCA). The IFA must, on a balance of probabilities, pose no serious possibility of persecution or danger to the claimant; and the conditions of the IFA must be such that it would be reasonable for the claimant to seek refuge there.

[13] With respect to the first prong of the test, the RPD noted that Budapest is the headquarters of several institutions that are dedicated to protecting minority rights in general and of the Roma people in particular. It found that discrimination against the Roma people is not especially severe in Budapest, and tends to be worse in rural regions. With respect to the second prong, the RPD saw no reason why the Applicants could not relocate to Budapest.

IV. Issues

[14] This application for judicial review raises the following issues:

- A. Was the RPD's assessment of the adequacy of state protection in Hungary reasonable?
- B. Was the RPD's assessment of the availability of an internal flight alternative reasonable?

V. Analysis

[15] The RPD's factual findings and its assessment of the evidence are subject to review by this Court against the standard of reasonableness (*Racz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 824 at paras 19-21). The Court will intervene only if the RPD's decision falls outside the 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).

[16] The RPD said the following at paragraph 17 of its decision:

Having examined the evidence in this case, the RPD finds that the discrimination experienced by [Mr. Peimli] does not threaten his fundamental rights but rather affects the quality of his existence in his home country ... The RPD finds that, in this case, what the claimant experienced was discrimination and does not reach the level of persecution.

[17] The Applicants do not dispute this finding. However, they maintain that the determination of refugee claims involves a forward-looking analysis, and it was therefore necessary for the RPD to consider the adequacy of state-protection and the availability of an IFA. They say the RPD's analysis was deficient in both respects.

A. *Was the RPD's assessment of the adequacy of state protection in Hungary reasonable?*

[18] The Applicants say that the RPD imposed too high a burden on them to demonstrate the inadequacy of state protection. According to the Applicants, the rule of law is eroding in Hungary and anti-discrimination laws may not be followed. As Justice Susan Elliott held in *Olah v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 899 at paragraph 22, "if the rule of law is fully eroded, there is no democratic institution from which the presumption of state protection can arise".

[19] The Applicants say the RPD improperly focused on the availability of police oversight mechanisms and government initiatives to improve state protection for the Roma people, rather than the effectiveness of these initiatives. The Minister responds that the RPD's analysis addressed both efforts and outcomes. The level of protection must be adequate, not perfect.

[20] The RPD acknowledged that the educational system in Hungary may discriminate against Roma children. Nevertheless, the RPD concluded that programs to assist Roma youth with their education are operationally effective. It also noted a public interest lawsuit in which a Hungarian court ruled, for the first time, that the police had engaged in negative discrimination against Roma citizens.

[21] The Applicants say that the RPD misconstrued the evidence of whether the criminalization of homelessness has been effectively sanctioned by civil liberties associations and courts. Nevertheless, there was evidence before the RPD that individuals who present themselves to Roma minority self-help offices in most Hungarian towns and cities receive social assistance and housing.

[22] While the RPD's consideration of government programmes and oversight agencies appears to have focused on efforts to improve social conditions for the Roma people in Hungary, it also encompassed a number of initiatives, particularly in relation to education, housing and policing, that have resulted in positive outcomes. I am therefore satisfied that the RPD's conclusion regarding the adequacy of state protection in Hungary was reasonably supported by the evidence. It is not the role of this Court on an application for judicial review to reweigh the evidence and substitute its view for that of the tribunal.

[23] Mr. Peimli has not been homeless in the past, and there is no reason to believe he will be homeless if he returns to Hungary. Both of the violent incidents he recounted resulted in police

investigations. There is nothing about the Applicants' specific circumstances to suggest they will face persecution, rather than discrimination, should they return to Hungary.

B. *Was the RPD's assessment of the availability of an internal flight alternative reasonable?*

[24] The Applicants rely on Justice Yves de Montigny's finding in *Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326 [*Katinszki*] that Budapest is not a viable IFA for the Roma people in Hungary:

[16] Accordingly, I find that it was not open to the Board to decide on a balance of probabilities that there is no serious possibility of the Applicants being persecuted in Budapest. The male Applicant has been attacked in Budapest because of his Roma ethnicity. There is nothing in the Board's IFA analysis or in the evidence that suggests that Budapest is safer than any other parts of the country, other than the fact that "Budapest is a large city" and "host to a number of organizations and government services for ... Roma who are discriminated against." Neither the size of the city nor the organizations listed offer effective protection against persecution in Budapest.

[25] The Minister says that the RPD did not find Budapest to be a viable IFA just because of its size. Its conclusion that the Applicants were not likely to face persecution in Budapest was based in part on its assessment regarding the adequacy of state protection, which tends to be more robust in urban areas than rural ones. The RPD said the following at paragraph 70 of its decision:

Budapest is clearly not an isolated region of the country. As the largest city of Hungary it is the country's principal political and commercial centre. The RPD finds that, if the claimants were to move to Budapest, they would not face the same discrimination as they had allegedly experienced in a smaller towns [*sic*] where they

had lived in the past. Further, even if the claimants were to experience discrimination in Budapest, I find that state protection is more than adequate in Budapest to address such concerns. It is for this reason that I find the claimants have an IFA in Budapest.

[26] For the reasons expressed by Justice de Montigny in *Katinszki*, the RPD's analysis of Budapest as a viable IFA may be vulnerable to criticism. However, given the RPD's findings respecting the absence of persecution and the adequacy of state protection, this is not sufficient to undermine its decision.

VI. Conclusion

[27] The application for judicial review is dismissed. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: JOZSEF PEIMLI, ROLAND PEIMLI, GEORGINA PEIMLI, MARK JOZSEF PEIMLI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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