Federal Court  Cour fédérale

Date: 20211006

Docket: IMM-2025-20

Citation: 2021 FC 1038

Ottawa, Ontario, October 6, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ZSOLT NOTAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Zsolt Notar is a citizen of Hungary and ethnically Roma. A previously failed refugee claimant, he returned to Canada on a temporary residence permit, which he overstayed, to support his common-law partner and their ailing child. A removal order later issued and a senior immigration officer [Officer] rejected his application for a pre-removal risk assessment [PRRA].

[2] Mr. Notar now seeks judicial review of the PRRA decision. I am not persuaded that: (a) the Officer breached procedural fairness by not providing Mr. Notar with an oral hearing; (b) the Officer's decision (more particularly, the Officer's conclusion of insufficiency of evidence) was unreasonable; and (c) the Officer used an incorrect test for state protection. For the more detailed reasons that follow, I therefore dismiss the Applicant's judicial review application.

[3] Alleged breaches of procedural fairness in administrative contexts have been considered subject to a "reviewing exercise … 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The duty of procedural fairness "is 'eminently variable', inherently flexible and context-specific": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 77. In sum, the focus of the reviewing court is whether the process was fair.

[4] Otherwise, the presumptive standard of review is reasonableness and applies to all other issues in this matter: *Vavilov*, above at para 10; *Ashkir v Canada (Citizenship and Immigration)*, 2020 FC 861 at para 11; *Cervenakova v Canada (Citizenship and Immigration)*, 2021 FC 477 at paras 19-20. A reasonable decision must be "based on an internally coherent and rational chain of analysis" and it must be justified, as well as transparent and intelligible, in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, above at paras 85 and 99. Courts should intervene only where necessary. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at para 100.

II. Background

[5] Mr. Notar came to Canada as a minor with his parents who fled Hungary. They claimed refugee status on the basis of alleged serious and persistent discrimination and racism experienced in their home country because of their Roma ethnicity. The family's refugee claim was rejected in 2014 and they were removed from Canada in early 2015.

[6] Mr. Notar met his common-law partner while he was in Canada between 2011 and 2015. They had one child who was born with serious health complications that remain ongoing. His common-law partner also is a refugee from Hungary, whose family's claims were accepted by the Refugee Protection Division [RPD] in December 2018.

[7] Upon their return to Hungary, Mr. Notar and his family (i.e. his parents and siblings) experienced immediate and continuous threats, intimidation and hostility from other non-Roma residents. Consequently, his parents and siblings moved to England for fear of continued persecution; Mr. Notar, however, remained in Hungary because of a lack of funds to relocate.

[8] While he remained in Hungary, a group of five "extremists" attacked Mr. Notar and his aunt, leaving Mr. Notar with injuries and destroying their personal property. These individuals also made threats against Mr. Notar's life. Rather than go to the hospital, Mr. Notar stayed at home where his aunt treated his injuries. They each made one phone call to the police to report the attack but the police allegedly refused to help them upon learning they were Roma.

[9] Mr. Notar thus returned to Canada in March 2016 as a visitor and was issued a temporary residence permit (for two months) to remain in Canada with his partner and their ailing child. He overstayed this permit, fearing that he would not be able to return to Canada. His second child with his common-law partner was born in November 2017.

[10] In February 2019, Mr. Notar reported to the Canada Border Services Agency [CBSA] for overstaying and a removal order was issued. He then submitted an application for a PRRA on May 1, 2019. This application was rejected on the basis that Mr. Notar would not be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Hungary.

III. Challenged Decision

[11] The Officer acknowledged the objective evidence for Hungary that points to the discrimination faced by its Roma population, but noted Mr. Notar's evidence does not establish that "every single" Roma person faces persecution indiscriminately and that, therefore, Mr. Notar likewise would be persecuted "individually" in Hungary. The Officer thus found there was insufficient objective evidence to support his personalized claim regarding persecution.

[12] Further, the Officer concluded that there was no way to tell if the photos provided by Mr. Notar, to support the injuries sustained during the alleged attack, were in fact photos of injuries on Mr. Notar's body or that the injuries occurred as a result of the attack, and again cites a lack of corroborative evidence. The Officer also found that Mr. Notar did not provide sufficient

evidence regarding state protection because Mr. Notar and his aunt each attempted to contact the police about the attack once, and did not make follow-up efforts.

[13] With respect to the evidence provided by Mr. Notar regarding his daughter's medical conditions, the Officer states that the PRRA is meant to assess risk upon removal, and that while it supports the family's circumstances, it is largely beyond the scope of the PRRA application.

[14] Finally, the Officer discounted the Refugee Appeal Division decisions involving Mr. Notar's common-law spouse and her family, on the basis that each refugee decision is made on the particular claimant's circumstances.

[15] In light of all the evidence, the Officer concluded that Mr. Notar had not established more than a mere possibility of persecution and is not a person in need of protection, as described in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. See Annex "A" below for applicable legislative provisions.

IV. Analysis

(a) *Alleged Breach of Procedural Fairness*

[16] Contrary to Mr. Notar's assertions, I am not persuaded that the Officer made a veiled credibility finding warranting an oral hearing. In my view, rather than cast doubt on the Applicant's credibility, the Officer instead found the evidence insufficient to corroborate Mr. Notar's narrative.

[17] I agree with the Respondent that it is the role of the PRRA officer to weigh the evidence submitted to determine if the Applicant has met his onus to provide sufficient probative evidence to support his claim. Noting the lack of corroborative evidence, the Officer made determinations about the probative value of the objective evidence provided, and not about its credibility, that went to the weight given to the Applicant's statements.

[18] Findings of insufficient evidence and credibility may be difficult to distinguish from one another, but nonetheless they are different concepts: *Simonishvili v Canada (Citizenship and Immigration)*, 2020 FC 193 at para 12; *Fatoye v Canada (Citizenship and Immigration)*, 2020 FC 456 at paras 41; *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at paras 40-41. In assessing whether an applicant has satisfied the evidentiary threshold, the trier of fact determines whether the evidence provided, assuming it is credible, is sufficient to establish the facts alleged, on a balance of probabilities: *Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at paras 17-18.

[19] Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] sets out the relevant factors that officers must consider; these provisions provide, permissively, that an immigration officer may hold a hearing if they believe one is required where a serious issue of credibility arises: *Jystina v Canada (Citizenship and Immigration)*, 2020 FC 912 at para 28.

[20] Here, the Officer did not evaluate the reliability of the evidential source, but rather found the nature and quality of the evidence insufficient, as discussed in greater detail below, for Mr.

Notar to discharge his burden of proof. Although Mr. Notar requested an oral hearing, he recognized in his submissions that an oral hearing is not an entitlement. An applicant cannot hope that a hearing would be held, to supplement or fill in missing gaps in the evidence submitted, and if one is not held, "then complain to the Court that procedural fairness was denied": *Sanchez v. Canada (Citizenship and Immigration)*, 2016 FC 737 para 7. Reading the Officer's reasons contextually and holistically explaining why the Applicant's evidence was insufficient, I am satisfied they disclose no breach of procedural fairness.

(b) *Reasonableness of Officer's Decision, including (c) Test for State Protection*

[21] I am not persuaded that the Officer's decision on the whole is unreasonable. Contrary to Mr. Notar's submission, the Officer examined recent country condition documents to determine if Mr. Notar would be subject to persecution (under the *IRPA* s 96) or subject to torture, a risk to his life, or a risk of cruel and unusual punishment (under the *IRPA* s 97), if he returns to Hungary. Further, in my view, Mr. Notar has not pointed to anything in the Officer's decision that would lead one to conclude the presumption the Officer has considered all the evidence has been rebutted or displaced in this case. The Federal Court of Appeal has held that, "… a tribunal need not refer in its reasons to each and every piece of evidence before it, but is presumed to have considered all the evidence": *Simpson v. Canada (Attorney General)*, 2012 FCA 82 at para 10.

[22] Here, the Officer's decision contains a summary of the evidence Mr. Notar provided, including country conditions documentation. Further, while the country conditions documentation points to Roma people facing discrimination in various aspects of Hungarian

society, it does not support the proposition that all Roma are persecuted indiscriminately. Mr. Notar thus failed to establish to the Officer's satisfaction that he would be persecuted indiscriminately simply by reason of being Roma. I am not persuaded that Officer's reasoning is faulty or that it is not coherent and rational, in the circumstances.

[23] In addition, the Officer found Mr. Notar's evidence is insufficient to support that he is in a situation where he would be persecuted individually in Hungary. I also am not persuaded that the Officer's insufficiency findings were unreasonable.

[24] For example, although Mr. Notar acknowledged that the Officer was not bound by previous decisions, Mr. Notar argued that nonetheless, the Officer should have considered whether he faced a similar risk as his common-law partner because their families came from the same city in Hungary. I find the Applicant's situation distinguishable, however, from that in *Conka v Canada (Citizenship and Immigration),* 2018 FC 532 (at paras 21-22) which involved the applicant's immediate family members (father and sister) in that case. Although Mr. Notar seeks to rely on the RPD's decision in favour of his common-law partner's family, as allegedly "similarly situated individuals," I cannot agree. As Mr. Notar's evidence establishes, and he admits, Mr. Notar and his common-law spouse did not know each other in Hungary and, in fact, they met in Canada.

[25] In addition, Mr. Notar's allegation of risk centres on the one attack he and his aunt suffered at the hands of extremists as described in his affidavit, but there was no corroborating evidence from his aunt who, according to Mr. Notar, treated his injuries after the attack. Further,

the photographs he submitted showing injuries on his body were not evidence of the attack itself and thus were assigned limited weight.

[26] Regarding the test for state protection, although the Officer mentioned a lack of police records, and the Respondent acknowledged at the oral hearing there is no legal requirement for such records, I am not persuaded that the Officer otherwise misstated the applicable test. The Officer reasonably stated that the onus was on the Applicant to show, with clear and convincing evidence, that the state authorities are unwilling or unable to provide protection. As held by the Supreme Court of Canada, "the lynch-pin of the analysis is the state's inability to protect": *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689. See also *Glasgow v Canada (Citizenship and Immigration)*, 2014 FC 1229 at para 35 for an articulation of the applicable test by this Court.

[27] I find that the case of *Tanarki v Canada (Citizenship and Immigration)*, 2019 FC 1337 [*Tanarki*], on which Mr. Notar seeks to rely also is distinguishable. In *Tanarki*, the applicant provided evidence of repeated attempts to seek police protection and the failure of the police to act in the circumstances (at para 43). Here, Mr. Notar and his aunt each made only one phone call, and further, Mr. Notar indicated that his injuries were not serious, to which the police responded that there was nothing to investigate.

V. Conclusion

[28] In light of the foregoing analysis, I conclude that there was no breach of procedural fairness and that the Officer's decision in this case was not unreasonable. I thus dismiss this application for judicial review.

[29] Neither party proposed a serious question of general importance for certification, and I find that none arises in the circumstances.

JUDGMENT in IMM-2025-20

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Refugee Protection, Convention Refugees and Persons in Need of Protection **Convention refugee**	**Notions d'asile, de réfugié et de personne à protéger** **Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

***Immigration and Refugee Protection Regulations* (SOR/2002-227)**
***Règlement sur l'immigration et la protection des réfugiés* (DORS/2002-227)**

Pre-Removal Risk Assessment Hearing — prescribed factors	**Examen des risques avant renvoi Facteurs pour la tenue d'une audience**
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	**a)** l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	**b)** l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	**c)** la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

FEDERAL COURT

SOLICITORS OF RECORD

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