

Federal Court



Cour fédérale

Date: 20220316

Docket: IMM-1426-21

Citation: 2022 FC 359

St. John's, Newfoundland and Labrador, March 16, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**PETER HORVATH
ANGELIKA ARANKA HORVATH
KATRIN HORVATH
DIANA HORVATH
EVA LAKATOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Peter Horvath (the “Principal Applicant”), his common-law spouse Eva Lakatos and their children Katrin Horvath, Diana Horvath and Angelika Aranka Horvath (collectively the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In that decision, the RAD dismissed their appeal from a

decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”) which found that they were not Convention refugees nor persons in need of protection, within the scope of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Hungary. They sought protection in Canada on the basis of their status as Hungarian Roma who were targeted between 2007 and 2015 by members of the community, neo-nazis and members of the Magya Onvedelmi Mozgalom-Hungarian Self-Defence Movement (the “MOM”). They also alleged that they were denied prenatal care and protection, by doctors and police.

[3] The determinative issue for the RPD was credibility, relating to both the Principal Applicant and his common-law spouse.

[4] The RAD also made negative credibility findings but proceeded to deal with the availability of state protection should the Applicants be returned to Hungary. It explicitly acknowledged the status of the Applicants as Hungarian Roma and referred to sections of the National Documentation Package for Hungary for the purpose of assessing whether they would either face the circumstances outlined in section 96 and subsection 97(1) of the Act, that is:

...would face a serious possibility of persecution based upon their ethnicity or if, on a balance of probabilities, they are at risk to their lives or risk of cruel and unusual treatment or punishment if returned to Hungary.

[5] The RAD's decision is reviewable upon the standard of reasonableness: see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.). That standard requires the Court to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision".

[6] The Applicants argue that the RAD's decision is unreasonable, both with respect to the credibility findings and its conclusion on state protection.

[7] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision meets the standard of reasonableness.

[8] It is not necessary for me to address the arguments about the credibility findings since I am satisfied the RAD did not reasonably assess state protection.

[9] I agree substantially with the submissions of the Applicants, that the RAD erred by focusing on the efforts of the Hungarian Roma community to protect itself, without engaging with the efforts of the Hungarian state to provide protection. According to the decision of the Supreme Court of Canada in *Ward v. Canada (Minister of Employment and Immigration)*, [1993] 2 S.C.R. 689, a citizen is entitled to seek protection from its home government. In my opinion, the provision of protection from a specific ethnic group is not equivalent to state protection. The conclusion of the RAD, in this regard, is not reasonable.

[10] In the result, the application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a different panel of the RAD for redetermination.

There is no question for certification proposed.

JUDGMENT in IMM-1426-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Refugee Appeal Division is set aside and the matter remitted to a different panel of the Refugee Appeal Division for redetermination. There is no question for certification proposed.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1426-21

STYLE OF CAUSE: PETER HORVATH, ANGELIKA ARANKA
HORVATH, KATRIN HORVATH, DIANA
HORVATH, EVA LAKATOS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: MARCH 15, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MARCH 16, 2022

APPEARANCES:

Alison Pridham FOR THE APPLICANTS

Kevin Spykerman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario