

Federal Court



Cour fédérale

Date: 20240826

Docket: IMM-8404-23

Citation: 2024 FC 1325

Ottawa, Ontario, August 26, 2024

PRESENT: Madam Justice Go

BETWEEN:

**ATTILA VIRAG,
ILDIKO KATALIN VIRAGNE HORVATH,
KLEMENTINA KATALIN VIRAG,
ATTILA DEZSO VIRAG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Atilla Virag [Primary Applicant or PA], his spouse Ildiko Katalin Viragne Horvath [Associate Applicant or AA], their daughter Klementina and their son Attila [together, the

Applicants] seek a judicial review of a decision by a Senior Immigration Officer [Officer] refusing their Pre-Removal Risk Assessment [PRRA] application [Decision].

[2] The Applicants allege that they fear persecution in Hungary because of their Roma ethnicity. The Applicants had made three previous unsuccessful attempts to seek protection beginning in 2012. The Refugee Protection Division [RPD] rejected their claims in February 2018. The Applicants were issued a removal order and departed from Canada in 2019. The Applicants attempted to enter Canada a year later but were deemed ineligible to file a refugee claim. The Applicants became subject to removal and left Canada on the same day. The Applicants returned to Canada in December 2021 and submitted their PRRA application in March 2022.

[3] The Applicants raise several issues in their judicial review application. They argue the Officer failed to properly consider the risks the Applicant would face in Hungary, made a veiled credibility finding by giving their statements little weight, and failed to conduct a hearing as required by subsection 113(b) of the *Immigration and Refugee Protection Act* (SC 2001, c 27).

[4] For the reasons set out below, I find the Officer committed reviewable errors when considering the evidence the Applicant submitted. I therefore grant the application.

II. Analysis

[5] The Applicants raise several issues, however, the determinative issue is the Officer's error in finding there was insufficient evidence to support that the recent incidents of attacks on

the Applicants were related to their Roma ethnicity. As this issue concerns the merits of the Decision, the presumptive reasonableness standard will apply per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[6] In support of their PRRA application, the Applicants submitted three affidavits, one each from the PA, the AA, and Klementina. The Applicants also submitted a statement from their minor child. The AA's affidavit described several incidents including incidents between 2019 and 2021 where the Applicants' neighbour terrorized, harassed, and physically assaulted them. The AA's affidavit also addressed an incident in 2019 in which her children were attacked while shopping, and Klementina was injured while attempting to protect her brother. Further, the AA described an incident, in December 2019 when Klementina was attacked by several racists from their neighbourhood, leaving her severely injured.

[7] The Officer found, with respect to all these incidents, that there was insufficient supporting evidence to suggest each attack was related to the Applicants' Roma ethnicity, such as a police report filed, or a description of verbal statements made during the encounter.

[8] The Applicants argue the law clearly holds that an applicant's testimony should be taken as true if there are no substantive contradictions or inconsistencies, citing *Hatami v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15134 (FC). They note that the three sworn affidavits were dismissed on grounds of insufficient supporting evidence, despite the fact that sworn affidavits are presumed to be credible.

[9] The Applicants also argue that the Officer disregarded their evidence and instead sought reasons to reject it.

[10] In their written submission, the Applicants do not clarify what evidence the Officer disregarded.

[11] At the hearing, the Applicants pointed to statements in all three affidavits discussing events that predated the Applicants' appearance before the RPD. The Applicants argued that the Officer unreasonably disregarded these statements, noting that they "are not given consideration for this [PRRA] assessment and this distracts from the weight accorded to this document." The Applicants argued they provided the statements to contextualize the Applicants' experience of discrimination as Roma in Hungary, and the Officer erred by finding that such contextual evidence and statements distract from the weight given to the affidavits.

[12] The Applicants also pointed to the AA's affidavit and submitted that it contained statements contrary to the Officer's finding about insufficient evidence that the Applicants were targeted because of their Roma ethnicity.

[13] Having reviewed the Decision and the affidavits, I agree with the Applicants.

[14] As the Officer noted in the Decision, the purpose of the PRRA is to consider new evidence and new development of risk that the Applicants may face since the last decision on protection was made. It was therefore open to the Officer not to consider incidents that predated

the RPD decision. However, the Officer in this case did more than that. The Officer relied on the statements with regard to the past incidents as the basis for discounting the weight the Officer gave to the three affidavits. The Officer offered no explanation as to why the inclusion of past incidents would somehow discount the weight of the PA's affidavit. This was unreasonable.

[15] I also agree that in finding there was insufficient evidence to support that the incidents of attacks were the result of the Applicants' Roma ethnicity, the Officer erred.

[16] The AA stated in her affidavit that, in relation to the December 2019 incident, her daughter "was attacked by several racists from our neighbourhood." The AA also described how their neighbour terrorized the family between 2019 and 2021. The AA later stated in her affidavit: "The harassment we experienced because of our former neighbour is all too common amongst the Roma people in Hungary. This form of discrimination is found everywhere in Hungary, no matter where you live." These statements tie the attacks on the Applicants to their Roma ethnicity based on the Applicants' experience with the "racists" in their neighbourhood.

[17] The Applicants' sworn statements are presumed to be true unless there are substantive contradictions or inconsistencies: *Maldonado v Canada (Minister of Employment and Immigration)* (1979), 1979 CanLII 4098 (FCA), [1980] 2 FC 302 at 305 (FCA) and *Sundralingam v Canada (Citizenship and Immigration)*, 2022 FC 1768 at para 48. The Officer did not make any findings of contradictions or inconsistencies regarding the sworn statements. The Officer also failed to justify why they found these statements were insufficiently linked to the attacks on the Applicants' Roma ethnicity when the AA specifically described the attackers

as “racists,” and neighbour’s attacks as a form of discrimination commonly experienced by Roma in Hungary. By failing to provide an explanation for rejecting the AA’s statements that contradict the Officer’s findings, the Decision lacks the requisite justification and intelligibility, and should be set aside.

III. Conclusion

[18] The application for judicial review is granted.

[19] There is no question for certification.

JUDGMENT in IMM-8404-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8404-23

STYLE OF CAUSE: ATTILA VIRAG, ILDIKO KATALIN VIRAGNE
HORVATH, KLEMENTINA KATALIN VIRAG,
ATTILA DEZSO VIRAG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 22, 2024

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