

**Date: 20080908**

**Docket: IMM-5188-07**

**Citation: 2008 FC 1005**

**Toronto, Ontario, September 8, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**RUDOLFINE HORVATH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a Pre-Removal Risk Assessment (PRRA) of a citizen of Hungary who fled Hungary alleging fear of persecution and risk based upon her ethnicity as Roma. Without a negative credibility finding, the Applicant's claim for protection was rejected by the Immigration and Refugee Board (IRB) on June 13, 2006 on the basis that the Applicant's suffering in Hungary as Roma did not amount to persecution but only discrimination, and, in any event, state protection is available in Hungary.

[2] In reaching the decision under review, the PRRA Officer cited the IRB's opinions but also found that the "2006 United States Department of State Country Reports on Human Rights Practices for Hungary" constitutes new evidence with respect to the current treatment of Roma in Hungary. Indeed, widespread discrimination against Roma continues. As a result, it was necessary for the PRRA Officer to consider this new evidence, together with the Applicant's evidence of her past suffering, in reaching a determination of the prospective risk she would face if she returns. In my opinion, the PRRA Officer failed to discharge this obligation.

[3] The Applicant's particularized evidence of her past suffering in Hungary is stated in the PRRA decision as follows:

The applicant made a refugee claim on 30 October 2001. The applicant's refugee claim was denied by the Immigration and Refugee Board (IRB) on 13 June 2006. The applicant's refugee claim is outlined in the IRB reasons. The applicant alleged that she is an ethnic Roma and from early childhood suffered "atrocities" such as having been "ostracized, hurt and humiliated constantly". Nobody would hire her and she only found a job in a Hungarian household. She was also constantly harassed in the building she lived in with her family. On May 11, 2002, her daughter was beaten, humiliated and raped by three "large men". She was taken to the hospital for treatment and the attack was reported to the police. However, her daughter's rape had traumatized her and she feels that the state in Hungary cannot protect. At the hearing she also stated that Hungarians are "racists" and that she fears racist elements if she were to return to Hungary now.

(PRRA Decision, p.3)

Whether this evidence did not constitute risk of more than a mere possibility of persecution or risk of cruel and unusual treatment at the time of the RPD hearing is not the issue; the issue is whether

these criteria will be met if she returns to Hungary. The only analysis given to this evidence on the record before the PRRA Officer is as follows:

The documentary evidence indicates widespread discrimination against Roma. However, it also indicates that the government is taking positive steps towards improving the situation for Roma in Hungary. Although I recognize that the situation for Roma in Hungary is not favourable, I am satisfied that the applicant would not face risk of persecution, risk to life, danger of torture or risk of cruel and unusual treatment or punishment if returned to Hungary.

(PRRA Decision, p.6)

[4] In my opinion, the PRRA Officer was required to fully consider the prospective risk that the Applicant would face should she return to the current conditions in Hungary having regard to the reality that she is an elderly woman who has been traumatised by her daughter's rape in what she perceives to be a racist society. In particular, I find that it was incumbent on the PRRA Officer to determine whether she faces prospective risk of cruel and unusual treatment should she return. Indeed, the PRRA Officer's analysis is devoid of any weighing of the evidence on this critical issue.

[5] As a result, I find that the decision under review is made in reviewable error.

**ORDER**

**ACCORDINGLY**, the decision under review is set aside and the matter is referred back to a different Pre-Removal Risk Assessment officer for re-determination.

I find no question to certify, subject to any argument to be supplied by Counsel within 5 days.

“Douglas R. Campbell”  
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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5188-07

**STYLE OF CAUSE:** RUDOLFINE HORVATH v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 8, 2008

**REASONS FOR ORDER  
AND ORDER:** CAMPBELL J.

**DATED:** September 8, 2008

**APPEARANCES:**

Yehuda Levinson  
Judy Michaely

FOR THE APPLICANT  
FOR THE RESPONDENT

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