

Federal Court



Cour fédérale

Date: 20120514

Docket: IMM-7264-11

Citation: 2012 FC 577

Vancouver, British Columbia, May 14, 2012

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

LASZLO MOLNAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Laszlo Molnar (the “Applicant”) seeks judicial review of the decision of Officer P. Duong who refused his Pre-Removal Risk Assessment in a decision made on September 8, 2011. The Officer found that the Applicant had failed to show that he would be at risk of persecution, torture, risk to life or at risk of cruel and unusual treatment or punishment under subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a Hungarian citizen of Roma ethnicity. He originally came to Canada in 2001 and filed a claim for recognition as a Convention refugee. He left Canada in 2002 and returned to Hungary to care for his ailing father who died in 2003. His departure from Canada prior to a determination of his refugee claim means that the Applicant is ineligible to submit another claim for refugee status pursuant to paragraph 101(1)(c) of the Act.

[3] In 2011 the Applicant returned to Canada, together with his wife and daughter. Although ineligible to pursue a claim for protection pursuant to section 96 of the Act, he was eligible to submit a PRRA application seeking protection pursuant to paragraph 97(1)(b).

[4] The Applicant filed his PRRA application consisting of an affidavit and a number of documents relating to country conditions in Hungary, specifically as they relate to the treatment of Hungarians of Roma ethnicity.

[5] The Officer determined that the Applicant had failed to rebut the presumption that state protection was available in Hungary having regard to initiatives undertaken by the Hungarian government to deal with corrupt practices by the police and the creation of independent agencies to oversee and deal with complaints from Hungarians of Roma ethnicity who have faced discrimination.

[6] The Applicant argues that the Officer committed a reviewable error by failing to consider relevant evidence, including his evidence about his personal experiences. For his part, the Minister of Citizenship and Immigration (the “Respondent”) submits that the Applicant carries the burden of

showing that state protection is unavailable and he failed to do so. He notes that the Officer acknowledged that there are problems with corruption and that the Applicant had been refused protection from the state on some occasions. However, the Officer concluded that the Applicant had failed to exhaust the reasonably available services and resources in Hungary, thereby failing to rebut the presumption of state protection.

[7] According to the decision in *James v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 318 at para.16, a PRRA decision is reviewable on the standard of reasonableness.

[8] The Applicant argues that the Officer committed a reviewable error by failing to assess the evidence before him, in particular the evidence of his personal experiences in relation to the documentary evidence. He provided evidence respecting his personal experiences where services were denied on the basis of his Romani ethnicity and he submits that this was ignored by the Officer.

[9] The Respondent submits that the Officer's decision was reasonable and that there is no basis for intervention.

[10] As noted above, the Officer's decision is reviewable on the standard of reasonableness. "Reasonableness" means that the decision demonstrates justification, transparency and intelligibility, and falls within the range of possible, acceptable outcomes, giving regard to the evidence submitted and the reasoning process involved; *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 47.

[11] In this case, I am not satisfied that the Officer's conclusion is reasonable having regard to the conflicts between the evidence about the Applicant's personal experiences and the documentary evidence. The Officer made no negative credibility finding. Mere recitation of the documentary evidence without consideration of the Applicant's evidence about his personal circumstances is an insufficient basis, in this case, for a reasonable decision; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at para. 17.

[12] In the result this application for judicial review is allowed. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7264-11

STYLE OF CAUSE: LASZLO MOLNAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 8, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** HENEGHAN J.

DATED: May 14, 2012

APPEARANCES:

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