

Federal Court



Cour fédérale

Date: 20120621

Docket: IMM-5358-11

Citation: 2012 FC 798

Ottawa, Ontario, June 21, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ILDIKO JANTYIK
DANIEL BONA
TAMAS RINALDO RACZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Ildiko Jantyk, along with her two children, Daniel and Tamas, left Hungary in 2009 and claimed refugee protection in Canada. Ms. Jantyk claims that she and her family were persecuted by skinheads in Hungary on the basis of their Roma ethnicity.

[2] A panel of the Immigration and Refugee Board rejected Ms. Jantyk's claim after finding that state protection is available in Hungary for persons in her circumstances. Ms. Jantyk argues that Board's decision was unreasonable because it failed to take account of the evidence before it that confirmed the mistreatment of Roma citizens of Hungary and the absence of state protection. She asks me to quash the Board's decision and order a new hearing.

[3] I can find no basis for overturning the Board's decision. It analyzed the evidence in considerable detail and took account of the positive responses to Ms. Jantyk's requests for state protection. Therefore, its conclusion was not unreasonable and I must dismiss this application for judicial review.

[4] The sole issue is whether the Board's analysis of state protection was unreasonable.

II. The Board's Decision

[5] The Board reviewed the case law relating to state protection, as well as evidence relating to the general civil apparatus in Hungary. Regarding the Roma population, the Board described the many measures that Hungary has implemented to improve conditions for the Romani ethnic minority. It concluded from that evidence that, while discrimination continues, there is adequate state protection in Hungary.

[6] The Board then considered the efforts Ms. Jantyk had made to secure state protection. On one occasion, after skinheads had doused the family dog with an accelerant and set it on fire, Ms.

Jantyik called police. They arrived 30 minutes later after the skinheads had fled. Ms Jantyik could not say what action the police took to investigate the matter. When she followed up with a visit to the police station, she was told to speak to the animal control department. The Board concluded that this was an adequate response in the circumstances given that the police had no evidence about the identities of the perpetrators.

[7] In a later incident, men yelled threats at Ms. Jantyik and her children when they were playing in a park. Ms. Jantyik called police and officers arrived 30 minutes later, after the men had left. Police advised her to be careful.

[8] Ms. Jantyik maintained that the slow police response was due to the fact that no one had been injured. However, the Board found there was no evidence to contradict the officer's claim of simply being short-staffed. Ms. Jantyik did not file a complaint with police about their slow response.

[9] In 2009, Daniel was injured after a confrontation with skinheads in Budapest. Ms. Jantyik could not recall if she reported this assault to the police. She stated that the police do not help Romani people. The Board found that there was no evidence to support Ms. Jantyik's perception.

[10] In 2008, Ms. Jantyik and her children were confronted by men at a restaurant. All of them suffered injuries and were taken to hospital. Police asked her for a description of the men and posted flyers. A month later, they followed up with more questions and told her they were trying to identify the perpetrators based on their tattoos.

[11] In 2009, Ms. Jantyk was a witness to a crime against a Roma person committed by a member of an extremist group. Daniel was attacked and warned that Ms Jantyk would be harmed if she testified at the trial. Police advised her to take her children to the countryside until after the trial, and offered to escort her. She declined. Police also offered to take her to the airport when she left Hungary. She declined again.

[12] The perpetrator of this offence was convicted and sentenced to a prison term. Still, Ms. Jantyk fears retaliation if she returns to Hungary. The Board found that the prosecution and conviction of this offender showed that Hungarian authorities respond seriously to crimes against the Roma population.

[13] The Board also referred to other incidents where Ms. Jantyk was mistreated. However, she did not report those events to the police.

[14] The Board concluded that Ms Jantyk had not taken all the reasonable steps available to her to obtain state protection. Further, the evidence showed that, when she did contact police, action was taken.

[15] The Board also considered documentary evidence about crimes against Roma persons in Hungary. That evidence showed that the crimes had been investigated but the police response was not effective. However, since 2008, further measures had been taken to address these kinds of crimes. Suspects have now been arrested. Other evidence showed that police investigations of some

crimes against the Roma were conducted poorly, but the officers responsible had been disciplined. Police patrols of Roma neighbourhoods have also increased.

[16] Looking at the totality of the evidence, the Board found that Hungary is willing and able to combat crimes against the Romani population. Accordingly, Ms. Jantyik had been unable to show that her fear of persecution on ethnic grounds was well-founded.

III. Was the Board's analysis of state protection unreasonable?

[17] Ms. Jantyik argues that the Board committed four errors. First, the Board only considered "efforts" on Hungary's part to deal with violence against Roma, not whether those efforts were adequate. Second, the Board failed to consider that Ms. Jantyik had been told by police that they could not protect her. Third, the Board erred by finding that a referral to animal control officers was an adequate response to Ms. Jantyik's dog being set on fire. Fourth, the Board overlooked documentary evidence showing the level of violence against Roma persons in Hungary and the inadequacy of the state response.

[18] In my view, the Board's decision was not unreasonable given the evidence before it.

[19] The Board did not just consider "efforts" to protect Roma. It considered the actual results of those efforts in terms of investigations, prosecutions and convictions. It also expressly considered the actual police response to each incident Ms. Jantyik brought to their attention.

[20] In her written narrative, Ms. Jantyk stated that the police told her there was nothing they could do after her brother had been assaulted. However, in respect of the incidents involving Ms. Jantyk and her children, the police responded when asked to do so. The Board considered all of the evidence surrounding those events.

[21] On its face, the suggestion made by police that Ms. Jantyk should consult animal control officers about the immolation of her dog seems insensitive, even cruel. However, Ms. Jantyk had testified that it was animal control officers who had investigated to begin with. Therefore, being directed later to animal control may not have been indicative of a lack of concern on the part of the police.

[22] The Board carried out a detailed analysis of the evidence. It accepted that there were serious problems facing the Roma population and that, at times, the state response to crimes had been less than satisfactory. It did not refer to all of the evidence. However, looking at its reasons as a whole, I find that the Board conducted a reasonably thorough and balanced assessment of the evidence.

[23] The Board's ultimate conclusion, that Ms. Jantyk had not provided sufficient evidence to rebut the presumption of state protection, fell within the range of defensible outcomes based on the facts and the law. Accordingly, it was not unreasonable.

IV. Conclusion and Disposition

[24] The Board's conclusion on the issue of state protection was not unreasonable on the evidence before it. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5358-11

STYLE OF CAUSE: ILDIKO JANTYIK, ET AL
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 23, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: June 21, 2012

APPEARANCES:

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