

Federal Court



Cour fédérale

Date: 20120907

Docket: IMM-1226-12

Citation: 2012 FC 1064

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 7, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**SANDOR BARANYI
ZSUZSANNA BALAZS
RICAHRD BARANYI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The Refugee Protection Division (RPD) expressly acknowledged the situation of violence against the Roma community that still exists in Hungary.

[2] Nevertheless, in its assessment of the evidence, the RPD found that state protection, far from being perfect, is improving through the efforts of the Hungarian government (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1003).

[3] Further, the RPD personalized the objective analysis to the applicants' specific situation before determining the availability of state protection since findings of the availability of state protection depend on the context of each case (*Raja v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1335).

II. Introduction

[4] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA), of a decision by the RPD dated January 10, 2012, that the applicants were not Convention refugees as defined in section 96 of the IRPA or persons in need of protection under section 97 of the IRPA.

III. Facts

[5] The applicants, Sandor Baranyi, principal applicant, his spouse Zsuzsanna Balazs and their son Richard Baranyi, 17 years old, are Hungarian and Romani citizens.

[6] The applicants allege a fear of persecution from the Hungarian Guard, an extreme right-wing paramilitary group.

[7] For nearly 20 years, after the fall of the communist regime, the applicants allege that they were subjected to harassment in several areas of their daily life, including education.

[8] Their son Richard was apparently harassed during his primary and secondary education because of his ethnicity. This harassment resulted in a significant delay in his education.

[9] At the beginning of October 2009, Ms. Balazs tried to complain to the school authorities about the harassment experienced by her son. Apparently, in return, she was beaten by children.

[10] On October 2, 2009, Sandor Baranyi's car was apparently vandalized. When he was repairing it, individuals beat him and injured his head. He made a complaint after the incident, but given that he could not identify his aggressors, the police told him that they could not continue their work. They protected him while he was repairing his car.

[11] November 27, 2009, the applicants left Hungary for Canada where they filed a refugee claim.

IV. Decision under review

[12] The RPD determined that there was a lack of credibility given the lack of information written on the applicants' Personal Information Form (PIF). The RPD criticized the applicants of enhancing their narrative during the hearing by adding, among other things, details surrounding the circumstances of the incident on October 2, 2009.

[13] The RPD is of the view that the applicants were victims of discrimination and not persecution because the cumulative effects of the discriminatory acts would not reach the level of persecution. Therefore, in its view, the delay in young Richard's education would be a result of factors other than his ethnicity.

[14] In an objective sense, the RPD is of the view, in light of the documentary evidence, that Hungarian state protection is available to the Roma. It implemented measures to fight discrimination against ethnic minorities.

[15] The RPD found that the applicants had not availed themselves of state protection since they had never complained to the authorities about the treatment they experienced.

V. Issue

[16] Is the RPD's decision reasonable?

VI. Relevant statutory provisions

[17] The following provisions of the IRPA are relevant:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors

every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Positions of the parties

[18] The applicants claimed that the RPD erred in its assessment of their testimony by questioning their credibility on the basis that their PIF lacked detail. Thus, the applicants submit that a significant amount of documentary evidence corroborates their allegations that they are subject to a risk of persecution because of their ethnicity. The same documentary evidence would indicate that the state of Hungary is not able to effectively protect its Romani citizens.

[19] With respect to Richard's situation, the applicants submitted that the RPD did not address the evidence that the adolescent had psychological problems because of the mistreatment he experienced at school.

[20] The respondent argued that the RPD assessed the applicants' credibility properly in noting that they had not left the country at the first opportunity. It argued that the applicants were, at most, victims of discrimination and not of persecution. In addition, the documentary evidence outlined the measures put in place by Hungary to protect the Roma. Further, the police apparently protected the applicant during the incident on October 2, 2009, but since he could not identify his attackers, the police could not arrest them.

VIII. Analysis

[21] The applicable standard of review in questions of mixed fact and law is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, (2008) 1 SCR 190; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, (2011) 3 SCR 708).

[22] Given the RPD's recognized expertise, this Court must show deference. In this regard, the Court's review must be limited to the justification, intelligibility and transparency of the decision (*Dunsmuir*, above, at para 47).

[23] At the outset, the Court notes that the RPD questioned the applicants' credibility. In doing so, it showed complete transparency, making explicit reference in its decision to the evidence that undermined the applicants' credibility.

[24] Although the RPD accepted their testimony about the other discriminatory acts that the applicants stated they experienced, it explained that the omissions affected the central issues of the claim.

[25] Further, the RPD criticized the applicants' unwillingness to leave Hungary despite the long period of persecution. In fact, the applicants, after a stay in Slovakia, returned to Hungary.

[26] In this respect, the Court acknowledged that the applicant's failure to leave their country of origin, when given the opportunity, diminishes the credibility of a fear of persecution (*Huerta v Canada (Minister of Employment and Immigration)*, (1993) FCJ No 271 (QL/Lexis) (FCA); *Manirazika v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1309).

Persecution and discrimination

[27] The main problem in this case is whether the nature of the mistreatments experienced by the applicants, namely, whether they can be qualified as persecution because of their cumulative effect.

[28] The RPD correctly established the applicable law by referring to the *Handbook on Procedures and Criteria for Determining Refugee Status*, written by the United Nations High Commissioner for Refugees (Handbook), which states:

(c) Discrimination

54. Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.

55. Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

(Reference is also made to the decision *Csonka v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1056, at para 68, and the Obiter at the end of the decision.)

[29] In this regard, the applicants did not demonstrate that the RPD's reasoning is tainted by a reviewable error. The RPD analyzed the situation of the applicant before deciding on the issue of the nature of the alleged acts:

[TRANSLATION]

[21] As stated at the hearing, the panel does not question that the applicants may have been the victims of regrettable, even unacceptable, statements of a certain form of discrimination in their country because of their ethnicity. However, despite their ethnicity, the applicants had a basic education. The evidence has not established that they were deprived of employment or housing because of their ethnicity. As to counsel's argument that their 17-year-old son is only in secondary II because of the discrimination he was subject to, the panel points out that the documentary evidence suggests that factors such as poverty, the parents' level of education, the location of the parents' residence may be responsible for this type of situation. [Emphasis added]

[30] It is true that young Richard's situation could have been more thoroughly analyzed by the RPD and that a many children are victims of the scourge of social exclusion, which significantly impacts development. Nevertheless, in this case, the applicants did not persuade the RPD, according to the evidence submitted, that Richard was persecuted because of his ethnicity. They did not establish a link between the harassment and the delay in his education.

[31] Although the documentary evidence that the applicant referred to indicated that Roma children are excluded and discriminated against because of ethnicity, it cannot, in itself, support a well-founded subjective fear of persecution. In this case, the RPD relied, as it is at liberty to do, only on extraneous factors in the documentary evidence that could be responsible for Richard's situation with respect to education. This is justified in light of the evidence it cited.

[32] In light of the available evidence, this Court cannot reverse the RPD's decision without overstepping its role of review in doing so, although it is sensitive to the voice of young Richard, seventeen years old, in secondary II in Quebec, who dreams of becoming a security guard [Translation] "to protect people" (Tribunal Record at p 228).

[33] This Court still wishes to reiterate that the line between persecution and discrimination can be very fine. This case is unique given the statements discussed above. Therefore, different conclusions could be drawn, even in regard to facts with minimal differences, because the assessment is primarily factual.

State Protection

[34] Despite the problems of credibility it was faced with, the RPD still conducted an objective analysis of the situation of the Roma to determine that state protection was available.

[35] The applicants mainly argue that the RPD did not refer to the documentary evidence supporting their allegations. The Court cannot accept that argument. On the contrary, the RPD explicitly recognized the violent situation against the Roma community that still exists in Hungary (RPD decision at para 29).

[36] Nevertheless, in its review of the evidence, it found that state protection, far from being perfect, was improving though the efforts made by the Hungarian government (*Kovacs*, above).

[37] In addition, the RPD personalized the objective analysis to the applicants' specific situation before finding that state protection was available because the finding on the availability of state protection depends on the context of each matter (*Raja*, above).

[38] In fact, the RPD found that the police did not refuse to protect the applicants after the incident on October 2, 2009, but because the applicants could not identify the attackers, an investigation could not be conducted. This decision is reasonable (*Kallai v Canada (Minister of Citizenship and Immigration)*, 2010 FC 729).

[39] Further, in making that decision, the RPD did not distort the applicable principles of state protection by reducing them to a question of ease, as the applicants claim.

[40] Thus, the RPD noted that the applicants never sought to report the discriminatory acts they experienced for more than twenty years.

IX. Conclusion

[41] In light of the above reasons, the RPD's decision is reasonable. Accordingly, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the applicants' application for judicial review be dismissed. There is no question of general importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1226-12

STYLE OF CAUSE: SANDOR BARANYI
ZSUZSANNA BALAZS
RICHARD BARANYI
v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 5, 2012

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

DATED: September 7, 2012

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