Federal Court  Cour fédérale

Date: 20121121

Docket: IMM-2890-12

Citation: 2012 FC 1349

Ottawa, Ontario, November 21, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PALNE KEMENCZEI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 7 March 2012 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a 77-year-old female of Roma ethnicity. She is a citizen of Hungary. She arrived in Canada on 9 February 2010, and claimed refugee protection the next day on the basis that she fears persecution in Hungary due to her Roma ethnicity. In support of her application, she submitted a narrative in her Personal Information Form (PIF), as well as documentary materials about conditions faced by Roma people in Hungary.

PIF Narrative

[3] The Applicant summarized the persecution she faced in Hungary in a paragraph attached to her PIF:

> Me and my family left Hungary because I am an old woman, my husband past (*sic*) away long ago, and I don't want to live the rest of my years in fear. I lived through the second world war as a child and that's when I learned about fear and suffering. There is a lot of cities where the racism is in the open. A lot of racism men joined together and formed a racist group guardsmen. Where I lived with my children is a town called Sajoszentpeter. These groups came into our town often dressed in black, and even their looks brought fear into my heart. Even at my age I had to leave (*sic*) through the humiliation that was daily against me, at stores, doctors and shopping places because my origin was gypsy. At nights (*sic*) they thrown (*sic*) thing (*sic*) at my window, I was afraid to sleep most of the time because I never know (*sic*) when they would break my door down. Here I feel safely (*sic*) because here there is no racism and discrimination. I really would like to spend my years here with my family because I found peace here.

Documentary Evidence

[4] The Applicant submitted multiple documents discussing the treatment of Roma in Hungary, as well as other country conditions materials. These documents included:

- IRB National Documentation Packages for Hungary dated 31 October 2011 and 20 April 2011;
- A document titled "Hungary" which is undated and for which the author is unclear;
- Amnesty International's Annual Report from 2011 and 2010 on Hungary;
- IRB Responses to Information Requests HUN103566.E
- An article titled "Attacks against Roma in Hungary: January 2008 – July 2011" from the European Roma Rights Centre;
- A package titled "Hungary: Violent attacks against Roma" prepared by Amnesty International in May 2011;
- An article titled "Violent Attacks Against Roma in Hungary" by Amnesty International.

[5] These materials discuss the racism and discrimination faced by Roma in Hungary, and the state machinery that is in place to deal with these problems. There have been racially-motivated violent attacks and murders of Roma people, as well as systemic discrimination against Roma. Recommendations have been made as to how Hungary should deal with this problem, and some efforts have been made. The police generally do investigate these attacks, but there is difficulty in the Hungarian criminal law system in recognizing hate crimes.

[6] The RPD held an oral hearing on 19 January 2012, and rejected the Applicant's claim on 2 March 2012.

DECISION UNDER REVIEW

[7] The RPD rejected the claim because the Applicant did not objectively have a well-founded fear of persecution and because she failed to rebut the presumption of state protection.

Fear of Persecution

[8] The RPD reviewed the Applicant's oral testimony in regards to the persecution she faced in Hungary. The Applicant stated that people threw things at her home, and that her son-in-law was beaten several times. However, she was never injured. She said she called the police about the things being thrown at her house, but they never showed up. The RPD noted that the Applicant did not provide any evidence to corroborate the attacks.

[9] The RPD noted the Applicant has several medical problems, but that she has no complaints about the medical care she received in Hungary. She also did not provide evidence that she received an inadequate education or inadequate accommodation. The RPD concluded that, on an objective basis, she does not have a well-founded fear of persecution if returned to Hungary, and that there is no serious possibility she would be persecuted if returned to Hungary.

State Protection

[10] The RPD also found that the Applicant had failed to rebut the presumption of adequate state protection available to her in Hungary. The RPD reviewed pertinent case law, and said that unless a state is in complete breakdown, it is presumed capable of protecting its citizens. The burden was on the Applicant to persuade the RPD, on a balance of probabilities, that protection in Hungary is inadequate. The onus is on the Applicant to approach the state for protection; it is the adequacy of

the protection that is at issue, rather than its effectiveness. The state's legislative and procedural framework for protection is an important consideration, as are the efforts made to protect citizens at an operational level.

[11] The RPD stated that "[l]ess than perfect protection is not a basis to determine that a state is either unwilling or unable to offer reasonable protection," and that state protection is proportional to the level of democracy that exists in any given state. Since Hungary is a democracy, there is a strong presumption of state protection. The Applicant must do more than simply show she went to the police and that her efforts were futile; she must have exhausted all courses of action available to her. The failure of local authorities to act does not mean that the state, as a whole, has failed to protect its citizens, unless it is part of a broader pattern of refusal to provide protection.

[12] The RPD found that the documentary evidence before it demonstrates that Hungary is a democracy with a relatively independent and impartial judiciary, and that it has in place a functioning security force to uphold the laws of the country. The evidence indicates that Hungary has a history of discrimination against Roma people, but that Hungary is attempting to correct this problem. The RPD referred to a report of thd *European Commission against Racism and Intolerance,* which refers to a number of initiatives adopted by the Hungarian government. For example, the Hungarian government has taken steps to limit the activities of political organizations with xenophobic agendas. The Hungarian government has also attempted to criminalize hate speech, and although these attempts have been unsuccessful there are other laws that may be used in hate-motivated crimes. It has also provided human rights training to police departments.

[13] The Hungarian government has introduced legislation to combat racial discrimination, in particular *The Equal Treatment and Promotion of Equal Opportunities Act*. This Act prohibits

discrimination and sets up a body to ensure compliance. Minorities also have recourse with respect to unconstitutional practices. In 2007, the Hungarian Parliament enacted *The Decade of Roma Inclusion Programme Strategic Plan*, which sets out specific goals to improve Romani access to education.

[14] The RPD noted that the European Commission Against Racism and Intolerance found that progress has been slow in reducing discrimination against Roma people in Hungary. Desegregation in schools remains a major problem, but the Hungarian government has made significant efforts to combat it by, for example, providing scholarship programs, regulating the way local authorities divide classes, and introducing diagnostic tests to take better account of cultural and socio-economic differences between students.

[15] The RPD found there is evidence that the unemployment rate among Roma is as high as 70%, and they are often discriminated against in the labour market. It also noted, however, that the Hungarian government provides vocational training programs aimed primarily at Roma, although the effectiveness of these programs has been questioned. The RPD also discussed Romani housing problems.

[16] The RPD accepted the documentary evidence, and found it suggested that though racism is a problem in Hungary, the government is making serious and genuine efforts to address it. State protection is not perfect, but it is adequate. The RPD found the Applicant had failed to rebut the presumption of state protection, and that she is not a Convention refugee or person in need of protection pursuant to sections 96 or 97 of the Act.

STATUTORY PROVISIONS

[17] The following provisions of the Act are applicable in this proceeding:

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,	**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*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries;	*a*) soit se trouve hors de tout 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;
[…]	[…]
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	**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*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*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*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(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) the risk is not caused by the inability of that country to provide adequate health or medical care	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
[…]	[…]

ISSUES

[18] The Applicant raises the following issues in this application:

a. Whether the RPD's evaluation of the Applicant's oral evidence was reasonable in that the RPD drew an unreasonable negative inference of credibility;

b. Whether the RPD's finding that there was adequate state protection was reasonable;

c. Whether the RPD's erred in finding that the discrimination suffered by the Applicant did not amount to persecution;

d. Whether the RPD failed to provide adequate reasons.

STANDARD OF REVIEW

[19] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. Further, in *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773, at paragraph 21, Justice Max Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be evaluated on a standard of review of reasonableness. Finally, in *Wu v Canada (Minister of Citizenship and Immigration)* 2009 FC 929, Justice Michael Kelen held at paragraph 17 that the standard of review on a credibility determination is reasonableness. The standard of review applicable to the first issue in this case is reasonableness.

[21] The standard of review applicable to the second issue is reasonableness. In *Pacasum v Canada (Minister of Citizenship and Immigration)*, 2008 FC 822 at paragraph 18, Justice Yves de Montigny held that state protection is a question of mixed fact and law to be evaluated on the standard of reasonableness (see also *Estrada v Canada (Minister of Citizenship and Immigration)*, 2012 FC 279; *Canada (Minister of Citizenship and Immigration) v Abboud*, 2012 FC 72). Further, the Federal Court of Appeal held in *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 that the standard of review on a state protection finding is reasonableness.

[22] The issue of the RPD's interpretation of "persecution" is a question of mixed fact and law that involves a tribunal interpreting its enabling statute (see *Sow v Canada (Minister of Citizenship and Immigration*), 2011 FC 1313 at paragraphs 17-21). The Supreme Court of Canada stated in *Smith v Alliance Pipeline Ltd*, 2011 SCC 7 at paragraphs 26-34 that such a question is to be reviewed on a reasonableness standard. Further, the RPD's persecution analysis goes to the interpretation of evidence. The third issue is reviewable on a reasonableness standard (*Alhayek v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1126 at paragraph 49).

[23] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], the Supreme Court of Canada held at paragraph 14 that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes." With respect to this issue, the adequacy of the reasons will be analysed along with the reasonableness of the Decision as a whole.

[24] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

Credibility

[25] The Applicant submits that no adverse finding of credibility was made by the RPD, but if one may be inferred by paragraphs 8-9 of the Decision then the Applicant submits that the RPD erred in this regard. The Federal Court of Appeal has held that oral evidence does not necessarily have to be corroborated by documentary evidence, and to arrive at a negative credibility finding on this basis is a reversible error (*Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (FCA) at 2). A failure to provide corroborating documentation may be a finding of fact, but it does not relate to the Applicant's credibility in the absence of other evidence (*Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 729 at page 4; *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705 at page 9 [*Ahortor*]).

[26] When an applicant swears to the truth of something there is a presumption that those allegations are true unless there is reason to doubt their truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302). The Applicant submits that any inconsistencies found by the RPD had to be supported by the evidence; it could not simply choose to disbelieve the Applicant's testimony without providing a valid reason.

[27] In *Ahortor*, above, the Federal Court found it to be an error for the RPD to find that an applicant was not credible because he was not able to provide documentary evidence supporting his claims. The Applicant submits that if the RPD made a negative inference about the Applicant's credibility, it erred in the same manner in the Decision as the decision-maker did in *Ahortor*. The

RPD used an absence of evidence to make a negative credibility finding against the Applicant, and this is a reviewable error (*Mui v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 1294 at 8-9; *Ledezma v Canada (Minister of Citizenship and Immigration)*, [2005] FCJ No 103; *Hercegi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 250 [*Hercegi*] at paragraph 3).

State Protection

[28] The Applicant submits that the RPD ignored evidence that Roma people do not receive adequate state protection in Hungary. The Applicant points to *Hercegi,* where Justice Roger Hughes said at paragraph 5:

> The reasons do not address the issue of state protection properly. They do not show whether, and if so, what, the Member considered as to provisions made by Hungary to provide adequate state protection now to its citizens. It is not enough to say that steps are being taken that some day may result in adequate state protection. It is what state protection is actually provided at the present time that is relevant. In the present case, the evidence is overwhelming that Hungary is unable presently to provide adequate protection to its Roma citizens.

[29] The Applicant further submits that the RPD did not properly explain why state protection in Hungary is adequate. The RPD was required to justify its findings and provide an analysis of the measures taken by the Hungarian government (*EYMV v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364 at paragraphs 15-16), and it did not do so in this Decision. The Applicant further submits that, as in *Rezmuves v Canada (Minister of Citizenship and Immigration)*, 2012 FC 334, the RPD failed to review and acknowledge the documentary evidence presented by the Applicant indicating a lack of state protection.

[30] The Applicant submits that the RPD was required to assess the objectivity of her well-founded fear of persecution, regardless of credibility (*Alexandre-Dubois v Canada (Minister of Citizenship and Immigration)*, 2011 FC 189). She further submits that the RPD paid lip service to the attempts being made by the Hungarian government to fight discrimination, but misapplied the legal test from *Ward*, above. The *Ward* decision says that an applicant may advance evidence of similarly situated individuals let down by the state's protection arrangement, and that an applicant does not have to risk being harmed in seeking protection.

[31] The Applicant points to the decision in *Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429, where Justice Luc Martineau said at paragraph 56:

> It is also wrong in law for the Board to adopt a "systemic" approach which may have the net effect of denying individual refugee claims on the sole ground that the documentary evidence generally shows the Hungarian government is making some efforts to protect Romas from persecution or discrimination by police authorities, housing authorities and other groups that have historically persecuted them. The existence of anti-discrimination provisions in itself is not proof that state protection is available in practice: "Ability of a state to protect must be seen to comprehend not only the existence of an effective legislative and procedural framework but the capacity and the will to effectively implement that framework" (*Elcock v. Canada (Minister of Citizenship and Immigration)* (1999), 175 F.T.R. 116 at 121). Hungary is now considered a democratic nation which normally would be considered as being able to provide state protection to all its citizens (*Ward, supra*). Unfortunately, there are still doubts concerning the effectiveness of the means taken by the government to reach this goal. Therefore, a "reality check" with the claimants' own experiences appears necessary in all cases.

[32] Further, in *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1211, Justice Michel Shore said at paragraph 13:

> As stated by Mr. Justice Edmond Blanchard in *Burgos v. Canada (Minister of Citizenship and Immigration*), 2006 FC 1537 (F.C.):

> [36] However, when it considers the issue of state protection, the Court cannot require that the protection currently available be perfectly effective. The following excerpt written by Mr. Justice James Hugessen in *Villafranca v. M.E.I.*, [1992] F.C.J. No. 1189 (F.C.A.) (QL), sets out this principle:
>
> On the other hand, where a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens from terrorist activities, the mere fact that it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection.
>
> [37] In spite of this, the mere willingness of a state to ensure the protection of its citizens is not sufficient in itself to establish its ability. Protection must nevertheless have a certain degree of effectiveness (*Bobrik v. M.C.I.*, [1994] F.C.J. No. 1364 (T.D.) (QL)).
>
> . . .
>
> [42] By determining that there was adequate protection in Mexico and that the applicants could have made a complaint following the incidents of August 21, 2005, and October 2, 2005, the Board rendered an unreasonable decision, in that it failed to take into consideration that the situation of the applicants was aggravated on both occasions when they made complaints to two different authorities. This conclusion is contrary to the principle established by the Supreme Court in Ward, according to which an applicant does not have to "risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness". This error warrants intervention by this Court insofar as this determination could not stand up to a probing examination.

[33] The Applicant submits the jurisprudence discussed above has been applied to the situation of Roma people in Hungary (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2010 FC

1003). The jurisprudence demonstrates that the RPD did not properly consider the issue of state protection available to Roma people in Hungary. The Decision does not address the real issue, which was the adequacy of the protection available (*Hercegi,* above).

[34] The Applicant further submits that the RPD ignored certain pertinent evidence in regards to state protection. This included:

i. The observations concerning conditions in Hungary at paragraph 28 of the Decision;

ii. The Applicant's oral and documentary evidence;

iii. The fact that the police are the agents of persecution;

iv. Other documentary evidence that was before the RPD.

The Applicant submits that this was important evidence, and the Decision should be set aside because the RPD ignored it (*Toro v Canada (Minister of Employment and Immigration),* [1981] 1 FC 652 (CA); *Horvath v Canada (Minister of Citizenship and Immigration),* 2001 FCT 398 (FCTD)).

[35] The Applicant argues that the need to refer and analyse a specific piece of evidence increases with the importance of the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* (1998) 157 FTR 35 (TD)). The RPD should have acknowledged the evidence that was contrary to its Decision, and it should have indicated in its reasons the impact of this evidence on the claim (*Gondi v Canada (Minister of Citizenship and Immigration),* 2006 FC 433 at paragraph 16; *Jones v Canada (Minister of Citizenship and Immigration),* 2006 FC 405 at paragraphs 14-18).

[36] The RPD erroneously considered the state's "willingness" to protect, while paying no attention to the state's "ability" to protect. The existence of anti-discrimination measures and counselling services does not go to the state's ability to protect Roma people from violent attacks (see *Elcock v Canada (Minister of Citizenship and Immigration)*, 175 FTR 116 (FCTD)).

Persecution

[37] The Applicant submits that the RPD also erred by classifying the violent acts committed against the Applicant as "discrimination" rather than "persecution." Discrimination involves a deprivation of certain things in relation to other people, but it does not include acts of criminal violence, which amount to persecution. This distinction is important to the Applicant; the mandate of many of the organizations discussed by the RPD is to reduce discrimination against Roma people; this does not provide the Applicant with protection from the violence she experienced (*Molnar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1081).

Adequacy of Reasons

[38] The Applicant submits that the Decision does not provide adequate reasons, specifically in relation to the distinction between discrimination and persecution, as well as the adequacy of state protection. There is a duty on the RPD to set out its findings of fact and explain the major issues at hand (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817). The Applicant submits that the RPD did not fulfill this duty, and requests that the Decision be quashed and sent back for reconsideration.

The Respondent

State Protection

[39] The Respondent submits that the RPD's finding that the Applicant had not rebutted the presumption of state protection was made after consideration of all the evidence, and it was reasonable.

[40] The RPD noted that the Applicant said she called the police after things were thrown at her home, but that the police never came. No evidence was produced to corroborate the attack, and it was open to the RPD to evaluate the Applicant's testimony how it saw fit, considering the other circumstances of her claim. The onus is on the Applicant to seek state protection, and the test for protection is adequacy, not perfection.

[41] The RPD also considered the documentary evidence before it. It noted that Hungary has a long history of discrimination against Roma, and that the country is trying to correct the situation through different initiatives. Progress has been slow, and the RPD reviewed some of the criticisms of the measures currently being taken. The RPD also considered the lack of objective evidence that the Applicant had sought protection, and although there is no legal requirement that an applicant produce corroborative evidence, it is more difficult for an applicant to rebut the presumption of state protection without it (*Cosgun v Canada (Minister of Citizenship and Immigration)*, 2010 FC 400 at paragraph 53). The Respondent submits it was reasonable for the RPD to take this into account as part of its state protection analysis.

[42] The jurisprudence dictates that a state is presumed to be capable of protecting its citizens (*Ward*, above at 724). The presumption is not rebutted just because an Applicant can point out

problems in the protection offered by the state. It has been accepted that no government can guarantee the protection of all its citizens at all times (*Canada (Minister of Employment and Immigration) v Villafranca*, (1992) 99 DLR (4^{th}) 334 (FCA) at 337 [*Villafranca*]).

[43] The Applicant cited much jurisprudence where this Court found the RPD erred in its consideration of state protection of Roma in Hungary. However, the Court has also come to contrary conclusions about Hungary. The Respondent reminds the Court that judicial review turns on the unique facts of each matter that comes before it.

[44] The Applicant cites the case of *Hercegi*; however, this decision was distinguished in *Kis v Canada (Minister of Citizenship and Immigration)*, 2012 FC 606 at paragraphs 14 and 17 [*Kis*]. In *Kis*, the Court found it was reasonable for the RPD to conclude that the programs put in place by the Hungarian government constituted "serious and genuine efforts" to ensure state protection was adequate. The RPD's findings in this case were similar to *Kis*; it noted a variety of government undertakings to increase the effectiveness of state mechanisms.

[45] The RPD also specifically considered the negative aspects of the situation for Roma in Hungary. It acknowledged areas of remaining concern, such as education, employment, and housing. It was open to the RPD to conclude that, although not perfect, there was adequate protection in Hungary for Roma, and that Hungary has been making serious efforts to deal with racism against Roma people. As long as the RPD took into account important evidence that contradicted its conclusions, there is no requirement for it to specifically refer to every piece of evidence or pertinent passage from cited sources (*Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923 at paragraph 33; *Matte v Canada (Minister of Citizenship and Immigration)*, 2012 FC 761 at paragraphs 114-117; *Horvath v Canada (Minister of Citizenship and*

Immigration), 2012 FC 253 at paragraphs 15-17). This is what the RPD did, and its Decision was within the bounds of reasonableness.

[46] A refugee claimant must take all reasonable steps to seek protection in their home country before seeking international surrogate protection (*Ward* at 709). The Respondent agrees with the Applicant that she need not risk her life to demonstrate inadequate state protection, but she must demonstrate that her subjective fears have an objective basis (*Macias v Canada (Minister of Citizenship and Immigration)*, 2010 FC 598 at paragraph 14; *Dannett v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1363 at paragraphs 34-42). The RPD considered the Applicant's claim that rocks were thrown at her house, that the police never arrived after she called them, and that her son-in-law was beaten up. It found that there was no clear evidence that she was refused police assistance. The country condition documentation also showed that the Hungarian police receive training in dealing with minorities. The RPD also noted there was recourse available to the Applicant if she was dissatisfied with the services she received from the police. It is not sufficient for the Applicant to state that she has been a victim of crime or discrimination; she must demonstrate a lack of state protection (*Ward* at paragraphs 51-52).

[47] It is a fundamental concept of international refugee law that national protection must take precedent over international protection (*Cosgun*, above, at paragraph 50). The presumption of state protection will not be rebutted by an applicant demonstrating a "subjective reluctance to engage the state" (*Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1126 at paragraph 10; *Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 134 at paragraphs 9 and 12; *Paguada v Canada (Minister of Citizenship and Immigration)*, 2009 FC 351 at paragraph 24). It is

also not enough for the Applicant to show that the Hungarian government has not always been effective at protecting persons in her particular situation (*Villafranca*, above).

[48] Further, refugee claimants from democratic countries have a heavier burden when attempting to demonstrate that they have exhausted all the resources available to them before claiming refugee status (*Hinzman*, above, at paragraph 57). Hungary is a functioning democracy, and the Applicant's failure to seek state protection is fatal to her claim (*Camacho v Canada (Minister of Citizenship and Immigration)*, 2007 FC 830). The RPD committed no reviewable error in coming to this conclusion.

Adequacy of Reasons

[49] Just because the RPD did not recite all of the evidence before it does not mean that evidence was ignored. The Decision suggests that the totality of the evidence was considered (*Parmar v Canada (Minister of Citizenship and Immigration)*, (1997) 139 FTR 203; *Moskvitchev v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 1744 (TD)). The Applicant is asking the Court to microscopically review the Decision, when the Decision ought to be read as a whole (*Ayala v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1258 at paragraph 8; *Boulis v Canada (Minister of Manpower and Immigration)*, [1974] SCR 875).

[50] As stated by the Federal Court of Appeal in *Hassan v Canada (Minister of Employment and Immigration)*, (1992) 147 NR 317 (FCA), "the mere fact that some of the documentary evidence is not mentioned in the Board's reasons is not fatal to its decision." Reasons are adequate when the decision-maker sets out its findings of fact and the principle evidence upon which those findings

were made (*VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FC 25 (FCA) at paragraphs 21-22). The RPD fulfilled this obligation in rendering the Decision.

[51] The Respondent submits that a functional approach should be taken in analyzing the adequacy of reasons; the inquiry is not abstract, but should address the live issues in the case (*R v Dinardo*, 2008 SCC 24 at paragraph 25). The Applicant must show the deficiencies in the reasons prejudiced her right of judicial review (*Za'rour v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1281 at paragraph 20); she has not done so in this case. Deference requires that the matter not be examined microscopically (*Ayalal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 183), and reasons are to be reviewed in the context of the evidence, submissions, and process (*Veerasingam v Canada (Minister of Citizenship and Immigration)*, 2012 FC 241).

[52] The Decision in this case informs the Applicant as to why her application was refused, and how the RPD weighed the evidence that led it to its conclusion. The reasons demonstrate the factors considered, and how the RPD conducted its analysis. As such, the reasons are adequate (*Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 at paragraphs 13-15). Essentially, the Applicant is simply complaining that she would have weighed the evidence differently, and this is not a reviewable issue. The Respondent requests that this application be dismissed.

ANALYSIS

[53] At the judicial review hearing before me in Toronto, the Applicant formally withdrew the credibility and the discrimination/persecution grounds for review. In any event, it is my view that

this Decision stands or falls on the RPD's state protection analysis. This is because, while the RPD may have had concerns about the Applicant's corroborative evidence for the violence she suffered in Hungary, it did not elaborate sufficient reasons for refusing the claim apart from its adequate state protection finding.

[54] In paragraph 14 of the Decision, the RPD correctly sets out the nature of the exercise before it:

> In determining, whether protection is adequate, it is important to consider whether a legislative and procedural framework for protection exists, and also whether the state, through police or other authorities, is able and willing to effectively implement that framework. A state must engage in serious efforts to protect its citizens at the operational level.

[55] As the RPD points out, the Applicant fears the Hungarian Guard and she says the state cannot, or will not, protect her from attacks against her and her family. Notwithstanding this clear statement, the RPD engages in a significant amount of discussion in its state protection analysis about matters such as employment and education which, as a 77-year-old woman in poor health, have nothing to do with the Applicant's case.

[56] When it comes to the operational adequacy of the state's ability or willingness to protect the Applicant against fascist and racist violence, the RPD has very little to say in its analysis:

> The report also notes that the government is taking active steps to change the attitude and treatment of members of the police force toward minorities, especially Roma. Training in human rights, basic freedoms, tolerance and how to deal with on the spot cases involving minority groups is being provided both at the police academy and medium level in-service police training.

[57] In my view, this analysis runs counter to what the RPD is obliged to do. The analysis is about a legislative and procedural framework (steps) that the government of Hungary has attempted to implement. It is not about the operational adequacy of those steps.

[58] There was before the RPD a 2008 ECRI Report on Hungary which, at paragraphs 67 and 68, refers to specific reports of violence against Roma, "including some incidents of police brutality against Roma," and which suggests that the Hungarian authorities need to do a better job "to introduce systematic and comprehensive monitoring of all incidents that may constitute racist violence…."

[59] The suggestion here is clear that the Hungarian authorities either have no idea of the extent of the violence that Roma people are subjected to, or have deliberately chosen not to monitor it. This kind of evidence brings into question the operational adequacy of any legislative and procedural framework that Hungary may have introduced to deal with violence against Roma people. Yet the RPD in this case fails to address this issue and does not attempt to grapple with the need to consider "whether the state, through the police or other authorities, is able and willing to effectively implement that framework," which the RPD acknowledges it had to do when addressing state protection in Hungary.

[60] In my view, the RPD's analysis does not address what Justice Mosley has called "operational adequacy." See *EYMV*, above, at paragraph 16. This renders the Decision unreasonable.

[61] On this basis alone, I think the matter must be returned for reconsideration.

[62] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2890-12
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	- and -
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REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	November 21, 2012

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