Federal Court  Cour fédérale

Date: 20121213

Docket: IMM-3045-12

Citation: 2012 FC 1475

Ottawa, Ontario, December 13, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

**CSABA MOLNAR, CSABANE MOLNAR,
EVELIN MOLNAR, CSABA MOLNAR JR,
KINGA MOLNAR and
AMANDA EDIT MOLNAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision from the Refugee Protection Division of the Immigration and Refugee Board of Canada (Board), dated February 29, 2012, in which it refused the applicants' claim for refugee protection under sections 96 and 97 of the Act.

Factual Background

[2] Mr. Csaba Molnar (the principal applicant), his wife Mrs. Csabane Molnar (the secondary applicant), and their minor children, Evelin, Csaba Jr., Kinga and Amanda Edit Molnar (the minor applicants) are all citizens of Hungary. They are of Roma ethnicity and claim refugee protection pursuant to sections 96 and subsection 97(1) of the Act. The secondary applicant has been appointed the representative of the minor applicants.

[3] The applicants left Hungary because of events that took place in January 2009. The principal applicant's cousin Tomi, who was said to live with them, allegedly worked for the Hungarian mafia (also referred to as the Raffael family). On January 16, 2009, the mafia allegedly asked Tomi to play with a rich Budapest businessman against whom he lost 6 million forints (approximately $27,500). The mafia allegedly held Tomi accountable for the debt and threatened him. The principal applicant allegedly helped Tomi with a portion of the debt, but both he and Tomi were assaulted when they repaid only a portion of the money owed, and were told that they had two (2) weeks to gather the rest. The principal applicant claims that a few days after this incident, a member of the Raffael family contacted Tomi to advise him that if the debt was not repaid, the principal applicant would be required to hand over his house. The principal applicant was also allegedly threatened that he and his family would be killed if he contacted the police or could not repay the debt.

[4] The principal applicant's cousin Tomi is allegedly missing since that day. On February 1, 2009, a member of the Raffael family allegedly went to the applicants' home asking to see Tomi. Fearing for his life, the principal applicant lied about Tomi's whereabouts. Following this visit, the applicants allegedly fled to Budapest and hid until arrangements were made to come to Canada.

[5] During the hearing, the principal applicant added that he was also afraid of the Hungarian Guard because he was allegedly assaulted by Guard members in 2007 (Tribunal Record, Vol 3, pp 584-85). The principal applicant alleged that he went to the police but that nothing was done.

[6] At the hearing before the Board, the secondary applicant claimed that, after her C-section in 2007, her fallopian tubes were tied against her will. She claimed she went to the police but that nothing was done (Tribunal Record, Vol 3, p 607).

[7] During the hearing, the principal applicant testified that his children, the minor applicants, were treated differently in school than the other Hungarian children, and were segregated by their teachers (Tribunal Record, Vol 3, p 594).

[8] The applicants fled Hungary on March 17, 2009 and arrived in Canada on the same date. They sought asylum upon arrival at the airport.

[9] The applicants' former counsel had allegedly failed to translate their Personal Information Forms (PIF) for them prior to filing them. The applicants met with their current counsel on March 28, 2011. The applicants' current counsel provided them with their PIFs and amended versions were provided to the Board.

[10] The Board heard the applicants' claim on December 8, 2011.

Impugned Decision

[11] In a decision rendered on February 29, 2012, the Board found that the applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the Act because they failed to rebut the presumption of state protection. The Board indicated that the determinative issue was whether the applicants' fear was objectively reasonable, for which it considered the availability of state protection, whether the applicants took all reasonable steps to avail themselves of that protection, and whether they had provided clear evidence of the state's inability to protect them. The Board concluded that the applicants had not. The Board also drew a negative conclusion with regards to the applicants' credibility.

Issue

[12] The main issue in this case is whether the Board erred in the analysis of credibility and state protection?

Standard of Review

[13] The Board's assessment of state protection is a mixed question of fact and law, and as such is reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 38, 282 DLR (4th) 413 [*Hinzman*]; *Balogh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 216 at para 9, [2012] FCJ No 230 (QL)). Consequently, the Court will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process", as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir*, above, at para 47).

Analysis

[14] At hearing before this Court, the applicant argued that the Board has unfairly relied on the PIF in its decision because the applicant was not asked to swear to its truthfulness. This situation would stem from information provided by an earlier legal representative with respect to the PIF translation. In any event, it is clear from the record that the Board indicated from the outset that the PIF could be updated and amended if required during the hearing (Tribunal Record, p 567). The Court also notes that the issues raised by the Board were not solely in respect of the PIF but it relied on the applicant's testimonies which contained contradictions and provided different versions (Tribunal Record, pp 7, 9 and 10). The Court cannot agree with the applicant that the Board committed an error.

[15] Although the Court recognizes that a refugee claimant's sworn testimony is presumed to be true, in the present case, there were reasons to doubt the veracity of the applicants' testimonies and rebut the presumption of truthfulness. These inconsistencies went to the heart of their claim as initially stated, namely fear of the Hungarian mafia. The Court finds the credibility findings were indeed reasonable given the important omissions and inconsistencies in the applicants' testimonies and written narrative.

[16] The applicants mentioned that Hungarian claimants are bound to fail because the Board's analysis will always establish that Hungary is a democracy with a central government and the ability to enforce legislation and other initiatives to protect its citizens. The Court cannot agree with this contention – the fact that Hungary is a democracy and a functioning state part of the European Union and member of the Council of Europe merely creates an assumption that state protection is

available and adequate (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1 [*Ward*]). The Court recalls that each case must be decided on its own merit. Although the Court agrees with the applicants that if an applicant has tried to obtain state protection to no avail, or adduced evidence that demonstrate that state protection is inadequate, an applicant could succeed in rebutting this assumption. However, as discussed below, this is not the case.

[17] The applicants contend that, in certain circumstances, it is not reasonable to expect applicants to seek state protection before leaving their country. However, this is not applicable to the present case which is clearly distinguishable from the case of *Melo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 150 at para 10, 165 ACWS (3d) 335 [*Melo*], referred to by the applicants. In *Melo*, above, the father of the applicant was a police commissioner himself and was the source of the persecution. It was clearly unreasonable to expect the applicant to seek protection from his persecutor. Additionally, the applicant had provided evidence explaining why seeking protection would not be reasonable. In the present case, the applicants have not adduced evidence that seeking state protection would be unreasonable. While the applicants claim the mafia threatened them not to go to the police, the Court is not satisfied that this is an indication that state protection is inadequate.

[18] The applicants further indicated that they should not bear the burden of going to agencies other than the police to seek protection, other cases have expressed a different view, indicating that state run or state funded agencies are an appropriate recourse for protection which should be sought out, if reasonable to do so (see for instance *Nagy v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 281, 112 ACWS (3d) 933 and *Zsuzsanna v Canada (Minister of*

Citizenship and Immigration), 2002 FCT 1206, 118 ACWS (3d) 707). However, this argument fails as the evidence before this Court indicates that the applicants did not attempt contacting the police with their recent alleged problems with the mafia.

[19] The applicants argued that their case was akin to that of *Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429, 122 ACWS (3d) 534 [*Mohacsi*]. However, the Court finds that there are significant differences between the applicants' circumstances and the ones set out in *Mohacsi*. The applicants in *Mohacsi* had been beaten, detained and harassed by the police, had suffered housing discrimination and been forced to live in a gypsy ghetto without running water, their nephew had been killed by skinheads for fishing without a licence, and they sought redress from the police, the state and the media but to no avail. Furthermore, the applicants' testimonies in *Mohacsi* corroborated each other. In the present case, the applicants' testimonies contradicted each other. Further, in *Mohacsi*, the Board had made capricious findings of credibility and had completely ignored contradictory documentary evidence which again is distinguishable from the present case.

[20] Indeed, on the basis of the evidence adduced, the Court is of the opinion that the Board's decision was reasonable. Although the Board drew negative conclusions on the applicants' credibility, it nonetheless was satisfied that they were of Roma ethnicity and therefore possibly subjected to discrimination in Hungary. Therefore, the Board pursued its analysis beyond the negative credibility findings to come to the conclusion that there was adequate state protection in these circumstances, and that the applicants had not adduced credible evidence to the contrary. The Board referred to several documents and did not limit its analysis to only those which supported its

final position – instead, it acknowledged that Hungarian initiatives are still, to this day, not always implemented successfully, and that the country still struggles with issues of discrimination.

[21] However, and contrary to the applicants' assertions, the Board addressed these issues in its analysis and referred to evidence of successful operational implementation such as police reactions to attacks on Romani communities to increase community safety (Tribunal Record, Board's reasons, p 15, para 36); the state taking action when complaints on corrupt police are made (Tribunal Record, Board's reasons, para 40, p 16); and employment programs for Romas yielding concrete results (Tribunal Record, Board's reasons, para 42, p 16). In addition, the Board noted that the principal applicant was able to work and received social benefits from the state during periods when he could not work. It was reasonable for the Board to take this information to mean that the principal applicant did not suffer discrimination from the state.

[22] Thus, the Court cannot agree with the applicants that the Board ignored evidence and engaged in a highly selective approach to its analysis of the evidence and that it did not analyse the meaningful protection at the operational level, preferring to focus on initiatives, legislation and commitments. The Court is of the view that the Board's decision on state protection is reasonable as it did not engage in generalizations without considering the specific evidence before it, nor did the Board refer only to efforts or good intentions without considering actual implementation and results.

[23] It was reasonable for the Board to mention that Hungary is taking measures to implement the standards that are mandated as a member of the European Union and that, although the state protection may not be perfect, it continues to be adequate. To that effect, the Court agrees with the

observations of Justice Rennie in *Onodi v Canada* (*Minister of Citizenship and Immigration*) 2012 FC 1191 at para 16, [2012] FCJ No 1267 (QL):

> [16] The applicants submit that state protection cannot be adequate because the applicant was attacked recently and violent attacks against Roma and Jews are increasing. However, no country can offer its citizens perfect protection. It is not sufficient for a refugee claimant to show that the government's efforts have not always been successful: *Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189.

[24] In conclusion, it was open to the Board to find that the preponderance of the evidence supported the conclusion that state protection was available (*Horvath et al v Canada (Minister of Citizenship and Immigration)*, 2012 FC 253 at para 16, [2012] FCJ No 275 (QL)).

[25] It is the Court's opinion that the Board's decision falls with the reasonable structure of *Dunsmuir*, above. The issue of state protection being determinative, the Court's intervention is therefore not warranted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No questions for certification were proposed by the parties, and none arise in the case at bar.

"Richard Boivin"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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