

Federal Court



Cour fédérale

Date: 20131203

Docket: IMM-8622-12

Citation: 2013 FC 1208

Ottawa, Ontario, December 3, 2013

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

TIBOR ROLAND HETYEI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Tibor Roland Heteyi is a 23 year-old Hungarian citizen of Roma ethnicity. He seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board denying his claim that he is a Convention refugee or a person in need of protection.

BACKGROUND:

[2] Mr. Heteyi recounted a history of discrimination and abuse growing up in Hungary. In one of the more serious of the incidents, in July 2004, when he was 14 years old, he was beaten up and

his girlfriend was abducted and raped. His mother took the girl to a hospital the next day and the rape was reported to the police. In 2008, Mr. Heteyi called the police when a neighbour's house was being ransacked. He later received a death threat which he took to the police. They told him they could do nothing "until they saw blood flowing". In July 2009, the family's pigs were slaughtered and he found another death threat in his mail box. Mr. Heteyi did not report that incident to the police. In another incident in November 2009, all of their household windows were broken. He decided at that point to leave Hungary and seek protection in Canada with the intention of sending for his mother when he was financially able to do so.

DECISION UNDER REVIEW:

[3] The Panel noted that the determinative issue was whether the claimant's fear was objectively reasonable and found that the applicant had not established a serious possibility of persecution on a Convention ground, or that he would personally be subjected, on a balance of probabilities, to a danger of torture, risk to life, or a risk of cruel and unusual treatment or punishment upon return to Hungary.

[4] The Panel did not draw any negative inferences from the failure of the applicant to report the earlier incidents to the authorities when he was a minor. The Panel noted that the applicant had gone to the police in 2008. However, when he did not receive satisfaction on that occasion, he did not attempt to elevate his complaint to any higher authority. Furthermore, the applicant had not reported the incidents of the pigs or the broken windows to the police but chose to flee Hungary. Additionally, the applicant was not able to provide copies of the death threats he had received.

[5] The Panel held that there was insufficient information to conclude that the police would not have conducted an earnest and genuine investigation of the November 2009 incident and apprehended the perpetrator. The applicant's decision not to report the crime and to flee Hungary may have resulted in a possible investigation being "delayed or stymied" since he would have been the key witness.

[6] After a review of the documentary evidence, the Panel recognized that there is widespread reporting of incidents of intolerance, discrimination, and persecution of Romani individuals in Hungary. Weighted against this evidence, the Panel considered the fact that Hungary "candidly" acknowledges its past problems and is making serious efforts to rectify the problematic treatment of minorities, and particularly of Roma. The Panel concluded that the preponderance of the objective evidence regarding country conditions indicates that there is adequate, albeit imperfect, state protection available for Roma who are victims of crime, police abuse, discrimination or persecution; that Hungary is making serious efforts to address these issues; and that police and government officials are willing and able to protect victims.

[7] As a result, the Panel found that the applicant had not provided clear and convincing evidence that state protection in Hungary is inadequate.

ISSUES:

[8] The following issues were raised in this case:

1. Did the Panel err in finding that the applicant had not rebutted the presumption of state protection?
2. Did the Panel err in finding adequate state protection?

ANALYSIS:

Standard of review

[9] The prior jurisprudence has satisfactorily established that the standard of review with respect to findings on the availability of state protection is reasonableness: *Conka v Canada (Minister of Citizenship and Immigration)*, 2013 FC 892 at para 12, [2013] FCJ no 929; *Lozada v Canada (Minister of Citizenship and Immigration)*, 2008 FC 397 at para 17, [2008] FCJ no 492 [*Lozada*].

[10] With respect to the second issue, the applicant submits that the standard should be correctness because the issue is a question of law. However, the applicant's arguments challenge the Panel's assessment of the evidence on the effectiveness of state protection, which is a question of mixed fact and law. The jurisprudence has consistently held that to be properly reviewed under the standard of reasonableness: *Lozada*, above, at paras 17, 19 and 34.

Did the Panel err in finding that the applicant had not rebutted the presumption of state protection?

[11] The Panel's conclusion that the presumption of state protection had not been rebutted was not unreasonable. Of the four incidents that occurred from 2008 onwards, when the applicant was no longer a minor, he reported only one of them to the police (the death threat received in December 2008). The applicant stated that on the one occasion that he had gone to the police, they had told him that they couldn't help him until blood flowed. The Panel mistakenly took this evidence as a reference to a note given to the applicant. However, the applicant did not take his complaint to a higher authority, and made no further effort to seek protection.

[12] On July 20, 2009, when blood did flow, the applicant sought refuge at his half-brother's house, but did not report the incident. He stated that another note had been left threatening his life if he went to the police, but he was unable to provide a copy of this note. On November 15, 2009, when the windows of his house were broken, the applicant chose not to report the incident to the police, even though in this case the record seems to indicate that there was no threat of repercussions if he did so. Instead, the applicant decided to flee the country.

[13] The bar for rebutting the presumption is high. As stated by Justice Mandamin in *Lozada*, above, at para 27, the claimant bears an evidentiary burden and a legal burden. The claimant must satisfy the evidentiary burden by introducing evidence of inadequate state protection. He must satisfy the legal burden by convincing the tribunal that, on the balance of probabilities, state protection is inadequate. The quality of the evidence required to rebut the presumption of state protection must be reliable and of sufficient probative value: *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 18, 20, 30, [2008] FCJ no 399.

[14] In this matter, the Panel concluded that the applicant had not met either the evidentiary or legal burden. I am unable to find that determination to be unreasonable.

Did the Panel err in finding adequate state protection?

[15] The Panel explained that it was not persuaded by the applicant's responses with respect to the effectiveness of state protection because "they were not consistent with the documentary

evidence”. The Panel also explained that it preferred the documentary evidence over the applicant’s testimony because it was “drawn from a wide range of publically [*sic*] accessible documents”. This is not a case where the Panel ignored the applicant’s evidence or failed to consider his personal circumstances. Rather, the Panel was faced with the applicant’s account of calling the police on behalf of the neighbours in 2008 and not again. Moreover, the applicant’s departure shortly after the incident in November 2009 meant that the state had no reasonable opportunity to address the applicant’s fears.

[16] Reading the decision as a whole, I am satisfied that the Panel did not apply the wrong legal test, as the applicant contends. In engaging in its review of the evidence, the Panel considered numerous legal, institutional, and legislative measures taken by the Hungarian government to address the situation of Roma in light of whether these measures had been successfully implemented. This was not simply a review of best efforts without considering their effectiveness.

[17] Furthermore, the Panel engaged in a thorough review of the current country conditions and addressed the contradictory documentary evidence. The Panel’s decision is therefore distinguishable from that reviewed in *Flores Alcazar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 173, [2011] FCJ no 217, where the Panel had neglected to explain why it had chosen to discount the contradictory evidence.

[18] In order to establish that state protection was inadequate, the applicant needed to lead clear and convincing evidence to an inability to protect. That is an objective test. His subjective reluctance to seek assistance did not establish that protection would be unavailable.

[19] Having considered the decision as a whole and the record before the Court, I am satisfied that the Panel conducted a transparent, justifiable and intelligible analysis of the evidence before it and came to a conclusion that was within the range of acceptable outcomes.

[20] No serious questions of general importance were proposed and none will be certified

JUDGMENT

THIS COURT’S JUDGMENT is that the application is dismissed. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8622-12

STYLE OF CAUSE: TIBOR ROLAND HETYEI
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 1, 2013

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

DATED: DECEMBER 3, 2013

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