

Federal Court



Cour fédérale

**Date: 20160921**

**Docket: IMM-1504-16**

**Citation: 2016 FC 1074**

**Toronto, Ontario, September 21, 2016**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**HORVATH, GYULA,  
HORVATH, GYULANE,  
HORVATH GYULA (MINOR),  
HORVATH, BOGLARKA (MINOR),  
HORVATH FANNI (MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Rendered on the Bench at Toronto, Ontario on September 21, 2016)**

**I. Overview**

[1] Whatever the outcome of a case is, is in the very domain of the RAD; but it must do its individual assessment! That the jurisprudence has clearly confirmed (Reference is made to

*Majoros v Canada (Citizenship and Immigration)*, 2013 FC 421, specifically paragraphs 8, 13, 14):

[8] In its decision, the Board found that applicants failed to rebut the presumption of state protection because they had failed to provide sufficient information to the police after the various attacks to allow them to properly investigate and apprehend the persecutors, and did not make any complaint to any state authority that they were dissatisfied with the police response.

[13] One can only conclude from reading the Board's decision as a whole that it placed decisive emphasis on the applicants' attempts to engage the police, and lost sight of the real question of whether state protection in Hungary is adequate.

[14] The difficulty with the Board's emphasis on the actions of these applicants is this: the evidence on the record was that the persecution suffered by the applicants was from a right-wing movement, and that the particular acts of violence and harassment were perpetrated indiscriminately. As a result, one must ask: "What difference would it have made if the applicants had more diligently reported and followed up with the police, and the individuals responsible for the various acts of violence had been caught?" Based on the record, one can only conclude nothing, or at the very most very little would have changed: persecution against the Roma in Hungary is widespread and in most cases indiscriminate. As a result, the state would be offering no more "protection" than it did prior the particular acts of persecution.

---

[2] This is a judicial review of a decision of the Refugee Appeal Division [RAD] which confirmed the determination of the Refugee Protection Division [RPD] that the Applicants are not Convention refugees or persons in need of protection. The RAD reached its negative determination on the basis of what it considered the reasonable lack of credibility findings of the RPD and the failure of the Applicants to rebut the presumption of state protection.

[3] It is significant to note that the RAD did not assess the credibility findings, rather the RAD stated “as the issue of state protection is sufficient to dispose of the appeal, however, it is not necessary for the RAD to consider the Appellants’ arguments in respect of credibility, other than those that relate to RPD’s analysis of state protection”. Although the RAD did recognize the argument made before it, it did not consider the issue of credibility, except to confirm without its review, the credibility findings of the RPD. The RAD, thus, for this alone, did not conduct the scope of review and assess, as it was meant to do, the refugee protection sections of 96 and 97 respectively.

[4] The RAD must ensure that it analyzes each case as a comprehensive whole, integrally; it must consider the personal narratives of each Applicant; and, then analyze the whole, together with the country condition evidence in context, not in segmented excerpts but as a comprehensive background to personal narratives.

[5] The Applicants relied on significant voluminous documentary evidence of the general treatment of Roma citizens in Hungary. As was pointed out by this Court in *Alakozai v Canada (Citizenship and Immigration)*, 2009 FC 266, the onus was on the Applicants to demonstrate the link between their personal situation and the objective evidence. The Applicants did bring that forward. That evidence must be analyzed by the RAD, not necessarily with a long decision, based on general jurisprudence, without considering the point-specific evidence on the treatment of each Applicant, against the background of country conditions, but rather with the point-specific evidence demonstrating independent analysis of that personal evidence in context with the country condition evidence.

[6] The RAD must make its determination independently.

[7] For all of the above, the Court sends the matter to a differently constituted panel of the RAD.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be granted.

The matter is remitted to a differently constituted panel of the RAD for determination anew.

There is no serious question of general importance to be certified.

“Michel M.J. Shore”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1504-16

**STYLE OF CAUSE:** HORVATH, GYULA, HORVATH, GYULANE,  
HORVATH GYULA (MINOR), HORVATH,  
BOGLARKA (MINOR), HORVATH FANNI  
(MINOR) v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 21, 2016

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** SEPTEMBER 21, 2016

**APPEARANCES:**

Roger Rowe FOR THE APPLICANTS

David Knapp FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

The Law Offices of Roger Rowe FOR THE APPLICANTS  
Barrister and Solicitor  
North York, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Toronto, Ontario