Federal Court  Cour fédérale

Date: 20171006

Docket: IMM-1161-17

Citation: 2017 FC 884

Ottawa, Ontario, October 6, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

IMRENE NAGY AND
HELENA MERCEDESZ HORVATH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This is an application for judicial review of a decision of a Senior Immigration Officer (officer) dismissing an application for a pre-removal risk assessment (PRRA) by Ms. Imrene Nagy (the principal applicant) and her minor daughter Helena Mercedesz Horvath (the minor applicant).

II. FACTS

[2] The applicants came to Canada in 2008 from Hungary when the minor applicant was four years old. At that time, they made an application for asylum citing fear of the principal applicant's ex-husband, a police officer named Imre Nagy. Mr. Nagy had allegedly threatened the applicants because the father of the minor applicant was a Roma. They also cited a fear of discrimination based on the minor applicant's status as a half-Roma child and the principal applicant's status as the mother of a half-Roma child.

[3] In a first decision in November 2010, the Refugee Protection Division (RPD) considering the applicants' asylum claim focused on the applicants' alleged fear of Mr. Nagy and found that the principal applicant lacked credibility in material aspects of her claim. The RPD denied the applicants' asylum claim on this basis.

[4] On judicial review of this decision, the Federal Court found the RPD's credibility assessment to be reasonable, but sent the matter back to the RPD for redetermination on the alleged persecution based on the minor applicant's Roma ethnicity. Importantly, the Federal Court did not set aside the RPD's negative credibility findings.

[5] In a second decision in March 2012, the RPD rendered another negative decision, finding insufficient evidence of persecution and availability of state protection. The applicants' application for judicial review of this second RPD decision was denied before the Federal Court in March 2013.

[6] In August 2016, the applicants filed a PRRA application which became the subject of the impugned decision in the present application.

III. IMPUGNED DECISION

[7] The officer noted that the applicants' PRRA application was based on essentially the same fears as were asserted before the RPD. Accordingly, the officer focused on four letters that were provided by the applicants, which had not been before the RPD, concerning Mr. Nagy's alleged recent efforts to locate the applicants. These were three letters from friends of the principal applicant, and a fourth letter from Mr. Nagy's brother, the principal applicant's brother-in-law (incorrectly identified by the officer as the principal applicant's brother). The officer concluded that these letters were unreliable and gave them no weight. The officer identified the following concerns:

1. The letters are short and lacking in detail concerning the circumstances surrounding Mr. Nagy's alleged harassment, or how the principal applicant is acquainted with the writers of the letters;
2. The letters are suspiciously similar, each referring to the "gipsy child" or the "baby" or "child" from a gipsy, and each imploring the applicants to never come home, "even to visit".
3. The implausibility that, eight years after the applicants had left Hungary, Mr. Nagy began harassing the applicants' acquaintances about their whereabouts (there being no evidence that Mr. Nagy had searched for the applicants in the intervening years).
4. The fact that all of the letters came from people who are close to the applicants and not neutral.

[8] The officer also found that the applicants had not rebutted the presumption that adequate state protection would be available to them to address any threat from Mr. Nagy. In support of this conclusion, the officer quoted at length from several documentary sources addressing issues such as Hungary's parliamentary democracy, laws aimed at preventing violence against women, mechanisms for complaints against the police.

[9] The officer also considered the applicants' risk of being targeted due to the minor applicant's Roma ethnicity. The officer noted that there was insufficient evidence of significant incidents of discrimination before they left Hungary, and that the applicants based their concerns on general country conditions for Roma in Hungary. The officer noted that these concerns had been considered and rejected before the RPD (in 2012) on the basis that state protection was adequate. The officer considered the relevant documentary evidence and concluded that, though it was mixed, it was insufficient to demonstrate a significant change in conditions for Roma since the RPD's analysis.

[10] The officer concluded by noting that there was little evidence that the minor applicant, who is only half Roma, would be perceived as Roma at all.

[11] The PRRA application was rejected.

IV. ISSUES

[12] The applicants argue that the officer erred in four principal respects in the impugned decision:

1. It was unreasonable not to give weight to the new evidence provided by the applicants concerning Mr. Nagy's efforts to find them.
2. The officer's analysis of state protection available to the applicants in Hungary was unreasonable.
3. The officer failed to undertake a forward-looking analysis in assessing the risks faced by the applicants in Hungary.
4. It was unreasonable for the officer to consider that the minor applicant might not be perceived as Roma.

V. ANALYSIS

A. *Standard of Review*

[13] The parties are agreed, and I concur, that the alleged errors asserted by the applicants are to be reviewed on a standard of reasonableness.

B. *New Evidence*

[14] The applicants argue that the officer made several errors in his analysis of the new evidence or Mr. Nagy's efforts to find them. With regard to the similarity of the letters, the applicants argue that this is simply a reflection of the similarity of the various approaches Mr. Nagy made to the applicants' acquaintances, as well as his determination to find the applicants. The applicants also note that the English translation of two of the letters was accompanied by an interpreter's note stating: "If the translation sound [*sic*] strange it is because [of] the source text. I tried to mirror the bad grammar … I overlooked the spelling mistakes."

[15] In my view, it was reasonable for the officer to consider negatively the combined facts of lack of detail and similarity in the letters. In particular, there appears to be something artificial in the repeated imploring of the applicant never to return, “even to visit”. I am not convinced that this concern is explained away by the interpreter’s notes.

[16] With regard to the timing of the letters, the applicants argue that the harassment by Mr. Nagy was ongoing and it should not be surprising that the letters are all dated around the time that the applicants sought evidence to support their PRRA application. The problem is that there was no evidence before the officer that Mr. Nagy’s efforts to locate the applicants had been ongoing; evidence to that effect was presented later before this Court, but cannot be considered in determining whether the officer’s analysis was reasonable. Accordingly, it was entirely reasonable for the officer to consider the plausibility of Mr. Nagy commencing efforts to find the applicants eight years after they left Hungary and just as the applicants were preparing their PRRA application.

[17] With regard to the fact that the letters come from people who are close to them, the applicants cite jurisprudence to the effect that it is improper to dismiss evidence on that basis. However, the respondent points out, correctly, that this jurisprudence stands for the proposition that it is improper to dismiss evidence solely on the basis that it comes from a source that is not neutral. In this case, the officer had several reasons for giving no weight to the letters.

[18] The applicants also note that the officer erred in describing the writer of the fourth letter as the principal applicant’s brother, as opposed to brother-in-law. This was indeed an error, but I

consider it to be minor. The key fact is that the writer is someone who is close to the principal applicant and not neutral.

C. *State Protection*

[19] I am not convinced that the officer's analysis of the documentary evidence was unreasonable. The officer's statement that the evidence is mixed was reasonable and supported by the lengthy quotes in the decision. For example, the officer quoted from a 2014 article by the Athena Institute indicating that "the extremist groups that caused massive problems for the Hungarian authorities, terrorised the Roma, Jewish and LGBT communities on countless occasions and played a huge role in Jobbik entering the Parliament in 2010 are on a path to insignificance."

[20] It was also reasonable for the officer to recognize that the same analysis of country conditions had been done in the second RPD decision, and to observe that the evidence was insufficient to demonstrate a significant change in conditions since then.

[21] The applicants argue that the officer dwelled on efforts to improve conditions for Roma in Hungary, rather than focusing on the results achieved by such efforts. Though the officer did make reference to efforts, the decision also addresses results achieved. I reject this argument.

D. *Forward-Looking Analysis*

[22] The applicants criticize the officer for the observation that the applicants had provided insufficient evidence to demonstrate that they had experienced any significant incidents of discrimination before they left Hungary. They argue that the officer's analysis should instead have been forward-looking.

[23] In my view, the officer's analysis was forward-looking. There was nothing unreasonable in observing that significant discrimination in the past had not been established. I note that this observation was immediately followed by the acknowledgement that "the applicants have based their application on the general country conditions for Roma in Hungary and on the possibility that they may experience discrimination rising to persecution in the future on their return to Hungary" (emphasis added).

E. *Consideration of Whether Minor Applicant Will Be Perceived as Roma*

[24] The applicants argue that it is not the officer's task to determine whether the minor applicant will be perceived as Roma. Rather, the officer should consider the consequences if the minor applicant is indeed perceived as Roma.

[25] I accept the respondent's argument that, even if the officer's analysis in this regard was unreasonable, the conclusion remains that state protection is adequate. Therefore, nothing turns on this issue.

VI. CONCLUSION

[26] For the foregoing reasons, the present application should be dismissed. The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-1161-17

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.

2. No serious question of general importance is certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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