

Federal Court



Cour fédérale

Date: 20171013

Docket: IMM-1283-17

Citation: 2017 FC 909

Ottawa, Ontario, October 13, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**LASZLO CSIKJA
KRISZTINA HANKO**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Court is judicially reviewing a decision of Senior Immigration Officer [the Officer] on the applicants' application for a Pre-Removal Risk Assessment [PRRA].

[2] The parties were informed following the oral hearing that this application would be allowed because the Officer copied the state protection analysis from a decision of the Refugee

Protection Division [RPD] on the applicants' son's claim for protection. These are my reasons for that decision.

[3] The applicants are Roma from Hungary. Mr. Csikja arrived in Canada on November 13, 2011, as a minor with his family. They filed a claim for refugee protection which, as of the date of the PRRA decision, February 6, 2017, was still outstanding. While in Canada, Mr. Csikja formed a relationship with Ms. Hanko, and they had one child, Laszlo Csikja, born February 2, 2013, who is a Canadian citizen.

[4] Ms. Hanko and her immediate family were facing removal from Canada, and they decided to return to Hungary in June 2013. Ms. Hanko took Laszlo Csikja with her.

[5] After hearing of incidents involving his common law spouse Ms. Hanko and his son, Mr. Csikja withdrew his claim for refugee protection and returned to Hungary in August 2013, to be with them. In Hungary, their second child, Kevin Hanko, was born on April 20, 2015.

[6] After suffering further incidents as a consequence of their ethnic origin, Mr. Csikja and Ms. Hanko, and their two sons fled to Canada, arriving on March 4, 2016. Neither parent was entitled to make a claim for refugee protection. Their Canadian born son had no need for one to remain in Canada. A claim for refugee protection was made by the younger child, Kevin Hanko, and was rejected by the RPD on September 8, 2016. Both parents filed an application for a PRRA. The Officer rejected that application on February 6, 2017.

[7] One of the material findings of the Officer, in rejecting the PRRA application, was that state protection was available to the applicants in Hungary.

[8] In the state protection analysis, the Officer largely copied the summary of the submitted documents from the RPD Decision, and he reproduced exactly, the state protection analysis given by the RPD. The Officer did not reproduce these with an acknowledgment that they were the words and analysis of the RPD; rather, he wrote them as if they were his own words and his own analysis. The following side-by-side chart, with identical wording copied from the RPD Decision shows this:

RPD Decision	PRRA Decision
<p>[38] The claimant provided extensive country conditions documents concerning treatment of Roma in Hungary. The National Documentation package (NDP) also contains similar information. Documents indicate that the Roma face differing levels of discrimination in employment, education and housing and that many live in impoverished communities and tend to possess less education. Also, examples are provided of periodic attacks against Roma perpetuated by certain individuals or right wing groups. However, while some Roma persons may experience persecution, this does not establish that all Roma face a serious possibility of treatment that rises to the level of persecution. The general situation of discrimination, exclusion and anti-Roma prejudice remains a cause for concern in Hungary. Roma remain the most deprived group with respect to education, employment, health and housing and suffer disproportionately high levels of extreme poverty. In response to this situation, the government has implemented a number of policy measures, often of an innovative nature.</p> <p>...</p>	<p>Counsel submitted <u>extensive country conditions documents concerning treatment of Roma in Hungary. Documents indicate that the Roma face differing levels of discrimination in employment, education and housing and the many living impoverished communities and [tend] to possess less education. There are also specific attacks against Roma perpetuated by certain individuals or right wing groups. However, while some Roma persons may experience persecution, this does not establish that all Roma face a serious possibility of treatment that rises to the level of persecution. The general situation of discrimination, exclusion and anti-Roma prejudice remains a cause for serious concern in Hungary. Roma remain the most deprived group with respect to education, employment, health and housing and suffer disproportionately high levels of extreme poverty. In response to this situation the government has implemented a number of policy measures.</u></p>

<p>[41] The Panel would be remiss if it did not acknowledge and consider that there is information in the documentation to indicate the violent attacks against Roma continued, generating strong public concern and intense disputes as to the existence and scale of racially motivated crimes. Human rights NGOs complained that law enforcement authorities, prosecutors, and courts were reluctant to recognize racial motivation for many crimes. However this criticism noted that they do prosecute crimes when the physical assault has occurred.</p> <p>[42] The documentary evidence regarding government operational steps to protect the Roma is mixed. There is evidence of actions, including arrests of Guardists, racists and those targeting the Roma. There are also reports of violence and intimidation including marches of paramilitary groups in Roma settlements where the state response was less than perfect.</p> <p>[43] State protection does not have to be perfect. However, the evidence, noted earlier in these reasons, before the Panel shows that Hungary is providing operationally effective state protection.</p>	<p><u>Documentary evidence indicates that violent attacks against Roma continued generating strong public concern and intense disputes as to the existence and scale of racially motivated crimes Human Rights NGOs complained that law enforcement authorities, prosecutors and courts were reluctant to recognize racial motivation for many crimes. However this criticism noted that they do prosecute crimes when the physical assault has occurred.</u></p> <p>There is <u>documentary evidence regarding government operational steps to protect the Roma is mixed. There is evidence of actions including arrests of Guardists, racists and those targeting the Roma. There are also reports of violence and intimidation including marches of paramilitary groups in Roma settlements where the state response was less than perfect.</u></p> <p><u>State protection does not have to be perfect. However the evidence shows that Hungary is providing operationally effective state protection.</u></p>
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[9] In addition to these four paragraphs, the Officer copied all or part of paragraphs 25, 26, 29, 32, 33, 34, and 35 of the RPD Decision.

[10] The Supreme Court of Canada in *Cojocar v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, held that incorporating substantial amounts of material from

submissions or other sources into reasons does not without more permit the decision to be set aside. However, the Supreme Court also stated at paragraph 36 that the presumption of judicial impartiality and integrity is rebutted if “the copying is of such a character that a reasonable person apprised of the circumstances would conclude that the judge did not put her mind to the evidence and the issues and did not render an impartial, independent decision.” To the same effect are the decisions of the Federal Court of Appeal in *Janssen-Ortho Inc v Apotex Inc*, 2009 FCA 212 at paragraphs 73-79, and *Es-Sayyid v Canada (Minister of Public Safety & Emergency Preparedness)*, 2012 FCA 59 at paragraphs 61-63.

[11] These applicants have never had their risk assessed and thus the PRRA application for them was of critical importance. It is also critical as Canada does not return persons to their country of origin if doing so puts them at risk. A state protection finding is sufficient to reject a PRRA application. In these circumstances and given the extent of copying on the state protection analysis, I am not satisfied that this Officer turned his or her mind independently to that issue. This goes directly to whether these applicants received procedural fairness. I am of the view that they did not, and that this decision cannot stand.

[12] There is no question suggested for certification and the basis on which this Judgment is made reflects a very long-standing and uncontroverted legal principle.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted, the decision under review is set aside and the application is to be determined by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1283-17

STYLE OF CAUSE: LASZLO CSIKJA, KRISZTINA HANKO v MINISTER
OF CITIZENSHIP AND IMMIGRATION

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ORDER AND REASONS: ZINN J.

DATED: OCTOBER 13, 2017

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