

Federal Court



Cour fédérale

**Date: 20171027**

**Docket: IMM-1290-17**

**Citation: 2017 FC 961**

**Ottawa, Ontario, October 27, 2017**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**JONOS BOZIK  
JANOSNE BOZIK**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Jonos and Janosne Bozik seek judicial review of the decision of a Pre-removal Risk Assessment Officer who concluded that the couple had not established that they would be at risk of persecution on the basis of their Roma ethnicity if they were required to return to Hungary.

[2] For the reasons that follow, I have concluded that the Officer made several errors in assessing the risk that the Boziks may face in Hungary. Consequently, their application for judicial review will be granted.

**I. Background**

[3] The Boziks first came to Canada in February of 2012, following which they made a refugee claim. They subsequently withdrew the claim and returned to Hungary when Mrs. Bozik's mother became ill and required a caregiver. The Boziks say that they continued to face persecutory treatment after their return to Hungary, leading to their decision to return to Canada in October of 2016.

[4] Because they had withdrawn their earlier refugee claim, the only risk assessment to which the Boziks were entitled was a Pre-removal Risk Assessment. They provided a substantial volume of material in support of their PRRA application, including, amongst other things, written submissions from counsel, an affidavit sworn by Mr. Bozik, medical reports, and country condition information.

[5] In a relatively brief decision, the PRRA Officer noted that the violence and the events described in the PRRA application was experienced by other individuals living in the Bozik's neighbourhood. The Officer found that the Boziks had provided insufficient evidence to establish that the treatment that they had personally faced as a result of their Roma ethnicity was so severe as to rise to the level of persecution.

[6] In coming to this conclusion, the Officer noted that the Boziks had a place to live when they were in Hungary, and that they had provided insufficient evidence to establish that they had been evicted from their home. The Boziks had, moreover, been able to access health care and other forms of social assistance while they lived in Hungary. This led the Officer to conclude that the Boziks had provided insufficient evidence to establish that they had suffered

discrimination in the provision of health care, housing, education and other social services that amounted to persecution.

[7] The Officer noted that while the Boziks claimed to have witnessed neo-Nazis attacking their neighbours, and police dragging Roma from their homes and destroying their possessions, there was insufficient evidence to establish that the couple had ever sought police assistance. Noting that Hungary is a democracy, the Officer stated that it was incumbent on the Boziks to have exhausted all courses of action open to them, including seeking assistance from non-governmental organizations, before seeking the protection of Canada.

[8] Finally, the Officer found that the fact that the Boziks had returned to Hungary in 2012 suggested that they lacked a subjective fear of persecution.

[9] These findings led the Officer to conclude that the Boziks had not established that they faced more than a possibility of persecution in Hungary, nor had they established that they were persons in need of protection under section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

## **II. Analysis**

[10] The Boziks have raised a number of issues in their application for judicial review, some of which may be quickly disposed of.

### *A. The Refugee Claims of Other Members of the Boziks' Family*

[11] I am not persuaded that the Officer erred in failing to expressly address the fact that several members of the Boziks' family had made successful refugee claims in Canada. It is true that this Court has found that a refugee decision cannot stand where several individuals are

granted refugee status and one applicant is refused, based on exactly the same facts and evidence: *Djouah v. Canada (Citizenship and Immigration)*, 2013 FC 884 at para 25, 438 F.T.R. 178.

[12] The Boziks did not, however, establish that the successful claims of their family members were based on the same facts and evidence as their own risk-based claims. The only information provided to the PRRA Officer regarding the refugee claims of the Boziks' family members was the one page "Notice of Decision" for each case. The reasons of the Board for allowing the claims were not provided, nor was any information provided with respect to the nature of the claims or the evidence that was before the Board in each of those cases.

B. *The Typographical and Grammatical Errors in the PRRA Decision*

[13] While the PRRA decision contained several grammatical and typographical errors, the errors do not reflect a misunderstanding of the evidence and would not, by themselves, justify the quashing of the decision: *Petrova v. Canada (Citizenship and Immigration)*, 2004 FC 506 at para. 51, 251 F.T.R. 43.

C. *The Homelessness Issue*

[14] I am, however, satisfied that the Officer erred in finding that the Boziks had not established that they would likely be homeless if they were to return to Hungary.

[15] The information provided to the PRRA Officer included an affidavit from Mr. Bozik in which he stated under oath that commencing in 2014, police and "commandos" started forcibly evicting Roma from their homes in the Boziks' neighbourhood. According to Mr. Bozik's

affidavit, the police and the commandos would drag Roma from their homes and would throw their possessions into the street.

[16] Mr. Bozik's affidavit went on to state that in a period of a few weeks in the spring of 2016, police and commandos forcibly evicted almost all of the Bozik's neighbours from their homes, and the Boziks knew that they would be next. Rather than wait to be evicted and have their possessions destroyed, Mr. Bozik stated that the couple decided to sell all of their belongings and to flee to Canada. Mr. Bozik further stated that if the couple were to return to Hungary, they would have no place to live and would end up homeless, as had happened to several members of their family.

[17] The Officer couched her finding that the Boziks had not established that they would likely be homeless if they were to return to Hungary in terms of the sufficiency of the evidence. The evidence submitted by the Boziks was, however, both detailed and was provided under oath. It was, moreover, supported by country condition information that was before the PRRA Officer that discussed forced evictions in the Boziks' neighbourhood during the period in question.

[18] The Officer could not have concluded that the Boziks had failed to establish that they were about to be evicted unless she disbelieved Mr. Bozik's sworn evidence on this issue. I am thus satisfied that what the Officer characterized as a question of the sufficiency of the evidence was in fact a disguised negative credibility finding on an issue that was central to the risk that the Boziks faced in Hungary.

[19] Before making such a negative credibility finding, the Officer was bound to consider whether it was necessary to hold an oral hearing, in accordance with the provisions of subsection

113(a) of the *Immigration and Refugee Protection Act: Majali v. Canada (Citizenship and Immigration)*, 2017 FC 275 at para. 29, [2017] F.C.J. No. 276.

[20] I note that there is a divergence in the jurisprudence of this Court as to whether the failure to hold an oral hearing in a PRRA determination is reviewable on the standard of reasonableness or correctness: *Zmari v. Canada (Citizenship and Immigration)*, 2016 FC 132 at paras. 10-13, 39 Imm. L.R. (4<sup>th</sup>) 92. It is not, however, necessary to resolve this issue in this case, however, as I am satisfied that it was unreasonable for the officer to make what was in essence a negative credibility finding on an issue that was central to the risk asserted in the PRRA application without holding an oral hearing, and the failure of the Officer to do so constitutes a reviewable error that justifies the setting aside of the PRRA decision.

[21] Moreover, as will be explained below, the Officer's error with respect to the issue of homelessness undermines other findings made in the PRRA decision.

D. *The Ability of the Boziks to Obtain Healthcare in Hungary*

[22] The Officer based her finding that the Boziks would be able to access social services in Hungary, including the health care that Mrs. Bozik needs for her cardiac condition, on the fact that she had been able to access such services in the past. However, as Mr. Bozik explained in the affidavit that was provided with the couple's PRRA submissions, accessing health care in Hungary requires a valid address card. Mrs. Bozik had a valid address cards in the years preceding the couple's departure from Hungary, with the result that they were able to obtain health care. That address card is, however, no longer valid.

[23] A risk assessment is, however, intended to be forward-looking. The evidence before the PRRA Officer from Mr. Bozik was that the couple would be homeless if they were to return to Hungary. Mr. Bozik noted that without a valid address card, the couple would be unable to access social services in Hungary, including health care. Because the Officer clearly did not believe Mr. Bozik's assertion that the couple would be homeless, she did not consider whether this change in circumstances would affect the Boziks' ability to obtain health care in the future.

[24] Before leaving the issue of access to healthcare, I must also address the issue of Mrs. Bozik's hysterectomy.

[25] As was noted earlier, the PRRA Officer noted the healthcare that the Boziks had received in the past, including the hysterectomy that Mrs. Bozik underwent when she was in her 30s. What the Officer appears to have overlooked is that the Boziks' sworn assertion that Mrs. Bozik's uterus was removed without her consent. While it is true that this occurred many years ago, it was perverse for the Officer to find such a profound violation of a woman's bodily integrity to be proof that she had been able to obtain health care in Hungary.

E. *The State Protection Issue*

[26] The final difficulty with the PRRA decision relates to the Officer's finding that there was insufficient evidence to show that the Boziks had ever sought the assistance of the Hungarian police. According to the PRRA Officer, because Hungary is a democracy, it was necessary for the Boziks to exhaust all avenues of assistance that were open to them before seeking surrogate protection in Canada.

[27] However, the uncontradicted evidence of Mr. Bozik was that the police were actively involved in the persecution of the Roma population in Hungary, and played an integral role in the forced evictions in the Boziks' neighbourhood. Mr. Bozik had further stated in his affidavit that "[g]oing to the police is a waste of time; they do not help us".

[28] While it is true that Hungary is a democracy, not all democracies are created equal. As this Court observed in *Rodriguez Capitaine v. Canada (Citizenship and Immigration)*, 2008 FC 98 at paragraphs 20-22, [2008] F.C.J. No. 181, democracies exist along a spectrum. It is thus necessary to consider where a country sits on that spectrum in order to determine what will be required to rebut the presumption that a state is willing and able to protect its citizens.

[29] An applicant may be required to exhaust all avenues of recourse available to her or him in a developed democracy such as the United States or Israel: *Rodriguez Capitaine* above at para. 21, citing *Hinzman v. Canada (Citizenship and Immigration)*, 2007 FCA 171, 362 N.R. 1; *Sow v. Canada (Citizenship and Immigration)*, 2011 FC 646 at para. 12. This proposition does not, however, apply to all countries, wherever they may stand on the "democracy spectrum": *Rodriguez Capitaine* above at para. 22.

[30] Risk assessors must therefore consider the evidence offered as to whether a country is able or willing to protect its citizens before concluding whether state protection is available to individuals in their country of origin.

[31] Although there was country condition information before the PRRA Officer that discussed the unwillingness of the Hungarian police to assist the country's Roma citizens, this evidence was not addressed by the Officer. As was noted above, the PRRA Officer simply found



that because Hungary was a democracy, it was necessary for the Boziks to exhaust all avenues of assistance open to them in order to rebut the presumption that state protection would be available to them in Hungary. The Officer failed to consider whether the protection that would be available to people in the Boziks' situation would be adequate.

### **III. Conclusion**

[32] For these reasons, the application for judicial review is allowed. I agree with the parties that the case is fact-specific and does not raise a question for certification.

**JUDGMENT IN IMM-1290-17**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is allowed and the matter is remitted to a different PRRA Officer for re-determination.

"Anne L. Mactavish"

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Judge

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

**DOCKET:** IMM-1290-17

**STYLE OF CAUSE:** JONOS BOZIK JANOSNE BOZIK v THE MINISTER OF  
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