

Federal Court



Cour fédérale

Date: 20180308

Docket: IMM-2709-17

Citation: 2018 FC 273

Ottawa, Ontario, March 8, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**MAGDOLNA HORVATH
BOGLARKA MEZEI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION
AND THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Ms Magdolna Horvath and her daughter, Boglarka Mezei, arrived in Canada from Hungary in 2011. They applied for refugee protection and for a pre-removal risk assessment (PRRA), but withdrew their claims and returned to Hungary in 2012.

[2] The applicants returned to Canada in 2015 and, once again, claimed refugee protection but their claim was denied because of their previous withdrawal (pursuant to s 101(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – see Annex for provisions cited). They also filed a fresh PRRA application, but it was denied, and an application for judicial review was dismissed.

[3] The applicants then filed an application for permanent residence on humanitarian and compassionate grounds (H&C). Their H&C application was pending at the time their removal from Canada was scheduled on June 20, 2017. They requested an immigration enforcement officer to defer their removal until they received an answer on the H&C. The officer refused. I stayed the applicants' removal from Canada to allow them to pursue this application for judicial review of the officer's decision.

[4] The applicants submit that the officer's decision not to defer their removal from Canada was unreasonable because it failed to take adequate account of the risks and hardships they would face in Hungary as members of the Roma ethnic minority. They ask me to quash the officer's decision and order another officer to reconsider their deferral request.

[5] I can find no basis for overturning the officer's decision. It was not an unreasonable outcome considering the evidence.

[6] The sole issue is whether the officer's decision was unreasonable.

II. Was the officer's decision unreasonable?

[7] The officer began by referring to the statutory duty to enforce removal orders as soon as possible (IRPA, s 48(2)) and to guidelines stating that a pending H&C application does not give rise to an automatic stay of removal.

[8] The officer went on to consider the challenges that Ms Horvath's daughter would face if she had to leave Canada and live in Hungary. The officer was not satisfied that she would be denied educational opportunities there. In addition, she would have the support of her father and siblings, who remain in Hungary. The officer also considered Ms Horvath's medical needs but was not persuaded that the medication she requires would be unavailable to her in Hungary. A physician confirmed that Ms Horvath was fit to travel to Hungary by air.

[9] Finally, the officer considered the possibility that the applicants would face a risk of death, extreme sanction, or inhumane treatment in Hungary. The evidence put forward by the applicants did not show any significant change in the period following their unsuccessful PRRA's.

[10] The applicants submit that the officer's conclusion was unreasonable because the evidence shows that the Roma population in Hungary faces serious hardships that amount to a risk of death, extreme sanction, or inhumane treatment. Most Roma are unemployed, segregated, poor, homeless, and lacking access to health care.

[11] I disagree. The officer was under a statutory obligation to remove the applicants as soon as possible. The officer was not in a position, and had no legal obligation, to carry out a full analysis of the humanitarian and compassionate considerations underlying the applicants' H&C application. The evidence relied on by the applicants was of a general nature, not specific to their personal circumstances. For example, they provided limited information about the situation of their other family members who continue to reside in Hungary, and put forward little evidence about any adverse health consequences that Ms Horvath would face there.

[12] In light of the evidence before the officer, I cannot conclude that her decision was unreasonable.

III. Conclusion and Disposition

[13] Given the circumstances, the officer provided a fair assessment of the evidence submitted by the applicants in support of their request for a deferral of their removal from Canada. The officer's decision refusing the deferral was not unreasonable on that evidence. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-2709-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
and no question of general importance is stated.

"James W. O'Reilly"

Judge

ANNEX

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27

Effect

Conséquence

48 (2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.

48 (2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être exécutée dès que possible.

Ineligibility

Irrecevabilité

101 (1) A claim is ineligible to be referred to the Refugee Protection Division if

101 (1) La demande est irrecevable dans les cas suivants:

...

[...]

(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;

c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2709-17

STYLE OF CAUSE: MAGDOLNA HORVATH, BOGLARKA MEZEI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION
AND THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 29, 2017

JUDGMENT AND REASONS: O'REILLY J.

DATED: MARCH 8, 2018

APPEARANCES:

Kristina Cooke FOR THE APPLICANTS

Christopher Crighton FOR THE RESPONDENTS

SOLICITORS OF RECORD:

DAVIS & GRICE FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Deputy Attorney General of FOR THE RESPONDENTS
Canada
Toronto, Ontario