

Federal Court



Cour fédérale

Date: 20180220

Docket: IMM-3426-17

Citation: 2018 FC 176

Ottawa, Ontario, February 20, 2018

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**RICHARD TAMAS GLASSL
HAJNALKA GLASSL**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Delivered from the Bench at Toronto, Ontario on February 1, 2018

I. PROCEEDING

[1] Mr. Richard Tamas Glassl and Ms. Hajnalka Glassl [the Applicants] have applied for judicial review of a decision of the Refugee Appeal Division [RAD] dated July 18, 2017 [the

Decision]. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. BACKGROUND

[2] The Applicants are married and are both citizens of Hungary. Ms. Hajnalka Glassl was the Principal Appellant before the RAD, and Mr. Richard Tamas Glassl was the Co-Appellant. Here they will be described in a similar fashion but using the term “Applicant”.

[3] On October 2, 2015, Mr. Glassl entered Canada to determine if this country was welcoming. He re-availed to Hungary on October 23, 2015. Three months later on January 9, 2016 both Applicants came to Canada and made a claim for refugee protection.

[4] The Applicants say they cannot return to Hungary because of the Principal Applicant’s Roma ethnicity. In her Basis of Claim form, she stated that she is “half Roma” because her mother is Roma. The Co-Applicant is not Roma but he fears being perceived as a member of the Roma community because he is married to the Principal Applicant.

[5] The Principal Applicant also fears abuse at the hands of her former spouse, Mr. Stopp. Mr. Stopp is a Hungarian national, and a member of the Jobbik party. The Principal Applicant married Mr. Stopp on November 22, 1998 and they divorced on April 23, 2005. She claimed that she divorced Mr. Stopp because of his violent tendencies and racist views. Even though they divorced 12 years ago, she alleges that he continues to harass and behave violently towards her.

III. DECISIONS

A. *Refugee Protection Division (RPD) Decision*

[6] The RPD considered whether the Principal Applicant is Roma, whether she was persecuted in Hungary due to her ethnicity, and whether she would be at risk on her return to Hungary. The Applicant stated that her mother is Roma, and her father is Hungarian. The RPD found that she did not provide “any objective documentation to substantiate that part of her heritage is Roma.” The Applicant testified she was raised by her parents as Hungarian, and not Roma. She also testified that because the colour of her skin is lighter than other Roma individuals, “her experience (as a Roma) has been less harsh.” At the Port of Entry (POE), the following exchange occurred: “Officer: Simply looking at you I can tell that you are not Roma. Is this correct? Answer “Well yes”. Further, when asked if she was Roma, she replied “Not Really”. The RPD found it is unlikely the general population would perceive her to be Roma based on her physical appearance. The RPD concluded the Applicants did not provide credible evidence to establish how the general population would know the Principal Applicant’s mother is Roma.

[7] The RPD considered only the Principal Applicant’s claim against Mr. Stopp because the Co-Applicant testified that he did not fear him. The RPD noted that the Applicants had three interviews with Canadian immigration officials after arriving in Canada and during these interviews they did not mention Mr. Stopp. Before the RPD, the Principal Applicant testified that she did in fact mention Mr. Stopp but immigration officials did not listen to her claims and would not write down her statements. The RPD found it was not reasonable that immigration

officers would have refused to record this essential information. The RPD found it would be reasonable to assume that the Applicants were asked by immigration officials who they feared, and that in response they would mention all agents of persecution, including Mr. Stopp.

[8] The RPD found, on a balance of probabilities, it is unlikely Mr. Stopp would continue to harass, threaten and assault the Principal Applicant twelve years after the divorce. In the alternative, the RPD concluded that if Mr. Stopp was pursuing and harassing the Principal Applicant, she could move elsewhere in Hungary to elude him.

B. *RAD Decision*

[9] The RAD agreed with the RPD that the Principal Applicant is not a member of the Roma community based on her physical complexion, her family names, including the fact that she used her husbands' non-Roma surnames during multiple marriages and the lack of documentary evidence. The RAD considered the exchange between the Principal Applicant and the immigration officer at the POE, described above and found her responses to questions about her identity as Roma were evasive.

[10] The RAD acknowledged the Principal Applicant's claim that she fears Mr. Stopp. The RAD considered Federal Court jurisprudence which establishes statements made to immigration authorities at the POE may be considered to evaluate a claimant's credibility. The RAD

referenced *Navaratnam v Canada (Citizenship and Immigration)* 2011 FC 856, in which Justice Shore held:

It is well established by the jurisprudence that declarations to immigration authorities at the [Point of Entry] POE may be considered by the Board in order to evaluate a claimant's credibility.

[11] The RAD found it was reasonable to expect that the Applicants would have mentioned Mr. Stopp when providing their answer at the POE about whom they feared. The RAD also concluded the Applicants did not explain the omission. As a result, the RAD concluded the Principal Applicant does not fear Mr. Stopp.

[12] The RAD considered the Co-Applicant's claim that because he is married to the Principal Applicant he is also perceived to be a member of the Roma community. The RAD noted that he gave contradictory testimony about whether he is perceived in Hungary as Roma, or whether he is mistreated because he is of German descent. The RPD concluded that he was not credible and the RAD noted that he did not challenge this finding.

[13] The RAD concluded that the issue of state protection had not been considered by the RPD. The RAD asked the Applicants to provide written submissions on the question of whether state protection would be available to them if they were to return to Hungary.

[14] The RAD acknowledged that both Applicants allege that they have suffered persecution in Hungary and that the state did not provide protection. The Co-Applicant stated his car was

vandalized in June of 2013 and he reported the matter to the police. The RAD found the evidence indicates the police attempted to investigate the matter but because the perpetrators were unknown, the investigation was closed. The RAD found there was no evidence to indicate the Co-Applicant was denied protection by the state.

[15] The RAD also considered the five instances of persecution alleged by the Principal Applicant: in May 2006 four men followed her, were verbally abusive and one of them shoved her; in May 2011, she and her sister were denied entry to a bar; in December 2011 her family received a threatening telephone call from an unknown individual; in February 2012 she was accused of shoplifting by a store security guard and was then molested by the guard while he searched for the stolen goods; and, in August 2012 she was involved in an altercation with members of the Guardists.

[16] The RAD considered each incident but found the Principal Applicant did not rebut the presumption of state protection. The RAD noted that at the POE, when asked whom she feared in Hungary, she did not mention that she had been threatened or assaulted. The RAD found that it is reasonable to expect that the Principal Applicant would have mentioned these incidents. The RAD concluded that the Principal Applicant failed to rebut the presumption of state protection.

IV. THE ISSUES

[17] The Applicants say that the Decision was unreasonable because:

- Undue weight was placed on the POE notes.

- The RAD ignored an IRB report dated February 1, 1999 about the Roma in Hungary which described features which identify Roma people.
- The requirement for corroboration of the Principal Applicant's Roma ethnicity was unreasonable because there are no official documents which establish ethnicity.
- The analysis of state protection was tainted by the finding that the Principal Applicant was not Roma.

V. DISCUSSION AND CONCLUSION

[18] In my view, the Applicants' failure in the three POE interviews to refer to Mr. Stopp and their failure to refer to the incidents in which the Principal Applicant says she was targeted as a Roma are deficiencies with respect to fundamental aspects of the refugee claim. They are not mere details and it was therefore reasonable of the RAD to make negative credibility findings based on those significant omissions.

[19] With regard to the IRB report, the Principal Applicant did not testify that she had mannerisms which revealed her Roma ethnicity. In these circumstances there was no need for the RAD to mention the report which spoke of the manner of dress, carriage and loud speech attributed to Roma people.

[20] In expressing its concern that there was no documentation to establish the Principal Applicant's Roma ethnicity, the RAD did not suggest that official documents were required. The

RAD suggested at paragraph 8 of the Decision that documents from the Principal Applicant's family members or organizations would have been helpful. This concern about corroboration was entirely reasonable given the Applicants' statement at the POE that she was "not really Roma" because she did not have traditional Roma skin colour and had not used a Roma surname for many years.

[21] The state protection analysis focussed on each alleged incident and assumed it had occurred notwithstanding the Principal Applicant's failure to mention the incidents during the POE interviews. In each case the RAD considered whether the police had been contacted and if so the reasonableness and effectiveness of the police response. I can find no error in this approach.

VI. CONCLUSION

[22] For all these reasons, the Application for judicial review will be dismissed.

VII. CERTIFICATION

[23] No question was posed for certification for appeal.

JUDGMENT IN IMM-3426-17

THIS COURT'S JUDGMENT is that the Application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3426-17

STYLE OF CAUSE: RICHARD TAMAS GLASSL, HAJNALKA
GLASSL v THE MINISTER OF CITIZENSHIP
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