

Federal Court



Cour fédérale

**Date: 20190312**

**Docket: IMM-746-18**

**Citation: 2019 FC 296**

**Montréal, Quebec, March 12, 2019**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**ANDRASNE RUSZO  
MARK RUSZO  
CINTIA RUSZO  
PATRICIA RUSZO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] The Applicants, Ms. Andrasne Ruszo and her three (3) children, Mark Ruszo, Cintia Ruszo and Patricia Ruszo, are citizens of Hungary. They came to Canada in 2011 and applied for refugee protection. Ms. Ruszo's children are now adults, although they were minors during the relevant period in Hungary.

[2] The Applicants claim to fear persecution on the basis of their Roma ethnicity. They allege that while living in Hungary, they suffered discrimination, harassment, threats and physical violence as a consequence of their ethnicity.

[3] In a decision issued on January 25, 2018, the Refugee Protection Division [RPD] rejected the Applicants' claim for protection. The RPD found that the Applicants had not met their onus of demonstrating that they would face persecution if they were to return to Hungary and that they had not rebutted the presumption that state protection was available to them.

[4] The Applicants seek judicial review of the RPD's decision. They allege that the RPD erred in finding that they would face discrimination rather than persecution should they return to Hungary and in determining that adequate state protection would be available to them should they seek it upon their return. The Applicants further contend that the RPD erred in failing to explain why it came to a different conclusion from that made by other RPD members in separate hearings regarding Ms. Ruszo's other children.

[5] For the reasons that follow, the application for judicial review is allowed. I find that in the circumstances of this case, it was incumbent on the RPD member to distinguish its decision from the decisions of the other members of the RPD who accepted the refugee claims of Ms. Ruszo's other children. I arrive at this conclusion based on the fact that the Applicants were similarly situated people and their claims were based in part on the same experiences as those recounted in the other children's claims. In view of my conclusion on this issue, it is not necessary for me to address the other issues raised by the Applicants.

## II. Analysis

[6] It is well established that the question of whether discrimination amounts to persecution, and the question of whether there is adequate state protection, are questions of mixed fact and law which attract the reasonableness standard of review (*Sagharichi v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 796 (FCA) (QL) at para 3; *Ban v Canada (Citizenship and Immigration)*, 2018 FC 987 at para 17; *Mrda v Canada (Citizenship and Immigration)*, 2016 FC 49 at para 24).

[7] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and the law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[8] In addition to the three (3) minor children included in her claim for protection, Ms. Ruszo has other children who, in separate hearings, were found to be Convention refugees. The following decisions were filed as exhibits at the hearing:

- A. Andras Daniel Ruszo (son) and his common-law partner issued by S.S. Kular on January 29, 2014;
- B. Ivett Ruszo (daughter) and her minor daughter issued by R. Tiwari on August 21, 2014;
- C. Eniko Ruszo (daughter) and her minor daughter issued by T. Andrews on February 2, 2015;
- D. Bettina Revesz-Ruszo (daughter) and her spouse issued by M. Fox on March 27, 2017.

[9] The RPD acknowledged the previous decisions but stated that it was obliged to consider the particular circumstances of the Applicants and to adjudicate their claims relying on the most recent information available to it.

[10] While in agreement with the RPD's statement, the Applicants submit that the RPD's obligation did not end there. They contend that the RPD erred in failing to explain why it deviated from the above determinations given that the earlier panels accepted the refugee claims of Ms. Ruszo's other children and the fact that the claims were based in part on the same experiences of acts of racist violence. The other RPD members determined that the claimants had experienced past persecution and that there was a serious possibility that they would experience further persecutory treatment. They also found that the state was unable or unwilling to offer adequate protection. The Applicants claim to have experienced similar ill-treatment and argue that it is unclear why the RPD in this case departed from the earlier determinations. This omission, according to the Applicants, constitutes a lack of transparency.

[11] I agree with the Respondent that each case is to be decided on its own merits and on the basis of the particular evidence before the decision-maker. I also agree that the RPD is not bound by the conclusion reached in another claim, even if the claim involves a relative (*Yeboah v Canada (Citizenship and Immigration)*, 2016 FC 780 at para 25 [*Yeboah*]; *Uygur v Canada (Citizenship and Immigration)*, 2013 FC 752 at paras 28-30; *Pinter v Canada (Citizenship and Immigration)*, 2012 FC 1119 at para 9 [*Pinter*]; *Mengesha v Canada (Citizenship and Immigration)*, 2009 FC 431 at para 5 [*Mengesha*]; *Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2007 FC 6 at para 17 [*Siddiqui*]).

[12] Notwithstanding, I am of the view that the circumstances of this case are such that the RPD member should have distinguished the earlier positive decisions.

[13] The allegations made by the Applicants to support their claim were similar to those made by Ms. Ruszo's other children. The Applicants and Ms. Ruszo's other children allege similar mistreatment, discrimination and physical violence while attending school. Moreover, at least two (2) of the previous claimants rely on a specific incident which is also relied upon by the Applicants in support of their claim. This particular incident involved Ms. Ruszo's husband, who was assaulted by a man with an axe. This same incident is described in the narrative of Ms. Ruszo's son, Andras Daniel, whose claim was accepted on January 29, 2014. It is also mentioned in the decision granting protection to Ms. Ruszo's daughter, Bettina, on March 27, 2017. In the case before me, the RPD found that there was no persuasive evidence suggesting that this "single potentially violent interaction" was related to the family's ethnicity. The RPD also went on to find that state protection would be available to the Applicants were they to seek it upon return to Hungary given the responsive action of the police who arrested the man for threatening the Applicants and had him convicted and sent to jail.

[14] Notably, in arriving at this finding, the RPD made no mention of the consideration of the same incident, by the same agent of persecution, by the two (2) other RPD members who granted refugee protection to Ms. Ruszo's children, Andras Daniel and Bettina. In granting them protection, it is reasonable to assume that they considered the police's response to this incident insufficient proof that state protection was available to them. In any case, the absence of any

mention of the accepted claims in the context of this specific incident raises concerns of transparency, justification and intelligibility.

[15] In addition to this incident, the Applicants also rely on an incident involving a neighbour's dog. The RPD did not find that the release of the dog to threaten Ms. Ruszo's children was persuasive evidence that the children were targeted because of their ethnicity. The RPD then went on to find that there was insufficient evidence to support Ms. Ruszo's allegation that the police were racist because they did not send officers out to investigate the incident when they heard the name of her husband. The RPD also added that even if the Applicants had been discriminated against by their neighbour, the lack of police response by one local police station did not represent a lack of state protection as a whole. While that may be true in principle, the same incident was relied upon by Ms. Ruszo's son, Andras Daniel, in his claim, which was accepted.

[16] Finally, Ms. Ruszo also claims in her amended Personal Information Form that she fears returning to Hungary as she and her children will be killed by her late husband's family. She alleges that her husband was very abusive to her and her children over the years and that although the police came, they did not take the matter seriously. She also alleges that her late husband's family began harassing her when she inherited the family home from her husband. The issue of Ms. Ruszo's abuse at the hand of her former husband and fear from his family was also raised in the claim of Ms. Ruszo's daughter, Bettina.

[17] In summary, given the similarity of the allegations relied upon to support the various claims as well as the fact that the claims were based in part on the same agents of persecution and involve the same conduct in seeking state protection, and also upon considering that the claims originate from members of the same immediate family, it is reasonable to consider the Applicants and Ms. Ruszo's other children as "similarly situated persons" and to presume that they were exposed to the same risk in the absence of some reason to distinguish the Applicants from Ms. Ruszo's other children (*Gomez Flores v Canada (Citizenship and Immigration)*, 2016 FC 1402 at para 15 [*Gomez Flores*]; *Yeboah* at para 26; *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at para 24 [*Mendoza*]).

[18] It may be that the RPD member had a good reason for reaching a different conclusion. However, as four (4) different RPD members came to the conclusion that Ms. Ruszo's other children ought to be granted refugee protection, the Applicants were reasonably entitled to receive a more fulsome explanation of why the RPD member did not subscribe to the same conclusion as the other RPD members regarding similar treatment and incidents. In the absence of such an explanation, the decision of the RPD is unreasonable as it lacks justification, transparency and intelligibility (*Dunsmuir* at para 47; *Gomez Flores* at para 17; *Yeboah* at para 26; *Mendoza* at paras 25-26; *Pinter* at para 9; *Mengesha* at para 5; *Siddiqui* at paras 18-19).

[19] Consequently, the application for judicial review is allowed, the decision is set aside and the matter is remitted back to a different member for redetermination.

[20] No question of general importance was proposed for certification and I agree that none arise.



**JUDGMENT in IMM-746-18**

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

1. The application for judicial review is allowed;
2. The Refugee Protection Division's decision dated January 25, 2018 is set aside;
3. The matter is remitted back for redetermination by a different member of the Refugee Protection Division; and
4. No question of general importance is certified.

"Sylvie E. Roussel"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-746-18

**STYLE OF CAUSE:** ANDRASNE RUSZO, MARK RUSZO, CINTIA RUSZO, PATRICIA RUSZO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 24, 2018

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** MARCH 12, 2019

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