

Federal Court



Cour fédérale

Date: 20190712

Docket: IMM-3004-18

Citation: 2019 FC 931

St. John's, Newfoundland and Labrador, July 12, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**ISTVANNE GLONCZI
OLIVER GLONCZI**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Istvanne Gloncz (the “Principal Applicant”) and her adult son Oliver Gloncz (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”) dated June 12, 2018. In the decision, the RPD found that the Applicants were neither Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97 (1) of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Hungary. They are Roma. They entered Canada on March 7, 2012. They sought protection on the basis of their Roma ethnicity.

[3] The RPD found that Budapest provided an Internal Flight Alternative to the Applicants. It also found that state protection was available to them.

[4] The Applicants argue that the RPD's findings in this regard are unreasonable because it failed to consider whether the efforts of the state in Hungary provide protection to Roma people at the operational level. They also submit that the RPD disregarded relevant documentary evidence of discrimination in Hungary against the Roma people.

[5] The Minister of Citizenship and Immigration (the "Respondent") submits that the decision of the RPD is reasonable and should withstand judicial intervention.

[6] The IFA finding is reviewable on the standard of reasonableness; see the decision in *Kina v. Canada (Citizenship and Immigration)*, 2014 FC 284.

[7] The finding of state protection is also reviewable on the standard of reasonableness: see the decision in *Ruszo v Canada (Minister of Citizenship and Immigration)* (2013), 440 F.T.R. 106. The application of the test to the facts is reviewable on the standard of reasonableness: see the decision in *Ruszo v Canada (Minister of Citizenship and Immigration)* (2013), 440 F.T.R. 106.

[8] According to the decision in *Dunsmuir v. New Brunswick* [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[9] On the basis of the material submitted and the arguments made, I am satisfied that neither the IFA nor the state protection findings meet the standard of reasonableness.

[10] I agree with the submissions of the Applicants that the RPD's decision is unreasonable because it does not show that the decision-maker considered the effectiveness of the programs that were implemented by the state, as a means of providing state protection for Roma people.

[11] The RPD referred to the decision in *Mudrak v. Canada (Citizenship and Immigration)*, 2015 FC 188, which found that police oversight agencies can support a finding that state protection is available. However, the jurisprudence of the Court is divided on the issue of whether administrative programs could provide adequate state protection. The RPD did not acknowledge this division of opinion, as discussed by the decision in *Balogh v. Canada (Citizenship and Immigration)* (2015), 474 F.T.R. 75.

[12] In my opinion, the RPD unreasonably failed to address the conflicting jurisprudence and explain how alternatives to adequate police protection results in state protection.

[13] The RPD found that the Applicants had failed to show that Budapest was not a reasonable IFA. It considered the two prong test for an IFA that is that the Applicants would not personally be at risk of persecution and second, that it was not unreasonable for them to seek refuge in that city.

[14] In my opinion, the RPD did not engage with the documentary evidence and explain its conclusion that state organizations would provide better protection to the Applicants in Budapest than elsewhere in Hungary.

[15] It is not necessary for me to address the other arguments raised by the Applicants.

[16] In the result, this application for judicial review is allowed, the decision of the RPD is set aside and the matter submitted to a differently constituted panel of the RPD for redetermination. There is no question for certification arising.

JUDGMENT IN 3004-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Refugee Protection Division is set aside and the matter submitted to a differently constituted panel for redetermination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3004-18

STYLE OF CAUSE: ISTVANNE GLONCZI, OLIVER GLONCZI v.
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 13, 2019

**REASONS FOR JUDGMENT
AND JUDGMENT:** HENEGHAN J.

DATED: JULY 12, 2019

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