Federal Court  Cour fédérale

Date: 20210303

Docket: IMM-705-21

Citation: 2021 FC 196

Fredericton, New Brunswick, March 3, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

ATTILA TIBOR LAKATOS
AGNES HORVATH
ATTILA LAKATOS
NIKOLASZ KRISZTIAN LAKATOS

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ORDER AND REASONS

[1] This Motion is brought by the Applicant family for an order staying their removal to Hungary pending the determination of their application for leave and judicial review of the decision of a Pre-Removal Risk Assessment (PRRA) officer received on January 18, 2021. The PRRA officer concluded that the Applicants would not be at risk on return to Hungary.

[2] The Applicants are scheduled for removal from Canada on March 5, 2021.

[3] This Motion was heard by videoconference on March 2, 2021.

[4] Attila Tibor Lakatos, his wife, Agnes Horvath and their two young children, are citizens of Hungary and of Roma ethnicity. In 2015, the Refugee Protection Division (RPD) denied their claim for refugee protection. Their appeal to the Refugee Appeal Division (RAD) was dismissed. The determinative issue for both the RPD and the RAD was credibility. Their judicial review application of the RAD decision was also dismissed by decision of this Court in *Lakatos v Canada (Minister of Citizenship and Immigration),* 2018 FC 1061.

[5] In December 2018, the Applicant family was removed from Canada to Hungary.

[6] On November 22, 2019, the Applicants re-entered Canada. The Applicants were ineligible to make another refugee claim. Because the Applicants did not obtain authorization to return to Canada, an inadmissibility report was prepared under section 44(1) *Immigration and Refugee Protection Act* (IRPA).

[7] As the Applicants were under an enforceable removal order; they were eligible to request protection through the pre-removal risk assessment (PRRA) process. The Applicants made a PRRA application in January 2020 and filed further submissions in February and September 2020.

[8] The PRRA decision was received by the Applicants on January 18, 2021, finding that they would not be at risk on return to Hungary. A direction to report was delivered to the Applicants on January 21, 2021, detailing the flight arrangements for their return to Budapest, Hungary, on March 5, 2021.

[9] The Applicants have filed an application for leave and for judicial review of the PRRA decision.

[10] On this motion for a stay of their removal from Canada, the Applicants argue that they are at risk in Hungary because of their Roma ethnicity and because of the COVID-19 pandemic.

Analysis

[11] On a motion for a stay of removal the Applicants must satisfy the three-part test outlined by the Federal Court of Appeal in *Toth v Canada* (MEI), [1988] FCJ No. 587 (QL) (CA) [*Toth*], summarized as follows:

1. The Applicants have raised a serious issue to be tried;
2. That they would suffer irreparable harm if the stay is not granted; and
3. That the balance of convenience favours granting the stay.

Serious Issue

[12] The serious issue branch of the *Toth* test requires that the Applicants establish that their underlying judicial review application has some merit. The Applicants need only show that their application is not frivolous or vexatious.

[13] The Applicants argue that the PRRA officer made errors in assessing the availability of state protection in Hungary when considering their specific circumstances. They argue that the officer failed to assess the operational adequacy of state protection for those of Roma ethnicity.

[14] The PRRA officer considered the issue of state protection relative to the issues raised by the Applicants such as discrimination in securing housing, employment, and medical care. However, the PRRA officer found that there was insufficient evidence of the Applicants' personalized risk of persecution to justify affording them refugee protection in Canada.

[15] Further, the evidence that the Applicants relied upon in support of their risks in Hungary and in support of their argument that there is a lack of state protection was in essence the same evidence that was previously assessed by the RPD, the RAD and ultimately, the Federal Court.

[16] I am not convinced that the Applicants have established a serious issue with the PRRA officer's decision. Regardless, in my view, the Applicants have not established irreparable harm, which I will address below.

Irreparable Harm

[17] Irreparable harm must be established with clear and non-speculative evidence *(Perez v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 627 at para 45).

[18] As stated above, the evidence relied upon by the Applicants was noted by the PRRA officer as being substantially the same evidence the Applicants relied upon when their refugee claims were considered by the RPD and the RAD.

[19] The officer noted as follows:

> I acknowledge the general country documentation submitted by the applicants which indicates that there is a history of discrimination against Roma people in Hungary. I also acknowledge that these offensive and discriminatory remarks are certainly upsetting; however they do not persuade me as being so determinative in affecting the applicants' fundamental human rights; thus warranting an international protection.

[20] The officer properly considered the evidence and acknowledged that while the situation in Hungary for Roma individuals is less than ideal, mistreatment and discrimination in this case does not rise to the level of persecution. The officer also endorsed the finding of the RPD that the discrimination "experienced by these applicants does not threaten their fundamental rights but rather affects the quality of their existence in their home country and that what the applicants experienced was discrimination and does not reach a level of persecution".

[21] The Applicants rely upon *Farkas v Canada (Public Safety and Emergency Preparedness*), 2018 FC 658, to support their argument that they will face irreparable harm if removed to Hungary based upon the generalized mistreatment of those of Roma ethnicity. However, the Applicants' circumstances are significantly different from those considered by the Court in *Farkas*. Specifically, in *Farkas* there was concern that Mr. Farkas' individual risks were never assessed because of incompetent immigration advice. No such allegation of incompetent advice is raised in this case. Furthermore, the risks raised by the Applicants' were

fully considered by the PRRA officer. I would further note that risk assessments are highly contextual and ultimately fact specific.

[22] The PRRA officer determined that state protection would be available to the Applicants. The officer specifically considered the operational level of state protection. In doing so, the officer noted that the Applicants had not provided any new evidence to challenge the RPD's finding on state protection. The officer noted the numerous state protection options available to the Applicants, none of which they had availed themselves of. Further, the Applicants did not report any of the alleged employment discrimination or incidents at the schools to any police authorities. In light of the lack of personal evidence to demonstrate that state protection was not available for the Applicants and would not be available, does not rise to the level of irreparable harm.

[23] The Applicants also argue that they are at risk in Hungary because of the COVID-19 pandemic. These arguments were first raised in the context of this stay motion and were not raised as part of their PRRA application. A court on a stay motion will generally not consider evidence that was not considered by the PRRA officer. However, given the evolving situation with COVID-19, I will briefly address this issue.

[24] The Applicants rely upon *Revell v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 716, to argue that the risks presented by COVID-19 can rise to the level of irreparable harm. However, the facts in *Revell* are distinguishable from this case. Furthermore, the Applicants are a young couple with young children and there is no evidence

that any of them suffer from underlying medical conditions or complicating risks factors in relation to COVID-19. In my view, there is no merit to the argument of irreparable harm in relation to COVID-19.

Balance of Convenience

[25] In these circumstances, the balance of convenience branch of the *Toth* test favours the Respondent and the statutory obligation under section 48 of the IRPA.

[26] The Applicants' motion is dismissed.

ORDER IN IMM-705-21

THIS COURT ORDERS that this motion for a stay of removal is dismissed.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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