Federal Court  Cour fédérale

Date: 20120615

Docket: IMM-7256-11

Citation: 2012 FC 761

Ottawa, Ontario, June 15, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ZSOLT MATTE; ERZSEBET ILONA KEREKES; VIVIEN MATE; ZSOLT MATE JR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 6 September 2011 (Decision), which refused

the Applicants' application to be deemed Convention refugees or a persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Male Applicant and his common-law partner, the Female Applicant, are citizens of Hungary. The Secondary Applicants are their son Zsolt, who is twenty years old, and their daughter Vivien, who is eighteen years old. The Secondary Applicants are also citizens of Hungary. All of the Applicants are Roma.

Original Narrative

[3] After they claimed protection in Canada, the Applicants submitted Personal Information Forms (PIFs) on 1 June 2009. They submitted a single narrative, written from the Male Applicant's perspective, on 17 June 2009 (Original Narrative). This narrative described how the Secondary Applicants had been discriminated against in school, where teachers and classmates wanted them to drop out. The Original Narrative said that Zsolt wanted to get a job as a waiter, but people told him he would never get such a job because no one wanted a Roma person to serve them.

[4] The Applicants went to the Roma Rights Center (RRC) to complain about the discrimination the Secondary Applicants had faced at school. The worker there said the RRC would write a letter to address the discrimination, but the Applicants did not get a copy of this letter and nothing changed for the Secondary Applicants at school. The Secondary Applicants were not allowed to change for their physical education classes in the same rooms as the other children at school. When non-Roma children lost their possessions, the Secondary Applicants would always be

suspected of theft. On one occasion, Vivien's name was chosen as the most unpopular name in her class.

[5] In January 2008, the Male Applicant's friend was attacked by skinheads. The skinheads forced the friend's car off the road and killed the friend and his son. Even though there were witnesses to the crash, the police refused to investigate; the police ruled the crash was an accident.

[6] In February 2009 the Applicants were attacked by skinheads while they were grocery shopping. The skinheads threw the Male Applicant to the ground and made him and the Secondary Applicants kneel while the skinheads slapped them. A passing bus-driver intervened and took the Applicants to the police station to report the attack. Rather than investigating, the police asked the Applicants what they had done to provoke the attack. The police did not take the Applicants' report, even though the Male Applicant and Zsolt had visible injuries.

[7] The February 2009 attack led the Applicants to leave Hungary for Canada, as they felt they could not get effective help from the police. The situation they faced in Budapest, where they lived, was bad, and the Applicants believed conditions in the rest of Hungary would be as bad or worse.

Amended Narratives

[8] After submitting the Original Narrative, the Applicants submitted new narratives for the Male Applicant, Female Applicant, and Zsolt on 1 December 2010 (Amended Narratives).

[9] The Male Applicant's amended narrative (Narrative 1) said he had grown up with prejudice in Hungary because he is Roma. He had had to leave his employment as a bridge builder in February 1997 because of this discrimination.

[10] Narrative 1 also said the Male Applicant's cousin had been driven off the road by members of the Hungarian Guard – a nationalist organization in Hungary – in January 2009. The crash killed the cousin and his son. Although witnesses spoke to the police, the police did not believe them and ruled the crash an accident. This incident was publicized on the internet, but witnesses did not come forward with what they knew.

[11] The February 2009 attack also appeared in Narrative 1. In this version, the Male Applicant said one of the skinheads who attacked the Applicants twisted his arm and hit him. The skinheads pulled the Female Applicant's hair to make her kneel, and slapped Zsolt to make him stop crying "Roma tears." The skinheads made the Applicants apologize for making them nervous because they were visibly Roma. Although the bus driver stopped and took them to the police station, he said he would not be a witness for the Applicants. At the police station, an officer asked the Applicants what they had done to invite the beating. Other officers said the Applicants were lying and called them stinking gypsies.

[12] On 26 March 2009, the Male Applicant was attacked on a streetcar by several members of the Hungarian Guard. One of the Hungarian Guards grabbed the Male Applicant by the arm and beat him. The Male Applicant broke free and ran to a train station, where he was able to hide in the crowd.

[13] The Female Applicant's amended narrative (Narrative 2) said she was discriminated against in school. The abuse she suffered as a child was so bad she once considered committing suicide. The Female Applicant said she could not continue her education because schools rejected her because she is Roma. Although she got a job in a garment factory, other workers damaged her

sewing machine. She later got a job as a street car cleaner, but her coworkers often stole money from her. The coworkers refused to use cleaning tools the Female Applicant had touched.

[14] The Secondary Applicants could not play sports in school because they are Roma. Zsolt became a waiter, although he was told he would never get a job in his profession.

[15] The Female Applicant's account of the February 2009 attack in Narrative 2 was identical to that of the Male Applicant in Narrative 1.

[16] Zsolt's amended narrative (Narrative 3) said he was made a fool of in primary school because he is Roma. Once, three other students urinated on him while he was on a school trip. He said Vivien was often beaten at school and he could not protect her. After Zsolt began seeing a non-Roma girl at school, she was harassed because he is Roma. This led them to end their relationship. Zsolt wrote that, during the February 2009 attack, he watched four skinheads beat the Male Applicant. He also said his cousin and his cousin's father were forced off the road and killed some time before the February 2009 attack.

Procedural History

[17] The Applicants arrived in Canada on 3 May 2009 and claimed protection on 4 May 2009. The RPD joined all four claims under subsection 49(1) of the *Refugee Protection Division Rules* SOR/2002-228 (Rules) and appointed the Male Applicant as representative for Vivien, because she was a minor at the time. The RPD heard the Applicants' claims over three sittings on 25 January 2011, 28 April 2011, and 4 July 2011.

[18] At the first sitting, the Applicants affirmed that their PIFs and narratives were complete, true, and correct. The Male Applicant also testified at this sitting. At the end of the first sitting, the Applicants made a motion to strike the Original Narrative from the record because it was prejudicial to their claim. They said the Male Applicant spoke to an interpreter (Farkas) who recorded his answers in English as the Original Narrative. Farkas made mistakes in the interpretation which were detrimental to the Applicants' case. The RPD adjourned the hearing to decide whether to exclude the Original Narrative. The RPD asked the Applicants to provide a letter from the Roma Community Center (RCC) in Toronto – where they said they had met Farkas – to show they had complained about the quality of interpretation she provided.

[19] At the second sitting on 28 April 2011, the RPD noted it had received a letter from the RCC (RCC Letter). The letter said the RCC could not give the Applicants Farkas's contact information. The RPD told the Applicants it had decided not to exclude the Original Narrative.

[20] After the third sitting on 4 July 2011 the RPD considered the Applicants' claims. It rejected them on 6 September 2011 and notified the Applicants of the Decision on 27 September 2011.

DECISION UNDER REVIEW

[21] The RPD rejected the Applicants' claims because they had not rebutted the presumption of state protection. It also found there was not a serious possibility they would face persecution on the basis of their Roma ethnicity in Hungary.

Motion to Strike

[22] The RPD denied the Applicants' request to strike the Original Narrative from the record. It found their explanation for how their PIFs and the Original Narrative were created was not reliable.

[23] At the first sitting of the RPD hearing, the Applicants said there were problems with the translation of the Original Narrative and the errors in translation would unduly prejudice them. Applicants' counsel said that Farkas came to his office and the Applicants introduced her to counsel as a friend. They also told counsel the RCC recommended Farkas as a translator. Although Farkas had good intentions, it became clear over the course of their dealings that she and the Applicants did not understand one another. The Male Applicant, however, said he understood Farkas.

[24] The Applicants also said that, because she had moved, they had been unable to contact Farkas after they discovered errors in the translation. They said the RCC was unable to give them her current telephone number. The RCC Letter said "we have no contact with [Farkas] and do not know who she is." The Applicants said they met Farkas at the RCC as she was leaving the RCC office one day, but they did not know if she actually worked there. The RPD found the Applicants' explanation unreasonable because it was inconsistent with the RCC Letter.

[25] The RPD also found the Applicants could not have met Farkas at the RCC. The RCC Letter said the Applicants had volunteered there in approximately February 2010. The Applicants submitted the Original Narrative in June 2009, after completing it with Farkas's help. The RPD concluded it was impossible for the Applicants to have met Farkas at the RCC in 2009 because they had only started going to the RCC in 2010.

[26] The RPD said it had no reason to believe Farkas would not have written down what the Applicants had told her to. Farkas told Applicants' counsel she was their friend, so she would have accurately written down what they said. The Applicants had also signed the Original Narrative to indicate the statements in it were their own. The declaration they signed in their PIFs said the forms and any attachments were interpreted to them. Farkas had also signed declarations on the Applicants' PIFs saying she had interpreted the PIFs and any attached documents accurately. Although the RPD received the Original Narrative two weeks after the PIFs, it found Farkas would have followed the same procedure as she did with the PIFs.

Merits of the Claims

[27] After dealing with the Applicants' motion to strike the Original Narrative, the RPD dealt with the merits of their claims. It found the Applicants had established their identity and citizenship through oral and documentary evidence.

Credibility

[28] The RPD found the Applicants' evidence was not credible because there were inconsistencies between their oral testimony, the Original Narrative, the amended narratives, and form IMM 5611 – the port of entry notes the Male Applicant completed on arrival in Canada.

[29] First, the Applicants' evidence showing their cousin was driven off a road and killed was unreliable. Narrative 1 said the cousin and his son were forced off the road in January 2009. The Original Narrative said this event occurred in January 2008 and it was the Male Applicant's friend

and his son who were killed. It was reasonable to expect the Male Applicant to know if it was a friend or a cousin who was killed.

[30] Before the hearing, the Male Applicant had spoken with Dr. Judith Pilowsky – a psychologist practicing in Toronto – who produced a report he submitted to the RPD (Pilowsky Report). The Pilowsky Report said the Male Applicant became frightened when he saw a car like the one involved in the crash which killed the cousin. Because he did not actually see the crash occur, the RPD could not understand why this kind of car would frighten the Male Applicant.

[31] The Original Narrative said the Hungarian police responded to the 2009 crash and ruled it an accident even though witnesses saw what happened. Narrative 1 said the police ruled the crash was an accident because they did not believe the witnesses. At the RPD hearing, the Applicants said the witnesses were afraid to talk to the police, so the police could only conclude this was an accident. All of this evidence was inconsistent.

[32] In light of its credibility concerns, the RPD expected the Applicants to produce evidence to corroborate their story about the crash. However, they could not provide any documentary evidence to show this event had occurred as they said it did. The RPD drew a negative inference from the Applicants' failure to provide corroborating evidence and found there was no evidence this incident was caused by the Hungarian Guard. The RPD concluded the January 2009 car crash had not occurred as the Applicants had described it.

[33] The Applicants said Farkas was responsible for the inconsistencies on this point, but the RPD rejected this explanation. It found there was no evidence Farkas did anything other than write what she was told to.

[34] Second, the RPD found inconsistencies in the Applicants' story about the February 2009 attack. In IMM 5611, the Male Applicant said members of the Hungarian Guard kicked grocery bags out of the Applicants' hands, forced them to kneel, and spat on them. The Original Narrative said the Applicants were forced to kneel and were slapped. It also said skinheads kicked the Male Applicant when he complained about them kicking the grocery bags around. In Narrative 1, the Male Applicant wrote that the skinheads twisted his arm and punched him until he lost his breath. He also said the skinheads pulled the Female Applicant's hair to force her to kneel and slapped Zsolt. The RPD found these were three escalating versions of the attack.

[35] The Applicants' evidence about the injuries they suffered in the February 2009 attack was also inconsistent. At the hearing, the Male Applicant said he was injured from kicks and Zsolt was slapped. The Original Narrative said he and Zsolt both had visible injuries. The RPD rejected the Applicants' argument that these inconsistencies arose from inaccurate translation.

[36] The evidence with respect to the bus driver's role in the attack was also inconsistent. The Original Narrative said the bus driver left his bus to rescue the Applicants and the police would not take his statement. Narrative 1 said the bus driver told the skinheads to stop or he would call the police. At the hearing, the Applicants said the driver told the skinheads he would call the police if they prevented him from doing his job. Further, the Original Narrative said the police would not take the bus driver's statement, but the Applicants testified at the hearing that he was unwilling to give a statement. The Applicants' evidence on this point was unreliable because it was inconsistent.

[37] At the RPD hearing, the Applicants said they waited hours at the police station after the attack before the police told them their complaint was a waste of time. After the RPD asked if they thought to ask for help, they said they asked for help every half hour. This testimony was

contradictory and adapted to show they had made stronger efforts to obtain assistance from the police, so it too was unreliable.

[38] The Applicants also added a detail at the hearing which was not in the Original Narrative. They testified they had gone to the RRC for help, but were told the RRC had no authority over the police. The Male Applicant told the RPD he had mentioned this to the immigration officer when he was completing IMM 5611, but this detail did not appear in that form. The Applicants also said the Original Narrative was incorrect on this point because of Farkas's improper interpretation. The RPD found the Male Applicant had an interpreter when he completed IMM 5611 and the Applicants could not blame Farkas for all the problems in their evidence. They had not contacted her to allow her to respond to their allegations and their challenge to the accuracy of her interpretation should have allowed for this.

[39] The RPD also found inconsistencies in the Applicants' evidence about their experience at the RRC in the Hungary, where they went to complain about the police response to the February 2009 attack. The Female Applicant said the RRC could not do anything about the police response without an official report, but the Male Applicant did not say this. The Applicants also did not provide any documents to show they had approached the RRC for help, though they should have been able to provide this evidence.

[40] The RPD found the events surrounding the February 2009 attack were not as the Applicants had described.

[41] Third, the RPD found inconsistencies in the Male Applicant's testimony about his education which could not be explained by Farkas's inaccurate translation or attributed to the immigration

officer who completed IMM 5611 for the Male Applicant. Narrative 1 said the Male Applicant has only eight years of education, but IMM 5611 says he has ten years of education, including two years at a trade school. At the RPD hearing, the Male Applicant said the Hungarian government paid for his trade school education after he lost his job. The Male Applicant's statement that he had only eight years education was an embellishment intended to exaggerate the harm the Applicants face in Hungary.

Section 96 Risk

[42] Although the RPD found the Applicants' evidence was generally unreliable because it was inconsistent, it also analysed whether they faced a risk of persecution in Hungary because they are Roma. It found they did not face such a risk because nothing they faced would deny them their fundamental rights in a way that threatened their lives.

[43] The RPD found much of the evidence which spoke to the risk the Applicants faced was unreliable. However, it examined whether they faced a risk of persecution based on the discrimination they might suffer because they are Roma. Although the Male Applicant and Female Applicant had experienced discrimination in Hungary, this discrimination had not seriously impacted their ability to earn a livelihood; both had become leaders in their jobs. The Secondary Applicants had experienced discrimination in school, but they were not denied access to education and their fundamental rights were not infringed.

[44] The RPD found the February 2009 attack, if it actually occurred, had only amounted to being spat on and forced to kneel. This kind of attack was not serious, persistent, or systemic.

[45] The RPD noted that discrimination can become so serious as to threaten lives or fundamental rights. In this case, the discrimination the Male Applicant suffered led him to attempt suicide, as the Pilowsky Report showed. Dr. Pilowsky diagnosed the Male Applicant with post-traumatic stress disorder. The RPD found this diagnosis was based on the same evidence it found was unreliable, so the cause of his condition was unknown. The RPD also found the Male Applicant would be able to access treatment for his condition in Hungary.

[46] Although discrimination against Roma people in Hungary occurs, and it often results in a lower standard of living for them, this did not result in a denial of fundamental rights which threatened the Applicants' lives.

State Protection

[47] The determinative issue in the Applicants' claim was state protection. The RPD reviewed the law on state protection, first noting that *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 establishes a presumption of adequate state protection. This presumption can only be rebutted with clear and convincing evidence of the state's inability to protect. See *Carillo v Canada (Minister of Citizenship and Immigration)* 2008 FCA 94. Further, *Zhuravlvev v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 507 teaches that local failures to provide effective policing do not amount to a lack of state protection unless they are part of a larger pattern of the state's inability to protect.

Applicants' Experience

[48] The RPD found the Applicants' evidence regarding their attempts to seek state protection was not reliable. However, it also found that, even if it accepted these events had occurred as the Applicants described them, they did not rebut the presumption of state protection. The Applicants' stories, if believed, showed only that police in Hungary are not always able to arrest perpetrators of violence, which is not enough to rebut the presumption of state protection.

[49] The Hungarian police were unable to arrest the people who attacked the Applicants in February 2009 because the bus driver was either unwilling to provide a statement or the police were unwilling to take his statement. The evidence the Applicants used to show what happened when they reported to the police was unreliable. The Applicants' claim that the police turned them away after they waited for five hours amounted only to a local failure in policing. The Applicants had also not sought additional redress for the failure of the police to take their complaint, so their experience at the police station could not rebut the presumption of state protection.

[50] For the purpose of its state protection analysis, the RPD accepted that the Male Applicant's story about the attack on the train in March 2009 was true. However, it noted he had not approached the police for assistance after this attack, so this experience could not rebut the presumption of state protection. Further, even accepting that the cousin and the cousin's son were forced off a road in 2009, the police could only conclude this was an accident because the witnesses were not forthcoming about what they saw.

[51] The Applicants also testified that the Female Applicant's mother found anti-Roma graffiti in the Applicants' apartment in Hungary after they left for Canada. The police investigated this incident, but suspended their investigation when they could not identify the perpetrator. This event did not rebut the presumption of state protection, as the police said they would pursue the

investigation further if new information came to light. The RPD could not find the Hungarian police were not willing and able to respond to calls from Roma people.

[52] The RPD concluded the Applicants' experience in Hungary was that police will take action when they are called. Although they are not always able to prevent attacks or solve crimes where there is a lack of evidence, this does not show a lack of state protection.

Documentary Evidence

[53] Against the Applicants' experiences in Hungary, the RPD examined other documentary evidence which showed the steps which the Hungarian government is taking to improve the situation of Roma people. The RPD found the Hungarian government is making serious efforts to reduce the discrimination Roma people face. Even though progress is slow, positive change is occurring.

[54] The RPD noted that social attitudes toward Roma people had to change for discrimination against them to be reduced. In Hungary, a recent economic downturn had increased extremism and discrimination against Roma people. Roma people are often deprived of social housing and schools are segregated because of discrimination. However, the Hungarian Government had banned the Hungarian Guards and the Hungarian Supreme Court had upheld this ban. After a gathering by the Hungarian Guards in 2007, the Hungarian police had taken action against many people for being involved in a banned organisation. In 2008, in response to a wave of violence, the Hungarian National Police Chief increased the number of detectives assigned to investigate violence against Roma people.

[55] Hungary's Ministry of Justice and Law enforcement currently operates the Roma Anti-discrimination Customer Service Network. This organization provides legal aid to Roma people who encounter discrimination based on their ethnicity and has helped more than 7,200 people since 2004. The Equal Treatment Authority also provides Roma people with a direct avenue to assistance for dealing with discrimination against them. People who experience discrimination can also seek compensation in the courts.

[56] The RPD concluded that the Applicants had access to programs in Hungary which would allow them to defend their rights against discrimination.

[57] The RPD also found Hungary does not condone, and generally does not allow, discrimination against Roma people. There are laws in place to combat discrimination against Roma people and the Department for Roma Integration coordinates government efforts to include Roma people in society. In 2007, the Hungarian Government adopted the Strategic Plan of the Decade of Roma Inclusion. Like other minority groups in Hungary, Roma people can elect their own Minority Self Government to handle cultural and educational affairs.

[58] Although under-employment is a problem for Roma people, the Hungarian Government has dedicated significant resources to employment and opportunity programs to address this issue. In 2008, a company was fined for refusing to hire people because of their Roma ethnicity. Government programs have given many Roma people employment.

[59] The RPD found progress with respect to education was slow, but there were positive signs of improvement. Roma children are often segregated in schools, which contributes to under-employment and poverty. However, there are programs in place to address segregation. In 2010, the

Hungarian Supreme Court awarded compensation to children who had been segregated, which showed the justice system is sending a message that discrimination cannot continue without costs.

[60] With respect to housing for Roma people, the authorities have a goal of reducing Roma ghettos. The Hungarian Government instituted a program to encourage Roma people to move into refurbished homes in towns and villages near where they reside. In 2009, the Budapest Court fined the 2nd District of Budapest for evicting 40 Roma people from housing they were occupying.

[61] With respect to prevailing racist attitudes, the Hungarian Supreme Court has ruled that radio stations erred by refusing to air an advertisement from the Jobbik political party that referred to "Gypsy Crime." This showed the court upholding a political party's right to equal time for campaigning, and that broadcasters are not responsible for content.

[62] The RPD found that, although slow, progress was occurring in Hungary and there was no clear and convincing evidence that Hungary would not be reasonably forthcoming with adequate protection. Although the Applicants had been mistreated in Hungary, there were avenues available for them to address this mistreatment.

[63] The RPD found the Applicants were not Convention refugees and that they had not rebutted the presumption of state protection. These findings disposed of their claims under both sections 96 and 97 of the Act.

ISSUES

[64] The Applicants raise the following issues in this application:

a. Whether the RPD erred by not excluding the Original Narrative from the record;

b. Whether the RPD erred by relying on the Original Narrative;

c. Whether the RPD failed to make a necessary finding of fact;

d. Whether the RPD's reasons are adequate;

e. Whether the RPD's state protection finding was unreasonable;

f. Whether the RPD applied the incorrect test for state protection.

STANDARD OF REVIEW

[65] The Supreme Court of Canada in *Dunsmuir v New Brunswick* 2008 SCC 9 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[66] The first issue challenges the RPD's decision to admit evidence. In *Lai v Canada (Minister of Citizenship and Immigration)* 2005 FCA 125, the Federal Court of Appeal held at paragraph 43 that the standard of review with respect to the admissibility of evidence is reasonableness.

[67] The second issue challenges the RPD's reliance on documentary evidence which the Applicants submitted. It is well established that the RPD has expertise in assessing evidence and that its findings are to be given deference. The standard of review on the second issue is reasonableness. See *Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No

946 (FCA) and *Ched v Canada (Minister of Citizenship and Immigration*) 2010 FC 1338 at paragraph 19.

[68] On the third and fourth issues, the Supreme Court of Canada recently held, in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62 at paragraph 14, that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes." The Court must examine whether the reasons and the record together support the RPD's findings. See also *Lezama v Canada (Minister of Citizenship and Immigration)* 2011 FC 986, at paragraph 22 and *Niyonzima v Canada (Minister of Citizenship and Immigration)* 2012 FC 299 at paragraph 24.

[69] In *Carillo*, above, the Federal Court of Appeal held at paragraph 36 that the standard of review on a state protection finding is reasonableness. Justice Leonard Mandamin followed this approach in *Lozada v Canada (Minister of Citizenship and Immigration)* 2008 FC 397, at paragraph 17 as did Justice Danièle Tremblay-Lamer in *Chaves v Canada (Minister of Citizenship and Immigration)* 2005 FC 193. The standard of review on the fifth issue is reasonableness.

[70] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa* 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that

it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[71] The standard of review on the sixth issue is correctness. In *Ramotar v Canada (Minister of Citizenship and Immigration)* 2009 FC 362 Justice Michael Kelen held at paragraph 12 that the standard of correctness applies where an applicant asserts that a decision maker applied the wrong test. Justice Yves de Montigny held at paragraph 35 in *Saeed v Canada (Minister of Citizenship and Immigration)* 2006 FC 1016, the correctness standard applies when examining the RPD's application of the test for state protection. Justice Paul Crampton made a similar finding in *Cosgun v Canada (Minister of Citizenship and Immigration)* 2010 FC 400 at paragraph 30.

STATUTORY PROVISIONS

[72] The following provisions of the Act are applicable in this proceeding:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries;	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
[…]	[…]

Person in Need of Protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

medical care	médicaux ou de santé adéquats.
[…]	[…]

[73] The following provisions of the Rules are also applicable in this proceeding:

5. (1) The claimant must complete the Personal Information Form and sign and date the included declaration that states that	**5**. (1) Le demandeur d'asile remplit le formulaire sur les renseignements personnels et signe et date la déclaration figurant sur le formulaire portant :
(a) the information given by the claimant is complete, true and correct; and	a) que les renseignements qu'il fournit sont complets, vrais et exacts;
(b) the claimant knows that the declaration is of the same force and effect as if made under oath.	b) qu'il sait que la déclaration a la même force et le même effet que si elle était faite sous serment.
[…]	[…]
(3) If the claimant completes the Personal Information Form with an interpreter, the interpreter must sign and date the included declaration that states	(3) Si le demandeur d'asile remplit le formulaire sur les renseignements personnels avec l'aide d'un interprète, ce dernier signe et date la déclaration y apparaissant attestant:
(a) the interpreter is proficient in the languages or dialects used, and was able to communicate fully with the claimant;	a) qu'il maîtrise les langues ou dialectes utilisés et qu'il a pu communiquer parfaitement avec le demandeur d'asile;
(b) the completed form and all attached documents were interpreted to the claimant; and	b) qu'il a interprété pour le demandeur d'asile le formulaire rempli et tout document joint à celui-ci;
(c) the claimant assured the	c) que le demandeur d'asile lui a

interpreter that the claimant understood what was interpreted.	assuré qu'il avait bien compris ce qui avait été interprété pour lui.
[…]	[…]
6. […](4) If a claimant wants to change any information given in the Personal Information Form, the claimant must provide to the Division three copies of each page of the form to which changes have been made. The claimant must sign and date each new page and underline the change made. This subsection does not apply to a change in the choice of language for the proceedings or the language of interpretation.	**6.** […] (4) Pour modifier un renseignement fourni sur le formulaire sur les renseignements personnels, le demandeur d'asile transmet à la Section trois copies de toute page du formulaire qui doit être modifiée. Il date et signe chaque page ainsi modifiée et souligne la modification. Le présent paragraphe ne s'applique pas dans le cas d'une modification du choix de la langue des procédures ou de celle de l'interprétation.

ARGUMENTS

The Applicants

Failure to Strike the Original Narrative

[74] The Applicants argue that the RPD should have excluded the Original Narrative because this document contained errors in translation. By relying on this document, the RPD breached their right to procedural fairness.

[75] The Applicants discovered errors in the translation of the Original Narrative and submitted amended narratives to the RPD. They had a right to submit amended narratives under the Rules. However, the RPD violated their right to procedural fairness by accepting the Original Narrative and relying on it to make negative credibility findings.

[76] The translation of the Original Narrative contained significant errors, but the RPD focussed on irrelevant or minor considerations when it chose not to strike this evidence from the record. Rather than acting as it should have, the RPD blamed the Applicants for not being able to find Farkas. The RPD was also overzealous when it analyzed the RCC Letter, even though the RPD had led the Applicants to believe that this letter would address its concerns with the translation issue. Although the RCC Letter confirmed the relevant facts, the RPD based its decision not to strike the Original Narrative on irrelevant sentences. The RPD did not consider how significant the errors in translation were.

Failure to Make Necessary Findings of Fact

[77] The RPD was obligated to make clear findings with respect to the events the Applicants alleged, but it did not do so. Its finding that the events they described had occurred, "but not as the [Applicants] would have me believe," is not a proper finding of fact. The RPD failed to accept or reject the evidence in a way that allows a meaningful review of the Decision. The Applicants alleged they had been attacked by members of the Hungarian Guard in February 2009, but the RPD only found that this did not happen in the way the Applicants described it.

[78] The RPD also failed to make clear credibility findings for all of the Applicants. It should have assessed Zsolt's claim separately because he was an adult at the time the RPD heard the Applicants' claims.

Reasons Inadequate

[79] The RPD's failure to make necessary findings of fact shows that its reasons are not adequate. The reasons do not show why the RPD concluded the events experienced by the Applicants do not amount to persecution. The reasons are also inadequate because they do not show what standard for persecution the RPD applied.

Conclusions Unreasonable

[80] When it concluded there was adequate state protection available to the Applicants in Hungary, the RPD selectively relied on evidence which supported its conclusions. It also minimized evidence which went against its conclusions. Further, the RPD applied the incorrect test for state protection when it looked at Hungary's willingness to protect rather than the adequacy of the protection Hungary provides. The RPD did not analyse whether the changes Hungary has implemented are meaningful, effective, or durable.

[81] The RPD also unreasonably ignored several pieces of documentary evidence which were before it. The United States Department of State's *Country Reports on Human Rights Practices for 2006: Hungary* shows that Roma people in Hungary generally fear police abuse and there is widespread discrimination against them. A report from Amnesty International also shows there is a prevailing attitude of xenophobia toward Roma people. Further, a report from the United Nations High Commissioner for Human Rights, *UN Expert on Minority Issues Concludes Visit to Hungary with Call for Continued Efforts to Address Problems Faced by Roma Minority*, reveals that discrimination and violence against Roma persists in Hungary even in the face of the State's efforts to stop it.

[82] The RPD did not explain why Hungary's status as a democracy and its efforts to include Roma people were enough to overcome the Applicants' clear and convincing evidence that Hungary is unable to protect them.

The Respondent

Refusal to Strike was Reasonable

[83] The RPD did not err when it refused to strike the Original Narrative from the record. In coming to this decision, the RPD identified significant inconsistencies in the evidence provided by the Applicants to show that the translation of the Original Narrative was faulty. They said the RCC recommend Farkas to them and they had seen her coming out of the RCC office. When the RPD asked what efforts the Applicants made to contact Farkas, they said she had moved but they had tried to contact her at the RCC. Although the Applicants said they tried to get Farkas's telephone number from the RCC, the RCC Letter said it did not know who Farkas was and had not been in contact with her. This directly contradicted the Applicants' testimony.

[84] The Applicants also claimed they had met Farkas at the RCC in 2009. However, the RCC Letter showed they had not volunteered at the RCC until February 2010. The Male Applicant also testified he had not gone to the RCC before 2010. The RPD reasonably found the Applicants had not been at the RCC in 2009, so they could not have met Farkas there as they claimed.

[85] It was reasonable for the RPD to find there was no reliable evidence that Farkas would have done anything other than write down precisely what the Applicants told her. They signed the declarations on their PIFs and declared the forms and any attachments had been translated to them.

Farkas also signed the interpreter's declaration affirming that she had interpreted the PIFs and attachments to the Applicants.

[86] It was reasonable for the RPD to refuse to strike the Original Narrative on the basis of the evidence before it.

Credibility Findings Reasonable

[87] *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (FCA) establishes that the RPD can make negative credibility findings, so long as it does so in clear and unmistakeable terms. In this case, the RPD noted the following inconsistencies in the Applicants' evidence which led it to conclude their evidence was not reliable:

a. Narrative 1 said the cousin and his son were killed in a car crash in January 2009, but the Original Narrative said a friend and his son were killed in January 2008;
b. Narrative 1 said the police ruled the crash was an accident because they did not believe the witnesses, but the Applicants' oral testimony was that the witnesses who saw the crash were afraid to give the police evidence;
c. The Applicants said the crash was reported in the news and on the internet, but could not give the RPD documentary evidence to show this was actually the case;
d. The Applicants provided escalating versions of the February 2009 attack;
e. The Original Narrative said the bus driver took them to the police station where the police refused to take his statement, but the Applicants' oral testimony was that the bus driver was not willing to be a witness;

f. The Applicants initially testified they sat and waited for several hours at the police station, then changed their story to say they got up every half hour to ask for help.

[88] It is open to the RPD to test a claimant's credibility by comparing different versions of their testimony at different points in the refugee claim process. The RPD can properly draw negative inferences from any inconsistencies between evidence given at various times along the way. See *Eustace v Canada (Minister of Citizenship and Immigration)* 2005 FC 1553, and *RKL v Canada (Minister of Citizenship and Immigration)* 2003 FCT 116.

[89] Although the Applicants have claimed otherwise, the RPD made clear findings on all the evidence it found was not reliable. Because the Applicants' claims were based on the same incidents, the RPD was not required to make a separate credibility finding with respect to Zsolt. Zsolt raised no separate claims from the other Applicants except his claims of discrimination at school, and the RPD accepted this had occurred.

Discrimination did not Amount to Persecution

[90] The RPD accepted the Applicants had suffered mistreatment in Hungary, but concluded this mistreatment did not amount to persecution because their fundamental rights were not breached. This is a conclusion the RPD is entitled to draw from the evidence and the Court should defer to this finding. See *Sedigheh v Canada (Minister of Citizenship and Immigration)* 2003 FCT 147 at paragraphs 29 to 36. The Male and Female Applicants were able to find employment and the Secondary Applicants were able to remain in school. The events the Applicants experienced did not deprive them of their fundamental rights. This was a reasonable conclusion for the RPD to draw based on the evidence before it.

State Protection Finding Reasonable

[91] The RPD also drew a reasonable conclusion that state protection was available to the Applicants in Hungary. This conclusion was dispositive of their claims under sections 96 and 97. The RPD thoroughly reviewed the evidence before it which showed how Hungary has responded to crimes committed against Roma people. The RPD found that, even though violence against Rome people continues in Hungary, the Hungarian government is committed to protecting them. The RPD also found that police protection and other resources are available to Roma people in Hungary. The Applicants' arguments on this point amount only to asking the Court to reweigh the evidence which was before the RPD. This is not appropriate on judicial review. See *Camacho v Canada (Minister of Citizenship and Immigration)* 2007 FC 830 at paragraph 10.

[92] The Applicants have said the RPD did not consider some of the documentary evidence which was before it. However, the evidence the RPD relied on – which shows significant progress has occurred in Hungary in recent years – is more recent than the evidence the Applicants have pointed to. The Applicants may be able to point to evidence on the record which shows that state protection is not available, but the RPD is entitled to choose which evidence it prefers so long as it does not make factual findings which are perverse or capricious.

Consideration of Evidence on Police Response was Reasonable

[93] The RPD assumed the events the Applicants alleged had actually happened to them when it analysed how the Hungarian police responded to their complaints. It reasonably concluded that the police in Hungary are willing and able to respond to requests for assistance from Roma people. It was not clear on the evidence what the police could have done in response to the January 2009 car

crash other than rule it was an accident. It was also reasonable for the RPD to conclude the police could not have done anything more about the graffiti in the Applicants' apartment when they could not identify the perpetrator. Further, even though the RPD accepted that the police had responded as the Applicants alleged after the February 2009 attack, it reasonably concluded this was a local failure in policing which did not rebut the presumption of state protection.

The Applicants' Reply

[94] The Applicants argue it was an error for the RPD to rely on the Original Narrative because they replaced it with their Amended Narratives. They followed the Rules in submitting these documents before the hearing, so the RPD should not have held the inconsistencies between the Original Narrative and the Amended Narratives against them. This makes the right to make corrections under the Rules meaningless. It would mean that any correction in a PIF could later be held against a claimant as an inconsistency.

[95] The Applicants corrected their narratives as soon as they became aware of the errors in translation. The mistakes in the translation of the Original Narrative were in English, so they could not have known about them before they had it translated to them by a professional translator. They point to *Mohammadian v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 309 where Justice Denis Pelletier held at paragraphs 27 and 28 that

> [Complaints] about the quality of interpretation must be made at the first opportunity, that is, before the CRDD, in those cases where it is reasonable to expect that a complaint be made.
>
> It will be a question of fact in each case whether it is reasonable to expect a complaint to be made. If the interpreter is having difficulty speaking the applicant's own language and being understood by him, this is clearly a matter which should be raised at the first opportunity. On the other hand, if the errors are in the language of the hearing,

> which the applicant does not understand, then prior complaint may not be a reasonable expectation.

[96] Even if the RPD did not breach the Applicants' right to procedural fairness by relying on an inaccurate translation of the Original Narrative, it was overzealous in searching out inconsistencies between this narrative and the amended narratives. In *Malala v Canada (Minister of Citizenship and Immigration)* 2001 FCT 94, Justice Jean-Eudes Dubé held at paragraph 24 that "[the] applicant must be afforded an opportunity to explain fully the alleged inconsistencies."

[97] The RPD also failed to make clear factual findings upon which to base its credibility findings. This prevented it from making a reasonable credibility finding.

The Respondent's Further Memorandum

[98] It was open to the RPD in this case to reject the Applicants' assertion that Farkas translated their Original Narrative incorrectly. It was also open to the RPD to rely on inconsistencies between the Original and Amended Narratives to find the Applicants were not credible. The Applicants had counsel at the time they completed their Original Narrative and they declared the document had been translated to them. It was open to the RPD to find Farkas was not responsible for the discrepancies between their narratives.

[99] The RPD's conclusion that state protection is available to Roma people in Hungary was a reasonable one and the Court has upheld similar findings in the past.

ANALYSIS

[100] The Applicants raise three grounds for reviewable error. I will deal with each in turn. As a general point, the Applicants cite very little authority for the positions they take. This is because much of what they say involves a particular reading of the Decision, which reading is not born out when it is read as a whole.

Striking the Original Narrative

[101] The Applicants say that the RPD should have struck the Original Narrative as requested and should not have relied upon it when assessing their credibility. They provide no authority for their position. In the end, the allegation that the Original Narrative contains translation mistakes is not supported by any objective evidence. The Applicants were not able to establish that the translator had any connection with the RCC and their claim they met her there in 2009 was undermined by evidence that they did not attend the RCC until the summer of 2010 at the earliest.

[102] The evidence before the RPD on this point included the Applicants' PIFs with the declarations and the Original Narrative, the Applicants' attestations that the Original Narrative was their own, and the translator's declaration that the translation was accurate. On this evidence, there is nothing unreasonable about the conclusion the RPD came to in the exercise of its discretion on this issue. Other conclusions may have been possible, but that does not mean the RPD was unreasonable in not accepting the Applicants' bald allegations (contradicted by the documentation) that the inconsistencies between their narratives should be attributed to errors in translation.

[103] It was reasonable for the RPD to rely upon these factors to reject the Applicants' explanation that the earlier PIF contained translation errors. As Justice Yvon Pinard pointed out in *Begolli v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1289 at paragraph 6

> The applicant stated in his PIF that his brother-in-law helped his brother to check his house and they were shocked when they saw the condition it was in, yet the applicant alleges that his brother was out to kill him. It does not make sense that his brother, who was out to kill him, would want to go to his house to get some of his things and would be shocked to see it that way. The applicant blames this contradiction on an error by the translator, however the translator declared and certified that she has accurately interpreted the entire content of the form and that the applicant fully understood the entire content of this form. It was reasonable for the Board to conclude that these explanations were implausible. [Emphasis added]

[104] The Applicants also argue that the RPD fettered its discretion by deciding that it could not strike the earlier PIF. They direct the Court's attention to an exchange on this point at pages 546 and 547 of the transcript. The relevant passage appears to be as follows:

> Member: You see … I think there is a … I mean as I think about why amendments are necessary there could be errors in dates perhaps a little bit, there could be information that was not previously available, there could be things that happened since they filed their personal information form. [But] you know for things that happened at the same time… and again I have to weight whether things are important or not, but it seems to me that is not what an amendment for a personal information form was intended to be. Again we are back to the same thing that under your theory, the only thing would count… do not tell me anything, just come in and give me your final personal information form and we should go by that. So I do not think that is the case.
>
> Counsel: I agree with you that should not be taken as so rightly. I will give you two paragraphs just to start off the personal information form and thin I will come in thirty days or twenty days before hearing with a new personal information form. That is not the case here Mr. Member. I would not say that is abuse of that.
>
> Member: I do not think so in this case but I am just following your theory, it does not…

Counsel: My theory is not, in this case, and I usually avoid to file late minute amendments and you probably know me from dealing with me, I could have amended a lot of personal information forms in case that were before you, but I did not because that is not appropriate. In this case, it happened that we depended on a person who is speaking English and Hungarian, so I depended on the Hungarian Person, it was translated to me in English and I put it in. What she told them in translating back of the personal information form, I really do not have idea [sic], but obviously they did not know what she said to me in English. So when we, when that came to light in preparation for… for the hearing and everything, when I used another interpreter that is what prompted grounds for amended personal information forms and then trying to amend them properly this time. And that is how we arrived to this new signed page, or page of the personal information form where the new interpreter is, and that is why I put it in. Otherwise, I would just put an amendment in.

Member: Well, I appreciate what you are saying and I have written down the submission that you have made. I have to weigh that given all the other evidence that I have.

Counsel: But I see your point in how it can be abused…

Member: I think you will… I do not know that you will find any Member that says let us just use the final personal information form that is sent in, but…

Counsel: Well are we going to call the … maybe also it will be dependent… I think as counsel I can strike the old narrative and just put the new one in or I can add on to the amendment.

Member: I do not think you can strike the old one. Once you…

Counsel: So in this case I thought I would be replacing.

Member: There is… I have never heard of replacing…

Counsel: There is not such a thing that you think that is a legal issue, definitely we can argue about that. <inaudible>.

Member: Well again…

Counsel: I think that was my intention to replace the whole, the old one with the new one.

Member: I think you would be hard to find a Member that would accept that kind of reasoning because… but I do understand the issue that you are saying was with the interpreter and again, I would have to weigh that with all the other things I hear to see if … how reasonable or unreasonable and…

[105] I do not think that in this passage the RPD is saying that the RPD cannot strike the earlier PIF if it chooses to exercise its discretion to do so. The RPD is simply saying that the Applicants cannot just automatically replace one PIF with another. The RPD makes it clear that it would be hard to convince a member "to accept that kind of reasoning" and it is something that has to be weighed "with all the other things." Saying it would be hard to convince the RPD to strike or disregard an earlier PIF in its entirety is not the same thing as saying the RPD cannot do this. In any event, as the Decision makes clear, the RPD did not refuse to strike the earlier PIF in this case because it felt it had no jurisdiction or power to do so. It provided cogent reasons for denying the motion to strike at paragraph 8 of the Decision and no mention is made of lack of jurisdiction or lack of a power to strike. The RPD did not accept the Applicants' reasons why it should strike the narrative and this was a reasonable outcome on the evidence before it: "Based on all the above, counsel's request to strike the original PIF and narrative from the record is denied."

Failure to Make Clear Finding of Fact

[106] The Applicants allege that the RPD failed to make clear findings of fact "about which events alleged by the Applicants have occurred and which did not."

[107] The basis for this assertion is the terminology used by the RPD when it finds that events did not happen "as the claimants would have me to believe."

[108] In my view, the Applicants are attempting to use form over substance. If the Decision is read as a whole and the impugned phrases are examined in their full context, it is clear that the RPD is saying that the episodes as recounted by the Applicants cannot be relied upon as evidence of section 96 persecution or section 97 risk.

[109] The Decision also explains why the experiences that were accepted did not reach the level of persecution.

[110] In addition, Zsolt's claim relied upon his parents' claim, so that it was denied for the same reasons. Further, given the mandatory wording of subsection 49(1) of the Rules, it was not an error for the RPD to hear these claims together.

[111] However, I do not need to make a finding on this issue because the Decision contains a stand-alone alternative finding of adequate state protection in which the Applicants' narrative is assumed to be true.

Selectively Reading Evidence for State Protection Finding

[112] Having concluded that the Applicants' personal evidence was not enough to support a claim for section 96 persecution or section 97 risk, the RPD then appropriately turned its mind to "whether there is a serious possibility the claimants will be persecuted simply because they are Roma?" As the RPD makes clear in deciding this question, the "determinative issue is whether the claimants have rebutted the presumption of state protection."

[113] The RPD then goes on to provide a detailed and extensive analysis of what Roma people face in Hungary and the state's willingness and ability to protect them. The Applicants disagree with the RPD's conclusions.

[114] First of all, the Applicants say that the RPD made selective use of the evidence and they point to documents which they believe support their position that adequate state protection for Roma people in Hungary does not exist.

[115] There is no evidence that the RPD did not review all of the available evidence on state protection. The fact that the Applicants can point to documents and excerpts which support their case is not evidence of unreasonableness. See *Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 946, *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598, and *Wijekoon v Canada (Minister of Citizenship and Immigration)* 2002 FCT 758. The RPD fully acknowledges the difficult situation faced by Roma people in Hungary and acknowledges failures of the state to protect in the past and even more recent failures.

[116] But this is an evolving situation in which the RPD was obliged to identify and weigh competing factors and incidents. The Court cannot re-weigh the evidence to oblige the Applicants. See *Suresh v Canada (Minister of Citizenship and Immigration)* 2002 SCC 1 at paragraph 29. A review of the Decision suggests to me that the RPD addressed this difficult task thoroughly and with an open mind and took into account all of the evidence. Its conclusions are not out of line with other decisions on point that this Court has reviewed and found it reasonable. See, for example, *Horvath v Canada (Minister of Citizenship and Immigration)* 2012 FC 253, *Balogh v Canada (Minister of Citizenship and Immigration)* 2012 FC 216, and *Banya v Canada (Minister of Citizenship and Immigration)* 2011 FC 313.

[117] Nor can it be said that the RPD only looked at the state's willingness to protect and failed to examine what Justice Richard Mosley has referred to as "operational adequacy." See *E.Y.M.V. v Canada (Minister of Citizenship and Immigration)* 2011 FC 1364 at paragraph 16.

[118] The RPD acknowledges that "effectiveness of the protection is a relevant consideration." It also says that "even if I were to accept the allegations of attacks, the evidence shows that the

authorities did act to assist the claimants." The Applicants have not questioned this finding, so it must stand.

[119] This means, in effect, that the state protection finding in this case is a separate and independent ground for refusing the claim and is based upon an acceptance of the Applicants' narrative of the attacks they experienced. Consequently, even if the Applicants were able to establish that the Original Narrative should have been struck and/or that the RPD was unreasonable in its credibility findings, this Decision must still stand because the state protection finding is based upon a notional acceptance of the Applicants' own narrative and a reasonable assessment of the operational adequacy of the state's willingness to protect.

[120] The RPD is clear that it must go beyond the legal framework that exists in Hungary:

> I need to examine what efforts the state as a whole is making to positively affect the lives of the Roma. Are these efforts serious and what effect do these efforts have? Can claimants reasonably avail themselves of the state protection and reasonably expect adequate protection?

[121] The RPD then goes on to examine extensive evidence in detail and to answer these questions. It is possible to disagree with its conclusions but it is not possible to say they were unreasonable and fall outside the *Dunsmuir* range.

[122] The Applicants have suggested the following question for certification:

> Did the RPD fetter its discretion and commit a legal error by deciding that it could not allow a PIF to be struck and replaced with a new PIF?

[123] As my reasons explain, such a question does not arise on the facts of this case. The RPD dismissed the motion to strike through a reasonable exercise of its discretion and not upon a legal assumption that it had no discretion to strike the earlier PIF.

[124] In addition, the answer to such a question would not be determinative of the appeal because the whole Decision can rest upon the stand-alone, alternative adequate state protection finding. This question is therefore not appropriate for certification. See *Zazai v Canada (Minister of Citizenship and Immigration)* 2004 FCA 89 at paragraph 11.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

dNAME OF COUNSEL AND SOLICITORS OF RECORD

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