

Federal Court



Cour fédérale

Date: 20120907

Docket: IMM-1954-12

Citation: 2012 FC 1065

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 7, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**FLORIAN BARANYI
FLORIANNE BARANYI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The applicants' argument relies mainly on the collective experience of Roma in Hungary and not on their personal history that was assessed by the Refugee Protection Division (RPD). Its analysis was thoughtful and transparent and is not reviewable.

[2] A reading of the hearing transcript also shows that the RPD was faithful to the applicants' testimony in its analysis. This Court, because of its reviewing role, cannot simply substitute its factual assessment for that of the RPD on this issue (*Sagharichi v Canada (Minister of Employment and Immigration)*), [1993] FCJ No 796, 182 NR 398 (QL/Lexis) (FCA).

II. Introduction

[3] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision by the RPD dated January 20, 2012, that the applicants are not Convention refugees as defined in section 96 of the IRPA or persons in need of protection under section 97 of the IRPA.

III. Facts

[4] The applicants, Florian Baranyi, 44 years old, and his spouse, Florianne Baranyi, 43 years old, are citizens of Hungary and are of Roma ethnicity.

[5] The applicants allege that they were the subject of harassment in several aspects of their life because of their ethnicity.

[6] The applicants allege that they were attacked in 2009 by six member of the Hungarian Guard, an extreme right-wing paramilitary group. On that occasion, the police apparently refused to intervene because the applicants did not know the identity of the attackers, but they purportedly accompanied them to a bus stop to ensure their safety.

IV. Decision under review

[7] The RPD was of the opinion that the harassment the applicants were the subject of does not amount to persecution, but to discrimination. To come to this conclusion, the RPD referred to the *Handbook on Procedures and Criteria for Determining Refugee Status* written by the United Nations High Commissioner for Refugees (Handbook). It noted that the applicants were never deprived of housing or prevented from working despite the alleged acts of discrimination.

[8] The RPD also found that state protection was available. After an analysis of the documentary evidence, the RPD acknowledged that Roma are discriminated against with respect to education, housing and employment. It was nevertheless of the opinion that, according to the documentary evidence, the Hungarian state took measures to fight discrimination and remedies are now available to Roma.

[9] Regarding fear of persecution by the Hungarian Guard, the RPD acknowledged this extremist group's violence towards Roma. The RPD pointed out, however, that the Hungarian state banned the group in 2009. The RPD admitted that members of the group then reorganized themselves into other organizations, but that the Hungarian government intensified its efforts to protect Roma, amending the legislation several times to fight heinous crimes by groups acting under

the guise of the uniform. Again referring to the documentary evidence, the RPD noted that proceedings were commenced against members of the Hungarian Guard.

[10] The RPD therefore found that the applicants did not rebut the presumption of state protection. To that end, it also noted that their fear that the Hungarian Guard infiltrated the police is without merit according to the documentary evidence. The RPD noted, by this very fact, that, after the incident of April 2009, the applicants did not require medical care and that the police did not refuse to intervene. In fact, the applicants were unable to identify the attackers, which is why the police were not able to investigate. Nevertheless, police officers accompanied them to a bus stop after the incident to ensure their safety.

V. Issue

[11] Is the RPD's decision reasonable?

VI. Relevant statutory provisions

[12] The following provisions of the IRPA are relevant:

Convention refugee

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,

(a) is outside each of their countries of nationality and is unable or, by reason of

Définition de « réfugié »

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) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du

that fear, unwilling to avail themselves of the protection of each of those countries; or

fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

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

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

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

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

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

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

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

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou

by other individuals in or from that country,

qui s'y trouvent ne le sont généralement pas,

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

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

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

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Position of the parties

[13] The applicants claim that the RPD improperly assessed their testimony with respect to the consequences of the discrimination by reason of their ethnicity that they were the subject of. Thus, it erred by not considering the cumulative impact of those acts as amounting to persecution. The applicants, by this very fact, argue that extensive documentary evidence corroborates their allegations that they are at risk of persecution by reason of their ethnicity. The same documentary evidence apparently indicates that the state of Hungary is not capable of effectively protecting its Roma citizens from extremist groups like the Hungarian Guard.

[14] The respondent submits that the applicants were, at the most, victims of discrimination, not persecution. However, he argues that state protection is the primary issue in this case and that it is determinative, regardless of the Court's finding on the discrimination issue. On this point, the respondent argues that the documentary evidence addresses the measures put in place by the Hungarian state to fight discrimination of Roma. Furthermore, police officers allegedly protected the applicants during the incident of 2009, but, because they could not identify their attackers, the police could not arrest the attackers.

VIII. Analysis

[15] Issues regarding the RPD's factual assessment call for a certain degree of deference and are to be reviewed on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708).

Persecution and discrimination

[16] This Court has recognized that the cumulative impact of a series of discriminatory practices can amount to persecution (*Munderere v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 84).

[17] In this case, the RPD unequivocally decided the issue of the cumulative discrimination alleged by the applicants by applying the cumulative principle correctly, referring explicitly to sections 54 and 55 of the Handbook.

[18] The RPD, however, noted the following facts in support of its negative finding with respect to persecution:

- a. The female applicant abandoned her studies on her own initiative, encouraged by her parents because of the discrimination suffered at the hands of professors and other students;
- b. The female applicant attended a normal Hungarian and non-segregated school;
- c. The female applicant worked planting trees;
- d. The male applicant had his own business for several years before declaring bankruptcy;
- e. Even though he alleged that he suffered discrimination at the hands of his employer in the wood cutting field, the male applicant never complained to his employer;
- f. The applicants owned their house.

[19] In this case, the RPD did not err in law as stated by the applicants. It truly examined the cumulative impact of the discriminatory practices in accordance with the teachings of this Court. It nevertheless found, by reason of its factual assessment, which, it should be noted, it is master of, that there was discrimination. On this point, the applicants did not establish that the findings of fact made by the RPD are arbitrary and unjustified. (Reference was also made to *Csonka v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1056 at paragraph 68 and the Obiter at the end of the decision.)

[20] A reading of the hearing transcript also shows that the RPD was faithful to the applicants' testimony in its analysis. This Court, because of its reviewing role, cannot simply substitute its factual assessment for that of the RPD on this issue (*Sagharichi*, above).

[21] Furthermore, the RPD, referring to the documentary evidence, found that measures to fight discrimination were put in place by the Hungarian government.

[22] It should be noted that this finding depends on the context to be carefully assessed by the trier of facts. Thus, slightly different facts cannot result in the same finding because discriminatory practices may achieve, in other circumstances, according to the evidence as a whole, a degree amounting to persecution.

State protection

[23] Subsequently, the RPD found, alternatively, that Hungarian state protection was available to the applicants.

[24] It is well established that the protection offered by a state need not be perfect and that it is up to the applicants to demonstrate that it is unavailable to them (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689; *Kovacs v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1003).

[25] In this case, the RPD objectively recognized the situation of Roma in Hungary and the discrimination that they are the subject of in the fields of education, social services and employment. Nevertheless, the RPD provided a list of the measures put in place by the Hungarian

government to fight discrimination against minorities. The RPD noted that, throughout the many years during which the applicants allege having been discriminated against by reason of their ethnicity, they never tried to file a complaint with the competent authorities.

[26] Regarding the attack against the applicants in 2009, the RPD accepted that the hatred against Roma is such that some are subject to attacks by heinous extremist groups. Nevertheless, the RPD was of the opinion, after a thorough study of the documentary evidence, that protection is available through police forces put in place to investigate attacks against Roma (RPD decision at paragraph 26).

[27] The RPD also determined that the applicants' fear that the police had been infiltrated by extremist groups is unfounded with respect to the documentary evidence. In fact, a tribunal was created with the specific objective of investigating complaints against police with the purpose of improving the work of the police. Similarly, the RPD stated that police officers who are found guilty must be held accountable for their actions.

[28] The RPD pointed out that the applicants, because they were unable to identify their attackers, did not enable police to investigate. The police simply offered them protection to the bus stop.

[29] Under these circumstances, with respect to the documentary evidence, it was reasonable for the RPD to find that the applicants, by that one complaint attempt, did not rebut state protection (*Kallai v Canada (Minister of Citizenship and Immigration)*, 2010 FC 729).

[30] These are factual findings that are not open to judicial review because they are justified and not arbitrary with respect to the evidence in the record.

[31] The applicants' argument relies mainly on the collective experience of Roma in Hungary and not on their personal history that was assessed by the RPD. Its analysis was thoughtful and transparent and is not reviewable.

IX. Conclusion

[32] In light of the foregoing, the RPD's decision is reasonable. The application for judicial review is, as a result, dismissed.

ORDER

THE COURT ORDERS the dismissal of the applicants' application for judicial review. No question of general importance is certified.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1954-12

STYLE OF CAUSE: FLORIAN BARANYI
FLORIANNE BARANYI
v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 5, 2012

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

DATED: September 7, 2012

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