

Federal Court



Cour fédérale

Date: 20121127

Docket: IMM-214-12

Citation: 2012 FC 1371

Toronto, Ontario, November 27, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**PATRIC STOJKA
(A.K.A. PATRIK STOJKA)
PATRICIA STOJKOVA
ROMEO STOJKA
ESPERANZA LOLITA STOJKOVA
(A.K.A. ESPERANZA LOLIT STOJKOVA)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are a Roma family, citizens of both the Czech Republic and Slovakia but resident in the Czech Republic. They sought and were refused refugee protection in Canada by a decision of a Member of the Refugee Protection Division of the Immigration and Refugee Board of Canada dated December 21, 2011. This is a judicial review of that decision.

[2] The issue before the Court relates to the Member's decision respecting the adequacy of state protection. The Member determined that the Applicants had not put before the Board sufficient and reliable evidence that police protection was inadequate. Counsel for the Applicants correctly points out that the Applicants' oral evidence sets out four incidents where the police were aware or made aware of attacks upon one or more of the Applicants by "skinheads" but did not do anything about it. Applicants' Counsel correctly points out that, in the absence of a negative finding of credibility, this evidence must be accepted as adequate.

[3] However the matter does not end there. The Member also determined that a number of state agencies and resources were available, even to those of limited education and sophistication such as the Applicants, and that the Applicants led no evidence that they made any attempt to avail themselves of any of these services. Such a finding I find to be within the acceptable range of reasonableness. It must be remembered that there is a presumption that there is adequate state protection and that there is a burden on the Applicants to lead credible and sufficient evidence to rebut that presumption. Here the Applicants led no evidence that they tried to avail themselves of such protection and, if so, what was the result.

[4] I find that even if the Member erred in respect of evidence as to police protection the decision in respect of assistance offered by other agencies is reasonable. The decision will not be set aside.

[5] Applicants' Counsel made another argument, namely that the Member's use of the word "persecution" in the reasons meant a finding both that there was sustained or systemic violation of

basic human rights and a demonstrative lack of state protection. Professor Hathaway's book "The Law of Refugee Status; 1991 was cited as authoritative. I find that the Member's use of this word was more casual than deliberate and no semantical conclusion can be reached such that the decision should be set aside.

[6] No party requested certification.

JUDGMENT

THEREFOR, THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-214-12

STYLE OF CAUSE: PATRIC STOJKA (A.K.A. PATRIK STOJKA)
PATRICIA STOJKOVA, ROMEO STOJKA,
ESPERANZA LOLITA STOJKOVA (A.K.A.
ESPERANZA LOLIT STOJKOVA) V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 26, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** HUGHES J.

DATED: November 27, 2012

APPEARANCES:

Clifford Luyt FOR THE APPLICANTS

Rafeena Rashid FOR THE RESPONDENT

SOLICITORS OF RECORD:

Czuma, Ritter FOR THE APPLICANTS
Barristers and Solicitors
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William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada