

Federal Court



Cour fédérale

Date: 20130507

Docket: IMM-10533-12

Citation: 2013 FC 479

Ottawa, Ontario, May 7, 2013

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**PETER RIGACS
PETERNE RIGACS
BETTINA ROZALIA RIGACS
PETER MIHALY RIGACS
ROLAND RIGACS**

Applicants

and

**MINISTER FOR PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR ORDER AND ORDER

[1] Peter Rigacs left Hungary with his family and sought protection in Canada from a loan shark. Their claim for asylum was dismissed by the Refugee Protection Division of the Immigration and Refugee Board of Canada, and their application for leave to judicially review that decision was denied by this Court.

[2] What is at issue in this judicial review is their request to an enforcement officer to defer their removal to Hungary pending the outcome of their application for permanent residence based on humanitarian and compassionate (H&C) grounds. The gist of the claim is that they all suffer from high anxiety. More particularly, the son Peter Mihaly suffers from post-traumatic stress disorder as a result of witnessing death threats against his father.

[3] The enforcement officer refused to defer. He noted that the humanitarian and compassionate application was submitted late June last year, and that the outstanding processing time would be between 27 and 39 months. He accepted the psychological assessment of Peter Mihaly, which was that he required long term counselling. However, he was of the view that it was reasonable to assume that such counselling would also be available in Hungary. Furthermore, Peter Mihaly would not be separated from his family, as the entire family would be removed.

[4] This refusal was based on the previous version of section 48 of the *Immigration and Refugee Protection Act*, which required an officer to remove persons “as soon as is reasonably practicable” rather than the current version which requires removal “as soon as possible”.

[5] In my opinion, the decision was reasonable, irrespective of whether I would have come to the same conclusion, and so the application shall be dismissed.

[6] There has been a great deal of jurisprudence touching upon the discretion of an enforcement officer to defer removal. Such discretion as there is has been limited to the short term, such as a pending birth or with respect to an outstanding H&C application which would have been resolved

had it not been for a backlog in the system. There is no such situation here. Longer term delays relate more to personal risk of safety, and their application has already been dismissed in that regard. There were no special considerations in this case (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311, [2009] FCJ No 314 (QL)).

[7] The enforcement officer is not required, and indeed does not have the ability, to carry out a mini H&C analysis (*Baron*, above).

[8] The law was recently reviewed by Mr. Justice O'Keefe in *Ortiz v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 18, [2012] FCJ No 11 (QL)). That case was very similar to this one, save that the psychiatrist was of the view that the applicant's mental state would collapse were she to be returned to Mexico. Nevertheless, the application was dismissed. In this case, there is no such statement from the psychologist, and no evidence has been provided by the applicants, the burden being on them, to establish that appropriate psychological counselling would not be available in Hungary.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10533-12

STYLE OF CAUSE: PETER RIGACS ET AL v MPSEP

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 30, 2013

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: MAY 7, 2013

APPEARANCES:

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Jennifer Dagsvik FOR THE RESPONDENT

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