

Federal Court



Cour fédérale

Date: 20130624

Docket: IMM-9511-12

Citation: 2013 FC 702

Toronto, Ontario, June 24, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DENES CSABA RACZ
MARODI RACZNE TIMEA
DAVID RACZ
VENESSZA RACZ
KEVIN RACZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant family members are citizens of Hungary and of Roma ethnicity.

[2] In their PIF and before the Board, they recounted various incidences of harassment, discrimination, and violence against them in Hungary. Two relatively recent incidents of violence were the focus of the Board's decision and this judicial review application.

[3] On the evening of May 3, 2011, the applicants were at home when stones were thrown through their windows. Denes Csaba Racz, the father in the applicant family, ran out of the house to see what had happened but he was immediately kicked in his stomach and assaulted. By the time Timea Raczne Marodi, the mother in the applicant family, went outside, her husband was on the ground and his attackers were fleeing in a car. They were shouting that “this is not over” and that the applicants would die. Mr. Racz called the police. When they arrived, he showed them the broken windows and where he was kicked and punched. The police asked if he saw the perpetrators, and Mr. Racz replied that he did not because he was kicked very suddenly. Ms. Marodi did not get the license plate. The police said that there was not much they could do, but that they would patrol the area more often. They left without taking a report. They patrolled one more time that night but no additional patrols were made. The applicants also asked the Mayor of their village to help them but he said the police would take care of things.

[4] On August 2, 2011, Ms. Marodi was on her way home from a store when three young men blocked her way and insulted her. She wanted to call out for help but the men told her to keep her mouth shut and then they punched her in her stomach. They then threw away the items she had purchased, kicked her, and insulted her. They called her a Gypsy whore and said that Gypsies should be exterminated. Once the men had left and Ms. Marodi had gathered herself and her things together, she went home and told her husband what had happened. He phoned the police. They came and took personal information and she told them that this was not the first time they had been attacked. She could not describe her attackers accurately because at the time she was afraid and had tried to avoid making eye contact with them. The police said they would send a copy of their report by mail, but no record was ever received. Ms. Marodi even went to the police station at some point

after the attack but was told they were still working on the report. She did not obtain any of copy of that report before the family left for Canada on September 27, 2011.

[5] The Board dismissed the applicants' refugee claims on the basis of the availability of state protection in Hungary. In particular, the Board found that in the context of the available documentary evidence about Hungary, which it had extensively reviewed and summarized in its decision, the applicants had "failed to rebut the presumption of state protection based on their personal experience [with the police]."

Issues

[6] The applicants raise two issues in their written memorandum:

1. Did the Board err by finding that the various acts of discrimination and violence against the applicants did not amount to persecution?
2. Did the Board err by failing to conduct a separate analysis under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]?

[7] However, regarding the first issue raised, the Board did not actually make any finding in its decision that the mistreatment suffered by the applicants did not amount to persecution. Regarding the second issue, since an applicant must establish a lack of state protection under both section 96 and subsection 97(1) of the Act and since the Board found adequate state protection, there was no need for it to examine whether the applicants also faced the mistreatment described in subsection 97(1). This has been often recognized by this Court: See, e.g., *Racz v Canada (Minister of Citizenship & Immigration)*, 2012 FC 436. Further, contrary to the submissions of the applicants,

the Board made no credibility findings and accordingly the above referenced decision is on all-fours with this case.

[8] The only real issue in this application is whether the Board's state protection finding was reasonable.

Analysis

[9] The applicants make four submissions on state protection. First, citing *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, they argue that a refugee claimant is not required to risk his or her life to seek the state's protection. However, the applicants do not point to any evidence in the record, including in their own testimony, that they themselves would be risking their lives in seeking Hungary's protection.

[10] Second, citing a paragraph from the Board's reasons, the applicants argue that state protection is not available to the Roma in rural areas but rather only in the larger cities. However, in that paragraph – paragraph 52 of the Board's reasons – the Board merely discusses how a particular legal aid program is only available in larger cities. Moreover, a claimant is not a Convention refugee or a person in need of protection under the Act if they have an internal flight alternative in their home country. Accordingly, it could be said that by this submission, the applicants presumably acknowledge that state protection is available to them in larger cities.

[11] Third, the applicants submit that there is only a strong presumption of state protection in a democracy, and that their evidence of rigged village elections shows that there was in fact no

democracy. However, while the applicants' testimony about the elections in their village may establish that the democratic institutions in their village are weak, the relevant unit of analysis is, undoubtedly, the state: See, e.g., *Kadenko v Canada (Solicitor General)* (1996), 143 DLR (4th) 532 (FCA). The applicants raise no real argument that Hungary as a whole is not a democracy.

[12] Last, the applicants criticize the Board for relying on evidence about the Independent Police Complaints Board (IPCB), arguing that the Board at paragraph 37 of its decision "concede[d] that only a small proportion of IPCB's recommendations were followed up by police indicating that the IPCB is effective." However, the Board did not concede this. Rather, it noted that the IPCB had forwarded 67 cases to the national police chief; that, at the time the report was written, the police chief had agreed with the findings in two of the cases, partially agreed with three, rejected three others; and that the remaining cases remained "pending." In other words, the Board's comments only mean that – at the time the report was written – the police had acted on eight of the 67 complaints referred to it. The applicants do not point out what documentary source this information is derived from; however, the reasons on their face do not amount to the assertion advanced by the applicants. In any event, even if the IPCB were an ineffective complaint mechanism that alone does not mean that the state protection offered in Hungary is not operationally adequate.

[13] In summary, the applicants have not raised any reviewable error in the Board's state protection finding. Further, I agree with the submission of the respondent that the Board's examination must focus on whether these persons, on clear and convincing evidence, have established that there is not adequate state protection at the operational level. I am unable to find, based on their submissions in this application, that the Board's decision that they did not establish

the inadequacy of state protection is unreasonable. In fact, although not perfect, the response of the police to the applicants' complaints, given the specific circumstances of the assaults taken to the police, appears to have been adequate and in keeping with what Canadian police forces would be likely to do.

[14] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9511-12

STYLE OF CAUSE: DENES CSABA RACZ EL AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 20, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** ZINN, J.

DATED: June 24, 2013

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