Federal Court  Cour fédérale

Date: 20130821

Docket: IMM-8775-12

Citation: 2013 FC 888

Ottawa, Ontario, August 21, 2013

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

GYORGY RICZU
TEREZIA HARASZT
VIRAG RICZU
GYORGY RICZU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Louise Paquette-Neville, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board (the Board), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act). The Board dismissed the Applicants' claim for refugee protection, concluding that they were not convention refugees or persons in need of protection under sections 96 and 97 of the Act.

I. Background

[2] The Applicants are Hungarian citizens of Roma ethnicity, consisting of a father (Principal Applicant) and his common-law spouse, their daughter and son. They are aged 27, 26, 5, and 3, respectively. The family resided in Sajozsentpeter which is a small city close to Miskolc, the third largest city in Hungary. The Principal Applicant was employed as a nursing assistant in Miskolc.

[3] Their Personal Information Form (PIF) included a three-paragraph personal narrative dated December 29, 2010 that said that living in Hungary is no longer bearable for the Applicants due to ongoing threats, abuse and discrimination stemming from their Roma ethnicity.

[4] A three-page amendment to the original PIF was provided to the Board on May 10, 2012. In the amended narrative, the Applicants allege three instances where the Applicants faced persecution:

a) The first of these incidents occurred in August, 2010. The Principal Applicant alleges the Applicants were verbally threatened by five ethnic Hungarians at a playground in their hometown of Sajozsentpeter;
b) The second incident occurred on October 10, 2010. The Applicants went to the neighbouring town of Miskolc and accidentally encountered an anti gypsy rally where participants verbally threatened them. A coke bottle hit their son. The Principal Applicant was pushed against a bus stop, which injuring his hand;
c) The third incident occurred on November 21, 2010. The Principal Applicant says that he was walking in Sajozsentpeter with his friend Kotai Otto, when some skinheads threatened them before stabbing his friend Otto. As a result of his wounds, Otto died in

his arms. The Applicants left the day after the funeral and arrived in Canada and applied for refugee protection on December 2, 2010.

II. Issue

[5] The issue raised in the present application is:

A. Was the Board's state protection analysis reasonable?

III. Standard of review

[6] The Board's finding with regards to state protection is reviewable on the standard of reasonableness (*Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354 at paras 25, 29; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 46, 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-48, 51 [*Dunsmuir*]).

[7] When reviewing a decision on the reasonableness standard, the Court must determine whether the Board's findings fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47). Although there may be more than one possible outcome, as long as the Board's decision-making process was justified, transparent and intelligible, a reviewing court cannot substitute its own view of a preferable outcome (*Khosa*, above, at para 59).

IV. Analysis

A. *The Appropriate Framework for the State protection Analysis*

[8] The appropriate test for state protection in the context of subsections 96(a) and 97 (1)(b)(i) of the Act was stated in *Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30:

> … a claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate.

[9] The state is not required to provide perfect protection to all citizens all of the time (*Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189, 99 DLR (4th) 334).

B. *Seeking Protection from Police and Non-Police Organizations*

[10] There is a presumption that a state is capable of protecting its citizens and that the more democratic the state, the more an applicant must do to show what it had done to exhaust all courses of action open to it (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 and *Hinzman v Canada (Minister of Citizenship and Immigration); Hughey v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 41).

[11] The Principal Applicant argued that he went to the police regarding the three incidents and argues he had no relief so going more times would have garnished the same results. The Applicants argue that it is operational adequacy on the ground not efforts that matter and in this case police or other agencies do nothing so there is no reason to go to them.

[12] The Principal Applicant said he went to the police to report the August, 2010 incident of verbal abuse that occurred in the playground. When he went to the police station they asked if he could prove anything that happened and asked for descriptions of the perpetrators. When the Principal Applicant told the police they were the only witnesses, the police did not even write anything down. At the hearing he was asked if there was any where else to turn to address the lack of police response and he said the minority self-government in Sajozsentpeter, but they say that the judicial system will believe the police over them. The complaint was not pursued further.

[13] The Board found that this was abhorrent treatment but that the issue of racism cannot be addressed overnight. The Board did find that the state was addressing discrimination through legislation and on the ground by providing venues in which complaints can be addressed. The Board found these measures to be operationally adequate. The Board found that the Applicants had not made reasonable attempts to address the discrimination and they did not demonstrate with clear and convincing evidence that state protection was inadequate with relation to the incident that occurred.

[14] The Principal Applicant testified that on October 10th, 2010, his family went to Mickolc to enjoy themselves and they walked into a rally. The Principal Applicant's son was hit on the head with a coke bottle and the Principal Applicant injured his hand. The Principal Applicant reported the incident to the police in Sajozsentpeter where he lived rather than in Mickolc where the incident occurred. He said he was too afraid to report to the police in Mickolc. The Principal Applicant could not provide the police with a description other that they were Guardists and racist people. The Principal Applicant testified that the police did not seem interested. The Board asked why he

reported it to his home and he said he thought the police would contact the Mickolc police. The Principal Applicant followed up 2-3 weeks later at the Sajoszentpeter police station and the receptionist said the person in charge was not in. He did not return as he felt they did not treat it the same as if an ethnic Hungarian filed the report.

[15] The Board found that he could not give the police a description of who threw the bottle other than a general description of Guardists. The Board noted that he said in his amended PIF that he attended a hospital to have his hand attended to and he told them what happened but no one really seemed to pay attention. The panel sympathized with the Applicants but found it unreasonable to expect the police to investigate when lack of sufficient evidence regarding the perpetrator. The Board found that on a balance, the police and state are addressing this increased violence.

[16] In November, 2010 when the Principal Applicant's friend was stabbed while walking with him. The police arrived about when the ambulance did. He was so emotional he said he could not talk to the police other than to tell them it was a "big bald guy who worked out". The day following this incident, the Principal Applicant attended the police station to provide a statement. He was unable to obtain a copy of the report. The day after the funeral the Applicants left for Canada. When his mother attended the police station to get a copy of his statement they told her they had been looking to talk to him. The Principal Applicant's mother told him that the police attended his former residence in Hungary in January or February of 2011 looking for him. The Principal Applicant assumes this visit was connected to the investigation of Otto's death. The Principal Applicant testified that in March 2012, his mother told him that she received a threatening letter addressed to

the Principal Applicant at his former address in Hungary. The Principal Applicant assumed that this letter was sent by someone connected to the death of Otto. The Board assigned little weight to the note as it was 2 years later on unsigned paper with newspaper letter pasted on it and mailed to him by his mother.

[17] When the Board questioned him he said he did not think he had to attend a hearing or any judicial matter.

[18] The Board found that at a minimum the Applicants departure did not assist the police in identifying who the perpetrator was and that this was unreasonable given he knew his brined had an altercation with someone from the neighbourhood 3 weeks prior. The Board found his departure to be premature given the state's interest in taking his statement and that they attended his home and he was a witness to the attack.

[19] It is very difficult to argue the state is not protecting you when you do not enable them in anyway such as giving descriptions to them of alleged attackers and to follow up with police regarding the attacker that killed your friend (*Szucs v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1614). The police cannot solve crimes where there is little if any evidence to investigate or to respond to.

[20] The Applicants cannot rebut a presumption by only asserting subjective reluctance to engage the state or other bodies legislated to assist operationally (*Molnar v Canada (Minister of*

Citizenship and Immigration), 2012 FC 530). It is more understandable when the police are the alleged perpetrators but that was not the case on these facts.

C. *Board Considering all Relevant Evidence*

[21] I find that the Board conducted a thorough very detailed and full review of the documentary evidence in coming to its decision on state protection contrary to the Applicants' suggestions that it completely disregarded the documentary evidence supportive of the Applicants. There is no evidence to support that claim.

[22] Likewise I do not agree with the Applicants that their testimonial evidence was completely disregarded by the Board. The Board addresses each of the Applicants' main claims of persecution; the incidents in August, October and November 2010 and the resulting police response. In addition it considers the secondary incidents of concern regarding the Principal Applicant's daughter kindergarten, the medical treatment of the Principal Applicant's son and father that were not argued at this hearing.

D. *Board Reasonably Assessing the Evidence*

[23] The Board considered the mixed country condition evidence. They were aware of the shortcomings of protection for Roma in Hungary. Their decision that protection though not perfect was adequate was available for them to make on the evidence before them. The decision was detailed analysis of the documentary evidence that considered and weighed it against the facts in this case.

[24] The Board in reviewing the specific circumstances of these Applicants did not find this family faced personalized risk of harm under section 97 of the Act. The Board found that the Applicants "failed to rebut the presumption of state protection with clear and convincing evidence and that the claimants did not take all reasonable steps in the circumstances to avail themselves of that protection before making a claim for refugee protection".

[25] Each case must be determined on its own facts as established by the evidence. The Applicants filed the recent cases of *Kemenczei v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1349, *Biro v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1120 and *Majoros v Canada (Minister of Citizenship and Immigration)*, 2013 FC 421. All were matters involving Roma with successful judicial reviews. I agree with those cases, but there continue to be recent cases where the judicial reviews have not been successful for Roma in Hungary. This strengthens the argument that it is a very factual determination and that each case will be reviewed on their own facts.

[26] On these facts, I find that the Board came to a conclusion that based on the evidence is a transparent, justifiable and intelligible result within the range of reasonable outcomes based on the evidence before it (*Dunsmuir*, at para 47 and *Khosa*, at para 46).

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8775-12
STYLE OF CAUSE:	Riczu et al. v. MCI
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 28, 2013
REASONS FOR JUDGMENT AND JUDGMENT BY:	MCVEIGH J.
DATED:	August 21, 2013

APPEARANCES:

George J. Kubes	FOR THE APPLICANTS
Teresa Ramnarine	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Georges J. Kubes Barrister and Solicitor Toronto, ON	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Toronto, ON	FOR THE RESPONDENT