Federal Court  Cour fédérale

**Date: 20140306**

**Docket: IMM-1298-13**

**Citation: 2014 FC 224**

**Ottawa, Ontario, March 6, 2014**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**MILAN VAGNER, MARCELA VAGNEROVA, KVETA VAGNEROVA**

**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 Karen J. McMillan, 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. Issue

[2] Was the Board's decision unreasonable with respect to state protection?

## II. Background

[3] The Applicants are a family of Slovak citizens. They consist of a father [the Principal Applicant or PA], his wife, and their daughter [the Minor Applicant or MA]. They are of Roma ethnicity.

[4] According to the PA's Personal Information Form [PIF] narrative, the Applicants fear returning to Slovakia because of several alleged incidents of violence directed towards them as a result of their Roma ethnicity.

[5] In 2003, the PA's wife and her son were robbed, assaulted and harassed in Bratislava. They did not know where to find a police station, so they did not report the assault.

[6] In 2007, the PA's wife was attacked by four skinheads and robbed while returning home from work. She recognized one of her attackers, and this attacker told the others to stop. She did not go to the police and continued to take the same route home from work in the future. She subsequently learned that the attacker that she knew had been jailed, although she was uncertain if his incarceration was related to the attack against her.

[7] In October, 2010, the PA was attacked on a train by skinheads. He stayed in the hospital for four days as a result of the attack. Police were called by medical staff, but he was unable to describe

his attackers to the police, other than the fact that they were bald. He heard nothing more from the police.

[8] In February, 2011, the MA was verbally abused and attacked by skinheads at her workplace. She called police and they arrived, but her attackers had left. She gave a report to the police, and heard from a friend that police went to one of the attackers' homes and cautioned him. She is unsure if charges were laid. After this attack, swastikas were painted on the apartment in which the Applicants lived. Police were not called, and the superintendent of the apartment painted over the symbols.

[9] On April 5, 2011, the Applicants arrived in Canada and claimed refugee protection.

[10] The determinative issue for the Board was state protection. The Board found that the Applicants had failed to rebut the presumption of state protection.

[11] With regard to the October, 2010 attack, the Board found that the police did what could reasonably be expected in the circumstances: they interviewed the PA and sought a description of his attackers. The PA was unable to provide a description, and the police were unable to pursue an investigation.

[12] With respect to the September, 2007 incident, the Board found that the PA's wife should have contacted police over the incident but did not, and noted that the fact that the attacker she knew

was later jailed shows that the Slovak police investigate criminal behaviour when they are made aware of it.

[13] Finally, with regard to the February, 2011 incident, the Board notes that the police took the MA's report and said they would investigate. Further, she requested security guards or cameras be installed at her workplace, and her employer complied. Because the Applicants left Slovakia shortly after the incident, there is no way of knowing what steps the police took to further this investigation.

[14] The Board questioned the PA about his view of state protection in Slovakia. The PA testified that the police do not help Roma because they do not want to. The Board found this answer unpersuasive, as none of the Applicants' incidents were corroborated and were inconsistent with the documentary evidence.

[15] The Board recognized that there is widespread reporting of incidents of intolerance, discrimination and persecution of Romani individuals in Slovakia. This includes violent attacks against the Roma by neo-Nazi groups, ineffective protection by the police, and discrimination in health care, education, housing and employment.

[16] However, the Board found that the Slovak government has taken steps to combat these deficiencies and it is making progress. The Board cites the third report to the Council of Europe on the Framework Convention for the Protection of National Minorities, which details progress Slovakia is making on protection for minorities.

[17] With regard to the police, the Board notes government efforts to address violence and discrimination against Roma and other minorities. This includes the monitoring of extremist activities by a special police unit and a commission that advises the police on minority issues. Further, the Board notes that Slovak laws are applied regardless of race and an outreach initiative involving 231 "Police Roma Specialists" spend 70 per cent of their time in Roma communities to build trust. Finally, the Penal Code was amended in 2009 to provide better protection for racially-motivated crimes.

[18] The key finding of the Board with respect to the Applicants' failure to rebut the presumption of state protection is that the Applicants did not take reasonable steps in the circumstances to seek state protection.

## III. Standard of Review

[19] While not specifically addressed by the parties, the standard of review is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 62; *Hippolyte v Canada (Minister of Citizenship and Immigration)*, 2011 FC 82, at paras 22-24).

## IV. Analysis

[20] The Applicants argues that the Board erred in suggesting that the Applicants had to seek protection beyond the police and by stating that the Applicants suffered discrimination, not persecution (*Molnar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1081, at paras 23-24, 28-30, 34, 37 et al).

[21] Moreover, the Applicants argues that the Board erred in finding that taking a police report without a proper investigation indicates adequate protection (*Biro v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1120, at paras 26-28), and alleges that the Board erred in concluding that the Applicants ought to have sought police protection, given that police protection had previously not been forthcoming (*Sebok v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1107, at paras 23-25).

[22] The Applicants also assert that the Board erred in concluding that state protection exists in Slovakia based on the documentary record, as the documentary evidence described by the Board at paragraphs 14, 20, 21, 22 and 24 show that Roma in Slovakia are increasingly suffering racially-motivated attacks, are continually the subject of police abuse, that officials have not taken necessary efforts to curb racist attitudes, and judges often lack sufficient training in relevant laws on extremism. The Applicants argues that this is especially so since the Applicants were deemed credible by the Board. Consequently, the Board failed to properly assess the operational adequacy of state protection efforts by Slovakia.

[23] The Applicants further argue that the Board ignored evidence, particularly the Applicants' oral evidence, various observations made by the Board at paragraphs 14, 20, 21, 22 and 24 of the decision, the fact that the police are often agents of persecution, the documentary evidence tendered by the Applicants' counsel, and documentary evidence provided by the Board.

[24] Finally, the Applicants assert that the Board erred in failing to deal with the "inability" of Slovakia to protect the Applicants.

[25] Notwithstanding the Applicants' submissions, I find that the Board was reasonable in determining that the Applicants were not convention refugees or persons in need of protection.

[26] Many of the Applicants' arguments are not supported on the evidence before me. Seeking protection beyond the police was not at issue in this case – the Board was speaking generally at paragraphs 15 and 20 of the decision. Contrary to the Applicants' claims, the Board also referred to persecution at paragraph 20. Moreover, I do not think it a fair categorization of paragraphs 16-17 of the Board's decision to say that the Board found there was adequate state protection because the police did not conduct an investigation. The Board found that the police either investigated to the extent that they could or the Applicants did not find out whether the police had conducted an investigation, and that as a result the Applicants had not discharged their burden of proving that state protection is inadequate. The Board did not ignore evidence – the Applicants' submissions amount to a request to re-weigh evidence.

[27] While the Respondent is correct that the Board states that it has examined the documentary evidence and concluded that it finds the state protection is adequate at the "operational level," in substance there is little evidence that it has done so. In particular, the Respondent acknowledges evidence at paragraph 14 that Slovakia is experiencing an "increasingly racist climate," and the Roma are "singled-out for violence." However, despite a weakness in the Board's analysis on this issue, it was reasonable for the Board to find that the Applicants had not rebutted the presumption of state protection, given the Applicants' failures to seek state protection. The Applicants did not contact police regarding some incidents, provided police with insufficient information for them to

pursue an investigation in others, and did not stay in Slovakia long enough to determine the results of the police investigation regarding the 2011 incident.

[28] While perspective claimants are not required to risk their lives to prove that protection is inadequate (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 48), the law is clear that there is a heavy burden on refugee claimants to show that they are not required to seek state protection prior to claiming refugee status (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 66, at para 12; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 57).

[29] While the Applicants cites *Cervenakova v Canada (Minister of Citizenship and Immigration)*, 2012 FC 525, at paras 70-74 [*Cervenakova*], as an example of a similarly weak analysis of the operational adequacy of state protection efforts in Slovakia, each case is determined on its own facts as established by the evidence. In *Cervenakova*, above, Justice James Russell did not make a finding as to the reasonableness of the applicant's efforts to seek state protection. At para 6 of that decision, it is noted that the police explicitly refused to help the applicant, and at para 9 that the Applicant was refused adequate medical care. Such refusals are not at issue in this case.

[30] Overall, on the evidence before the Board, it was reasonable to conclude that the Applicants did not take all reasonable steps in the circumstances to seek state protection. Given the Applicants' failure to rebut the presumption of state protection with clear and convincing evidence, the decision as a whole was reasonable (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, at paras 26, 28).

## JUDGMENT

**THIS COURT'S JUDGMENT is that**:

1. The Application is dismissed;

2. No question is to be certified.

"Michael D. Manson"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-1298-13 |
| **STYLE OF CAUSE:** | Vagner et al v. MCI |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | March, 5, 2014 |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | MANSON J. |
| **DATED:** | March 6, 2014 |

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