

Federal Court



Cour fédérale

Date: 20140908

Docket: IMM-8262-13

Citation: 2014 FC 852

Ottawa, Ontario, September 8, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**KAROLY NAGY
AGNES MARIA SINKA
KAROLY NAGY
BERCEL NAGY
AJTONY NAGY**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] **UPON** an application for judicial review of a decision of the Refugee Protection Division [RPD] made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA];

[2] **AND UPON** review of the application and the documentation in support of the application;

[3] **AND UPON** considering carefully the arguments put forward by counsel for the parties;

[4] The Court must conclude that the application for judicial review has to be dismissed.

Here are the reasons for that conclusion.

[5] The facts of this case are simple and uncontradicted. The applicants are Hungarians of Roma ethnicity. Following a period living in Ireland, they went back to Hungary in 2009. It appears that employment opportunities in Ireland had dried up and the family chose to go back to its country of nationality. It appears that the employment situation in Hungary for the principal applicant (Karoly Nagy) was not completely satisfactory as only part time employment was available. One of the principal applicant's sons had to abandon his law studies in Hungary because of a lack of financial resources. The applicants allege that two incidents, one in February 2012 and one in March 2012, convinced them that they had to leave Hungary. Indeed, they left Hungary on April 12, 2012 to come to Canada and seek refugee protection upon arrival.

[6] These incidents are the following. In February 2012, the principal applicant's wife and one son were insulted and attacked on the street. According to a police report which would have been done on April 1, 2012, the main applicant's wife and son were grocery shopping when they were accosted by an unknown man. He grabbed her hand and started threatening her. The

attacker was shouting and he let go of her, after hitting her left arm on a few occasions, when the son ran away to call for help.

[7] The second incident would have taken place on March 29, 2012 when the principal applicant was attacked, at night, in a Budapest park. The principal applicant faced a group of three or four people who were unknown to him and the altercation resulted in injuries to him.

[8] A medical report, the authenticity of which was doubted by the RPD, reveals that what appears to be a thorough medical examination confirmed bumps and bruises which, according to the medical opinion, would require a recovery within eight days.

[9] Less than two weeks later, the applicants traveled to Canada and sought refugee status.

[10] The decision under review is not a model of clarity but, upon careful examination, it is fundamentally based on the conclusion that the incidents reported by the applicants do not rise to the level of persecution. It is true that the RPD discounted significantly the two incidents reported by the applicants. The Court is less than satisfied that such discounting was appropriate, given the basis on which it was made by the RPD. The RPD discounted an ambulatory card which would have been filled out following the February incident. It also challenged the authenticity of the medical report that would have been produced following the March incident involving the principal applicant. Finally, the police report dated April 1, 2012 is not recognized as being authentic.

[11] In my view, the important conclusion reached by the RPD is that the situation of the applicants did not rise to the level of persecution. Even if the incidents of February and March 2012 are factored in, I fail to see how the RPD conclusion can be said to be unreasonable. Persecution requires that the harm be serious and systematic. That proof has not been made on this record. In fact, the only incidents reported by these applicants refer to attacks by unknown individuals in February and March 2012, with a decision made within two weeks of the second incident to seek refugee status in Canada.

[12] The RPD also concluded that the applicants had not discharged their burden to show through clear and convincing evidence, that state protection would not be available for them in Hungary. There was certainly no evidence directly relevant to their situation since the police report would have been taken on April 1, 2012, barely 11 days before they left for Canada. They therefore had to rely on general country documentation.

[13] With the greatest of respect, the applicants did not even seek to show that state protection would not be afforded to them. The failure to bring about evidence with respect to these applicants is fatal (*Radics v Canada (Citizenship and Immigration)*, 2014 FC 110). The evidential burden has not been met (*Hetyei v Canada (Citizenship and Immigration)*, 2013 FC 1208).

[14] As a result the application for judicial review is dismissed. There is no question to be certified.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. There is no question to be certified.

"Yvan Roy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: KAROLY NAGY, AGNES MARIA SINKA, KAROLY NAGY, BERCEL NAGY, AJTONY NAGY v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 28, 2014

ORDER AND REASONS: ROY J.

DATED: SEPTEMBER 8, 2014

APPEARANCES:

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