

Federal Court



Cour fédérale

Date: 20150724

Docket: IMM-6587-14

Citation: 2015 FC 910

Ottawa, Ontario, July 24, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**GABOR GULYAS
IDA GULYASNE SCHREITER
CSILLA TOFEJYNE SCHREITER
KRISZTIAN PETER TOFEJY
BENEDEK GULYAS, GERGO GULYAS AND
GABOR GULYAS (BY THEIR LITIGATION
GUARDIAN GABOR GULYAS)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants are a family from Hungary – Gabor Gulyas [the principal Applicant], his wife Ida Gulyasne Schreiter and their three minor sons, Gabor, Benedek and Gergo, as well as

his sister-in-law Csilla Tofejnye Schreiter and her minor son Krisztian Peter Tofejy. The principal Applicant was a lawyer, elected municipal official representing the Hungarian Socialist Party [the MSZP], and an advocate for minority rights. They fled Hungary in 2012 fearing persecution from the state for the principal Applicant's political opinions and activities.

[1] Pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act], the Applicants are seeking judicial review of a decision of the Refugee Protection Division [the Board] that they are not Convention refugees nor persons in need of protection in the meaning of sections 96 and 97(1) of the Act. For the reasons that follow, the application is dismissed.

II. Background

[2] The principal Applicant joined the MSZP in 1990, which he describes as a “centre-left social democratic party” that was in power in Hungary from 1994 to 1998 and from 2002 to 2010. The principal Applicant was an elected councillor on the municipal council for his local district in Budapest from 1994 to 2010. He was elected four times and during his tenure, he acted as the Hungarian representative to the European Union for the Prevention and Fight Against Crime. He also actively advocated for minority rights, including the Jewish and Roma communities, and wrote articles and made statements in the media expressing his views. Ida and Csilla also worked on behalf of the Hungarian Roma and helped with his campaigns.

[3] The principal Applicant alleges that for years he had been actively opposing the nationalist, anti-Roma and anti-Semitic policies espoused by the FIDESZ political party. In

2010, FIDESZ won the national election and a FIDESZ mayor, Szilard Nemeth [Nemeth], was elected in the principal Applicant's district. Nemeth was also a member of Parliament and of the Budapest city council and the principal Applicant claims that Nemeth is a close friend of the current Prime Minister.

[4] The principal Applicant alleges that Nemeth, FIDESZ, the right-wing Jobbik party, and the Hungarian Guard started to target and harass him and his family due to his political work with the MSZP and his outspoken activism.

[5] The principal Applicant alleges the following incidents of persecution and state corruption destroyed his law practice and political career, impacted his future employment opportunities and restricted his freedom of expression:

- In 2005, he began to receive numerous death threats, which he reported to police;
- He was subjected to a systematic campaign to discredit his reputation;
- In 2008, he was falsely accused of misappropriating funds by former clients, whom he alleges were either taken advantage of or influenced by FIDESZ;
- He was brought up on trumped charges by the police and the prosecutor, both of which he allege were under the influence of FIDESZ, for an offence for which the statute of limitations has passed;
- A book was published in his hometown that slandered his name and reputation;

- Due to the allegations against him and the damage to his reputation, he was forced to close his law practice and was unable to run for re-election in 2010;
- After closing his practice, he began working at a school for Roma children but was later dismissed from that position in mid-2009;
- He was unable to find stable employment after his dismissal;
- His sister-in-law also worked at the school and was dismissed in 2012 when her association to the principal Applicant came to light;
- His son's hand was broken and his nephew was hit in the head and suffered a concussion at the hands of fellow students who were insulting the principal Applicant; and
- He was physically assaulted on the street.

[6] The charges and allegations against the principal Applicant were all dropped and he was never arrested. The principal Applicant alleges that he and his family were not able to access adequate state protection in Hungary, with nothing being done despite their multiple complaints to the police and his complaint to the Ombudsman's office. The principal Applicant filed a civil action against FIDESZ for slander, which he alleges was wrongfully terminated in 2011 after his lawyer requested to change a hearing date. It is his evidence on this application that he was denied access to justice in the Hungarian courts, which prevented him from seeking a remedy from the European Court of Human Rights. He also submits that he was unable to seek a remedy from a Hungarian labour court since, as a lawyer, he was not subject to labour laws and his job at the school was a contract position.

[7] The principal Applicant alleges that since he does not support the FIDESZ party, he and his family would not get adequate state protection and would continue to be victimized.

[8] The Applicants left Hungary and arrived in Canada on June 22, 2012 and made their claim for refugee protection at the airport.

III. Impugned Decision

[9] The principal Applicant, Ida, and Csilla all testified at the RPD hearing, which took place over three sittings between February and July 2014.

[10] The RPD refused the Applicants' claim in a decision dated August 22, 2014. The RPD accepted the Applicants' identity and found them to be generally credible witnesses. Regarding the Applicants' specific allegations, the RPD accepted that the principal Applicant was a member of the MSZP and found that it was more likely than not that he had faced "political trials and tribulations due to his allegiance with the MSZP" and that the remaining Applicants had suffered as a result.

[11] The RPD concluded that the alleged delay in terminating the prosecutions does not demonstrate a risk of harm rising to a level of persecution or being in need of protection, but is objective evidence of state protection by the intervention of senior police and prosecutory officials in preventing a wrongful prosecution. The RPD further found that the Applicants had not rebutted the presumption of state protection. Other points arising from the reasons are as follows:

- The principal Applicant was able to appeal his conviction on the trumped charges and the appellate courts overturned his conviction, which demonstrates that he had due process and was able to exercise his “civil and criminal rights”;
- While corruption in the Hungarian government is an issue, the documentary evidence shows that the government “does not turn a blind eye to corruption or inaction within the police forces” and “generally takes steps to prosecute officials who committed abuses;”
- Civil authorities maintain effective control over the police, National Protective Service and armed forces and the government has effective mechanisms to investigate and punish abuse and corruption;
- The government is subject to the jurisdiction of the European Court of Human Rights [ECHR] and the Court of Justice of the European Union and both of these bodies have ruled on cases involving the Hungarian government;
- The Applicants have recourse for unlawful dismissal through domestic labour courts and the ECHR;
- The Applicants could lodge complaints with relevant Hungarian authorities if their right to earn a livelihood had been infringed due to their profiles and if they were unsatisfied with their domestic remedies, they could submit an application to the ECHR;
- The adult Applicants are intelligent, articulate and educated and as a lawyer, the principal Applicant would have reasonably investigated and explored avenues of redress;

- The Applicants did not provide a reasonable explanation for their failure to access further recourse that were available to them, so they have not exhausted their domestic remedies before seeking international protection;
- While the adult Applicants are considered Roma sympathizers, there was no evidence to suggest that supporters of the Roma community were subject to discrimination or mistreatment amounting to persecution or that state protection would not be available to them, and that the absence of such evidence indicates that “it is not such a widespread problem that it places the claimants at risk”; and
- Documents indicate that the Prime Minister of Hungary has stated that his country is done with liberal democracy and that he is at serious risk of breaching values in the Treaty of the European Union were disturbing but describe “general conditions;” and
- Organizations and remedies continue to exist in Hungary and it has not been shown that the Applicants could not access protection or that it would be unreasonable for them to do so.

IV. Issues

[12] The issues raised by the Applicants are as follows:

1. Did the RPD err by failing to consider that the agents of persecution are state agents?
2. Did the RPD err by misapprehending the evidence of the false charges against the principal Applicant?

3. Did the RPD err in finding that the Applicants had a duty to seek further avenues of redress and that they failed to provide a reasonable explanation for not doing so?
4. Did the RPD err by relying on irrelevant factors?

V. Standard of Review

[13] The RPD's assessment of state protection raises questions of mixed fact and law and is to be reviewed on the reasonableness standard (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171, 282 DLR (4th) 413 at para 38, leave to appeal refused [2007] SCCA No 321; *Horvath v Canada (Minister of Citizenship and Immigration)*, 2014 FC 313, [2014] FCJ No 330 at para 16 [*Horvath*]).

[14] The RPD's weighing of the Applicants' evidence and its determination of whether they faced persecution lie squarely within the RPD's jurisdiction and is entitled to deference (*Horvath* at para 15, *Dunsmuir* at para 47).

VI. Analysis

A. *Did the RPD err by failing to consider that the agents of persecution are state agents?*

[15] The Applicants' primary argument at the hearing was that although the principal Applicant's narrative and testimony set out his problems pertaining to difficulties he had with

Nemeth, the Member's analysis did not reflect a recognition of the nature of the persecution as being by state agents directing the police and prosecutorial authorities.

[16] I agree with the Respondent that it was clear from the reasons that the state, by the conduct of its agents (the police and prosecutors), were the focus of the Member's reasons. As such, I find that the decision properly described the nature of the alleged persecution.

[17] The Applicants' evidence also references the ruling political party as being corrupt and contends that for that reason the principal Applicant was unable to access state protection because of his affiliations to the MSZP. The RPD's decision acknowledges the Applicant's submissions relating to the election of the new Prime Minister of Hungary, which can only be made in reference to an inference of political interference in the handling of his prosecution.

[18] There was no need to make specific reference to his problems with a particular senior politician and close friend of the Prime Minister, to establish that the Member fully understood the essence of the principal Applicant's submissions. In any event, the Court's attention is on the nature of the protection provided or available and not a specific detail of the political discrimination, so long as it is understood that the alleged discrimination relates to political affiliation as a leader of the Roma community.

B. *Did the RPD err by misapprehending the evidence of the false charges against the principal Applicant?*

[19] This allegation relates to an alleged failure of the Member's factual finding that the principal Applicant had been convicted and that his conviction was overturned on appeal. The Applicants' acknowledge that there was "a little confusion at the hearing about the legal processes that were involved". It would appear that the Member may have confused the word "court" to mean "prosecutor" on the basis of the translation.

[20] Once again however, I find the Applicants' submission of little relevance to the central issue before the RPD or this Court. The important fact is that with respect to the long delay in dropping the charges, the second level of prosecutorial review concluded that there was insufficient credible evidence to uphold the charges and they were, in fact, dropped. The state apparatus, whether it be at the prosecutorial or court level, worked.

[21] More to the point, the fact that the intervention occurred at the lower level than an appellate court is a better example of appropriate controls over police and prosecutory conduct as a signpost of adequate state protection. There was no need for the courts to intervene, but had such intervention been necessary, this too would have been sufficient to demonstrate adequate state protection.

[22] The Applicants state that the Member found the principal Applicant to be credible and therefore cannot pick and choose among his statements. Firstly, the Member's credibility findings were limited in their scope. Secondly, they could not extend to inferences for which the

Applicant has provided no sound logical basis that any delay in prosecution must be attributed to bad faith and state interference. The Member needed better foundational evidence, such as statistics on the delay normally occurring in Hungary from the laying of charges to a decision on prosecution. Such evidence would have to be aligned with the facts and any special considerations, such as where public figures are implicated in crimes.

[23] It is also important to note that the initial charges brought against the principal Applicant by former clients were never suggested to have been at the behest of the state. Nor is there any evidence as to the appropriate delay in situations such as these ones, particularly when a public figure might be involved and the state authorities could be subject to criticism.

C. *Did the RPD err in finding that the Applicants had a duty to seek further avenues of redress and that they failed to provide a reasonable explanation for not doing so?*

[24] On this second basis to reject the Applicant's claims, I am satisfied that the RPD's reasons disclose reasonable grounds to conclude that, taking into consideration all of the evidence, the Applicants did not exhaust further avenues of redress. In particular, the principal Applicant has a doctorate in law and was a practicing lawyer advocating on behalf of the Roma community and would know the full extent of redress mechanisms available.

D. *Did the RPD err by relying on irrelevant factors?*

[25] The Applicants argue that the Member ignored evidence such as their home being threatened and the incidents with their children at school. These issues were clearly put forward

as being of little relevance in comparison with the political basis for the allegations of prosecutorial misconduct. In addition, the Member accepted that the principal Applicant faced political trials and tribulations due to his allegiance with the MSZP and that he and his family members also suffered as a result.

VII. Conclusion

[26] For the foregoing reasons, the Court concludes that there is no reviewable error with respect to the RPD's conclusions that the Applicants were neither Convention refugees nor persons in need of protection. Accordingly, the application is dismissed and no questions require certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and there are no questions requiring certification.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6587-14

STYLE OF CAUSE: GABOR GUYLAS v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 8, 2015

**REASONS FOR JUDGMENT
AND JUDGMENT:** ANNIS J.

DATED: JULY 24, 2015

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