

Federal Court



Cour fédérale

**Date: 20170125**

**Docket: IMM-5841-15**

**Citation: 2017 FC 90**

**Toronto, Ontario, January 25, 2017**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ZOLTANNE HORVATH, BEATA GALAMB,  
ZOLTAN HORVATH, JUDITH, HORVATH,  
ZOLTAN HORVATH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Horvath family arrived in Canada from Hungary in two groups in 2014 and 2015. They claimed refugee protection because of their fear of persecution based on their Roma ethnicity. A panel of the Immigration and Refugee Board dismissed their claim for a lack of

credible evidence and their failure to provide sufficient proof that state protection was not available to them in Hungary.

[2] The Horvaths appealed the Board's decision to the Refugee Appeal Division (RAD). The RAD reviewed the evidence afresh and dismissed their appeal. The RAD confirmed the Board's findings on credibility and state protection.

[3] The Horvaths submit that the RAD's decision should be quashed because it unreasonably discounted their testimony about the mistreatment they suffered in Hungary. Further, they contend that the RAD overlooked evidence showing that they were unable to access state protection. They ask me to order another panel of the RAD to reconsider their claims.

[4] I can find no basis for overturning the RAD's decision. The RAD's findings were supported by the evidence, so are, therefore, not unreasonable.

[5] I will deal with the RAD's findings on alleged persecution and the absence of state protection together.

## II. The RAD's Decision

[6] The RAD found that some of the Horvaths' complaints amounted to allegations of discrimination, not persecution. The RAD addressed only the more serious allegations and doubted the claimants' credibility for the following reasons:

- The adult son and his common law spouse gave differing testimony about an alleged assault by skinheads in 2009. The son gave contradictory statements about whether he was hospitalized; his spouse said he did not seek medical attention.
- The adult son said he was attacked by skinheads on a tram in 2013. In his written narrative, he said he went to the hospital. However, in his oral testimony he said he did not go to the hospital, originally because he was not bleeding and, later, because his mother treated his wounds.

[7] In respect of state protection, the RAD found:

- The claimants did not report any incidents of mistreatment to the police until 2008.
- The adult son refused to attend the police station to report the 2008 assault.
- The common law spouse gave inconsistent accounts of an alleged sexual assault in 2008. She testified that the police did not believe her. However, in her earlier narrative, she stated that she had gone to the police who told her that they could not pursue an investigation without witnesses. Those who had witnessed the incident refused to testify.
- The evidence was not clear whether the adult son reported the alleged 2009 assault.
- In 2013, the police responded when contacted by the father about an assault at Christmastime, but without a description of the assailants, could not pursue the investigation any further.

[8] The RAD found that the claimants' evidence did not show that they sought, and were then subsequently denied, state protection. In the RAD's view, in some cases they did not avail themselves of the protection that was available to them; in others, there was little the police could do.

[9] The RAD also analyzed the evidence of general conditions in Hungary and the state's ability to protect its citizens. It concluded that the claimants had failed to show that state protection would not be reasonably available to them if they returned to Hungary.

III. Were the RAD's Credibility Findings Unreasonable?

[10] The claimants contend that the RAD seized on minor discrepancies in their evidence and arrived at the unreasonable conclusion that their claims of persecution were not credible.

[11] I disagree. As described above, the RAD noted unexplained contradictions in significant areas of the claimant's evidence. In particular, the evidence about whether they did or did not seek medical attention was relevant to the severity of the alleged assaults. The claimants have not shown that the RAD's conclusions were unsupported by the evidence.

[12] Regarding state protection, the RAD concluded that the claimants did not show that state protection was unavailable to them in Hungary. In my view, the RAD reasonably found that the fact that the police were unable to pursue suspects without tangible evidence of identity did not prove an unwillingness or inability to protect the claimants.

[13] In a case where state protection is an issue, the real question is whether, considering the whole of the evidence about the state's capacity to protect its citizens, the claimants will be exposed to a serious risk of persecution if returned to their home country. Given the evidence before it, I find that the RAD reasonably concluded that the claimants had failed to satisfy that test.

IV. Conclusion and Disposition

[14] The RAD arrived at reasonable credibility findings. Further, the RAD reasonably concluded that the evidence relating to state protection did not show that the claimants would be exposed to a serious risk of persecution if they returned to Hungary. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT in IMM-5841-15**

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

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5841-15

**STYLE OF CAUSE:** ZOLTANNE HORVATH, BEATA GALAMB, ZOLTAN HORVATH, JUDITH, HORVATH, ZOLTAN HORVATH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 31, 2016

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** JANUARY 25, 2017

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