Federal Court  Cour fédérale

Date: 20171018

Docket: IMM-1105-17

Citation: 2017 FC 921

Ottawa, Ontario, October 18, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JOZSEF OLAH
JUDIT DINAI
REBEKA OLAH
BRENDON JOZSEF OLAH
DZENIFER CINTIA OLAH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an immigration officer [the Officer], dated January 31, 2017, rejecting the Applicants' application for a Pre-removal Risk Assessment [PRRA].

[2] For the reasons explained below, this application is dismissed, as the Applicants' arguments do not demonstrate that the Officer's decision is unreasonable.

II. Background

[3] The Applicants, Jozsef Olah, Judit Dinai, Rebeka Olah, Brendon Jozsef Olah, and Dzenifer Cintia Olah, are a family of Hungarian nationals who entered Canada on March 3, 2016, and made a claim for refugee protection. They claim fear of persecution in Hungary because they are Roma and allege they have faced problems in accessing education for the minor Applicants, employment for Mr. Olah, and health care for Ms. Dinai. The Applicants refer to various concerns about societal mistreatment of Roma in Hungary and submit that they face discrimination in Hungary that cumulatively amounts to persecution, for which state protection is unavailable.

[4] The Applicants were ineligible to be referred to the Refugee Protection Division [RPD], because they filed a previous refugee claim in 2012 that was rejected by the RPD based on the availability of state protection, with their subsequent application for judicial review dismissed at the leave stage. They therefore filed a PRRA application, which was rejected by the Officer, who determined that the Applicants would not face a risk of torture, persecution, or cruel and unusual treatment or punishment, or face a risk to life, if they returned to Hungary.

III. Issues and Standard of Review

[5] The Applicants' Memorandum of Fact and Law raised twelve issues for the Court's consideration. However, at the hearing of this application, the Applicants' counsel explained that the major issue he wished to raise was an argument that the Officer erred in failing to conduct the required analysis under s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] as to whether, taking into account the country condition documentation applicable to Hungary, the Applicants faced more than a mere possibility of persecution because of their Roma ethnicity. The Applicants' counsel further explained that many of the 12 issues raised in the written submissions were subsumed in this argument, although he provided brief oral submissions on some of the other issues as well.

[6] With the benefit of the Applicants' oral submissions, I would characterize the issues for the Court's consideration as follows:

A. Did the Officer err in failing to conduct the required analysis under s 96 of IRPA as to whether, taking into account the country condition documentation applicable to Hungary, the Applicants faced more than a mere possibility of persecution because of their Roma ethnicity?

B. Did the Officer err in understating the extent that the negative impact of the alleged negligence of the Applicants' former counsel had on their RPD hearing?

C. In finding a want of corroborative evidence, did the Officer err in failing to convoke an oral hearing?

D. Did the Officer err in failing to consider the principal Applicant's sworn testimony with respect to his family's discrimination in health care?

E. Did the Officer err in minimizing the widespread evictions of Roma in Hungary leading to the conclusion that the Applicants were not at risk?

F. Did the Officer err in not conducting an analysis of state protection?

[7] The parties generally agree that these issues are reviewable on the standard of reasonableness. However, the Applicants argue that the first issue described above relates to a question of law and is therefore reviewable on the standard of correctness. The Respondent's position is that this issue, like the others in this application, is subject to the standard of reasonableness.

[8] I agree with the Respondent's position on the standard of review. In this respect, the decision of Chief Justice Crampton in *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 [*Ruszo*] is instructive. One of the issues raised in that case was whether the RPD had erred by failing to provide adequate reasons for its conclusions that the treatment to which the applicants were subjected in Hungary was discriminatory, but not persecutory, in nature and that the general treatment to which people of Roma ethnicity in Hungary are subjected also does not reach the level of persecution.

[9] Chief Justice Crampton noted that this issue raised two distinct questions. The first was a question of statutory interpretation, namely the meaning of the term "persecution" in s 96 of IRPA. The Court held that question to be reviewable on a standard of correctness, because the jurisprudence had established a clear test for the meaning of that term, such that the question fell within the narrow category of exceptional situations where the standard of correctness was applicable (see *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*] at paras 30, 34, 46).

[10] The second question in *Ruszo* was whether the RPD erred in determining that the discriminatory conduct that formed the basis of the applicants' claims did not meet the test for persecution. That question was reviewable on a standard of reasonableness. The issue raised by the Applicants in the present case is akin to that question. I find no basis to conclude that it falls into the limited categories of questions to which the standard of correctness is applicable under *Alberta Teachers*. Rather, the question of whether the Officer erred in the s 96 analysis, taking into account the applicable country condition documentation, is a question of mixed fact and law reviewable on the reasonableness standard.

IV. Analysis

A. *Did the Officer err in failing to conduct the required analysis under s. 96 of IRPA as to whether, taking into account the country condition documentation applicable to Hungary, the Applicants faced more than a mere possibility of persecution because of their Roma ethnicity?*

[11] The Applicants supported their PRRA application with a statement by Jozsef Olah, and supporting written submissions, identifying problems in accessing education, health care and employment since returning to Hungary following the rejection of their refugee claim by the RPD. The Officer reviewed the guidance in the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, as to the circumstances under which the cumulative effects of discrimination can amount to persecution, and referred to the country condition documents on the situation of the Roma in Hungary. However, the Officer found various shortcomings in the Applicants' evidence (some of which are addressed in more detail under the other issues canvassed below), as a result of which the Officer concluded that the Applicants' experiences of discrimination in Hungary did not individually or collectively constitute persecution.

[12] The Officer referred to having reviewed the country documents provided by the Applicants' counsel and concluded there was no doubt that the Roma remain a marginalized population in Hungary. The Officer referred to widespread discrimination impacting the Roma in a variety of ways, including in areas such as housing, health care and interactions with police. However, the Officer then referred to the decision in *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 [*Balogh*], to the effect that the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibly of persecution on return. While the Officer found that the Applicants have faced and will likely continue to face discrimination in Hungary, the Officer concluded, based on the limitations of their evidence, that their personal experiences did not support a finding that they

had faced discrimination amounting to persecution or that they faced a forward-looking risk of persecution simply because they are Roma.

[13] The Applicants argue that, as it was undisputed that they were Roma and as the Officer found they would face discrimination in Hungary, the Officer erred in failing to assess whether the fact of their Roma ethnicity, in combination with the evidence as to the conditions faced by Roma in Hungary, supported a claim for refugee protection under s 96 of IRPA. Essentially, the Applicants submit that the Officer erred by concluding, based on *Balogh* and the shortcomings in the evidence of their personal experiences, that no further analysis was required as to whether the Applicants would face discrimination which cumulatively amounted to persecution based solely on their Roma ethnicity and the objective evidence of conditions faced by that ethnic group. These submissions encompass a number of the issues identified in the Applicants' written submissions: that the Officer did not consider evidence of the changes in Hungary since the RPD decision, erred in finding that the Applicants had not submitted corroborating evidence by disregarding the corroborative country documentation, disregarded the evidence of similarly situated persons, failed to conduct an analysis of cumulative discrimination reaching to the level of persecution , and gave no weight to the documentary evidence regarding general societal treatment of Roma in Hungary.

[14] I agree with the Applicants' submission that personal targeting or past persecution is not required in order to establish a risk for purposes of s 96. Rather, persecution can be established by examining the situation of similarly situated individuals (see, e.g. *Salibian v Canada (Employment and Immigration)*, [1990] 3 FCR 250 at para 17; *Kang v Canada (Citizenship and*

Immigration), 2005 FC 1128 at para 10; *Fi v Canada (Employment and Immigration)*, 2006 FC 1125 at para 14). However, I do not regard the decision in *Balogh*, upon which the Officer relied, to be in any way inconsistent with these principles. As explained by Justice LeBlanc at paragraph 19 of that decision:

> [19] Moreover, while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return *(Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056, at paras 67-70 [*Csonka*]; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, at para 22 [*Ahmad*]. Both subjective fear and objective fear are components in respect of a valid claim for refugee status *(Csonka*, at para 3). The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Prophète v Canada (Citizenship & Immigration)*, 2008 FC 331, at para 17; *Jarada v Canada (Minster of Citizenship and Immigration)*, 2005 FC 409, at para 28; *Ahmad*, at para 22).

[15] I read this reasoning as noting that the jurisprudence surrounding refugee claims by Hungarian Roma does not support a conclusion that the general country conditions are such that all Roma in Hungary face discrimination amounting to persecution. Rather, it is necessary to consider a particular claimant's specific circumstances, in combination with the general documentary evidence, to conclude whether that claimant faces a risk of persecution. The above statement from *Balogh* does not represent a departure from the principles surrounding s 96 upon which the Applicants rely but rather an application of those principles.

[16] As noted by the Respondent, similar reasoning is evident in the decision in *Csoka v Canada (Citizenship and Immigration)*, 2017 FC 651 [*Csoka*] at para 28, in which Justice Diner

upheld a PRRA officer's analysis, considering the objective evidence as to the difficulties experienced by Roma in Hungary, but finding insufficient individualized evidence that related to the applicants' personal situation in Hungary to support a conclusion that the applicants were at risk.

[17] The Applicants argue that the necessary link between their specific circumstances and the general documentary evidence is established by the mere fact that they are Roma, which distinguishes their circumstances from those in *Balogh*. They note that, in that case, the RPD found that the applicant had not established his Roma ethnicity, which finding was not disturbed by the Court. However, this means only that the analysis in paragraph 19 of *Balogh* was an additional finding, as that analysis was clearly premised on a claimant being found to be of Roma ethnicity. I also note that there does not appear to have been any doubt as to the Roma ethnicity of the claimants who were the subject of Justice Diner's analysis in *Csoka*.

[18] I can therefore identify no error by the Officer in taking into account the limitations in the Applicant's evidence as to their own personal experience, in assessing their risk and concluding that they had not established that they face a forward-looking risk of persecution. Nor can I conclude that the Officer did not consider evidence of the changes in Hungary since the RPD decision, disregarded the corroborative country documentation or evidence of similarly situated persons, or gave no weight to the documentary evidence regarding general societal treatment of Roma in Hungary. While the analysis of the country condition documentation is not lengthy, the Officer refers to reviewing the country condition documents provided by counsel, expressly

relies on and footnotes various pieces of that documentation, and makes findings as to the marginalization of and discrimination against the Hungarian Roma population.

[19] I also find no basis for a conclusion that the Officer failed to conduct an analysis of cumulative discrimination rising to the level of persecution. As noted above, the Officer expressly reviewed the UNHCR Handbook's guidance as to the circumstances under which the cumulative effects of discrimination can amount to persecution. The subsequent analysis expressly states that the overall limitations in the Applicants' evidence do not persuade the Officer that the cited experiences of discrimination amount to persecution, even when considered on a cumulative basis.

[20] I therefore find that the principal issue raised by the Applicants, and the various related arguments raised in connection with that issue, do not support a conclusion that the Officer's decision is unreasonable.

B. *Did the Officer err in understating the extent that the negative impact of the alleged negligence of the Applicants' former counsel had on their RPD hearing?*

[21] This issue relates to the fact that, at their RPD hearing, the Applicants were represented by a lawyer who has subsequently been disciplined by the Law Society of Upper Canada for negligent representation of many Roma claimants. In the PRRA decision, the Officer mentioned the concerns the Applicants had regarding the competence of their counsel before the RPD and their resulting unpreparedness for the RPD hearing. However, the Officer states that the

Applicants had not identified any specific problems in providing their testimony to the RPD or sought a specific remedy.

[22] The Applicants asserted in their Memorandum of Fact and Law that the specific problem they had identified to the Officer was not having been prepared for the RPD hearing. They submit that the PRRA was negatively affected by the findings of the RPD, which were in turn negatively affected by the negligent representation of their former counsel.

[23] This argument does not raise a reviewable error on the part of the Officer. The Officer concluded that, while the Applicants indicated they were not properly prepared, they did not identify any specific problems in providing testimony or adducing evidence to the panel. Nor did they offer examples of where they believed their evidence was misconstrued during the hearing or in the RPD's reasons for its decision. I find nothing unreasonable in this analysis. I also disagree that the PRRA was negatively affected by the findings of the RPD. As argued by the Respondent, the Officer's decision was based on the submissions and evidence filed with respect to the PRRA and does not demonstrate the Officer relying on the RPD decision in any way.

C. *In finding a want of corroborative evidence, did the Officer err in failing to convoke an oral hearing?*

[24] Mr. Olah's statement in support of the PRRA application explained difficulties experienced in his children's schooling upon their return to Hungary. In analysing this evidence, and concluding that there was insufficient information to accord any meaningful weight to this matter, the Officer stated that there was evidence that the Officer would reasonably have

expected to be available to corroborate and detail the nature of the education that the children received but which had not been provided. The Officer also noted there was no evidence regarding their current educational placement and progress, which might have offered some insight as to whether they were years behind their respective age cohort in the Ontario education system.

[25] The Applicants argue that, while the Officer does not expressly make a negative credibility finding with respect to Mr. Olah's statement, the Officer's rejection of that evidence in the absence of corroboration represents a veiled credibility finding. As a result, they argue that the Officer was required to give the Applicants an opportunity to address the credibility concerns at an oral hearing.

[26] I disagree with the Applicants' characterization of the Officer's analysis. I do not read the analysis as disbelieving Mr. Olah's statement. Rather, because of the lack of detail provided, the Officer found that the statement was insufficient to support a conclusion that the children were discriminated against based on their ethnicity or that their education suffered as a result. As the Officer made no express or implicit credibility finding, there was no requirement for an oral hearing.

D. *Did the Officer err in failing to consider the principal Applicant's sworn testimony with respect to his family's discrimination in health care?*

[27] The Applicants asserted that they experienced mistreatment when it came to accessing or receiving healthcare. Mr. Olah referred to a hospital attendance where his wife, Ms. Dinai, who

was experiencing a cramp in her kidney, was made to wait and was ultimately sent home without an examination. The Applicants allege that this occurred because they are Roma. Two months later, Ms. Dinai went to a different hospital and was informed that, had she been examined earlier, her could kidney could have been saved.

[28] The Officer noted that Mr. Olah's written statement provided only that one example of a problem accessing health care, without any dates or even a general timeframe, which made it difficult to conclude that this was new evidence arising since the RPD determination in 2012. The Officer also noted that there was no indication why the Applicants believed that their ethnicity was the cause of their treatment at the first hospital visit. The Officer identified several other potential important details that had not been provided, as well as a lack of any medical evidence in relation to Ms. Dinai's condition, and concluded there was insufficient information to draw any meaningful conclusions as to the family's experiences of discrimination in the provision of healthcare.

[29] The Applicants argue that, as the Officer raised no credibility concerns with respect to Mr. Olah's evidence, it should have been accepted without a requirement for any further corroborative evidence. I agree with the Applicants that the Officer did not find Mr. Olah's statement lacking in credibility. Rather, as with the Officer's analysis surrounding the children's education, I read the analysis of the evidence related to health care access as turning on insufficiency of evidence. The weighing of the evidence is the province of the Officer, and I find nothing unreasonable about the Officer's analysis.

E. *Did the Officer err in minimizing the widespread evictions of Roma in Hungary leading to the conclusion that the Applicants were not at risk?*

[30] The Applicants' PRRA submissions raised concern over housing in their city, Miskolc, due to plans to eliminate the local slums in which Roma live. However, they acknowledged that they were not given any notification of eviction while they lived in Hungary, and the Officer stated there was insufficient evidence to determine that they would likely be personally affected by any expropriation process should they return to Hungary. The Officer noted that the Applicants had not provided any indication where in Miskolc they resided or whether this was among the areas the evidence suggested could be impacted. Noting from the country condition documents that it did not appear that the majority of Roma in Miskolc were affected, the Officer concluded that it would be highly speculative to make any related findings. The Officer was therefore unable to accord any weight to consideration of the impact of housing-related discrimination on the Applicants.

[31] The Applicants argue that, in stating there was insufficient evidence to determine that they would likely be personally affected by any expropriation process, the Officer applied an incorrect test, as the applicable test is whether or not there is a serious possibility of persecution, not whether the Applicants will likely be personally affected.

[32] I agree with the Applicants' statement of the applicable test. However, reading the Officer's analysis of this issue as a whole, I do not regard the Officer's use of the word "likely" as indicative of a misunderstanding of the test or that the Officer made a finding that employed

an incorrect test. Rather, the Officer analysed the lack of evidence connecting the Applicants' personal circumstances to the evictions in Miskolc and found there was insufficient evidence to make any findings in that regard.

[33] The Applicants also argue that the Officer erred in finding that the majority of Roma are not affected by the evictions. In their Memorandum of Fact and Law, they refer to an excerpt from the documentary evidence referring to Hungary having started a country-wide program of slum elimination, which they submit contradicts the Officer's finding.

[34] In reaching the conclusion that it appears the majority of Roma in Miskolc are not affected by the evictions, the Officer refers to country documents indicating that certain areas, such as the so-called "numbered streets," have been the focus of eviction activity. I do not find the reference to a countrywide program of slum elimination, to which the Applicants refer the Court, to contradict the Officer's conclusion as to the focus of the evictions in Miskolc.

F. *Did the Officer err in not conducting an analysis of state protection?*

[35] The Applicants argue that the Officer erred in failing to conduct an analysis of the availability of state protection for Roma in Hungary. On this issue, I agree with the Respondent's submission that, where there has been no finding of a risk of persecution, an analysis of state protection is unnecessary. As the Officer did not find that the discrimination in this case rose to persecution, there was no requirement to conduct an analysis of the availability of state protection: see *Mallampally v Canada (Citizenship and Immigration)*, 2012 FC 267 at para 41.

V. Conclusion

[36] Having found that none of the Applicants' arguments demonstrate the Officer's decision to be unreasonable, this application for judicial review must be dismissed. The parties raised no question for certification for appeal, and none is stated.

JUDGMENT IN IMM-1105-17

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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