

Federal Court



Cour fédérale

Date: 20190208

Docket: IMM-2674-18

Citation: 2019 FC 166

Ottawa, Ontario, February 8, 2019

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**GHEORGHE MICLESCU, FLORENTINA
ALEXANDRU (AKA FLORENTINA
ALEXADNRU), ELENA GIOVANI
ALEXANDRU (AKA ELENA GIOVANA
ALEXANDRU), PAMELA ALEXANDRU,
IONUT SAVAS ALEXANDRU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This is an application for judicial review brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] concerning a decision rendered by a member of the Immigration and Refugee Board, Refugee Protection Division (RPD) rejecting a refugee claim under sections 96 and 97 of IRPA.

[2] For the reasons set out below, I have concluded that this application should be granted.

II. BACKGROUND

[3] Gheorghe Miclescu (the principal applicant), Florentina Alexandru (the female applicant), Elena Giovani Alexandru, Pamela Alexandru, and Ionut Savas Alexandru (collectively the applicants) are a family of citizens of Romania.

[4] The applicants are of Roma ethnicity and allege that they suffered discrimination and harassment in Romania for that reason.

[5] The applicants arrived in Canada after travelling through Spain, Mexico and the United States. Once in Canada, the applicants submitted their refugee application.

III. DECISION UNDER REVIEW

[6] The RPD member (the Member) decided this application under six headings: (i) identity; (ii) credibility; (iii) the absence of supporting documentation; (iv) the applicants' path to Canada; (v) other grounds of persecution; and (vi) counsel's submissions and the documentary evidence. The decision ultimately turned on a negative credibility finding and the Member rejected the applicants' claim.

[7] Identity: The Member found that the applicants are citizens of Romania.

[8] Credibility: The applicants alleged that they were being extorted by police, the children were bullied at school (without any redress from the principal), and that the principal applicant's

business was burned down. The Member found that the applicants lacked credibility based on the following issues:

- i. Inconsistencies between dates found in the applicants' Personal Information Form (PIF) and dates given in oral testimony;
- ii. The fact that the applicants were represented by experienced counsel but did not correct the errors with the dates;
- iii. The inability of the female applicant to identify two of the police officers in her small town in Romania who were involved in the alleged extortion;
- iv. Inconsistency in the applicants' testimony concerning whether the principal applicant required a business license for his scrap metal business, and whether he was refused such a license; and
- v. The failure to mention in their PIF the allegation that the principal applicant went to a different town to make a police report regarding the burning down of his business.

[9] The Member found that these issues were implausible, inconsistent and contradictory, and drew a negative credibility inference therefrom.

[10] Absence of Supporting Documentation: The applicants alleged that the principal applicant was severely beaten by police on several occasions, but did not require medical attention. Therefore, the applicants provided no medical evidence to support this claim.

[11] The Member noted that refugee claims do not always require documentary evidence but, given the negative credibility finding, documentary evidence was required in this circumstance. The Member found that, given the nature of one of the alleged beatings, it was "more likely than not" that the principal applicant would need medical attention, which would have resulted in

some kind of medical record. The Member concluded that the absence of medical evidence undermined the applicants' credibility.

[12] Applicants' Path to Canada: The applicants allege that they had 12,000 euros to fund their travels. They went through Spain and Mexico before reaching the United States, where they were detained by immigration authorities and made claims for asylum. The principal applicant was detained for four months while the other applicants were released. The applicants did not complete their United States asylum applications because they left for Canada shortly after the principal applicant was released from detention.

[13] The Member was concerned about this portion of the applicants' story. The Member did not believe the applicants' explanation that they had to resort to begging for money in the United States. The Member concluded that the 12,000 euros they had would likely have been sufficient to sustain them for the time they were in the United States. As well, the Member found that the applicants were likely forum-shopping when they decided to abandon their United States asylum claims, and it was reasonable to expect them to complete these claims. The Member drew a negative inference from the combination of the applicants' failure to complete their United States asylum claims and the credibility issues discussed above.

[14] Other Grounds of Persecution: These other grounds concerned the minor applicants. The Member rejected the applicants' fear of early and forced marriage of their children and poor schooling if they were sent back to Romania. The Member noted the female applicant's testimony that she has moved away from culture restrictions, and concluded that she would be able to prevent any forced marriage or relenting on her children's education.

[15] Counsel's Submissions and the Documentary Evidence: The Member reviewed many documentary sources indicating difficult conditions for Roma people in Romania, but noted that not every Roma experiences this kind of discrimination, and that the information provided by counsel should be considered on an individualized basis. As the applicants were found not to be credible, there was no credible evidence of individualized risk.

IV. ISSUES

[16] The applicants raise a number of issues, but for the purposes of the present decision I need address only the following two:

- A. Did the Member err in assessing the applicants' credibility?
- B. Did the Member err in failing to assess the risks to which the applicants might be exposed in Romania because they were found to lack credibility?

V. ANALYSIS

A. *Did the Member err in assessing the applicants' credibility?*

[17] Some of the grounds for the Member's doubts about the applicants' credibility are reasonable. These include:

- i. The female applicant's mistakes concerning the dates of key events such as extortion by the local police chief, the burning down of the principal applicant's business, and when the applicants travelled to Austria; and
- ii. Inconsistencies between the female applicant and the principal applicant surrounding whether a business license was required for the principal applicant's business and whether he was ever refused such a license.

[18] However, the Member's conclusion that the applicants lacked credibility was tainted by unreasonable assessment of the evidence in several respects. Examples of such unreasonable assessment of the evidence relate to:

- i. The female applicant's inability to name two of the police officers involved in the alleged extortion;
- ii. The absence of medical evidence of beatings the principal applicant allegedly suffered; and
- iii. The begging the applicants were allegedly reduced to in the United States while the principal applicant was detained.

[19] With regard to the police officers the female applicant could not name, the Member was not convinced that this was plausible in the small town in which the applicants lived, and that it was to be expected that the applicants would have made enquiries as to their identities. This is essentially a finding of implausibility, which should be made only in the clearest of cases: *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776 at para 7. Such a conclusion based on the small size of the town is not sufficiently clear, especially considering that the applicants are part of a minority that is ostracized from many aspects of Romanian society, and therefore may not wish to be familiar with local police.

[20] With regard to medical evidence to corroborate the principal applicant's alleged beatings, the Member reasoned that "where a person is attacked by three individuals, as the principal claimant alleged to have occurred two weeks after the fire, it is more likely than not that the victim would need medical attention." The Member reached a negative credibility conclusion based on the absence of corroborating documentation. However, the testimony was that the principal applicant had not sought medical attention. The Member's conclusion amounts to

another finding of implausibility based on facts that are not sufficiently clear. For one thing, there is no information about the nature of the principal applicant's injuries that would indicate clearly that he needed medical attention. Though it may be more likely than not that a person suffering the kind of beating described by the applicants would need medical attention, this situation does not rise to the level of implausibility. Moreover, it is possible that the principal applicant did not seek medical attention despite having injuries that were severe enough to merit medical attention. This is especially plausible considering that (i) the principal applicant is part of a minority that is ostracized from many aspects of Romanian society, and (ii) the perpetrators were police. Again, it is not implausible that a person suffering the kind of beating described by the applicants would have no medical documents.

[21] With regard to the alleged begging in the United States, the Member noted that the applicants had left Romania with 12,000 euros, and concluded that "they likely had sufficient funds to keep them sustained for the three and a half months they were in the US." This conclusion was used to support the Member's doubt as to why the applicants abandoned their asylum application in the United States and came to Canada. In light of the fact that the applicants (a family of five) travelled from Romania to Spain and then from Spain to Mexico before reaching the United States, the Member's statement that the 12,000 euros in question would likely have lasted several months until the principal applicant's release from detention in the United States lacks the justification, transparency and intelligibility expected of a reasonable conclusion.

[22] In my view, but for the Member's flawed reasoning described above, the overall conclusion of lack of credibility might have been different.

B. *Did the Member err in failing to assess the risk of persecution to which the applicants might be exposed in Romania because they were found to lack credibility?*

[23] After addressing the credibility problems, the RPD looked at country conditions in Romania for Roma. The RPD acknowledged many problems of repeated discrimination against Roma, some of which are serious (such as allegations of police harassment and brutality). The Member disposed of any concerns raised in the documentation by noting that the applicants' potential risk of persecution in Romania must be individualized. The Member concluded that, since the applicants were not credible, they could not establish the required individualized risk.

[24] In my view, this conclusion is unreasonable. It is trite law that risk assessment is a forward-looking exercise, and so a refugee claim may have merit even if the claimant lacks credibility on their narrative of past events. It is not clear to me that the Member understood that.

[25] The concerns that the applicants have in this case are not generalized to the entire population of Romania. They are specific to Roma. The Member expressed no doubt concerning (i) the applicants' Roma ethnicity, or (ii) the documentation noting the mistreatment of Roma in Romania. The applicants were entitled to have their risk upon return to Romania assessed.

VI. CONCLUSION

[26] Accordingly, the present application for judicial review will be granted.

[27] The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-2674-18

THIS COURT’S JUDGMENT is that:

1. The present application is granted.
2. The impugned decision of the Refugee Protection Division is set aside and the matter is remitted for redetermination by a different decision-maker.
3. There is no question of general importance to certify.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: GHEORGHE MICLESCU, FLORENTINA
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IONUT SAVAS ALEXANDRU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 16, 2019

JUDGMENT AND REASONS: LOCKE J.

DATED: FEBRUARY XX, 2019

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