Federal Court  Cour fédérale

Date: 20190430

Docket: IMM-5204-17

Citation: 2019 FC 288

Ottawa, Ontario, April 30, 2019

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ROBERT SANDOR KISFALUDY,
ZSUZSANNA VERONIKA KISFALUDYNE SORONICS,
JAZMIN VERONIKA KISFALUDY
(A MINOR)

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] against a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [Board],

dated November 15, 2017. The RPD determined that the Applicants are not Convention refugees and are not persons in need of protection within the meaning of sections 96 and 97(1) of the IRPA, pursuant to subsection 107(1) of the IRPA.

[2] The application for judicial review is allowed for the reasons that follow.

II. Background

[3] The Principal Applicant is a citizen of Hungary. His wife (the Secondary Applicant) and minor child are also citizens of Hungary and have sought refugee protection. They are also the Applicants in the present matter as their claims were joined pursuant to Rule 55 of the *Refugee Protection Division Rules*, SOR/2012-256 for the determination of their refugee status.

[4] Due to the Secondary Applicant's Roma ethnicity, the Applicants filed for asylum in Canada on January 25, 2012, based on fear of discrimination and persecution in Hungary.

[5] In her Personal Identification Form [PIF], the Secondary Applicant alleged that the family members are victims of discrimination in society, education, employment and health care, mainly for the following reasons:

- The Secondary Applicant has been mistreated by the hospital staff while she was pregnant. As a result of receiving poor medical treatment from her doctors, the Secondary Applicant contracted a viral infection which was later treated in Canada through surgery;

- The Principal Applicant was demoted from his managerial position to a janitorial position due to his wife's Roma ethnicity;
- The minor child was poorly treated when she was at the daycare center in Hungary. The Secondary Applicant alleges that her daughter was often picked up from daycare with diaper-rash as no one would change her diaper. The child also had bruises on her arms and would cry every time she saw her teachers the following day.

III. The RPD's Decision

[6] On November 15, 2017, the RPD determined that the Applicants are not Convention refugees and are not persons in need of protection within the meaning of sections 96 and 97(1) of the IRPA. The RPD noted that there were three issues that needed to be determined to decide the claims: (i) whether the Principal Applicant's testimony was credible; (ii) whether the treatment the family suffered amounted to persecution; and (iii) whether the family successfully rebutted the presumption of state protection.

[7] The RPD undertook an analysis of each of the alleged incidents of discrimination and persecution in the areas of health care, education, employment, and housing.

A. *Alleged discrimination in healthcare not credible*

[8] The RPD found that the Applicants failed to prove, on a balance of probabilities, that they suffered discrimination in healthcare. The Secondary Applicant testified that she was being mistreated at the hospital due to her ethnicity. Although the RPD accepted the Secondary

Applicant's testimony and found her to be credible, it nevertheless concluded that there was no evidence demonstrating that the other Applicants "had any issues involving denial of healthcare". After questioning the Secondary Applicant about her illness in 2011, the RPD found that she was clearly under the care of a gynecologist who immediately referred her to surgery when she was in the hospital in April of 2011. The RPD considered the evidence presented by the Secondary Applicant herself, indicating that she did in fact receive medical treatments from doctors in Hungary. The Secondary Applicant also testified that she could no longer have children because of the doctors' misdiagnosis in Hungary. The RPD did not accept this allegation as there was "no evidence before the panel to confirm this portion of her testimony that this was a result of her not receiving the proper and adequate healthcare due to her ethnicity".

B. *Treatment did not otherwise amount to persecution*

[9] Next, the RPD considered whether the allegations of discrimination amounted to persecution. The RPD noted that "[f]or treatment to amount to persecution, it must be 'sustained or systemic violation of basic human rights demonstrative of a failure of state protection'" *(Canada (Attorney General), v Ward*, [1993] 2 SCR 689).

[10] The Secondary Applicant alleged that her husband held the position of Manager of Security at a company and was later downgraded to a janitorial position. The RPD rejected this submission. The RPD did not find any evidence showing that the managerial position was filled by another person. The RPD determined that the claimants were not victims of discrimination or

persecution in their employment as "[t]here is nothing discriminatory about a company re-organizing and eliminating position(s)".

[11] The RPD further determined that the treatment of the Minor Applicant, on its own, did not amount to persecution.

C. *Presumption of State Protection not rebutted in the alternative*

[12] Finally, the RPD found that the Applicants failed to rebut the presumption of adequate state protection in Hungary. As stated by the RPD, a claimant needs to "rebut the presumption by providing clear and convincing evidence of the state's inability to protect". There is no expectation of any government to guarantee perfect protection to all its citizens at all times. After reviewing the documentary evidence on file, the RPD found that Hungary is a functioning democracy and is not in a total breakdown of state authority.

[13] The RPD further indicated that the "claimants have a burden of establishing a link between the general documentary evidence and their specific circumstances". Based on the general country conditions of Roma in Hungary, the RPD determined 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 possibility of persecution upon return".

[14] After reviewing the National Documentation Package [NDP] on Hungary, the RPD made several findings on Hungary's willingness and ability to provide the Applicants adequate state protection if they sought help. The RPD found that there are government institutions such as the

Equal Treatment Authority [ETA] that offer protection and promote equality with respect to direct and indirect discrimination, segregation, harassment and victimization. The RPD indicated that in 2010 the ETA held 377 investigations after receiving 1,300 complaints, mostly dealing with discrimination in employment.

[15] The RPD also found evidence in the NDP demonstrating that "the Hungarian justice system will enforce the human rights of Roma when faced by inappropriate police actions". As for the education in Hungary, the RPD found that many programs, such as scholarships and student housing for Roma, have been implemented in the educational system "to improve the position of Roma in society". According to the RPD, these programs are perceived as "operational measures to counter private and public discrimination suffered by the claimants in education, healthcare and housing". These programs demonstrate on a balance of probabilities that effective state protection does exist in Hungary when dealing with discrimination cumulatively amounting to persecution.

[16] The RPD concluded that Hungary is not a failed state. At paragraph 38 of its decision, the RPD disagreed with the claimants' submission that there is a general climate of insecurity for Roma due to persecution by the state itself:

> The objective evidence indicates that while discrimination against Roma, even by some parts of the state exists in Hungary, there are state institutions that offer adequate protection to Roma who complain.

[17] Based on the objective documentary evidence, the RPD found that on a balance of probabilities the Applicants failed to rebut the presumption that Hungary provides adequate state

protection in response to discrimination against Roma. The Applicants failed to seek protection from Hungary before immigrating to Canada.

D. *Post-Hearing Application received November 14, 2017*

[18] The RPD submitted an article to counsel regarding a Roma who had made a complaint to the ETA "as a matter of interest". The claimants' counsel brought a motion for recusal.

[19] Counsel for the claimants also asked the panel to reconvene the hearing to allow him to produce a post-hearing psychological functioning report for the Principal Applicant's wife. The RPD did not accept this submission. According to the RPD, if counsel for the claimants had concerns with regard to the claimant's mental state, he could have obtained a psychological report prior to the hearing. "In light of the above, the panel finds that there are no exceptional circumstances to warrant the hearing to be reconvened".

[20] After considering the matter of bias, and reading the application made by counsel, the RPD concluded that evidence needs to be clear in order to support an allegation of bias. The reasonable apprehension of bias has no basis as it is speculative and unsupported by any evidence. At paragraph 52 of its decision, the RPD therefore denied the application for recusal.

> I find that an informed person, viewing the matter realistically and practically, and having thought it through, could not reasonably conclude that the member, consciously and unconsciously, would not decide this claim fairly.

[21] On November 30, 2017, the Applicants filed an application for leave and for judicial review against the RPD's decision. The present matter was previously set to be heard on June 13, 2018, but was later rescheduled by this Court for November 20, 2018.

IV. Issues

[22] According to the Applicants, the present matter raises four issues which can be summarized as follows:

1. Did the RPD commit a breach of procedural fairness or a reasonable apprehension of bias?

2. Did the RPD conduct a reasonable state of protection analysis?

3. Did the RPD ignore objective evidence of discrimination?

4. Did the RPD err in finding that discrimination did not cumulatively amount to persecution?

[23] Issues of procedural fairness such as that of reasonable apprehension of bias are assessed under the standard of correctness (*Bushati v Canada (Citizenship and Immigration)*, 2018 FC 803 at para 16; *Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139 at para 38). Whether the RPD ignored relevant corroborative evidence is to be reviewed under the standard of reasonableness (*Abd v Canada (Citizenship and Immigration)*, 2017 FC 374 at para 13 [*Abd*]). The reasonableness standard also applies to the RPD's interpretation and assessment of evidence (*Abd* at para 13). Finally, the RPD's assessment of state protection raises a question of mixed

fact and law that is reviewed under the standard of reasonableness (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 16). The Court must therefore show deference to the RPD's decision as the Board is a specialized tribunal with expertise.

[24] In oral argument, both counsel acknowledged that the applicable standard of review for the RPD's decision was reasonableness.

V. Relevant Provisions

[25] Section 96 of the IRPA states:

Convention refugee	**Définition de *réfugié***
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[26] Subsection 97(1) of the IRPA states:

Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

medical care.	médicaux ou de santé adéquats.

VI. Submissions of the Parties

A. *Did the RPD commit a breach of procedural fairness or a reasonable apprehension of bias?*

[27] The Applicants argue that the decision-maker's conduct resulted in a reasonable apprehension of bias. After the hearing on October 26, 2017, the RPD sent an article to the Applicants' counsel, from the European Roma Rights Centre [ERRC], about a Romani woman who was harassed at a Hungarian hospital while giving birth. The RPD provided a deadline to counsel to submit additional evidence as well as submissions in reply. In the article in question, the Equality Body decided that the hospital had violated the equal treatment of a Romani woman and found the hospital guilty of harassment based on her ethnicity. While the RPD member stated that the article was merely sent to counsel "as a matter of interest", the Applicants disagree because they were given an opportunity to exercise their right of reply and, therefore, provide written submissions.

[28] The Applicants submit that the RPD repeatedly mentioned in its reasons the implications of the ETA in dealing with complaints of discrimination; however, the ETA and its role were clearly identified in the article provided by the RPD after the hearing. By doing so, the Applicants contend that the RPD failed to consider their rebuttal arguments regarding the ERRC article.

[29] The Respondent submits that the Applicants failed to refer to the evidence on record to illustrate clearly why they had the "subjective impression" that the decision-maker's conduct gave rise to a reasonable apprehension of bias. The Respondent submits that "[an allegation of bias] cannot rest on mere suspicion, pure conjecture or mere impressions of an applicant or counsel." (*Arrachch v Canada (Minister of Citizenship and Immigration)*, 2006 FC 999 at para 20 [*Arrachch*]). The fact that the RPD member sent an article to the Applicants' counsel and invited comments does not mean that the RPD was close-minded on the issue of discrimination in healthcare or that it failed to review the documentary evidence as a whole. The Respondent further notes that this article in question was not referred to in the RPD's reasons for decision.

B. *Did the RPD conduct a reasonable state of protection analysis?*

[30] The Applicants argue that the RPD's analysis of state protection was unreasonable. The Applicants submit that the RPD ignored the objective evidence on file. According to the Applicants, the RPD mostly focused its analysis of state protection on the ETA's actions in dealing with complaints of discrimination, however, it failed to address whether these complaints were filed by Romani victims. Moreover, the Applicants submit that the RPD erred in finding that the Applicants did not encounter problems with the police in Hungary, as they had expressly alleged in their PIF. The RPD also erred in relying on the possible avenue for the Applicants to file a complaint against the police to the Independent Police Complaints Board [IPCB]. "As has been said many, many times by this Court, the taking of a complaint against the police for non-action is not, in any way, the equivalent of providing state protection." (*Olah v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 899 at para 29).

[31] The Respondent argues that the Applicants had the burden of establishing that the state was unwilling or unable to provide adequate protection. “In other words, a claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate.” (*The Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 at para 30). The Respondent further submits that the onus was on the Applicants to demonstrate that the ETA was ineffective when dealing with complaints from Roma victims (*Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178).

C. *Did the RPD ignore objective evidence of discrimination?*

[32] The Applicants argue that the RPD erred by requiring corroborative evidence to support the allegations of discrimination (*Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705 at para 45). The Applicants also submit that the RPD ignored evidence of discrimination as there was in fact corroborative evidence on record, which clearly depicted the situation with the Roma population in Hungary, based on the country conditions evidence on Hungary.

[33] The Respondent, on the other hand, argues that the RPD did not ignore any evidence of discrimination. For instance, the Respondent contends that the RPD did not make a speculative finding in determining that the Principal Applicant was demoted to a janitorial position due to a re-organization of the company in which he was employed from 2000 to 2008. The RPD’s finding was based on the testimony of the Principal Applicant who stated the following at the hearing: “[…] and that’s when I got the questions. You guys are related? And I said, yes, we are

related and actually exactly one week later they called me and they said we're going to reorganize the company". The Respondent also submits that both the Principal Applicant and his wife were employees, and had remained employees during the same period of employment, in the same company.

[34] Although the objective evidence shows that the Roma do suffer discrimination at times in Hungary, the Respondent argues that the Applicants failed to show the Board how the subjective evidence (the treatments received from their employer and the hospital in Hungary) was based on the ethnicity of the Principal Applicant's wife.

D. *Did the RPD err in finding that discrimination did not cumulatively amount to persecution?*

[35] The Applicants argue that the RPD erred in finding that the Applicants do not face discrimination that cumulatively amounts to persecution for the following reasons: (i) the RPD ignored the issue of discrimination in the healthcare system, (ii) the RPD failed to consider the "cumulative impact" of each of the Applicants' reported incidents of discrimination, (iii) the RPD did not consider the objective documentary evidence correctly, and (iv) the RPD applied the wrong legal test. For instance, while the RPD accepted the Secondary Applicant's testimony and sympathized with her medical outcomes, it found that the Secondary Applicant was not denied adequate healthcare due to her Roma ethnicity without considering the objective evidence regarding the alleged mistreatment and discrimination in the healthcare system (*Ramirez v Canada (Citizenship and Immigration)*, 2008 FC 466 at para 16).

[36] The Respondent argues that it was reasonable for the RPD to conclude that the Applicants did not suffer discrimination amounting to persecution. “The fact that the Board considered each allegation in turn does not show that it failed to consider the overall situation of the Applicants.” (Respondent’s Memorandum of Argument, para 27). Based on all the evidence on file, the Respondent submits that the RPD’s finding is reasonable.

VII. Analysis

[37] For the following reasons, the application for judicial review is allowed.

A. *Did the RPD commit a breach of procedural fairness or a reasonable apprehension of bias?*

[38] In *Committee for Justice & Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369, Justice de Grandpré stated the test for reasonable apprehension of bias as follows:

> …The apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is “what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that … [the decision-maker], whether consciously or unconsciously, would not decide fairly.”

[39] As submitted by the Respondent, an allegation of bias “cannot rest on mere suspicion, pure conjecture or mere impressions of an applicant or counsel” (*Arrachch* at para 20). The Court concurs with the Respondent’s position regarding this issue. No material evidence on record, including the transcript of the RPD hearing, shows that the RPD member did something that gives rise to a reasonable apprehension of bias. In *Arthur v Canada (Attorney General)*,

2001 FCA 223, at paragraph 8, the Federal Court of Appeal made the following comment on the notion of bias:

> […] An allegation of bias, especially actual and not simply apprehended bias, against a tribunal is a serious allegation. It challenges the integrity of the tribunal and of its members who participated in the impugned decision. It cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of an applicant or his counsel. It must be supported by material evidence demonstrating conduct that derogates from the standard.
>
> [Emphasis added.]

[40] In the present case, the Court finds that, "viewing the matter realistically and practically", "and having thought the matter through", an "informed person" would have come to the same conclusion as the RPD member did. The Court finds that the allegation of bias made by counsel for the Applicants is unfounded and has no merit. There was no breach of procedural fairness on the part of the panel as the Applicants were clearly afforded an opportunity to provide written submissions in response to the contents of the ERRC article in a letter from the RPD dated October 27, 2017. While the article in question can be found in the CTR, at page 148, it is clear from the RPD's decision that the panel did not rely on this evidence in its decision-making process. Even if it had, the RPD gave notice to the Applicants and provided an opportunity to respond to the evidence.

B. *Did the RPD conduct a reasonable state of protection analysis?*

[41] The Court finds that the RPD committed two reviewable errors. Both of these errors refer to the reported incident that involved the Applicants' neighbour who pushed the Secondary Applicant down the stairs while she was pregnant, after which a call had been made to the police.

Firstly, the RPD erred in stating in its reasons, at paragraph 37, that the Applicants did not testify about problems encountered by the police in Hungary. The Court notes that both the Principal Applicant (Claimant), and his wife (Claimant 2), testified at the hearing about their experience with the police:

> Claimant 2: And I call my husband to come because when I … when I call the police they was asking me, is it blood over there or something…
>
> […]
>
> Claimant: When I called the police the police said, okay. Nobody's bleeding. We're not coming over there and they advised Vera to buy pepper spray and if something happens spray them and run away. […] I told, one more thing, I'm going to call the cops and they started mocking because they know that they're not going to do anything.

[42] The Applicants had expressly alleged the altercation with the neighbour, including the call to the police, in their PIF. The RPD appears to have ignored this allegation as it was silent about the Applicants' efforts when seeking help from the police in Hungary:

> 6. […] When I [the Secondary Applicant] was seven months pregnant, one of our neighbours grabbed me and pushed me in the hallway. I called the police, but they laughed at me, and refused to help. I was told to call back when there was blood. And in the meantime if I needed help, to buy some pepper spray, use it and run away.

[43] The Court notes that the RPD's lengthy analysis on the adequacy of state protection in Hungary mostly explains the notion of presumption of state protection and a claimant's burden of proving an absence of state protection. The RPD focused this section of its analysis on an independent administrative body, the ETA, which deals with complaints of direct and indirect discrimination. Only one paragraph from the RPD's reasons refers to state protection in Hungary

when Roma or persons have issues with the police; however, this paragraph solely addresses the victims' different avenues, such as the IPCB, to pursue their complaints against the police. As mentioned by the Applicants in their written submissions, "[t]he Court has consistently found that the existence of the IPCB is not an avenue of state protection." (*Majoros v Canada (Citizenship and Immigration)*, 2017 FC 667 at para 77; *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 1220 at para 23). The Court finds that the RPD erred in finding that Hungary provides "adequate protection" because there are state institutions that can take complaints against the police.

[44] Secondly, the Court reminds that a decision-maker is presumed to have considered and weighed all the evidence before him or her unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). In this case, the RPD ignored relevant contradictory evidence in conducting the state protection analysis due to the fact that the Board was silent about the actions or non-actions of the police when dealing with Roma victims in Hungary. Specific passages in the objective documentary evidence have clearly been overlooked by the RPD as it failed to address evidence that was put before it by the Applicants, and is contradictory to the state protection finding of the Board:

> NGOs reported continued failures and omissions on the part of the police and prosecution in investigating hate crimes committed against minority group members (including Roma).
>
> (CTR, Hungary, Country Reports on Human Rights Practices for 2016, p 205)
>
> In addition, the three non-governmental organizations (NGOs) report that "law enforcement authorities … systematically fail to provide effective protection to Roma" (ibid.).
>
> (CTR, Response to Information Request dated October 12, 2011, Hungary: Police response to complaints lodged by Roma citizens;

> procedures to lodge a complaint against a police officer; alternate complaints mechanisms for human rights violation, p 215)
>
> The state's response to violence against Roma has been feeble. Police regularly treat hate crimes as ordinary without considering the hate motive. For example, when assailants into the house of a Romani family in Eger in 2015, assaulting the family and shouting "Filthy Gypsy, you will die", the crime was recorded by the police as merely "illegal entry".
>
> (CTR, A drop of hope in the sea of fear: Tackling hate crimes against Roma in Hungary, Amnesty International, January 25, 2017, p 351)

C. *Did the RPD ignore objective evidence of discrimination?*

[45] The Court agrees with the Respondent and finds that the RPD did not ignore objective evidence of discrimination. Regarding the allegation of discrimination in the healthcare system, the Applicants argued that the RPD failed to consider objective evidence on discrimination faced by Romani women in the healthcare system. The Court concludes that "[t]he applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances" (*Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19).

[46] The Court also finds that the RPD did consider the Secondary Applicant's testimony and the evidence on file to conclude that it was not convinced, on a balance of probabilities, that the Applicant's wife was being mistreated and discriminated against at the hospital in Hungary solely due to her Roma ethnicity. While the RPD acknowledged that the Applicants may have suffered some mistreatment by society, it found that "there is no evidence before the panel to confirm this portion of her [the Secondary Applicant] testimony that this was a result of her not

receiving the proper and adequate healthcare due to her ethnicity" (CTR, RPD's Reasons for Decision, p 6). [Emphasis added.].

D. *Did the RPD err in finding that discrimination did not cumulatively amount to persecution?*

[47] The RPD addressed the reported incidents of mistreatment and discrimination separately in its reasons. Individually, the RPD found that most of these incidents were not discriminatory in nature. The RPD concluded that while the Secondary Applicant may have suffered discrimination in education and employment, this discrimination did not cumulatively amount to persecution "because it is not sustained or systemic violation of their human rights" (CTR, RPD's Reasons for Decision, p 7). It is not an error to address each of the allegations of mistreatment separately to decide whether the Applicants are victims of discrimination in Hungary. Given that the RPD carefully analyzed the evidence on discrimination and examined the Applicants' credibility, the Court finds that the RPD did not err in finding that discrimination did not cumulatively amount to persecution.

[48] Given that the RPD failed to conduct a reasonable state of protection analysis, the Court concludes that the RPD's decision cannot fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VIII. Conclusion

[49] The Application for judicial review is allowed. No question of general importance will be certified.

JUDGMENT in IMM-5204-17

THIS COURT'S JUDGMENT is that the Application for judicial review is allowed.

No question of general importance will be certified. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Elyse Korman	FOR THE APPLICANTS
Rachel Hepburn Craig	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Korman & Korman LLP Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT