Federal Court  Cour fédérale

Date: 20190627

Docket: IMM-5949-18

Citation: 2019 FC 864

Ottawa, Ontario, June 27, 2019

PRESENT: Mr. Justice Manson

BETWEEN:

BRIGITTA LAKATOS
ANDRAS LAKATOS (by his litigation guardian, Brigitta Lakatos)

Plaintiffs

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by a Senior Immigration Officer at Immigration, Refugees and Citizenship Canada [the Officer] dated July 31, 2018, which denied the Applicants' application for a Pre-Removal Risk Assessment [the Decision].

II. Background

[2] The Applicants are Brigitta Lakatos [the Principal Applicant, or Ms. Lakatos] and her son, Andras. Ms. Lakatos was born on March 2, 1992 in Miskolc, Hungary. She has Hungarian citizenship, and is of Roma ethnicity.

[3] Ms. Lakatos came to Canada in September 2011, along with her common-law husband and son. The family filed a claim for refugee protection, in which Ms. Lakatos' husband was the principal claimant.

[4] The family's claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board [the RPD] in a decision dated December 18, 2012 [the RPD Decision].

[5] The family sought judicial review of the RPD Decision, but leave was denied in May 2013.

[6] In June 2014, the family failed to report for removal from Canada, and a warrant was issued for Ms. Lakatos' arrest. She was arrested on June 21, 2017.

[7] Ms. Lakatos filed a Pre-Removal Risk Assessment [PRRA] application on June 29, 2017. This application was rejected on August 28, 2017 [the First PRRA Decision].

[8] Ms. Lakatos sought judicial review of the First PRRA Decision. In *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 [*Lakatos #1*], Justice Diner allowed the application for judicial review. Justice Diner found at paragraph 36 that the immigration officer had committed a reviewable error by first accepting the Principal Applicant's narrative regarding attacks against her and injuries suffered, and finding that the Hungarian police had not competently investigated hate crimes, but then failing to analyse whether Ms. Lakatos' efforts to test state protection met the evidentiary burden in her circumstances, in light of the evidence accepted. As a result, Justice Diner sent the matter back for redetermination.

[9] Andras was subsequently served with a PRRA. When filing Andras' PRRA application, counsel for Ms. Lakatos and Andras asked that their PRRA applications be determined together, and stated that Andras would rely on the evidence and submissions of his mother.

III. Decision Under Review

[10] The Applicants attended an interview with the Officer on June 26, 2018 [the Hearing]. The Applicants were represented by counsel at the Hearing, who is also counsel before this Court. The Hearing was conducted with the aid of an interpreter.

[11] In the Decision, dated July 31, 2018, the Officer denied the Applicants' application for a PRRA.

[12] The Officer first reviewed Ms. Lakatos' testimony from the Hearing, and made numerous adverse credibility findings, on the basis of, among other things:

(i) discrepancies in her description of where she attended high school;

(ii) a statement that an attack on her family in 1992 was perpetrated by the Hungarian Guards, as the Hungarian Guards were only established in 2007;

(iii) an insufficient explanation of how she was discriminated against while receiving medical care;

(iv) an insufficient description of occasions when she needed medical treatment; and

(v) her inability to remember how many months she had been pregnant for at the time of a 2010 attack by the Hungarian Guard, during which she suffered a dislocated finger.

[13] The Officer concluded that, due to Ms Lakatos' lack of credibility, there was insufficient evidence to establish a personal history of mistreatment amounting to treatment described in sections 96 and 97 of the IRPA.

[14] The Officer next turned to the Applicants' documentary submissions. The Officer reviewed four letters written by the Applicants' family members, each of which described incidents of violence and threats perpetrated due to the writers' ethnicity. The Officer discounted the letters due to a perceived lack of detail, a lack of independent documentary evidence to corroborate the letters, and the fact that the letters were not sworn. The Officer also discounted a threatening note received by Ms. Lakatos' mother-in-law, which stated "Stinky gypsies, you come home you die!!!", as the author of the note did not sign the note or specifically address the note to the Applicants. Lastly, the Officer discounted pictures of a swastika sign painted on Ms. Lakatos' mother-in-law's door, on the basis that the pictures did not identify that the sign was painted on the mother-in-law's door, as well as a lack of corroborating evidence.

[15] The Officer concluded that the Applicants had not adduced sufficient documentary evidence to demonstrate that they or their family members had experienced mistreatment in Hungary amounting to treatment defined in sections 96 and 97 of the IRPA.

[16] The Officer then reviewed the country conditions package prepared by Applicants' counsel. The Officer concluded that while the documentary evidence established that the Roma population in Hungary experiences prejudice and mistreatment, the Applicants had failed to show that they personally would face discrimination amounting to persecution.

[17] Lastly, the Officer addressed the availability of state protection. The Officer noted that Ms. Lakatos had only made a single attempt to report the harassment she experienced to the local police in Hungary, and did not attempt to take her concerns to higher authorities or governmental organizations who might offer protection. The Officer concluded that the Applicants had failed to rebut the presumption of state protection.

IV. Issues

[18] The issues are:

(i) Did the Officer breach the Applicants' right to procedural fairness and exceed her jurisdiction by convoking an oral hearing?

(ii) Was the Officer's assessment of the Applicants' risk of persecution in Hungary unreasonable and did the Officer apply the wrong test under section 96 of the IRPA?

(iii) Did the Officer apply an incorrect test when assessing the availability of state protection in Hungary?

(iv) Was the Officer unreasonable when assessing the evidence of state protection?

V. Standard of Review

[19] The choice of test for state protection is a question of law, reviewable on the standard of correctness (*Kristofova v Canada (Citizenship and Immigration)*, 2016 FC 415 at para 30 [*Kristofova*]; *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at paras 20-22). The ensuing determination of whether the Applicants have rebutted the presumption of state protection is a question of mixed fact and law reviewable on the standard of reasonableness (*Kristofova,* above at para 30).

[20] The assessment of the Applicant's risk of persecution is reviewable in the standard of reasonableness. However, whether the wrong test was applied in considering "persecution" under section 96 of the IRPA is reviewable on a standard of correctness (*Ruszo*, above at para 20).

[21] Issues of procedural fairness are reviewed on the correctness standard. However, for reasons outlined below, I find that there are no issues of procedural fairness properly before this Court.

VI. Analysis

A. *Did the Officer breach the Applicants' right to procedural fairness and exceed her jurisdiction by convoking an oral hearing?*

[22] Section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] outlines factors for an immigration officer to consider when determining if an oral hearing is required:

> 167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:
>
> (a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;
>
> (b) whether the evidence is central to the decision with respect to the application for protection; and
>
> (c) whether the evidence, if accepted, would justify allowing the application for protection.

[23] As outlined in subsection 113(a) of the IRPA, in a PRRA application, "an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection".

[24] The Officer chose to conduct an oral hearing. The Applicants argue that the Officer exceeded her jurisdiction, and breached the Applicants' procedural rights, by focusing her questioning on evidence that had been considered and decided by the RPD - Ms. Lakatos' personal experiences of mistreatment before she left Hungary - and by impugning the Applicants' credibility for failing to provide evidence they were barred from providing by section 113.

[25] The Respondent objects first on the basis that this argument was raised for the first time in the Applicants' Further Memorandum, filed and served approximately two weeks before the hearing of this matter. The Applicants failed to raise this issue at the Hearing before the Officer, in written submissions to the Officer prepared after the Hearing, or in their memorandum seeking leave to this Court.

[26] In *Al Mansuri v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 22 at paragraphs 12 to 13 [*Al Mansuri*], Justice Dawson outlined a non-exhaustive list of factors that may apply when this Court is considering an exercise of its discretion to allow issues to be raised for the first time in a further memorandum:

> [12] Thus, for these reasons, I am satisfied that in every case it is for the Court to exercise its discretion as to whether to allow issues to be raised for the first time in a party's further memorandum of fact and law. Considerations relevant to the exercise of that discretion, in my view, include:
>
> > (i) Were all of the facts and matters relevant to the new issue or issues known (or available with reasonable diligence) at the time the application for leave was filed and/or perfected?
> >
> > (ii) Is there any suggestion of prejudice to the opposing party if the new issues are considered?
> >
> > (iii) Does the record disclose all of the facts relevant to the new issues?
> >
> > (iv) Are the new issues related to those in respect of which leave was granted?
> >
> > (v) What is the apparent strength of the new issue or issues?
> >
> > (vi) Will allowing new issues to be raised unduly delay the hearing of the application?

> [13] As noted, the list is not exhaustive, and not every factor will be relevant in a particular case…

[27] In a letter to the Court responding to the Respondent's objections, the Applicants cite the decision of *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at paragraph 33 [*Sattva*], where the Supreme Court of Canada allowed an issue not raised in a leave application to be heard:

> Unless this Court places restrictions in the order granting leave, the order granting leave is "at large". Accordingly, appellants may raise issues on appeal that were not set out in the leave application. However, the Court may exercise its discretion to refuse to deal with issues that were not addressed in the courts below, if there is prejudice to the respondent, or if for any other reason the Court considers it appropriate not to deal with a question.
>
> [Emphasis by the Applicants.]

[28] While the Applicants emphasize the first portion of this quote, I find the latter portion to be as instructive. On the whole, the analysis in *Sattva,* notwithstanding that it relates to the procedure of the Supreme Court of Canada rather than the Federal Court, is consistent with the approach outlined in *Al Mansuri;* there is the possibility to raise new issues not addressed at the leave stage, but such issues may be refused at the discretion of the court if they prejudice the other party, or for any other reason.

[29] Having reviewed the factors outlined in *Al Mansuri*, I decline to exercise my discretion to allow this issue to be raised. I note in particular that this issue was known to the Applicants prior to their post-Hearing submissions to the Officer, and certainly prior to filing their application for leave. In fact, the letter dated May 28, 2018, which gave the Applicants notice of the Hearing,

expressly states that the Hearing would focus on the Applicants' "experiences of mistreatment on the basis of ethnicity in Hungary".

B. *Was the Officer's assessment of the Applicants' risk of persecution in Hungary unreasonable and did the Officer apply the wrong test under section 96 of the IRPA?*

(1) Credibility Findings

[30] As outlined above, the Officer discounted the Principal Applicant's testimony because of inconsistencies and an inability to remember the exact dates, and made several adverse credibility findings. The Officer concluded that the testimony was insufficiently probative to establish a personal history of mistreatment amounting to treatment described in sections 96 and 97 of the IRPA.

[31] The Applicants argue that the Officer's assessment of the Principal Applicants' testimony at the Hearing was unreasonable, as the Officer was overly microscopic in discounting testimony of events that happened more than 8 years ago - largely while she was a minor. The Respondent suggests that the Officer's negative credibility findings were reasonable, and showed the Principal Applicant to be an unreliable and contradictory witness.

[32] The Principal Applicant's testimony does have some inconsistencies. However, these minor inconsistencies do not meaningfully detract from the totality of her evidence regarding the violence she suffered as a youth in Hungary.

[33] First, the Principal Applicant testified to a 1992 attack in which the perpetrators threw a Molotov cocktail through the window of her family home, which caused her crib to catch on fire. The Principal Applicant suffered significant burns, including the loss of all of her toes, and required extensive plastic surgery both as a baby and throughout her youth. The Principal Applicant stated that her father told her this attack was perpetrated by the Hungarian Guards. The Officer rejected this testimony based on documentary evidence that the Hungarian Guards did not exist until 2007, and made a negative credibility finding.

[34] The Officer may question who perpetrated the 1992 attack, but it is clearly established that the Principal Applicant was severely injured as a result of this attack. Further, it defies logic that the Officer would not recognize that a Molotov cocktail thrown through the window of a Roma family home is highly probative of racially motivated violence. An inconsistency regarding the identity of perpetrator of the attack, particularly when relating to events that occurred when the Principal Applicant was an infant, should not and cannot diminish this reality.

[35] Second, the Officer made a negative credibility finding because the Principal Applicant failed to sufficiently explain how hospital staff discriminated against her. The Officer's notes outline that the Principal Applicant testified about delayed access to painkillers, that nurses would put on two sets of gloves before touching her and avoid touching her whenever possible, and would handle her roughly. The Officer rejected these explanations on the basis that the Principal Applicant had been treated in a segregated room, and therefore could not have known this treatment was different from how the nurses treated other patients.

[36] Once again, the Officer appears to be searching for a way to reject the Principal Applicant's testimony. This finding shows complete disregard for the context of significant discrimination suffered by people of Roma ethnicity in Hungary.

[37] Third, the Officer faulted the Principal Applicant for (1) inconsistent testimony regarding which school she attended for grade nine, and whether her grade nine school was segregated, (2) an inability to remember details regarding an attack that occurred when she was 13 or 14 years old, and (3) an inability to remember how many months pregnant she was at the time of a 2010 attack, in which she dislocated a bone in her finger.

[38] There were inconsistencies in the Principal Applicant's testimony regarding each of these events. However, the Officer unreasonably discounted the entirety of this testimony, and failed to recognize that, irrespective of minor inconsistencies, the Principal Applicant's testimony strongly suggests that she suffered racially motivated violence as a youth and while pregnant with Andras in 2010.

[39] Similarly, an inconsistency regarding where the Principal Applicant attended grade nine does not detract from the evidence that she was discriminated against while at school, and ultimately dropped out of high school. Additionally, her testimony regarding discrimination is consistent with the documentary evidence regarding discrimination against Roma children in school, and she should not be faulted for some vagueness regarding which school she attended approximately 12 years prior to the Decision. In any event, the location of her grade nine school has no meaningful relation to her claim.

[40] On the whole, I find that the Officer's credibility findings were unreasonable. The Officer engaged in an overly microscopic analysis of the Principal Applicant's testimony, and failed to recognize that irrespective of some minor inconsistencies in peripheral details, the Principal Applicant suffered at least two racially motivated attacks while living in Hungary, one of which left her severely burned and required many years of hospital care and plastic surgeries. Additionally, the Officer faulted the Principal Applicant for not providing evidence to corroborate her testimony regarding past events in Hungary when, as outlined in section 113 of the IRPA, she was largely limited to putting forward evidence arising since the RPD Decision.

(2) Letters and Supporting Evidence

[41] The Principal Applicant put forward several letters from family members, including:

(i) A letter by Mr. Zoltan Hering, the Principal Applicant's ex-brother-in-law, describing an incident where the Hungarian Guards smashed his windshield in with baseball bats, and providing pictures of his broken windshield [the Brother-in-law's letter];

(ii) A letter by Ms. Farkas, the Principal Applicant's godmother, describing an attack on public transit [the Godmother's Letter];

(iii) A letter by Ms. Ferencne Hering, the Principal Applicant's ex-mother-in-law, describing how her late husband's grave was vandalized, along with photos of the vandalized grave [the Mother-in-law's Letter];

(iv) A letter by Mr. Mark Varadi, another ex-brother-in-law of the Principal Applicant, describing an incident where he was run over by a car while riding his bicycle [the Varadi Letter].

[42] The Principal Applicant also provided photos of a note received by her mother-in-law, after her family had indicated on Facebook they would be returning to Hungary from Canada, which read "Stinky gypsies, you come home you die!!!".

[43] The Officer admitted this evidence, but then assigned each piece minimal probative value. The Officer discounted each piece of evidence, generally on the basis that (1) the letters were not sworn, (2) some of the letters were not dated, or (3) the descriptions of violence were not accompanied by police reports or other corroborating documents.

[44] The Applicants argue that the Officer erred by rejecting the letters because they are not in affidavit form. The Applicants also argue that the Officer erred by faulting the letters for what they failed to show, rather than what they did show - that the Principal Applicant's family members had been victims of racialized violence. Lastly, the Applicants argue that the Officer erred by discounting the photos based on a lack of corroborating evidence, without considering that the letters corroborated the photos.

[45] The Respondent submits that the Officer reasonably noted that the letters were not sworn, vague, and lacked supporting documents.

[46] Reviewing the Decision as a whole, the Officer first found the Principal Applicant's testimony not credible, and then engaged in a detailed review of the supporting letters and photos, searching for reasons to discount each piece of evidence. This approach is inexorably tied to the Officer's erroneous credibility findings. Moreover, the Officer's strict and focused approach fails to recognize that, while there may be some inconsistencies or vagueness in the evidence, the letters and photos support a finding that at least some of the Applicants' family members have suffered racially motivated violence in Hungary. This is consistent with the country condition evidence.

(3) Test for Persecution

[47] Under section 96 of the IRPA, an applicant must establish on a balance of probabilities that there is more than a mere possibility that the applicant will be persecuted on a Convention ground (*Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at para 64 [*Sallai*]). Under section 97 of the IRPA, a nexus to a Convention ground is not required; an applicant must establish that the risk they face is personal - not a risk generally faced by other citizens of the country (*Sallai*, above at para 65).

[48] Justice Strickland summarized the section 96 analysis in *Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332 at paragraph 31:

> [31] As stated in *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at para 13, to satisfy the definition of "Convention refugee" in s 96 of the IRPA, the applicant must show that he or she meets all the components of this definition, beginning with the existence of both a subjective and objective fear of persecution. The applicant must also establish a link between him or herself and persecution on a Convention ground. The applicant must be targeted for persecution in some way, either "personally" or "collectively", and the applicant's well-founded fear must occur for reasons of race, religion, nationality, membership in a particular social group, or political opinion. Further, persecution under s 96 can be established by examining the treatment of similarly situated individuals, the applicant does not have to show that he himself has been persecuted in the past or would be persecuted in the future.

[49] The Respondent argues that the Officer did conduct a forward looking assessment, and cites one sentence from a 13-page decision (included in the excerpt below) suggesting that the Officer considered the Applicants' risk from a future return to Hungary.

[50] The Applicants argue that the Officer applied the wrong test when assessing their risk of persecution under section 96. First, the Applicants argue that the Officer erred by failing to consider the Applicants' forward-facing risk of persecution in Hungary.

[51] Second, the Applicants argue that the Officer required them to demonstrate past persecution, and failed to consider whether the treatment of similarly situated individuals could establish persecution. As outlined in *Debnath,* above, persecution can be established by examining the treatment of similarly situation individuals; applicants need not show that they themselves have been persecuted in the past or would be persecuted in the future.

[52] The Officer's language at several points in the Decision illustrates the errors identified by the Applicants. After considering the Principal Applicant's testimony, the Officer concluded: "I find insufficient evidence in the application before me to establish personal history of mistreatment amounting to treatment described in sections 96 and 97 of the IRPA." Moving on to the letters and photos from family members, the Officer concluded: "… I find that the principal applicant adduces insufficient corroborative documentary evidence to demonstrate that she personally or her family members have experienced mistreatment in Hungary amounting to treatment defined in sections 96 and 97 of the IRPA."

[53] Finally, having reviewed some documentary evidence, the Officer concluded with the following paragraphs:

> Overall, I acknowledge that the Roma population has experienced prejudice and mistreatment in Hungary. I acknowledge that Hungarian Roma people can face discrimination on the basis of their ethnicity. I accept that Roma experience widespread

> discrimination in employment, education, healthcare, housing and political participation. However, I do not find that the applicants adduced sufficient evidence to demonstrate that they personally experienced mistreatment which ultimately amounts to treatment described in sections 96 or 97 of the IRPA. I do not find that the applicants have met the burden of proof required of them showing that they personally will face discrimination amounting to persecution in Hungary based on the evidence submitted.
>
> …
>
> In the case of the applicants, I note that they failed to establish, through documentary submissions or through oral testimony, that they personally experienced serious incidents of harassment or mistreatment in Hungary. While there is a risk of discrimination because of the applicants' ethnicity, I do not find there to be a risk of persecution, based on the applicants' personal circumstances.
>
> [Emphasis added.]

[54] While the Respondent is correct that at one point in the above excerpt, the Officer does mention a forward facing risk, on the whole the Officer's analysis of risk under section 96 repeatedly emphasizes the Applicants' failure to show a personal history of past persecution.

[55] The Officer erred by failing to meaningfully consider forward facing risk, by failing to meaningfully consider the evidence of similarly situated individuals, and by requiring the Applicants to show a past history of persecution. Additionally, while I recognize that Andras was relying on his mother's submissions, the Officer never meaningfully considered Andras' circumstances, as a child returning to Hungary and enrolling in school having left the country as an infant.

C. *Did the Officer apply an incorrect test when assessing the availability of state protection in Hungary?*

[56] The law regarding state protection was ably summarized by Justice Diner in *Lakatos #1*, above at paragraph 18:

> [18] Under section 96 of IRPA, a refugee claimant must establish a well-founded, subjective fear of persecution. In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (SCC) at 712 [*Ward*], the Supreme Court of Canada held that adequate state protection speaks to whether a claimant's subjective fear is objectively well-founded. Subsequent cases have confirmed that a finding of adequate state protection is also fatal to claims under section 97 (see *Samuel v Canada (Citizenship and Immigration*, 2012 FC 973 at para 40). Therefore, a finding of adequate state protection precludes refugee protection status (*Canada (Citizenship and Immigration) v Foster*, 2016 FC 130 at para 25; *Neubauer* at para 23).

[57] There is a presumption that state protection is available in a claimant's country of origin (*Ruszo* at para 29). However, a refugee claimant may rebut this presumption with "clear and convincing evidence" by showing, on a balance of probabilities, the state's inability to provide adequate protection (*Ruszo* at para 29). A claimant must show either that they are unable to obtain state protection or that, by reason of a well-founded fear of persecution, they are unwilling to avail themselves of the protection of their home state (*Ruszo* at para 30).

[58] In determining whether state protection is adequate, a decision-maker must focus on actual, operational adequacy, rather than on a state's "efforts" to protect its citizens (*Lakatos #1* at para 21).

[59] The Applicants argue that the Officer erred by applying the wrong test, focusing exclusively on the Hungarian government's efforts and failing to consider whether these steps have translated into actual protection for Roma people.

[60] The Respondent does not address this argument, other than by suggesting that the Applicants' arguments amount to a disagreement with the Officer's weighing of the evidence.

[61] I agree that the Officer focused on Hungarian government's efforts rather than on their operational adequacy. However, I am unable to conclude that the Officer applied the wrong legal test. The Officer does, at pages 13 and 14 of the Decision, mention, albeit briefly, evidence going to the operational results of the Hungarian government's efforts to protect Roma people.

[62] While the test to be applied may have been correctly identified, there remains the question of whether the Officer was unreasonable in the application of that test.

D. *Was the Officer unreasonable when assessing the evidence of state protection?*

[63] I find that the Officer erred unreasonably when assessing the documentary evidence of state protection.

[64] As outlined above, the focus of the Officer's analysis was on the efforts of the Hungarian government to provide state protection to Roma people, rather than on the operational adequacy, or ground-level effect, of those efforts. The Officer repeatedly references legislative and policy

changes intended to counter racialized violence and discrimination, without meaningfully considering whether these efforts have had any effect.

[65] This error was compounded by the Officer's failure to address significant evidence on the record demonstrating (i) Hungary's weakening democracy and shift to the extreme right, (ii) a weak or non-existent governmental response to racially motivated violence, and (iii) inadequate state response to violence against Roma.

[66] In particular, the Officer failed to engage with:

(i) evidence of an inability and unwillingness by police to address racially motivated violence;

(ii) evidence that Hungarian police continue to fail to protect Roma people from hate crimes; and

(iii) evidence that efforts by the Hungarian government to reduce discrimination against Roma people have not yet resulted in substantial improvements.

[67] The more important the evidence which is left unanalyzed, the more likely it will be that this failure will render a decision unreasonable (*Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 20 at para 22). There was significant evidence before the Officer to support a finding that it was objectively reasonable for Ms. Lakatos not to make further efforts to seek state protection. The Officer erred unreasonably by failing to meaningfully consider this evidence.

[68] Additionally, the Officer erred by relying on the potential for the Applicants to receive protection from NGOs, the ombudsman, the Equal Treatment Authority, and the National Police

Headquarters. The jurisprudence of this Court is clear that the police force is presumed to be the main institution mandated to protect citizens, and that other governmental or private institutions are presumed not to have the means nor the mandate to assume that responsibility, unless evidence is adduced to the contrary (*Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326 at para 15 [*Katinszki*]).

[69] As Justice de Montigny outlined in *Katinszki* at paragraph 15, referring to largely the same organizations referenced by the Officer in this matter, "the mandate of each of the organizations referred to by the Board … is not to provide protection but to make recommendations and, at best, to investigate police inaction after the fact". Other decisions of this Court have similarly found that these type of organizations are not an avenue of state protection for Roma people in Hungary (*Katinszki*, above at paras 14-15; *Racz v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 824 at para 38; *Vidak v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 976 at para 13; *Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 at para 14).

[70] I find that the Officer erred when assessing the Applicants' risk of persecution in Hungary, and also erred by applying the wrong test under section 96 of the IRPA. The Officer further erred when assessing the documentary evidence of state protection, and failed to meaningfully consider the operational effect of Hungarian government efforts to provide state protection to Roma individuals.

[71] This application is allowed, and the matter returned for redetermination by a different immigration officer in accordance with these reasons. Counsel agreed there is no question for certification.

JUDGMENT in IMM-5949-18

THIS COURT'S JUDGMENT is that:

1. The application is allowed, and the matter remitted back for redetermination by a different immigration officer in accordance with these reasons; and

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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