

Federal Court



Cour fédérale

Date: 20211025

Docket: IMM-1389-20

Citation: 2021 FC 1131

Ottawa, Ontario, October 25, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

**GEZA TAKACS
ERIKA TAKACS
GEZANE TAKACS
SZANDRA TAKACS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Takacs family seeks refugee status in Canada based on their experience of persecution in Hungary due to their Roma ethnicity and their fear of its continuation should they return. Their refugee claim was rejected by the Refugee Protection Division (RPD) and their

appeal of that rejection was denied by the Refugee Appeal Division (RAD). Both the RPD and the RAD found the Takacsés' credibility was undermined by inconsistencies between information they gave in interviews at their port of entry to Canada, information in their refugee application form, and information given a few weeks later on their Basis of Claim (BOC) forms.

[2] I agree with the Takacsés that a number of the RAD's credibility findings were unreasonable as it either reached conclusions unsupported by the evidence or gave no reasonable basis for rejecting the Takacsés' explanations for the identified inconsistencies. These unreasonable conclusions are sufficiently central to the RAD's reasons for rejecting the Takacsés' refugee claim that the decision cannot stand.

[3] The application for judicial review is therefore allowed and the Takacsés' appeal of the RPD's decision is returned to the RAD for redetermination.

II. Issues and Standard of Review

[4] The Takacsés raise the following two issues on this application:

- A. Did the RAD err in failing to consider the cumulative effects of discrimination amounting to persecution?
- B. Did the RAD err with respect to its credibility findings?

[5] I conclude that the latter issue is determinative of this application and that I therefore do not need to address the former.

[6] The parties agree that the RAD's credibility determinations are reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23–25; *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at paras 5, 9. Under this standard, the Court determines whether the decision is internally coherent, justified, transparent and intelligible in light of the record before the decision maker and the submissions of the parties: *Vavilov* at paras 99, 105–107, 125–128. Credibility findings are at the core of a fact finder's mandate. On judicial review, the Court's role is not to undertake its own assessment or weighing of the evidence: *Vavilov* at para 125. At the same time, however, credibility findings are not immune from review and must be reasonable in the sense described in *Vavilov*, which is to say that they must be based on coherent reasoning and justified in light of the evidence: *Vavilov* at paras 99–101, 126.

III. Analysis

A. *The Takacs family's claim for refugee protection*

[7] The Takacs family consists of two parents (Geza and Gezane) and two adult daughters (Erika and Szandra). Their refugee claim is founded on the cumulative effects of discrimination they suffered as Roma in Hungary. They allege this cumulative discrimination amounts to persecution within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and makes them persons in need of protection within the meaning of section 97 of the *IRPA*.

[8] The Takacses' evidence of discrimination came in the form of their own narrative of experiences in Hungary as well as the objective country condition evidence describing treatment of Roma in that country. In their BOC forms, the Takacses relied on a single common narrative prepared by Mr. Takacs. Each of the four gave evidence at their refugee hearing before the RPD.

[9] The Takacses' personal narrative evidence raised five primary areas exemplary of the discrimination and persecution they had suffered: verbal and physical abuse; discrimination in housing; discrimination in access to education; discrimination in employment and in the workplace; and discrimination in access to medical care. In the first category, they described numerous examples of verbal and physical abuse, including being insulted and called the ethnic slur "gypsy," being spat on, having rocks thrown at them, and being harassed by police. They also described two particular incidents. The first occurred in the spring of 2016 or 2017. Mr. Takacs went out to see why dogs were barking, and a stranger in the courtyard yelled "Die you gypsy!" and threw a brick at him, hitting him near the eye and knocking him out. The second occurred to Ms. Takacs in November 2017. Several men accosted her on the way to work, harassed her, threatened her using ethnic slurs, and tripped her, injuring her knee. The men left only when a call for help brought assistance from a bystander. Shortly thereafter, the Takacses fled for Canada, where a godson had previously been accepted as a refugee.

[10] With respect to discrimination in housing, Mr. Takacs' BOC narrative stated that "[f]rom about 2010 onwards, we have had an impossible time finding stable housing" and that the family had "basically been moving from place to place with relatives or friends or acquaintances for a couple months at a time." It went on to describe difficulties with registering at temporary

addresses and being refused rentals when proprietors realized they were Roma. It described their final habitation in Miskolc as having nine people in a two-bedroom house, with only cold running water and the toilet outside.

[11] With respect to employment, Mr. Takacs indicated he had been receiving a disability pension for about ten years after various health difficulties prevented him from continuing to work as a bricklayer. Gezane Takacs worked for a few months a year as a street cleaner through Varosgazda, a work program for Roma people in Miskolc. However, when she sought to respond to ads for other jobs, she would be insulted and refused on grounds of her Roma ethnicity. In 2011, Erika Takacs worked for about a month as a cleaner at a shopping mall. She was treated badly at work, endured verbal abuse, was spat on, and was ultimately fired because “co-workers did not want to work with a ‘gypsy’.” Szandra Takacs, who was 26 when the family left Hungary, had never been able to secure a job because people would not hire someone of Roma ethnicity.

[12] With respect to education, Mr. Takacs described Hungarians as being “trained to hate Roma people.” His daughters were separated into different classes for Roma students, with lower standards and poor teachers. Both teachers and students were insulted, spat on, and rocks were thrown at them, while complaints to the principal went unanswered. Erika Takacs completed Grade 8 and Szandra Takacs completed Grade 10. Applications to return to school were rejected, which the family believes was owing to their ethnicity.

[13] Finally, with respect to medical care, Mr. Takacs described his own chronic medical issues and the lack of care received from doctors. He stated that Roma are discriminated against in the health care system and refused treatment or made to wait for non-Roma patients to be seen first, while Gezane Takacs was placed in a “Roma women’s ward” when she gave birth. Upon arrival in Canada, a Canadian physician advised Mr. Takacs to discard the medications he had been given in Hungary. A 2018 letter from a Canadian physician stated that Mr. Takacs has “multiple other health issues that don’t appear to have been properly managed or followed prior to coming to Canada.”

B. *Rejection of the Takacs family’s claim for refugee protection*

[14] Both the RPD and the RAD dismissed the family’s refugee claim on grounds of credibility. Each found there were inconsistencies in the family’s evidence and in particular differences with respect to the issues of housing, education, and employment between what was said in their narrative and oral evidence, on the one hand, and in statements made to immigration officers and on immigration forms shortly after their arrival in Canada, on the other.

[15] With respect to housing, the RAD concluded the Takacses’ statement that they had been unable to find stable housing since about 2010 was contradicted by the lists of residences given on their refugee application intake forms. Geza and Gezane Takacs’ intake forms gave a single address for the period of November 2007 to July 2015, followed by a period of homelessness and three months at a final address on Jozsef Attila Street in 2017. Erika and Szandra Takacs’ forms each gave three addresses, although only two of these were in common with each other, one of which was the Jozsef Attila Street address given by their parents. The dates provided by each for

their period of residence at the various places also differed, Erika Takacs stating that they lived at the Jozsef Attila Street address for 14 months before leaving, while Szandra Takacs indicating they lived there between 2010 and 2014.

[16] The RAD concluded the evidence showed the family had “several stable periods of years-long residency at various addresses in Hungary between 2005 and 2017,” contradicting the narrative that they had an impossible time finding stable housing after 2010. The RAD rejected the Takacses’ explanations for these inconsistencies in part because they could “have amended their BOC narrative before the RPD hearing to more accurately and completely reflect the pattern of residence that they now assert meant that they were ‘frequently on the move.’”

[17] With respect to employment, the RAD agreed that the RPD erred in certain respects. The RAD nonetheless concluded that Gezane Takacs’ testimony and responses during an intake interview were a “much more complete summary” than the employment history given in the BOC narrative. The RAD concluded that the totality of evidence showed that “the female Appellants, save for Szandra” (*i.e.*, Gezane and Erika Takacs) “had a history of employment in Hungary that spans several years.” The RAD conceded that their employment prospects may not have been “excellent” as the RPD had concluded, but found that “the evidence shows that they were able to support themselves through employment in Hungary.”

[18] With respect to education, the Takacses admitted there were inconsistencies between the statements given by Erika and Szandra Takacs about their level of education upon entry and those given in the BOC narrative and at the refugee hearing. The RAD did not accept their

explanations that they had initially embellished their education to make themselves appear in a more positive light. The RAD agreed with the RPD that this explanation was not “logical,” and noted that the Takacses could have amended their intake forms before their RPD hearing or acknowledged the embellishment in their BOC narrative.

[19] With respect to health care, the RAD noted that upon arrival in Canada, Mr. Takacs said he took medication for a number of conditions and had those medications with him. Gezane and Szandra Takacs also had medications. The RAD concluded this meant the Takacs family “were able to access Hungary’s medical system to the extent they were able to obtain medications.” The RAD conceded that this did not mean they would never have experienced discrimination in the health care system, but found that it failed to prove they were not treated properly in Hungary because they are Roma. The RAD also agreed with the RPD that Mr. Takacs’ Canadian medical records, which included a physician’s statement that he had “multiple other health issues that don’t appear to have been properly managed or followed prior to coming to Canada” did not support a finding that this was “specifically due to anti-Roma discrimination in Hungary.”

C. *The RAD’s decision is unreasonable*

[20] Despite the deference due to the RAD’s credibility findings, I cannot conclude that the RAD’s decision with respect to these findings show the justification, transparency, and intelligibility needed to be considered reasonable. In particular, I will address the RAD’s findings regarding the Takacses’ employment history, education, and access to health care.

(1) The RAD's credibility findings

(a) *Findings with respect to employment*

[21] I agree with the Takacses that the RAD's findings with respect to their claim of discrimination in employment are unreasonable. The RAD effectively made three conclusions, none of which in my view provides a reasonable basis for an adverse credibility finding or a conclusion regarding the claim of discrimination arising to persecution. First, the RAD noted that the evidence in the intake forms and testimony was a "much more complete summary" of their employment history than in the BOC narrative. The RAD does not state what conclusions it draws from this. The BOC narrative does not purport to provide a full summary of the Takacses' employment history. It details Gezane Takacs' work as a street cleaner to describe her treatment on the job, and her efforts to find other positions. It also refers to the incident in 2011 when Erika Takacs was fired after being mistreated based on her ethnicity. To the extent that the RAD considered there to be an inconsistency between these descriptions and other evidence, it failed to explain what this inconsistency was and how it affected the credibility assessment.

[22] Second, the RAD found that Gezane and Erika Takacs "had a history of employment in Hungary that spans several years." With respect to Erika Takacs, this statement directly contradicts the RAD's own finding in the preceding paragraph that Erika Takacs was unemployed since April 2014 after having worked for about eight months as a cleaner. Indeed, the evidence was that in the 16 years between leaving school in 2001 and her departure, Erika Takacs had less than a year's employment. With respect to Gezane Takacs, there was no dispute she had worked seasonally as a cleaner for a few months a year for a number of years

and provided some child care. To describe this as a “history of employment in Hungary that spans several years” may be literally true, but has little meaning in terms of assessing either the Takacses’ credibility or whether they faced discrimination in employment owing to their ethnicity.

[23] This is particularly so when the second finding is tied to the third, namely that “the evidence shows that they were able to support themselves through employment in Hungary.” As the Takacses point out, the evidence in fact showed that the family was able to make ends meet thanks to a combination of Mr. Takacs’ disability pension and Gezane Takacs’ work. Indeed, the RAD itself later cited Mr. Takacs’ statement in the BOC narrative that it was the amount from the disability pension that allowed the family to make ends meet and buy his medication. In any event, the broad statement that the family was “able to support themselves” says little about the condition in which they were able to support themselves and whether that condition was affected by ethnic discrimination or contributed to a finding of persecution.

(b) *Findings with respect to education*

[24] The RAD rejected the daughters’ explanations for the admitted inconsistency in their education history as “not logical.” This finding adopted the conclusion of the RPD, whose rejection of the explanations (covering discrepancies in the areas of housing, employment and education) was the following:

To address these discrepancies, the claimants explained that when they arrived in Canada, they were frightened and stressed. They wanted to make themselves appear in a more positive light than they actually were so they embellished their education. They

explained that they were fearful of the Canadian border agents in uniform given their negative experiences in Hungary. [...]

The panel does not accept these explanations. The claimants had been preparing to come to Canada for two years. There was no imminent threat or danger when they fled Hungary. The claimants had a relative in Canada who told them they would be safe here. There is no logical purpose that would have been served by embellishing their education and employment history and it does not appear likely that the claimants would have thought there was.

[Emphasis added.]

[25] My understanding of the RPD's reasons, adopted by the RAD, is that they were not in imminent danger when they left Hungary and had been told they "would be safe" in Canada, so no "logical purpose" would be served by embellishing their education. I understand the reference to "logical purpose" to refer to some positive benefit that would be obtained by embellishing their education, presumably in the context of their refugee claim. As a result, the RPD and the RAD appear to have concluded that the statements at the border were not in fact embellishments, but rather that the later evidence was an untrue understatement of their actual education.

[26] The "purpose," or rather reason, given by Erika Takacs for saying that she had attended two years of secondary school was that she was afraid officials in Canada would consider her ethnicity in the same way as they did in Hungary and that she wanted to "look more important" than she was. Similarly, the purpose Szandra Takacs gave for telling a Canada Border Services Agency officer she graduated from high school while telling the RPD that she only reached Grade 10 was "not to be looked down on because [she] was still afraid of officials who were in uniform." Neither suggested that they were trying to improve their refugee claim and this contention was not put to them. Rather they said they acted out of fear and a desire not to be

looked down on, a reaction that is inherently not one of “logic” or deliberative planning. While rationality and logic may generally be reasonable grounds to determine whether an explanation makes sense, in my view, assessing the daughters’ explanations on grounds of being insufficiently “logical” does not assess the explanation on the basis it was given.

[27] In any event, while it may appear clear to the RAD or anyone familiar with Canadian refugee claims that embellishing one’s education may not improve a refugee claim, I agree with the Takacses it is not reasonable to apply such “logic” to a refugee claimant without further evidence of their understanding. Indeed, it is unclear on what basis the RPD or the RAD concluded that it was “not likely” Erika Takacs would have thought there was a purpose to be served by such an embellishment. Nor, conversely, did the RAD consider what “logical purpose” would be served by Erika Takacs falsely claiming at her refugee hearing, as it effectively concluded she did, that she only had a Grade 8 education when she in fact had two years of high school (or what the RAD itself found to be a “training program”).

[28] There are clearly inconsistencies between the statements regarding education given in the refugee claim forms and the later evidence of the daughters’ education level. In my view, however, the RAD’s stated basis for dismissing the explanations for those inconsistencies was not reasonable.

[29] The RAD’s credibility findings based on the evidence in respect of employment and education were material aspects of its conclusion that the Takacses’ evidence should be rejected in its entirety, including with respect to the incidents of abuse, violence, and discrimination in

health care. Although it also made credibility findings arising from the inconsistencies in the forms regarding their historical addresses, I cannot conclude that the RAD's unreasonable findings on these issues represent a superficial or peripheral "minor misstep" that does not affect the reasonableness of the decision as a whole: *Vavilov* at para 100. Rather, I find that these flaws are sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100.

[30] I therefore need not determine the Takacs's additional challenge with respect to the RAD's credibility findings concerning the issue of housing. Nonetheless, I consider it worth noting that I have some concern regarding the adequacy of the RAD's conclusion that the Takacs's explanation for the inconsistencies "does not explain why" they are inconsistent, and some difficulty in understanding the nature of the amendment to the BOC narrative that the RAD stated could have been made.

(2) The RAD's findings with respect to health care

[31] As noted, the Takacs family claimed they had faced discrimination in health care in Hungary, and that this discrimination was part of their claim of a risk of cumulative discrimination arising to persecution. They argued their experiences were consistent with the objective country condition evidence showing discrimination against Roma in the provision of health care.

[32] The RPD accepted that Mr. Takacs had not been properly treated in Hungary. However, given its credibility findings with respect to the Takacs family generally, it found the Canadian medical records fell short of supporting allegations of persecution. In the RPD's view, the

medical records did not establish that Mr. Takacs' poor treatment was the result of his Roma ethnicity and was "just as likely" that it was simply poor health treatment.

[33] The Takacses challenged this finding before the RAD, noting that the accepted Canadian medical record proved he was not treated properly in Hungary, while the objective evidence showed evidence of discrimination in health care. They argued it was unreasonable to suggest that the Canadian record would list Mr. Takacs' ethnicity as a reason for failing to treat him.

[34] The RAD characterized this argument as being that the Canadian medical records showed the Takacses were discriminated against by Hungary's health care system. It dismissed this argument since the Canadian records did not show that the poor health treatment was specifically due to anti-Roma discrimination. In my view, this mischaracterizes the Takacses' argument and allegation. The Takacses relied on the Canadian medical records to show that Mr. Takacs had received poor health treatment in Hungary. This was accepted by both the RPD and the RAD. To connect this established poor health treatment with anti-Roma discrimination, the Takacses relied on their own evidence and the objective country condition evidence. The RAD dismissed the Takacses' evidence on credibility grounds and did not assess the objective evidence to determine whether it supported the claim that the poor health care was based on anti-Roma discrimination. I have concluded above that the credibility findings were not reasonable. In any event, having accepted that Mr. Takacs had received poor health treatment, it was unreasonable for the RAD not to have considered the relevant evidence and submissions regarding the reason for this treatment, even if it rejected some aspects of that evidence.

[35] I also agree with the Takacses that it was unreasonable for the RAD to rely on the family having medicine in their possession without consideration of Mr. Takacs' evidence that the medications from Hungary were dangerous to his health and were thrown away after he showed them to the Canadian doctor.

IV. Conclusion

[36] The foregoing issues are sufficient to conclude that the RAD's decision was unreasonable and must be set aside. The application for judicial is therefore granted.

[37] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT IN IMM-1389-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted and the applicants' appeal is remitted to the Refugee Appeal Division for redetermination by a differently constituted panel.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1389-20

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