

Federal Court



Cour fédérale

Date: 20211206

Docket: IMM-5663-20

Citation: 2021 FC 1361

Ottawa, Ontario, December 6, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**DUSAN MINO
MARTINO MINO
CATERINA MINOVA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the judicial review of three negative pre-removal risk assessment (“PRRA”) decisions. The Applicants – a father (the “Principal Applicant”) and two children, ages 26 and 27 – are of Roma ethnicity and citizens of the Czech Republic. The Applicants came to Canada and claimed refugee protection in 2009. The Refugee Protection Division (the

“RPD”) found the Applicants were neither Convention refugees nor persons in need of protection.

[2] On February 10, 2020, an immigration officer from Immigration, Refugees and Citizenship Canada (the “Officer”) found that the new evidence submitted with the Applicants’ PRRA applications did not overcome the findings of the RPD with respect to adequate state protection, and thus the Applicants would not face a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to the Czech Republic.

[3] The Applicants submit that the Officer breached the Applicants’ right to natural justice by issuing the same decision for all three Applicants; failing to give the Applicants an oral hearing; relying on extrinsic evidence; and basing their assessment solely on the RPD decision. The Applicants also argue that the Officer erred in finding that there is adequate state protection.

[4] For the reasons that follow, I find that the Officer’s decision is unreasonable. I therefore grant this application for judicial review.

II. Facts

A. *The Applicants*

[5] The Principal Applicant, Mr. Dusan Mino, is a 63-year-old citizen of the Czech Republic. He arrived in Canada in 2009 with his two children, Katerina Minova and Martin Mino, and claimed refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee*

Protection Act, SC 2001 c 27 (“IRPA”). The Applicants claimed they faced persecution in the Czech Republic due to their Roma ethnicity. Katerina Minova is now 26-years-old, and Martin Mino is 27-years-old. Katerina Minova has three Canadian-born children.

B. *The RPD Decision*

[6] On February 9, 2012, the RPD found that the Applicants were not Convention refugees or persons in need of protection. The RPD found that there was adequate state protection in the Czech Republic, noting that the Czech Republic is “a democracy with free and fair elections,” and noting the Applicants’ evidence that police responded and conducted an investigation when they were allegedly attacked, and that they were able to access medical care.

[7] The RPD also made a number of negative credibility findings against the Applicants. For example, the Principal Applicant claimed that his son, Martin, was beaten and attacked, resulting in two broken legs. However, the RPD found that no serious effort had been made to gather medical or police reports to corroborate the claim, and Martin himself testified that he had a cut on his leg, but that his leg had not been broken. The RPD also found that the Principal Applicant testified about two attacks that were not mentioned in the Personal Information Form.

C. *The PRRA Decisions*

[8] On January 28, 2019, the Applicants submitted PRRA applications. The Applicants again reiterated a fear of persecution due to their Roma ethnicity, and emphasized that they face

a lack of state protection. The Applicants submitted evidence in the form of various news articles and country condition information, dated between 2011 and 2015.

[9] In addition to the evidence provided by the Applicants, the Officer also consulted the 2018 United States Department of State Human Rights Report (the “2018 US DOS Report”), which states that violence and threats of violence against Roma individuals remain a human rights issue in the Czech Republic, and provides details on the role of the police and the prevalence of corruption in law enforcement.

[10] The Officer found that the Applicants had not provided new evidence that demonstrates that state protection would not be available to them.

III. Preliminary Issue: Style of Cause

[11] The style of cause lists the Respondent as the Minister of Immigration, Refugees and Citizenship. I note that the proper Respondent in this matter is The Minister of Citizenship and Immigration (*IRPA*, s 4(1); *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2)). The style of cause is hereby amended accordingly.

IV. Issue and Standard of Review

[12] Whether the PRRA Officer’s decision is reasonable.

[13] It is common ground between the parties that this issue is reviewed upon the reasonableness standard. I agree. This conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 16-17.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

V. Analysis

A. *Adequacy of State Protection*

[16] The Applicants argue that, in light of evidence to the contrary, the Officer failed to provide adequate reasons for their finding that the Applicants could access state protection as Roma people in the Czech Republic. The Respondent contends that the Applicants did not establish a material change in country conditions, such that state protection would no longer be afforded to them. The Respondent submits that, pursuant to *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13, a “negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD.”

[17] In its decision, the RPD concluded that the Applicants were able to access medical care and state protection. In all three PRRA decisions, the Officer found “that there is no new evidence to overcome the findings of the RPD” and that there is “insufficient evidence of new risk developments.”

[18] While the Applicants’ PRRA submissions are brief, they highlight a fear of persecution in the Czech Republic on the basis of their Roma ethnicity, and the lack of state protection. For instance, the Principal Applicant’s PRRA application states:

I came to seek protection in Canada due to prosecution of Roma in my country. The situation became worse despite government’s effort to make it better. Police is part of the prosecution – they are often the agents of prosecution – and Roma are not protected. If I were to return back, I would have no place to live and I would be denied the medical care I need because of being Roma.

[19] During the hearing, counsel for the Respondent acknowledged that conditions are difficult for Roma in the Czech Republic and that the evidence of state protection is “mixed,” but that it was reasonable for the Officer to determine that it is not inadequate. As such, without new evidence to suggest the opposite, the Respondent submits that the Officer was bound by the RPD’s finding that there is effective state protection for the Applicants in the Czech Republic.

[20] In Martin Mino’s PRRA application, he writes:

I came to seek protection in 2009 because of persecution of Roma in my country. The situation for Roma in my country is not any better from the time I left, in fact it became worse. There were number of incidents, the latest incident happened in Pisez, Czech R. – Demolition of pig farm on Romani genocide site in Czech Republic 2017. There are marches against Roma often and there is nowhere to go to hide from it [...]

[21] I note that this pig farm incident refers to a demolition, which according to the evidence submitted by the Applicants, was scheduled in 2019 to make way for a memorial, including a “visitor centre exhibiting archaeological finds from the site of the WWII-era concentration camp for Romani people.” Although this may show, as the Respondent notes, “increased public acknowledgement of Romani history,” it does not address the ample evidence on the record of the violence and discrimination against Roma people, which the Applicants argue consists of persecution and demonstrates a lack of state protection.

[22] I agree with the Applicants’ position. As in the case of *Csiklya v Canada (Citizenship and Immigration)*, 2019 FC 1276 (“*Csiklya*”), “the mere presence of ameliorative efforts does not establish adequate state protection. Instead, the operational adequacy of programs, policies,

and legislation must be assessed in order to determine their actual impact” (at para 28; see also: *Boakye v Canada (Citizenship and Immigration)*, 2015 FC 1394 (“*Boakye*”) at para 11; *Molnar v Canada (Citizenship and Immigration)*, 2013 FC 296).

[23] The Applicants’ PRRA applications included evidence of the pervasiveness of discrimination against the Roma community in the Czech Republic, including discrimination against Roma students in Czech schools, attacks on Roma citizens, riots that promote anti-Roma sentiments, and the lack of police action in the face of rising neo-Nazism movements that include the targeting of Roma people. In their reasons, the Officer acknowledges this evidence, but finds that it does not rebut the RPD’s finding:

The applicant has provided numerous documentary sources which report on the challenges faced by the Roma community in the Czech Republic, which I have carefully reviewed. Whilst I acknowledge the submissions indicative of incidents of intolerance, discrimination and persecution of some Romani individuals, I find that they do not overcome the findings of the RPD.

[emphasis added]

[24] To support the conclusion that there is effective state protection for Roma in the Czech Republic, the Officer cites one extract from the 2018 US DOS Report. In doing so, I find that the Officer either provides irrelevant information regarding elections, democracy and constitutional freedoms, or describes a situation where corruption is pervasive, where societal biases remain a powerful force, and where crime continues to be a significant problem. The evidence cited by the Officer does not demonstrate that actual or operational state protection is available to Roma people in the Czech Republic (*Csiklya* at paras 28-29; *Boakye* at para 5). It

simply cites the mechanisms available to enforce the laws and maintain public order, rather than addressing what Roma people actually face.

[25] It also stands to reason that with country conditions like this, the Officer ought to provide reasonable justification as to why the objective evidence is not sufficiently persuasive for a finding of risk. However, the Officer failed to do this, stating only that:

I have insufficient objective evidence before me to persuade me to conclude differently from the decision of the RPD and to indicate that state protection would not be forthcoming for the applicant if the need arose.

[26] The Officer unacceptably gives no transparent or intelligible reasoning for why these country conditions would ensure that the Applicants could access state protection. I find it unreasonable for the Officer to acknowledge that “some Romani individuals” face intolerance, discrimination and persecution, while not applying this threat to the Applicants, who are similarly situated as Roma from the Czech Republic. There is nothing more personal to an individual than their ethnic identity and there is ample evidence on the record to suggest the Applicants would face the same level of risk as other Roma in the Czech Republic.

[27] Furthermore, while I acknowledge that the Applicants’ documentary evidence dates from 2011 to 2015, the 2018 US DOS Report cited by the Officer discusses how “[h]ate crimes against Roma continued to be a problem,” and “[h]uman rights issues included crimes involving violence or threats of violence against members of the Romani minority.”

[28] The Officer's failure to give more than a passing mention to the effectiveness of state protection in the Czech Republic without engaging in any meaningful analysis of country condition evidence of direct relevance to the Applicants constitutes a reviewable error in the risks assessment for a proper PRRA determination. I find the Officer's conclusion does not logically flow from the evidence before them and is thus unreasonable.

VI. Conclusion

[29] For the above reasons, I find the Officer's decision to be unreasonable. I therefore grant this application for judicial review.

[30] No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-5663-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The decision under review is set aside and the matter is referred back for redetermination.
2. The style of cause is amended to reflect "The Minister of Citizenship and Immigration" as the proper Respondent.
3. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5663-20

STYLE OF CAUSE: DUSAN MINO, MARTINO MINO, AND CATERINA MINOVA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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