

**Date: 20081105**

**Docket: IMM-1692-08**

**Citation: 2008 FC 1241**

**Calgary, Alberta, November 5, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**AVRAM ADRIAN DRAGOMIR  
LENUTA VIOLETA LUNCANU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns the rejection of a plea for humanitarian and compassionate relief, pursuant to s. 25 of the *Immigration and Refugee Protection Act (IRPA)*, made by Romani parents of a Canadian born child with respect to their imminent return to Romania.

[2] There is no debate that Romani in Romania, and elsewhere in Europe, suffer extreme economic, political, and social abuse simply because of their ethnicity. While a debate exists as to whether this abuse is merely discrimination and not persecution, thereby establishing a challenge to Romani who claim protection under s. 96 and s. 97 of the *IRPA*, nevertheless, the abuse is a reality which should be understood and deplored by fair minded people everywhere.

[3] In the context of the present Application, the central factor in play before the Visa Officer in reaching a determination under s. 25 was an understanding of the potential suffering the Applicants and their child will experience if they are required to return to Romania. On this point, the decision under review is misguided because its central focus is on the issue of the s. 96 and s. 97 risk that the Applicants might face upon return to Romania. In this respect the decision reads much like a Refugee Protection Division or a Pre-Removal Risk decision involving, for example, the need for the Applicants to prove individualized risk and the lack of state protection in Romania. While risk is a factor that should be taken into consideration in reaching a humanitarian and compassionate determination, as expressed in the guidelines expected to be followed by visa officers (IP 5), a proper determination requires a multi-faceted analysis of the nature of the hardship that a person might suffer if he or she is required to leave Canada and return to his or her country of origin. Most importantly, when a child is involved in a humanitarian and compassionate application, s. 25 itself requires a visa officer to give even wider scope to the analysis by making an earnest effort to determine the best interests of that particular child (see: *Kolosovs v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 211; *Gill v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 780).

[4] In my opinion, in the decision under review there is scant evidence that the Visa Officer was alert, alive, and sensitive to the child's best interests. The single passage devoted to this concern reads as follows:

In addressing the best interests of the applicant's one year old Canadian child I have also consulted the U.S. DOS report. Public education is free and compulsory for children up to grade ten after which fees are charged for books. Roma children, traditionally in lower income families, are discouraged from attending as a result. Roma children are also often affected by their parents need to have them engage in employment at a young age in order to assist the family. Children receive free medical care up to age 18 years and most drugs are provided for little or no cost. In my opinion, based on my research in this area, if the applicant's child were to accompany her parents to Romania she would not face a risk that would constitute an undue, undeserved or disproportionate hardship. [Emphasis added]

(Decision, p. 4)

Two striking decision-making errors are exposed in this passage; the focus is on risk, and the reality in Romania is not accurately applied. I agree with Counsel for the Applicants' argument that, while verifiable evidence of the reality was placed before the Visa Officer, this evidence was apparently largely ignored in reaching the decision under review. Counsel for the Applicants places emphasis on the following evidentiary points:

- Roma children often experience discrimination and exclusion when accessing state education.
- Some reports detail overt discrimination, such as teachers only providing help to non-Roma children, through to reports of violence and abuse directed at Roma children.
- Several sources noted that lack of education was a serious problem among Roma in Romania.
- Roma children are 25 per cent less likely to attend elementary school and 30 per cent likely [sic] to attend secondary school.

- Children are among those who are directly affected by human rights abuses in Romania.
- Romani children were among the victims of sexual abuse, child exploitation, human trafficking, and so on. In 2004 police registered about 1,331 cases of abuse and neglect on [sic] children, including 832 cases of rape, 284 cases of sexual intercourse with a minor, 114 cases of sexual perversion, and 101 cases of sexual corruption.
- The lack of economic and social opportunities in Romanian society has subjected Roma children to various vulnerabilities. In some circumstances, they are forced to work to earn a living. While the law prohibits forced or compulsory child labor, such practices remain widespread in Romani communities.
- Many children were reported to occasionally forego attending school while working on family farms, especially in rural areas and in Romani communities.
- 3.9 million of the 5.6 million children in the country were “economically active”. Over 300 thousand (approximately 7 percent) were “child laborers”...
- ...70 thousand (approximately 1 percent) were victims of the “worst forms of child labor”, including hazardous work, sexual exploitation, forced labor, trafficking, or criminal activity.
- Child labor, including begging, selling trinkets on the street, or washing windshields, remained widespread in Romani communities; children engaged in such activities could be as young as five years old.

(Applicants’ Application Record, pp. 89 – 92)

As a result, given the inadequacy of the best interests of the child analysis conducted, I find that the decision under review is manifestly unreasonable.

**ORDER**

**THIS COURT ORDERS that**

Accordingly, I set aside the Visa Officer's decision, and refer the matter back to a different visa officer for redetermination.

There is no question to certify.

\_\_\_\_\_  
"Douglas R. Campbell"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1692-08

**STYLE OF CAUSE:** *Avram Adrian Dragomir  
Lenuta Violeta Luncanu*

**Applicants**

**and**

*The Minister of Citizenship  
and Immigration*

**Respondent**

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** November 4, 2008

**REASONS FOR ORDER:** CAMPBELL J.

**DATED:** November 5, 2008

**APPEARANCES:**

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FOR THE APPLICANTS

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FOR THE RESPONDENT

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