

Federal Court		Cour fédérale
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Date: 20100623

Docket: IMM-4934-09

Citation: 2010 FC 686

Toronto, Ontario, June 23, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**TAMAS BANYA
TAMASNE BANYA
AND KLAUDIA NATASA BANYA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicants in the present Application are a mother, father and daughter who, in applying for a Pre-Removal Risk Assessment (PRRA), provided extensive evidence that, as Roma from Hungary, should they be required to return to Hungary, there is more than a mere possibility that they would be persecuted pursuant to s. 96 and would suffer the probability of risk pursuant to

s.97 of the *IRPA*. Because the Applicants had made a prior claim for protection before the Refugee Protection Division but had it declared abandoned with no opportunity to reopen, the PRRA application required a full consideration of the s. 96 and s. 97 claims by the PRRA Officer concerned.

[2] In the submissions which went to the PRRA Officer the Applicants recounted their past experiences in Hungary of persecution as Roma, and supplied copious current documentary evidence of the in-country conditions in Hungary to prove that, should they be required to return to Hungary, there is a probability they would suffer persecution and risk to life. In rejecting the Applicants' claim for PRRA relief, the PRRA Officer made the following critical findings:

Counsel, in her written submission, contends that the applicants are at risk in Hungary because they are Roma and that the government of Hungary cannot provide adequate protection for Romas. Counsel argues that Romas in Hungary continue to be an extremely marginalized minority and have recently been subjected to violent and deadly attacks which the state seems unable or unwilling to prevent. Counsel also asserts that the Hungarian state has shown that they are unable or unwilling to take any steps to help improve the conditions of the Roma. Counsel adduced several media articles in support of this argument. I have carefully reviewed and considered all of the evidence before me. I find that Counsel's submissions do not provide sufficient objective evidence of risk that is personal to the applicants. Furthermore, Counsel's submissions do not satisfy me that the applicants, upon their return to Hungary, would be persons of interest or that they would be targeted by the authorities or any other groups or individuals because they are Roma.

[...]

I have also assessed Counsel's evidence in the context of section 97 of the *IRPA*. Other than the applicants' statement that they are Roma, the applicants have provided no additional evidence that they are Roma or that they will be perceived as Roma by the authorities or any other groups or individuals should they return to Hungary. As such, I find the applicants and their Counsel have provided insufficient objective evidence and that the applicants are more likely than not to face a danger or torture, or a risk to life, or a risk of cruel

and unusual treatment or punishment upon their return to Hungary because they are Roma.
[Emphasis added]

(Decision, p.5-6, and p.7)

I find that the errors exposed in the quoted paragraphs are fundamental and constitute reviewable errors. First, the whole of the evidence placed before the PRRA Officer was that as Roma, on the basis of the current in-country conditions, the Applicants are entitled to a positive PRRA decision. The critical factor in the Applicants' claim is that the immutable personal characteristic upon which their application is based is their ethnicity. There is absolutely no evidence on the Record upon which a doubt can be raised with respect to this fact. Nevertheless, as quoted above, the PRRA Officer held a belief that the very underpinning of their applications for risk relief, being their ethnicity, is in doubt. I find that this unsubstantiated and unwarranted suspicion which effectively constitutes an unsupported negative credibility finding explains how the negative PRRA decision could be rendered without a full contextual analysis of the evidence of the horrific suffering that the Applicants would probably experience should they be required to return to Hungary. The evidence is found in 24 articles in the Tribunal Record of in-country conditions in Hungary, a primary representative source of which is the U.S. Department of State Country Reports on Human Rights Practices – 2008, dated February 25, 2009, the introduction of which reads as follows:

The government generally respected the human rights of its citizens; however, problems remained and worsened, including in the following areas: reports that police used excessive force against suspects, particularly Roma; progovernment bias in state-owned media; extremist violence and propaganda against ethnic and religious minority groups; and government and societal corruption. Other human rights problems included societal violence against women and children, sexual harassment of women, and trafficking in persons. Extremists increasingly targeted Roma and other dark-skinned persons. A series of violent attacks against Roma led to four deaths and multiple injuries. Discrimination against Roma in education, housing, employment, and access to social services

continued. Violence and abuse directed at gays continued to be a problem.

[3] As a result, I find that the decision under review is unreasonable.

ORDER

THIS COURT ORDERS that the decision under review is set aside, and the matter is referred back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4934-09

STYLE OF CAUSE: TAMAS BANYA, TAMASNE BANYA AND KLAUDIA
NATASA BANYA v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: June 22, 2010

**REASONS FOR ORDER
AND ORDER:** Campbell J.

DATED: June 22, 2010

APPEARANCES:

Wennie Lee FOR THE APPLICANTS

Kevin Doyle FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lee & Company FOR THE APPLICANTS
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada