

Federal Court



Cour fédérale

Date: 20110315

Docket: IMM-4630-10

Citation: 2011 FC 313

Toronto, Ontario, March 15, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

TAMAS ARON BANYA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Young Tamas Banya is five years old. He fears, or more accurately his parents fear, that were he to return to Hungary he would be persecuted because he is of Roma descent and that his life would be at risk. His refugee claim was dismissed. This is the judicial review of that decision.

[2] Tamas' parents and older sister came to Canada in 2001 and claimed refugee status. They returned to Hungary before a decision was made. They returned with Tamas and unsuccessfully attempted to reopen their refugee claim. Nevertheless they were entitled to a pre-removal risk

assessment. The first assessment was negative. However a judicial review was granted by Mr. Justice Campbell. His decision is reported at *Banya v Canada (Minister of Citizenship and Immigration)* 2010 FC 686, 2010 FCJ No. 827. Currently they are undergoing a second PRRA.

[3] Thus the family has two active claims. If either one succeeds they will remain here. If Tamas succeeds and his family doesn't, he cannot be very well left here on his own. On the other hand, if his family succeeds and he doesn't, he can hardly be separated from his parents at such a tender age.

[4] Counsel relies very strongly on the *Banya* decision of Mr. Justice Campbell. However it must be borne in mind that judges are not to make their own assessment of country conditions. There are three variables: 1) the record before the Refugee Protection Division, both as to personal circumstances and country conditions; 2) the adequacy of and reasonableness of the decision reached; and 3) the reviewing judge's appreciation of that decision. What may be a palpable and overriding error to one judge, may simply be an invitation to re-weigh evidence to another.

[5] I find the decision of the Member of the Refugee Protection Division to be extremely thoughtful and well reasoned. I dismiss the judicial review.

[6] The basis of the claim is that as a Roma in Hungary Tamas will be discriminated against, harassed and harmed because of his race, as his parents have been. This discrimination is on many levels including in employment, education, housing and in the attitude of and physical attacks by right-wing extremists and even the public at large.

[7] Counsel points out that even if individual acts of discrimination taken in isolation do not amount to persecution, cumulatively they may. My attention was drawn to the interpretation of the *Convention Refugee definition in the Case Law*, published by the legal services of the Immigration and Refugee Board, as updated to December 2005. To reach the level of persecution, as opposed to discrimination or harassment, the mistreatment suffered or anticipated must be serious, occurring with repetition or persistence, or in a systematic way and linked to a United Nations convention ground. Persecution is distinguished from common crime.

[8] Based on the jurisprudence, the legal services comment is that if there is more than one incident of mistreatment, the member may fall in error if he or she only looks at each incident separately. It is insufficient to simply state that the cumulative nature of the discriminatory acts have been considered without any further analysis.

[9] It is submitted that that is exactly what happened in this case. I cannot agree.

[10] There has to be an analysis of the incidents complained of in order to ascertain a thread. It was certainly open to the member to find that the complaint with respect to housing arose because the landlord was a con artist who took large deposits from many tenants and then tried to get rid of them without returning the deposits. There was no evidence of racial discrimination. Indeed, the police were called in and sided with the Banya family.

[11] The member accepted that Tamas' parents and sister suffered discrimination in school, that Roma are segregated, and that their employment expectations are less than the average citizen. However, it was noted that the parents had been employed, and when they lost their jobs they found new ones. The member was of the view that the evidence did not indicate a serious, sustained or systematic denial of the parents' right to earn a reasonable livelihood.

[12] There has been a recent rise in anti-Roma sentiment and the rise in power of groups like the Hungarian Guard. However the Guard was dissolved by ministerial edict, which was upheld by the courts. Looking forward, the parents' evidence was taken together with and viewed in the context of objective documentary evidence. The Hungarian authorities have undertaken serious efforts to positively affect the lives of Roma in Hungary, and they are achieving results, certainly not perfect, but in the member's opinion adequate. It must be kept in mind that the burden of showing that state protection would be inadequate rests with the claimant.

[13] It was noted that extremists have increasingly targeted Roma resulting in injuries and some deaths, including deaths of children.

[14] Following the banning of the Hungarian Guard, police initiated legal proceedings against 176 people for participating in a banned organization. The number of detectives has been increased, and the Ministry of Justice and Law Enforcement operates the Roma Anti-discrimination Customer Service Network. Since 2005 the Equal Treatment Authority provides individuals with a direct avenue of redress for violations of the prohibition of discrimination. There is also a Roma Police Officers Association.

[15] The documentary evidence indicated that a number of programs have been developed to assist Roma and other minorities to find work, to obtain education and with housing. In 2006 a department for Roma integration was established within the Ministry of Social Affairs and Labour.

[16] The member considered like evidence with respect to employment, education and housing. It certainly cannot be said that the overall situation of Roma in Hungary was inadequately considered. An example of improvement the Member noted was that in 2007 the United Nations reported the Hungarian government was financing housing renovations in nine Romani localities, dramatically improving living conditions.

[17] According to the European Roma Rights Centre, desegregation efforts by the Hungarian government have been among the strongest in Central Europe, particularly in the field of education. A scholarship program has been established for young Roma. Over 11,000 scholarships were awarded in 2007-2008.

[18] In my opinion, the member's decision falls within the reasonableness structure of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190.

ORDER

FOR REASONS GIVEN:

1. The judicial review is dismissed;
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4630-10

STYLE OF CAUSE: TAMAS ARON BANYA v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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