

Federal Court



Cour fédérale

**Date: 20130123**

**Docket: IMM-5241-12**

**Citation: 2013 FC 62**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, January 23, 2013**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**JOZSEF BALAZS  
JOZSEFNE BALAZS  
MIKLOS BALAZS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board dated May 1, 2012, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The RPD found that the applicants are not Convention refugees under section 96 of the IRPA or persons in need of protection under section 97 of the IRPA.

**I. Facts**

[2] The applicants are Hungarian citizens and members of the Roma ethnic minority. The principal applicant was designated as the legal representative of his minor son.

[3] The applicants were discriminated against in Hungary on several occasions. The couple's child was apparently discriminated against at school. The family was refused access to a playground; they had problems filling up at the gas station; and they feel as though they are treated differently on public transit.

[4] The applicants left Hungary on November 27, 2009, for Canada and claimed refugee protection here that same day.

[5] On April 4, 2012, the applicants amended their Personal Information Form (PIF) to add the following facts.

[6] On October 17, 2009, the family made some purchases for their son's birthday. A security guard followed them while they were shopping. When they left the store, the security alarm went off and the security guard purportedly insulted them and treated them like shoplifters. He allegedly had the young applicant remove his clothes to see what he had stolen; his parents were unable to intervene because they were being held back by two other security guards.

[7] On November 1, 2009, at around 11:00 p.m., the applicants were woken up by a noise. They looked out the window and saw a black vehicle and guards in uniforms who were threatening to kill

them. They found that their car had been damaged and found a Molotov cocktail on the seat of their car. They filed a complaint with the police, but the police said that they could not investigate unknown people.

## **II. Decision under review**

[8] The RPD found that the applicants were not entitled to refugee protection or “person in need or protection” status. That finding was largely based on the applicants’ lack of credibility. In its decision, the RPD noted the contradictions that seemed the most determinative in the applicants’ testimony.

[9] First, the RPD found that there was no doubt that the applicants are of Roma ethnicity.

[10] The panel member asked the applicants why the two incidents stated in the amended statement dated April 4, 2012, were not mentioned in their initial PIF. They replied that they did not understand why those events were not added to it because the forms were prepared in their first lawyer’s office. The RPD did not consider that explanation as being satisfactory. Furthermore, given that the applicants state that the incident on October 17, 2009, was the most significant, it is surprising that they did not mention it in their initial account. The RPD nevertheless found that it believed the applicants when they said that that incident occurred, but that it does not constitute an act of persecution.

[11] When asked whether they had been prevented from earning a living in Hungary, they stated that they sold clothing in flea markets and stated in their amendments submitted on April 4, 2012,

that people refused to buy clothes from them because they were sold by Gypsies. However, the RPD noted that the applicants did not mention the fact that they were merchants in Hungary and that they did not provide any satisfactory explanation to justify that omission. As a result, the RPD found that the applicants did not establish that they were prevented from earning a living.

[12] Regarding the incident on November 1, 2009, the RPD identified contradictions between the account included in form IMM 5611 and the testimony in that regard. The applicants alleged that a Molotov cocktail was thrown at their window and that it fell on a bus, whereas they testified that they heard men in uniforms shouting in the night and that the Molotov cocktail was found in their car. The RPD considered these significant inconsistencies.

[13] Thus, the RPD found that the applicants were the target of certain discriminatory acts because of their Roma ethnicity and that those acts did not amount to persecution because they did not have serious, adverse consequences for the applicants. The applicants were able to make a living in Hungary, lived in a suitable house and had basic education. However, their son explained that, in class, the Roma sat in a separate row. Moreover, the applicants also did not establish that they would be at risk of persecution if they were to return to Hungary.

[14] The RPD then analyzed the objective evidence on the situation of the Roma in Hungary. It considered that the Hungarian Guard, a paramilitary group, as well as skinheads have committed acts of violence against the Roma. The Hungarian Guard has now been dissolved and participation in the activities of the dissolved organizations is prosecuted as an infringement of the law.

[15] Regarding state protection, the RPD was of the opinion that it was adequate in the applicants' case. The RPD pointed out that the documentary evidence shows that Hungary has taken a number of legal and institutional measures to improve the situation of the Roma minority. Furthermore, although the situation is not perfect, the Hungarian government has put measures in place, including the establishment of a special group of 100 police officers to investigate crimes against Roma. The RPD added that, if it considers that the incident on November 1, 2009, actually happened, there was adequate state protection because the police came to the applicants' house but were unable to investigate for lack of information. Therefore, the RPD was of the opinion that the applicants did not rebut the presumption of state protection.

### **III. Position of the applicants**

[16] The applicants submit that the RPD's findings on their situation are unreasonable given that the discrimination against them was constant and repetitive and therefore constitutes persecution under the Convention.

[17] Second, they established a reasonable fear should they return to Hungary given the violence against the Roma in Hungary. The issue of reasonable fear of return is separate from the analysis of the discriminatory acts the applicants were apparently the subject of. Therefore, even if the RPD found that the applicants did not establish that those acts occurred, it was unreasonable for it to find that they do not face a risk if they were to return.

[18] In fact, according to the applicants, it is clear from the documentary evidence that the Roma are at constant risk in Hungary and the RPD was silent on this evidence in its assessment of the applicants' fear of return to Hungary.

[19] Regarding state protection, the applicants are of the opinion that the RPD's finding that the Hungarian authorities could provide them with adequate protection is erroneous. In fact, the documentary evidence shows that the Roma are persecuted by the police and shows the racial profiling that they were the victim of. Thus, the RPD found that the Hungarian state is making efforts to protect the Roma, but, according to the applicants, those efforts are inadequate to establish effective protection by the Hungarian state. In fact, the willingness of the Hungarian state to protect the Roma is not sufficient to establish that concrete protection is in place.

#### **IV. Position of the respondent**

[20] The respondent maintains that the RPD did not commit an error by finding that the applicants, even though they were victims of discrimination, were not the subject of acts that constitute persecution. Thus, the applicants did not prove that their lives would be in danger should they return to Hungary or that they would be at risk of persecution there.

[21] With respect to the incident on October 17, 2009, the RPD validly determined that the applicants should have mentioned it in their PIF, which they did not do. Furthermore, that event does not constitute persecution.

[22] The respondent adds that the applicants rely on the documentary evidence that the Roma are discriminated against but have not, however, demonstrated their own specific situation of being discriminated against.

[23] Regarding state protection in Hungary, the RPD justly found that the state has put in place measures to fight the discrimination the Roma are subject to. Furthermore, the state protection does not have to be perfect. Under the circumstances, it was up to the applicants to demonstrate that the protection was inadequate in their case by submitting clear and convincing evidence and demonstrating that they exhausted all of the avenues of recourse available to them.

[24] In this case, after the Molotov cocktail was discovered, the applicants contacted the police. The police were ready to investigate but were unable to do so because there was a lack of information.

## **V. Issues**

1. Did the RPD err by finding that the applicants were not victims of persecution?
2. Did the RPD err by finding that state protection was available to the applicants?

## **VI. Standard of review**

[25] The reasonableness standard applies to the RPD's decision with respect to the finding that the applicants were not victims of persecution and with respect to the state protection issue because they are questions of mixed fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190).

## VII. Analysis

1. *Did the RPD err by finding that the applicants were not victims of persecution?*

[26] The RPD's decision is reasonable for the following reasons. It is true that the dividing line between persecution and discrimination or harassment is sometimes difficult to establish, the more so since, in the refugee law context, it has been found that discrimination may very well be seen as amounting to persecution.

[27] In *Sagharichi v Canada (Minister of Employment and Immigration)*, 182 NR 398, 1993 CarswellNat 316 (FCA), it was established that, to be characterized as persecution, incidents of discrimination or harassment must be serious, systematic or support a finding of a serious possibility of persecution in the future. Furthermore, the intervention of the reviewing Court is not warranted unless the conclusion reached appears to be capricious or unreasonable.

[28] In that regard, it is recognized that people of Roma ethnicity are the subject of discriminatory acts and that, in some cases, that discrimination is considered persecution when the measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned.

[29] In this case, the RPD did not make any unreasonable finding. In fact, the RPD assessed the applicants' testimony and written account and found that they were victims of discrimination even though their credibility was not established regarding the incident that apparently occurred on



November 1, 2009. However, the RPD found that the discrimination against the applicants does not amount to persecution because it was not repetitive or systematic.

[30] Although some unfortunate events occurred in the case of the applicants, the RPD made a reasonable finding by stating that they are not entitled to refugee protection because the events do not constitute persecution. The events experienced by the applicants are not of a severity that entitles them to refugee protection. They were not prevented from studying or earning a living and the RPD was of the opinion that the events experienced by the applicants, including the treatment of children in school, do not constitute persecution in themselves even if the incidents are assessed cumulatively.

[31] In *Zsuzsanna v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1206 at paragraphs 18-19, 2002 CarswellNat 3339, it was decided that the Roma refugee claimants, including the children who experienced discrimination in school, could not establish a case of persecution even when assessed cumulatively.

[32] Furthermore, the RPD's observation that the applicants were not prevented from earning a living because of their ethnicity given that they did not submit evidence on this fact on a balance of probabilities, which tends to demonstrate that they were not persecuted, is consistent with the case law of this Court (see *Lin v Canada (Minister of Employment and Immigration)*, (1993) 24 Imm LR (2d) 208 at paragraph 6, 66 FTR 207; *Soto v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 768 at paragraph 16, 2002 CarswellNat 1667).

[33] Thus, the RPD's finding that the applicants were the subject of discrimination, but not persecution, is reasonable and this Court's intervention is not warranted.

2. *Did the RPD err by finding that state protection was available to the applicants?*

[34] The RPD's analysis of the state protection provided to the applicants in the circumstances is reasonable. First, the RPD is assumed to have assessed all of the documentary evidence submitted (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA)).

[35] The RPD was of the opinion that the fact that the Hungarian government dissolved the Hungarian Guard by ministerial edict, a decision that was upheld by the courts, and the fact that the authorities made serious efforts to fight discrimination against the Roma, was adequate (*Banya v Canada (Minister of Citizenship and Immigration)*, 2011 FC 313 at paragraph 12, 2011 CarswellNat 1694).

[36] The RPD considered the fact that it is recognized that there are problems of discrimination against the Roma in Hungary and that the protection available is not perfect. However, it found that the applicants did not establish that, in their situation, the protection was inadequate. In fact, the police agreed to investigate after the incident on November 1, 2009, although its occurrence was not established on a balance of probabilities.

[37] The parties were invited to submit a question for certification, but none was submitted.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed. No question for certification arises.

“Simon Noël”  
\_\_\_\_\_  
Judge

Certified true translation  
Janine Anderson, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5241-12

**STYLE OF CAUSE:** JOZSEF BALAZS ET AL  
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