

Federal Court



Cour fédérale

**Date: 20130131**

**Docket: IMM-3316-12**

**Citation: 2013 FC 106**

**Ottawa, Ontario, January 31, 2013**

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

**BETWEEN:**

**GEZA OLAH  
GEZANE OLAH  
KRISZTIAN OLAH  
EVELIN DORINA OLAH  
ADRIENN BECSI  
ALEXANDRA VIVIEN OLAH  
GEZA OLAH  
ANDREA ERZSEBET PACZOK**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The Applicants are a family of Hungarian Romas who claimed persecution and need for protection based on their Roma ethnicity. The Immigration and Refugee Board [Board] refused the

Applicants' claim for refugee status and protection. This is the judicial review of that Board decision.

## II. FACTS

[2] The Applicants outlined a number of incidents experienced by one or more members of the family. These incidents include being assaulted in school, being bullied at school, being intimidated and attacked by skinheads on numerous occasions and being detained by supermarket security on suspicion of shoplifting. Only a few of these incidents were reported to police and in some instances the police did nothing.

[3] In support of their claim, the Applicants relied on their PIF narrative, documentary materials on conditions faced by Hungarian Roma and a psychologist's letter. The psychologist opined that one of the Applicants had symptoms of post-traumatic stress disorder (PTSD) and that all were terrified and exhibiting signs of anxiety, depression and psychological trauma. The other documentary evidence outlines the history of discrimination against Roma, the fact that police do generally investigate attacks but that the Hungarian criminal law system has difficulty in recognizing hate crimes.

[4] The Board, in rejecting the Applicants' claim, concluded that the determinative issue was whether the Applicants' fear was objectively reasonable. This issue was further divided between whether there was state protection and whether the Applicants had taken all reasonable steps in the circumstances to seek protection.

[5] The Board concluded that in the instance where the assailant was fined, the Board could not determine whether the fine was inadequate due to insufficient supporting evidence. The Board did note that the assailant was charged and convicted which undermined the attempt to rebut the presumption of state protection.

In the instance of detention by a security guard, although the police laughed at one of the Applicants, the police did investigate and report on the incident. The Board concluded that even if there was a local failure by authorities, a single incident of failure is insufficient to rebut the state protection presumption.

[6] The Board then went on to consider state protection in Hungary as a whole including governmental organizations as well as the measures taken to implement European Community standards while recognizing that there are difficulties in implementing certain laws at a local level.

[7] The Board's ultimate conclusion was that it was not persuaded that Hungary would not provide state protection if the Applicants sought it. The Board commented on the high level of democracy in Hungary, the free and fair elections, and the independence and impartiality of the judiciary. The Board concluded that the Applicants had not taken all the reasonable steps to engage state protection.

### III. ANALYSIS

[8] It was accepted that state protection findings such as the one at issue here and which is primarily factual, are subject to the "reasonableness" standard of review.

[9] Where the determinative issue was state protection, the Board did not have to engage in a detailed analysis of subjective fear. The psychologist's report confirms the Applicants' subjective fears but adds nothing to the state protection analysis. In this regard, the psychologist has no direct knowledge of the adequacy of state protection nor expertise in this field.

[10] The Board was sympathetic to the Applicants' recounting of incidents but it properly noted the times in 2002 and 2007 when none of the Applicants had any interaction with the authorities concerning the incidents they described.

[11] The Board conducted the proper type of analysis for a state protection finding. It looked at the laws and the organizations available to assist the Applicants, but also considered the reality of operational adequacy. It reasonably accepted the presumption of state protection in a democratic developed country that is part of the European Union.

[12] The Board also reasonably concluded that the Applicants had not rebutted the presumption by not engaging the authorities. There were no incidents of absolute refusal to assist and failures (if any) were local and not systemic.

[13] The Board's comment that there must be "clear and convincing" evidence to rebut the presumption is just excessive verbiage for what is still a balance of probabilities test (*Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636 at paras 24 and 30). The critical matter is that the Applicants had the burden of proof. Nothing turns on the use of this phrase because the Board applied the correct legal test for state protection. It found that when

looked at in its totality, state protection existed; the Applicants had not met the burden of establishing the absence of state protection as a whole or in their own particular circumstances.

IV. CONCLUSION

[14] Therefore, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

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

**DOCKET:** IMM-3316-12

**STYLE OF CAUSE:** GEZA OLAH  
GEZANE OLAH  
KRISZTIAN OLAH  
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THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 18, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** PHELAN J.

**DATED:** January 31, 2013

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