

Federal Court



Cour fédérale

Date: 20130423

Docket: IMM-5087-12

Citation: 2013 FC 414

Toronto, Ontario, April 23, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**MIHALY BALI, BEATRIX BALINE
KANALAS, MIHALY BALI, ISTVAN BALI,
and PETER BALI by his litigation guardian
MIHALY BALI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant Beatrix Baline Kanalas [the Principal Applicant], her spouse Mihaly Bali, and their children Peter, Mihaly Jr. and Istvan [collectively, the Applicants] seek judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated April 30, 2012, wherein the Board determined that the Applicants are neither

Convention refugees nor persons in need of protection [the Decision].

[2] For the following reasons, the application will be allowed.

Background

[3] The Applicants are citizens of Hungary who claim persecution in that country because of the Principal Applicant's Roma ethnicity. Specifically, they say that their lives were threatened by members of the Hungarian Guard, a right-wing organization known for targeting Roma communities in Hungary. The Principal Applicant testified that although there had been earlier violent episodes involving relatives and friends, the threat level faced by the Applicants elevated significantly in 2009. In the summer of that year, the Principal Applicant and her husband received threatening phone calls and the oldest son was assaulted and threatened by the Hungarian Guard. Then, uniformed members of the village chapter of the Hungarian Guard entered her home and physically assaulted her and her oldest son. The Applicants did not report these events to the police. The adult Applicants explained at the hearing that prior encounters with the police had led them to believe that the police would not act to protect them because they are Roma. They also explained that their assailants warned them that there would be reprisals if they reported the incidents to the authorities.

[4] In addition to the violence experienced by the family, the evidence before the Board also described the discrimination suffered by the Principal Applicant due to her ethnicity, including segregation and abuse at school, difficulty finding work, and intolerance on the part of Hungarian

neighbours and others in her community. She testified that her children experienced similar segregation and abuse at school and in the community.

The Decision

[5] The Board dismissed the Applicants' claim on the basis of the availability of state protection. The Board determined that the Principal Applicant had failed to take all reasonable steps to avail herself of state protection which the Board concluded would likely be forthcoming in Hungary. This conclusion about the availability of state protection was based on a lengthy review of state institutions which dealt with discrimination and public safety. The Board addressed the recent history of discrimination against the country's Roma population, including the rise of right-wing and anti-Roma organizations, and then described the government and police response. The analysis also canvassed avenues of redress for those affected by police corruption and misconduct.

[6] The Board acknowledged that despite substantial efforts made by the Hungarian government to improve the socio-economic status of its Roma population, there continues to be significant and widespread discrimination against the Roma in the areas of education, employment, housing, social services and health care. Nonetheless, the Board decided that there was no persuasive evidence to establish that the discrimination which Roma face, either individually or cumulatively, rises to a "level of serious harm amounting to persecution or a risk to life, a risk of torture, or a risk of cruel and unusual treatment or punishment." The Board also said that it was not satisfied on the basis of the objective country documentation that members of the Roma community are being subjected to widespread and systemic acts of racially motivated violence across the country.

The Issues

[7] The Applicants identify the “cumulative effects” analysis as the Decision’s most egregious error. They argue that this analysis, which is meant to address the cumulative effects of the discrimination alleged by the Applicants, is flawed because it fails to address the question of whether the discrimination faced by *these Applicants* amounts to persecution, either on individual or cumulative grounds. Instead, the Board is said to have addressed discrimination on a macro level and come to a conclusion with respect to Hungary’s Roma population as a whole. The Applicants argue that this is an error in law. The Respondent refutes this allegation and submits that the Board carried out its cumulative effects analysis in relation to the Applicants. The Respondent also submits that whether or not the Board erred in its cumulative effects analysis is irrelevant because the determinative issue in this case is state protection.

[8] However, the Applicants also take issue with the Board’s analysis of state protection. They argue that because the Board failed to address the discrimination suffered by the Applicants, it consequently failed to address the availability of state protection for the forms of discrimination they suffered. They also argue that the evidence before the Board establishes that the Hungarian government’s efforts to address the problems of the Roma people have been ineffective. Finally, the Applicants argue that when they sought state protection they were rebuffed. They submit that it was unreasonable for the Board to have expected the Applicants to have complained about the police in the hope that at some future point in time the police would be found to have been in dereliction of duty. Such an expectation is characterized by the Applicants as unreasonable and well beyond the

burden placed on claimants by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (SCC).

[9] The Respondent argues that it is well established that claimants bear the onus of approaching the state for protection where it might be forthcoming and particularly so in a democratic state such as Hungary. The Board is said to have provided a very detailed and well-reasoned analysis of both the Applicants' specific evidence relating to state protection and the objective country documentation. Counsel for the Respondent reviewed the various state mechanisms referenced by the Board as avenues of redress for individuals faced with discrimination or abuse of police authority. Counsel also submitted that the failure of local police to provide state protection is insufficient to establish inadequate state protection at the state-wide level. Thus, it was reasonably open to the Board to conclude that the Applicants did not make diligent efforts to seek state protection.

Discussion

[10] I accept the argument that the Board's cumulative effects analysis does not address the Applicants. Although it appears that the Board accepted the evidence of discrimination faced by the Applicants as credible, it did not address its cumulative impact. In *Bledy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 210, Mr. Justice Scott carried out a review of relevant precedents and confirmed that the Board is required to provide an analysis of the cumulative effects of the discriminatory incidents faced by claimants and explain why, in the aggregate, they do not amount to persecution. In this case, the Board focused on the violence faced by the Applicants and

clearly treated these as persecutory events but it erred when it made its cumulative effects finding only in relation to the general Roma population.

[11] The Board also made a fundamental error on the issue of state protection. State protection must be considered with regard for an applicant's personal circumstances or the particular factual context of the refugee claim (*Flores c Canada (Ministre de la Citoyenneté & de l'Immigration)* 2010 FC 503; *Torres v Canada (Minister of Citizenship & Immigration)*, 2010 FC 234). In this case the Board relied on materials related to the rest of the country and concluded that state protection was available to the Principal Applicant with no regard for the fact that the Applicant lived in a small village which was home to a uniformed group of the Hungarian Guard whose members appeared to act with impunity.

[12] The documentary evidence before the Board showed that homes on the periphery of settlements and in small towns and villages, such as the Applicants', are targeted by skinheads and groups like the Hungarian Guard. Organizations like the European Roma Rights Centre, Amnesty International and the Organization for Security and Cooperation in Europe have described violent attacks against Roma in Hungary from 2008 to 2011 and their reports indicate that many of the violent acts were carried out against Roma families at their homes, in their small communities. This evidence was directly relevant to the Applicants' circumstances in Hungary. This documentary evidence suggests that it may be possible to identify a systemic failure to provide adequate state protection for Roma people at the village or small community level in Hungary. However, because the Board did not focus on the Applicants' circumstances, it failed to see the relevance of this country documentation. This was unreasonable.

[13] No question was posed for certification pursuant to section 74(d) of the Act.

ORDER

THIS COURT ORDERS that

The Decision is hereby set aside and this matter is referred back for redetermination by a differently constituted panel of the Board.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5087-12

STYLE OF CAUSE: MIHALY BALI, BEATRIX BALINE KANALAS,
MIHALY BALI, ISTVAN BALI, and PETER BALI by
his litigation guardian MIHALY BALI v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

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

DATED: April 23, 2013

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