Federal Court  Cour fédérale

Date: 20140516

Docket: IMM-11747-12

Citation: 2014 FC 480

Ottawa, Ontario, May 16, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

TIBOR DEZSO MERUCZA
EMESE MAGDOLNA GONCZO
TIBOR MERUCZA
DORKA MERUCZA
ALEX BALAZS MERUCZA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] **UPON** an application for judicial review of a decision rendered on October 30, 2012, by the Refugee Protection Division [RPD]; the application for judicial review is made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA];

[2] **AND UPON** reviewing the memoranda of law and fact produced by the parties;

[3] **AND UPON** considering carefully the arguments and authorities put forward by the parties, for the reasons that follow, the application for judicial review is dismissed.

[4] This is another case involving Hungarian citizens of Roma ethnicity who seek the protection of Canada. They seek refugee status in this country after a series of alleged attacks in Budapest that would be racially motivated. The five applicants are a family and it is the father that is the principal applicant.

[5] The principal applicant is educated and he has maintained a good work record throughout the years. At the time the decision was rendered he was 30 years of age.

[6] His complaints are based on his fear of racist violence against him and his family. The family arrived in Canada on November 11, 2011, and sought refugee status upon arrival.

[7] Over the years, there have been a number of incidents which would tend to support that they were racially motivated. Given the number of incidents, it is not likely that they were mere coincidences. They also appeared to be random acts of violence and vandalism, as opposed to an organized scheme targeting the applicants, where the identification of the perpetrators did not occur. Thus, going back to 2000, the principal applicant's car windshield was smashed. In 2003, the windshield of the applicant's car was once again smashed. In 2005, the applicant would have been attacked by skinheads at a concert; it appears that the principal applicant was part of a

group that was involved in the altercation. In 2007, he would have been insulted and punched by skinheads at a bus stop. In May and June 2009, he would have been the victim of an attack by the so-called "Hungarian Guards" and skinheads. During the May 2009 attack, the principal applicant's common-law wife, who was pregnant at the time, was pushed to the ground. Finally, there was an attempted break-in on the principal applicant's house in May 2011. As indicated earlier, the family travelled to Canada in November 2011 and sought refugee protection.

[8] With respect to most of these incidents, the police were either not called or no report was made to the authorities. Furthermore, the evidence is to the effect that even when the police were called, the principal applicant did not push the issue any further. To put it another way, if the police were called, that was the end of the matter as far as the principal applicant is concerned. He would not pursue the matter with the police or other Hungarian authorities. Moreover, he was never able to provide any kind of information that could assist in identifying the perpetrators.

[9] This kind of factual situation is rather common in our case law. The question, at the end of the day, is whether or not state protection in Hungary is available. Indeed, in this case, this is the determinative issue.

[10] The applicants in this case argue that the RPD failed to consider Hungary's "low level of democracy". According to them, that should have reduced the burden on the applicants to rebut the presumption of state protection. It follows that the RPD, in the view of the applicants, was wrong in its conclusion that state protection in Hungary is adequate.

[11] It is not disputed that the judicial review of this decision must proceed on the basis of the review standard of reasonableness. The issues are of mixed fact and law and the RPD was applying well known legal principles to this particular factual situation. As found in *Kotai v Canada (Citizenship and Immigration)*, 2013 FC 693, another case involving Hungarian citizens of Roma ethnicity:

> [10] The applicable standard of review of the decision of the Board is reasonableness which calls for deference. The role of the Court on judicial review is not to substitute any decision it would have made but to "determine if the outcome 'falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law': *Dunsmuir*, at para 47. There may be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome": *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, 2009 SCC 12; [2009] 1SCR 339 at para 59.

[12] In a well researched and clearly articulated decision, the RPD considered fairly the situation in Hungary and that of its Roma minority in particular. To put it simply, the RPD did not "sugar coat" its analysis and took into account the very argument put forward by the applicants.

[13] Hence, the board reached the following conclusion after a careful analysis of the documentary evidence made available by the parties:

> [34] Therefore, regarding the totality of the evidence before me, while there is evidence to indicate that police do still commit abuses against people, including the Roma, the evidence also demonstrates that it is reasonable to expect authorities to take action in these cases and that the police [*sic*] both willing and capable of protecting Roma and that there are organizations in place to ensure that the police are held accountable. Furthermore, considering this issue from an operational level, as it relates to the

> particular circumstances of the case at hand, I find that the claimants have failed to provide clear and convincing evidence that the state protection afforded to them was either ineffective or inadequate.

[14] This conclusion finds echo in a decision of this Court involving circumstances that are clearly reminiscent of those this Court is faced with. In *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004, Chief Justice Crampton looked carefully and exhaustively into the issue of state protection for Roma in Hungary.

[15] We are reminded that the burden is on the applicant for refugee protection to demonstrate, with clear and convincing evidence, that the state of nationality is unable to provide adequate protection. The Chief Justice states the following:

> [31] With respect to the "inability" branch of the definition, it is not sufficient to simply demonstrate that there may have been some local failures of the police to provide state protection [authorities omitted].
>
> [32] An applicant for refugee protection is required to demonstrate that he or she took all objectively reasonable efforts, without success, to exhaust all courses of action reasonably available to them, before seeking refugee protection abroad. Among other things, this requires claimants for refugee protection "to approach their home state for protection before the responsibility of other states becomes engaged" [authorities omitted].
>
> [33] In this regard, doubting the effectiveness of state protection without reasonably testing it, or simply asserting a subjective reluctance to engage the state, does not rebut the presumption of state protection. In the absence of a compelling or persuasive explanation, a failure to take reasonable steps to exhaust all courses of action reasonably available in the home state, prior to seeking refugee protection abroad, typically will provide a reasonable basis for a conclusion by the RPD that an applicant for protection did not displace the presumption of state protection with clear and convincing evidence [authorities omitted].

[16] In my view, this is exactly the situation this Court is faced with in this case. The applicants raised with the local police incidents, but only some. Furthermore, they never tried to pursue the matter. I find myself in agreement with the observations the Chief Justice made at paragraphs 49, 50 and 51 of his decision. They read:

> [49] In my view, the weight of the jurisprudence establishes that, in the absence of compelling or persuasive evidence which establishes an objectively reasonable basis for refraining from fully exhausting all reasonably available avenues of state protection, it is reasonably open to the RPD to find that the presumption of state protection has not been rebutted with clear and convincing evidence.
>
> [50] In this regard, compelling or persuasive evidence is evidence that provides an objective basis for the belief that taking any of these actions might reasonably expose the applicant to persecution, physical harm or inordinate monetary expense, or would otherwise be objectively unreasonable. It is not unreasonable to expect a person who wishes to seek the assistance and generosity of Canada to make a serious effort to identify and exhaust all reasonably available sources of potential protection in his or her home state, unless there is such a compelling or persuasive basis for refraining from doing so. In brief, this would not satisfy the requirements of the "unable" branch of section 96, discussed at paragraphs 30-33 above. And in the absence of a demonstration of an objectively reasonable well founded fear of persecution, the requirements of the "unwilling" branch, discussed at paragraph 34 above, also would not be met.
>
> [51] For greater certainty, a subjective perception that one would simply be wasting one's time by seeking police protection or by addressing local police failures by pursuing the matter with other sources of police protection, would not constitute compelling or persuasive evidence, unless the applicant had unsuccessfully sought police protection on multiple occasions, as in *Ferko v Canada (Citizenship and Immigration)*, 2012 FC 1284, at para 49.

[17] In other words, it will not suffice that an applicant has reported some incidents, but not all, to the local authorities to then seek the protection of a country like Canada. The bar is higher.

There is an obligation to seek protection in a more robust manner before resorting to the generosity of another country.

[18] The RPD's analysis is in my view perfectly congruent with that of the Chief Justice in the case of *Ruszo*. The right legal framework was used and the facts were examined through that framework. The applicants' burden to show that all reasonable efforts had been made to seek protection in Hungary has not been discharged. Hungary is not a country that has suffered a complete breakdown of state apparatus (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689). Accordingly, there continues to be a presumption that the state is capable of protecting its citizens. Even assuming that the presumption is less robust in cases where the quality of democracy is not as high as that enjoyed by Canadians, it remains that clear and convincing evidence is required. In the case at hand, all that we have is a principal applicant who complained to the police on a few occasions over a period of 10 years. There was never any attempt to push the matter further. The burden that remained on the shoulders of the applicants has not been discharged and the failure to convince the RPD does not make the RPD's decision to be unreasonable. On the contrary, it was reasonable to conclude as it did in view of the evidence that was available to it.

[19] Accordingly, the application for judicial review is dismissed. There is no question for certification.

JUDGMENT

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

There is no question for certification.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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