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IMM-2636-14

Citation: 2015 FC 658

Ottawa, Ontario, May 21, 2015

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

JOZSEF PUSUMA, AGNES TIMEA DAROCZI, AND VIKTORIA LAURA PUSUMA DAROCZI [BY HER LITIGATION GUARDIAN JOZSEF PUSUMA]

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicants are a family of Hungarian Roma who were poorly served by the legal profession in Canada. The lawyer that represented the applicants before the Refugee Protection Division of the Immigration and Refugee Board has admitted to having committed professional

misconduct in his handling of their refugee claims, and to having failed to serve the applicants to the level of a competent lawyer.

[2] After their refugee claims were rejected, the family applied for a Pre-removal Risk Assessment, which was subsequently refused. After retaining new counsel, the applicants applied for a second PRRA and for permanent residence from within Canada on humanitarian and compassionate grounds. Both of these applications were refused. The applicants subsequently sought to re-open their PRRA and H&C applications, after learning that disciplinary proceedings had been commenced against their former counsel by the Law Society of Upper Canada. These requests were also refused.

[3] Before me are four applications for judicial review, two of which relate to the negative PRRA and H&C decisions, and two to the immigration officer's refusal to re-open those decisions. For the reasons that follow, I have concluded that the applications relating to the negative PRRA and H&C decisions should be granted, and that it is not necessary to deal with the applications relating to the two refusals to re-open the cases.

II. Background

[4] Joszef Pusuma claims that he worked as an assistant to Viktoria Mohácsi in the years between 2004 and 2009. Ms. Mohácsi is a prominent Roma rights advocate in Hungary and she is also an elected Member of the European Parliament. Agnes Timea Daroczi is Mr. Pusuma's wife. Ms. Daroczi says that she is from a well-known Hungarian Roma family and that she too was active in promoting the rights of the Roma people in Hungary. Viktoria Laura Pusuma Daroczi is the couple's young daughter.

[5] Mr. Pusuma asserts that through his employment with Ms. Mohácsi, he was involved in field work, examining the conditions facing Roma in Hungary and investigating complaints regarding the segregation of Roma children in Hungarian schools. Mr. Pusuma also investigated complaints of abuse and violence against members of the Roma community, which required him to attend scenes where racist attacks against Roma had taken place. This allowed him to observe, first-hand, the unwillingness of the Hungarian police to respond to attacks on the Roma population.

[6] According to Mr. Pusuma, he became well-known as a Roma rights advocate in Hungary as a result of his work with Ms. Mohácsi, and he attracted the attention of anti-Roma elements of Hungarian society, including members of the Hungarian Guard. This led to death threats being made against Mr. Pusuma and his family.

[7] The applicants say that on July 20, 2009, they were viciously attacked by four men who they believe were part of the Hungarian Guard. This was the culminating event that led the family to flee Hungary. They arrived in Canada on September 16, 2009.

A. *The Applicants' Refugee Claims*

[8] On their arrival in Canada, the applicants were asked at the port of entry why they were seeking refugee protection. Mr. Pusuma provided general information regarding the family's fears, but did not specifically mention the 2009 attack. Mr. Pusuma now says that he was asked a broad question at the port of entry as to why the family was seeking refugee protection in Canada, but that he was not asked to provide any details regarding their experiences in Hungary.

[9] After leaving the airport, the applicants went to a refugee shelter in Toronto. There they were referred to a lawyer named Viktor Hohots. The applicants chose to have Mr. Hohots assist them in making their refugee claims because they were told that he had represented many Roma refugee claimants, and that he had a Hungarian-speaking immigration consultant on his staff named Jozsef Sarkozi.

[10] The applicants contacted Mr. Hohots' office, and Mr. Sarkozi assisted them in applying for a Legal Aid certificate. The applicants met with Mr. Sarkozi in connection with the preparation of their Personal Information Forms (PIFs), providing Mr. Sarkozi with the written narratives that they had prepared. Mr. Sarkozi did not provide the applicants with any guidance as to what should be addressed in their PIFs, but simply translated the applicants' narratives and filed them with the Board as the applicants' PIFs.

[11] Although the applicants had explanations for their conduct, the PIFs filed on their behalf did not address either their failure to contact the police following the 2009 attack, or their failure to mention the attack at the port of entry.

[12] The applicants never met with Mr. Hohots in connection with the preparation of their PIFs, and Mr. Hohots has since admitted to the Law Society of Upper Canada that the applicants were not provided with adequate guidance as to the information that should be provided to the Board in support of their refugee claims.

[13] The applicants also provided Mr. Sarkozi with various documents supporting their claims during their initial interview with him. This included a letter, written in Hungarian, from

Ms. Mohácsi attesting to Mr. Pusuma's work with her, and other letters confirming various aspects of the applicants' claims.

[14] The applicants only met once, briefly, with Mr. Hohots in the months leading up to their refugee hearing. During this meeting, which was just a couple of days before the applicants' hearing, the applicants were told that Mr. Hohots would not be appearing at their hearing, and that Mr. Sarkozi would be representing them.

[15] Mr. Sarkozi did appear at the applicants' refugee hearing. However, because he had failed to have Ms. Mohácsi's letter translated into English prior to the hearing, it was not admitted into evidence by the Board. Mr. Sarkozi also did not ask for leave to file a translated copy of the letter with the Board after the hearing.

[16] Mr. Sarkozi had also failed to have the other corroborative evidence that had been provided by the applicants at the time that the firm was first retained translated into English, with the result that it too was not accepted as evidence in the proceeding. The Board also refused to admit recent country condition information regarding the situation for Roma in Hungary because Mr. Sarkozi had failed to respect the Board's filing deadlines.

[17] The Board rejected the applicants' refugee claims, drawing adverse inferences from their failure to file the letter from Ms. Mohácsi corroborating Mr. Pusuma's employment - a matter that Mr. Hohots has now admitted was central to the family's refugee claims. The Board found as a fact that Mr. Pusuma had not been employed by Ms. Mohácsi. It also drew an adverse inference from the family's failure to explain why they had neglected to mention the 2009 attack

when they were interviewed at the port of entry. Finally, the Board found that adequate state protection was available to the applicants in Hungary.

[18] The applicants consulted Mr. Hohots about seeking judicial review of the Board's decision. Mr. Hohots did not advise the applicants to seek independent legal advice in light of the shortcomings in the representation that his office had provided. Instead, a Notice of Application was filed in this Court by Mr. Hohots' office, in Mr. Pusuma's own name, with Mr. Hohots advising the applicants that he would not go on the record unless he was provided with a retainer. After the applicants failed to provide the retainer, the applicants' application for judicial review was dismissed because of their failure to perfect the application.

[19] When the applicants received the application forms for a Pre-removal Risk Assessment, Mr. Hohots and Mr. Sarkozi assured them that they would take care of their PRRA application. However, Mr. Hohots and Mr. Sarkozi once again failed to include the admittedly important documentation provided by the applicants in support of Mr. Pusuma's political profile with the family's PRRA application, and the PRRA application was therefore dismissed.

B. *The Applicants Retain New Counsel*

[20] After their first PRRA application was rejected, the applicants retained their present counsel. It was only then that they became aware that their application for judicial review of the Board's decision had been dismissed some five months before, as a result of their failure to perfect the application.

[21] After reviewing the matter with their new counsel, the applicants filed a complaint against Mr. Hohots with the Law Society of Upper Canada in December of 2011. They also filed

a complaint against Mr. Sarkozi with the Canadian Society of Immigration Consultants (now the Immigration Consultants of Canada Regulatory Council).

[22] The applicants then applied to reopen their refugee claims, arguing that they had been denied procedural fairness in the refugee process as a result of the incompetence of their counsel. The Board dismissed this application because the applicants had provided Mr. Hohots with insufficient notice of their allegations of incompetence. This decision was upheld by the Federal Court: *Pusuma v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1025, 417 F.T.R. 119 (*Pusuma #1*).

[23] Importantly, though, for our purposes, Justice Russell did accept in *Pusuma #1* that "the excluded Mohácsi Letter, dealing as it does with the Applicants' activities and profile in Hungary, *is material to a state protection analysis, so that if the letter was improperly excluded the state protection findings cannot stand*": at para. 39, [my emphasis].

[24] In the meantime, the applicants sought a deferral of their removal from Canada to allow for the consideration of a second PRRA application. The deferral was denied, and this Court refused to stay the applicants' removal.

[25] Rather than report for their removal, the applicants sought sanctuary in a Toronto church, where they remained for more than three years before being removed from Canada on December 12, 2014.

C. *The Applicants' H&C and Second PRRA Applications*

[26] In addition to their attempts to have their refugee claims re-opened, the applicants also sought to have their allegations of risk addressed through an H&C application and a second

PRRA application. On January 30, 2014, the Applicants were notified that both of these applications had been refused, and they then filed applications for judicial review with respect to both decisions. Court file IMM-823-14 relates to the applicants' H&C decision and IMM-824-14 relates to the PRRA decision.

[27] The applicants continued to pursue their complaint against Mr. Hohots with the Law Society of Upper Canada. In February of 2014, the Law Society commenced disciplinary proceedings against Mr. Hohots, alleging that he had engaged in professional misconduct and/or conduct unbecoming a licensee as a result of his conduct in relation to a number of refugee claims, including those of the applicants.

[28] After learning that disciplinary proceedings had been initiated by the Law Society against Mr. Hohots, the applicants sought to have their PRRA and H&C decisions reopened, based upon this new evidence. In a decision dated March 14, 2014, the senior immigration officer declined to reopen either application. The decision refusing to re-open the PRRA decision is the subject of IMM-2633-14, and the decision refusing to re-open the H&C decision is the subject of IMM-2636-14.

D. *Other Actions Taken by the Applicants*

[29] The applicants have made other attempts to have their allegations of risk addressed since their refugee claims was refused. In March of 2014, they sought to have the decision refusing them leave to judicially review the original RPD decision set aside on the basis of Mr. Hohots' misconduct. It will be recalled that this application for judicial review had been dismissed as a result of the applicants' failure to perfect their application.

[30] In dismissing this motion, Justice Mosley found that the applicants had not retained Mr. Hohots to represent them in connection with their application for judicial review, and that the failure to perfect the application was due to the applicants' own lack of diligence. In concluding that it was not contrary to the interests of justice to dismiss the applicants' motion to re-open, Justice Mosley had regard to the fact that the applicants' allegations regarding the incompetence of their counsel were before the Court in the present applications.

[31] The applicants also applied for a Temporary Residence Permit to allow them to remain in Canada pending the completion of the disciplinary proceedings against Mr. Hohots. No decision was made in relation to this application prior to the applicants' removal from Canada in December of 2014, and it appears that the application remains outstanding.

[32] In February of 2015, Mr. Hohots signed an Agreed Statement of Facts in the context of the Law Society proceedings in which he admitted that he had abdicated his professional responsibilities in relation to his refugee practice, leaving it largely in the hands of Mr. Sarkozi and a series of junior lawyers who had worked in his office for short periods of time.

[33] Mr. Hohots also admitted that he had failed to properly serve these applicants to the standard of a competent lawyer in connection with their refugee claims. In particular, Mr. Hohots admitted that the applicants did not receive adequate guidance from his office regarding their failure to mention the 2009 attack at the port of entry, or with respect to their failure to complain to the police following the attack. He further admitted that his firm failed to have important documents translated for the applicants' refugee hearing, and that it had failed to respect the Board's time requirements for filing country condition information in support of the applicants' claims.

[34] On March 2, 2015, the Law Society found Mr. Hohots guilty of professional misconduct based on the facts set out in the Agreed Statement of Facts.

[35] The applications for judicial review currently before the Court do not include an application for judicial review of the Board's decision regarding the applicants' refugee claims. However, because of the influence that the decision with respect to the applicants' refugee claims had on the decisions relating to the applicants' PRRA and H&C applications, it is necessary to address the fairness of the Board process.

[36] Based upon the admissions made by Mr. Hohots, it is now apparent that the applicants were indeed denied a fair hearing of their refugee claims as a result of Mr. Hohots' professional misconduct. To paraphrase Justice Russell in another case involving Mr. Hohots' inadequate representation of Hungarian Roma refugee claimants, this is one of those extraordinary cases where the incompetent acts of Mr. Hohots ultimately proved critical to the RPD's assessment of the applicants' claims. It is, moreover, now clear that the inadequate level of legal representation provided by Mr. Hohots was sufficiently serious as to compromise the fairness of the RPD process: see *Galyas v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 250, at para. 89, 429 F.T.R. 1.

III. The H&C Decision

[37] The applicants' H&C application was based upon the hardship that they said they would face in Hungary as Roma activists, and because of the prominence of Ms. Daroczi's family. They also argued that the conditions the family faced in Hungary meant that it would be contrary to Viktoria's best interests to require them to return to Hungary to apply for permanent residence.

In addition, the family relied on their establishment in Canada as a positive factor supporting their H&C application.

[38] The applicants provided extensive evidence dealing with the issue of risk-based hardship in support of their H&C application. This included an affidavit from Ms. Mohácsi, a letter from Amnesty International, affidavits from two experts on the situation facing Roma in Hungary, and country condition information from a variety of sources attesting to the poor conditions facing the family in that country.

[39] The applicants say that the decision refusing their H&C application was unreasonable because the immigration officer relied on findings that had been made by the RPD, both in relation to their risk profile and the availability of adequate state protection, which findings had been arrived at through what amounted to an unfair hearing.

[40] The officer further erred, the applicants say, by applying a PRRA-type analysis to the H&C assessment, and by requiring the applicants to show that they faced a personalized risk in Hungary. The applicants also say that the immigration officer ignored material evidence going directly to the issue of risk-based hardship, and that the officer's analysis of Viktoria's best interests was unreasonable.

[41] The respondent submits that any unfairness that may have occurred in relation to the applicants' refugee claims as a result of the misconduct of their counsel was cured through the H&C process, as the immigration officer conducted an independent assessment of the hardship factors relied upon by the applicants and did not simply rely on the RPD's decision.

[42] The respondent further contends that the officer is presumed to have considered all of the evidence provided to her. As a consequence, the officer's failure to expressly mention the expert evidence adduced by the applicants or the letter from Amnesty International does not make the H&C decision unreasonable.

[43] The respondent also submits that the immigration officer did not apply a PRRA-type analysis in assessing the applicants' H&C application. Rather, the officer properly considered whether the applicants would be personally and directly affected by adverse conditions in Hungary as a result of their Roma identity, requiring that there be a link between the evidence of hardship and the applicants' personal situation. Nor did the officer err in considering the avenues of redress and state protection available to the applicants in Hungary, as the existence of state protection in the country of origin was relevant to the assessment of hardship.

[44] Insofar as the officer's assessment of Viktoria's best interests was concerned, the respondent says that the officer examined the evidence regarding the situation for Roma children in Hungary and reasonably concluded that it did not establish that Viktoria would herself be educationally disadvantaged. The officer also reasonably concluded that there was insufficient evidence that Viktoria would face pervasive discrimination if she were required to return to Hungary.

[45] The respondent also contends that it was reasonable for the officer to find that the concern that Viktoria would be left alone if something were to happen to her parents was speculative, and that the finding that, in any event, there were other family members in Hungary who could care for Viktoria if something did in fact happen to her parents was itself reasonable.

A. *Analysis*

[46] As I will explain below, I agree with the applicants that there are numerous problems with the immigration officer's analysis of the applicants' H&C application and that the decision cannot stand.

(1) The Officer's Reliance on the RPD's Decision

[47] The question of whether the H&C assessment was tainted by the unfairness of the applicants' refugee hearing raises a question of fairness. As a consequence, I have to determine whether the process followed by the immigration officer satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.

[48] While seemingly accepting that the applicants did not receive a fair hearing of their refugee claims because of the misconduct of their counsel, the respondent contends that this unfairness did not taint the H&C process as the immigration officer conducted an independent assessment of the risk-based hardship factors relied upon by the applicants. This submission is not, however, borne out by a review of the H&C decision. Indeed, it is apparent from a review of the H&C decision as a whole that the immigration officer's assessment of the question of risk-based hardship was heavily influenced by the RPD's findings.

[49] That is, after reviewing the applicants' submissions relating to the issue of risk-based hardship in her decision, the immigration officer proceeded to cite extensively from the RPD's decision. The officer referred, in particular, to the Board's negative credibility findings based upon the applicants' failure to produce a translated copy of the letter from Ms. Mohácsi confirming Mr. Pusuma's employment, and Mr. Pusuma's failure to mention the 2009 attack at

the port of entry. It will be recalled that the fairness of both of these findings was directly called into question by the failure of Mr. Hohots to provide the applicants with competent legal representation.

[50] The immigration officer then goes on to state that "[w]hile I'm not bound by the RPD's original determination, **I accord it much weight** as the RPD is a competent and experienced Board who had the opportunity to examine the applicants' risk claim in detail and accordingly determine the facts of their case" [my emphasis]. Accepting the officer's statement that she accorded much weight to the Board's decision at face value, I am thus satisfied that the unfairness in the applicants' refugee hearing tainted this aspect of the H&C decision

[51] While this finding is sufficient to dispose of the applicants' application for judicial review, there are other aspects of the H&C decision that bear comment, given that the matter will have to be sent back for re-determination.

(2) The Officer's Treatment of the Evidence Regarding Risk-Based Hardship

[52] Applicants for an H&C exemption have the burden of showing that they are directly and personally affected by unusual and undeserved or disproportionate hardships: *Kanthasamy v. Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113, at paras. 48 and 49, [2014] F.C.J. No. 472.

[53] Noting the extensive evidence regarding the discrimination that is faced by the Roma population of Hungary, the officer accepted that "Hungary continues to face challenges and shortcomings with respect to the situation of Roma and of continued discrimination in many aspects of life". However, the officer went on to find that the applicants were privileged in

comparison to the majority of the Hungarian Roma population because they have been able to acquire some education, skills, and employment experience. The officer seemed to suggest that because of this, the applicants had not been personally and directly affected by the negative conditions in Hungary, and that they would not be so affected in the future. This finding was, however, made without regard for the evidence that had been adduced by the applicants in support of their H&C application.

[54] The applicants had provided the officer with evidence regarding their work as Roma rights activists, and the officer accepted that Mr. Pusuma had in fact worked with Ms. Mohácsi promoting the rights of the Roma in Hungary. However, the officer found that the evidence did not demonstrate that Roma rights activists faced any particular risk in that country due to their profile as activists.

[55] The applicants had, however, included a letter from Amnesty International in their H&C submissions that specifically noted the incidence of hate crimes against Roma rights activists. The letter further noted that "there are serious concerns that those who speak out in defense of Roma rights are not adequately protected by state authorities" and that "[i]t is not unusual for Romani community organizers and spokespeople, and members of their family to be targeted by individuals and vigilante groups". This targeting was reported to take the form of "attacks on their property, physical attacks, death threats, and persistent harassment". No mention was made of this evidence by the officer.

[56] It is true that the officer is presumed to have considered all of the evidence before her, and that she is not required to refer to every piece of evidence in the record: *Newfoundland and*

Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para. 16, [2011] 3 S.C.R. 708. That said, the more important the evidence that is not specifically mentioned and analyzed in the officer's reasons, the more willing a court may be to infer that the officer made an erroneous finding of fact without regard to the evidence: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 at paras.14-17, 157 F.T.R. 35.

[57] This is not a situation where the officer simply failed to refer to evidence that was contrary to her findings. Rather, the officer stated quite categorically that "violence against human rights activists, including Roma rights activists *was not identified as an area of concern or a profile of interest, in terms of being targeted*" [my emphasis]. Given that the Amnesty International letter made specific reference to attacks being made on Roma rights activists, this gives rise to the inescapable inference that this evidence was overlooked by the officer.

[58] Also troubling is the officer's failure to refer to the expert evidence adduced by the applicants regarding conditions in Hungary for the Roma population. The applicants had provided affidavits from Aladar Horvath and Gwendolyn Albert, both well-known experts with respect to the conditions facing the Roma population in Hungary.

[59] Both experts provided detailed information regarding the on-the-ground realities facing the Roma in Hungary. Once again, this was compelling evidence that ran directly contrary to the officer's conclusion regarding the conditions facing the applicants in Hungary, raising the concern that the evidence was overlooked. Indeed, as this Court noted in *Vassey v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 899 at para. 64, [2013] 1 F.C.R. 522, the duty to assess evidence increases with the expertise of the affiants providing the evidence.

[60] Finally, the officer erred in her consideration of the availability of state protection in relation to the applicants' H&C application.

[61] The officer held that "the documentary evidence shows that there are avenues of redress available through the state and non-governmental organizations". She concluded, however, that "while there are challenges in the criminal justice system where Roma are concerned, in light of the documentary evidence before me, I find there is redress available for Roma in Hungary through the state as well as assistance of non-governmental organizations". The officer also concluded that "the applicants have not demonstrated that they could not seek recourse through the state should they face difficulties/discrimination in the future".

[62] Assuming, for the sake of argument, that recourse would indeed be available to the applicants in Hungary after the fact, should they be victimized because of their Roma identity, it does not mean that the victimization itself could not constitute unusual, undeserved or disproportionate hardship.

[63] More fundamentally, however, the officer's finding that adequate state protection would be available to the applicants in Hungary should they encounter difficulties in that country, was made without regard to the evidence from Amnesty International which specifically noted the "serious concerns that those who speak out in defense of Roma rights are not adequately protected by state authorities".

(3) The Assessment of Viktoria's Best Interests

[64] I am also satisfied that the officer's assessment of Viktoria's best interests was unreasonable.

[65] The officer recognized the systemic discrimination against Roma children that is endemic in the Hungarian educational system, including the segregation of Roma children in special schools for children with mental disabilities. However, the officer nevertheless found that insufficient evidence had been adduced to show that Viktoria would not be able to obtain an education in Hungary.

[66] In coming to this conclusion, the officer noted that Mr. Pusuma and Ms. Daroczi had themselves each been able to receive an education. That is true, but both of them had described the systemic discrimination and bullying that they had experienced in the Hungarian educational system in their H&C submissions. No consideration appears to have been given to these submissions by the officer.

[67] The officer further found that the applicants would be able to seek redress on Viktoria's behalf, should she face discrimination in the school system. However, even if the applicants are better equipped than many Roma to deal with the discrimination that Viktoria may face in the Hungarian school system, it does not mean that Viktoria would not suffer as a result of that discrimination. No consideration was given by the officer to the impact that discrimination in the educational system would have on Viktoria herself.

[68] The applicants also argued that Viktoria's best interests would be better served by her remaining in Canada because something might happen to the adult applicants in Hungary. I agree with the respondent that this argument was based upon speculation. That said, the officer's suggestion that, in any event, there were others who could care for Viktoria should something happen to her parents, shows a troublingly dismissive attitude regarding the world-shattering impact that the loss of parents would have on a young child.

(4) Conclusion Regarding the H&C Decision

[69] For these reasons, the application for judicial review of the refusal of the applicants' H&C application is allowed, and the matter will be returned to a different immigration officer for re-determination.

[70] Having concluded that the original H&C decision cannot stand, it is not necessary to address the application for judicial review of the officer's decision refusing to re-open the H&C decision. The application for judicial review of the refusal to reopen is accordingly dismissed.

IV. The PRRA Decision

[71] The applicants also seek judicial review of the decision refusing their second PRRA application, as well as the immigration officer's refusal to re-open the PRRA decision to consider the updated evidence regarding Mr. Hohots' misconduct.

[72] The officer carrying out the assessment of the applicants' PRRA application was the same officer who decided the applicants' H&C application, and as I will explain below, many of the errors that I have already identified in the H&C decision were also present in the PRRA decision.

[73] Before addressing these concerns, however, I must first address the respondent's argument that this application for judicial review should be dismissed on the basis that it is now moot as a result of the applicants' removal from Canada in December of 2014.

A. *The Mootness of this Application*

[74] I agree with the respondent that these applications are indeed now moot: *Solis Perez v. Canada (Minister of Citizenship and Immigration*, 2009 FCA 171, at para. 5, 82 Imm. L.R. (3d)

167. That said, I retain the discretion to consider the applications, notwithstanding that they are now technically moot: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231.

[75] A day has already been devoted to the hearing of these applications, and both sides have had the opportunity to fully argue the issues raised by these applications. As a result, little in the way of judicial economy would be realized were I to decline to decide this matter. This is also not a case in which a decision by this Court could reasonably be considered to be an intrusion into the functions of the legislative branch of government.

[76] Moreover, I am satisfied that, if they are allowed to stand, the findings made by the immigration officer in the PRRA decision could have collateral consequences for the applicants, both in relation to their outstanding application for a temporary residence permit and for the re-determination of their H&C application.

[77] Indeed, as Justice Rothstein observed in *Ramoutar v. Canada (Minister of Employment and Immigration)*, [1993] 3 F.C. 370, at para. 13, "[t]he deportation of an individual from Canada, while having negative consequences to the individual, does not eliminate all rights that may accrue to him under the *Immigration Act*". He went on to observe that "[t]hose rights should not be adversely affected by a decision made by application of the wrong standard of proof and without affording the applicant procedural fairness".

[78] In light of the above considerations, I have concluded that this is an appropriate case for me to exercise my discretion to decide this matter, notwithstanding that it has become moot.

B. *The Officer's Reliance on the RPD Decision*

[79] The respondent argues once again that even if there was unfairness in the refugee process as a result of the misconduct of the applicants' former counsel, this unfairness was cured through the applicants' second PRRA, as the PRRA officer conducted a fresh and independent assessment of the risk faced by the applicants in Hungary.

[80] However, as was the case with the H&C decision, the reasons given for the PRRA decision demonstrate that the assessment of the applicants' PRRA was also negatively affected by the officer's reliance on the decision in the applicants' refugee case.

[81] First of all, the officer refused to consider evidence adduced by the applicants in support of their PRRA application on the basis that it was not "new evidence", but could have been adduced before the RPD with the exercise of reasonable diligence. The misconduct of the applicants' counsel in the refugee process thus had a direct impact on the assessment of the applicants' PRRA.

[82] By way of example, the officer did not accept evidence provided with respect to Ms. Daroczi's work as a Roma rights advocate because this evidence could have been adduced before the RPD. The officer also did not accept evidence regarding Mr. Pusuma's employment with Ms. Mohácsi as new evidence. Similarly, an affidavit from Ms. Mohácsi was discounted on the basis that it contained little that the officer viewed as being new, apart from Ms. Mohácsi's belief that the applicants are in greater danger now than they were at the time that they left Hungary. While Ms. Mohácsi's affidavit stated that the applicants had told her about the 2009 attack shortly after it occurred, the officer gave this statement little weight because Ms. Mohácsi did not witness the attack first-hand.

[83] In refusing to accept the Mohácsi evidence, the officer noted that the untranslated version of Ms. Mohácsi's employment letter had been before the RPD, with the result that this evidence was not new. It will be recalled that Mr. Hohots has admitted to misconduct in failing to have this important evidence translated so that it could be considered by the Board.

[84] It will also be recalled that in *Pusuma #1*, Justice Russell accepted that "the excluded Mohácsi Letter, dealing as it does with the Applicants' activities and profile in Hungary, *is material to a state protection analysis, so that if the letter was improperly excluded the state protection findings cannot stand*": at para. 39, [my emphasis]. The same is true here.

[85] The officer did go on in her analysis to note that even if she accepted the letter (which she expressly stated she did not), the letter did not refer to any incidents faced by the applicants that were suggestive of risk. This takes me to the next error committed by the officer, which was her treatment of the evidence regarding the issue of risk.

C. *The Officer's Treatment of the Evidence Regarding Risk*

[86] In assessing the risk faced by the adult applicants as Roma rights advocates in Hungary, the officer discounted the Statutory Declaration of Aladar Horvath because he did not specifically refer to his own personal experiences as a Roma living in Hungary. This was, in my view, unreasonable.

[87] The evidence provided by Professor Horvath was expert evidence, based upon his years of work and study in the field, and the content and tone of his report is consistent with it being an independent expert report. It was not, nor was it intended to be, a personal narrative. Indeed the

insertion of personal anecdotes into the expert report could arguably have undermined its weight as a dispassionate assessment of the situation facing the Roma in Hungary.

[88] Also troubling is the officer's comment that the applicants had adduced insufficient evidence from "broad-based sources such as … Amnesty International" to show that persons with Mr. Pusuma's profile would be at risk in Hungary.

[89] As I noted in the previous section of these reasons, the applicants had provided the officer with a letter from Amnesty International that specifically noted the incidence of hate crimes against Roma rights activists such as Mr. Pusuma and Ms. Daroczi. The letter also noted the inability or unwillingness of state authorities in Hungary to protect those who speak out in defense of Roma rights. In these circumstances, the failure of the officer to make express reference to this letter leads to the inference that it was overlooked.

[90] I am also satisfied that it was unreasonable for the officer to discount evidence adduced by the applicants regarding a posting on the *kuruc.info* website as "unreliable", and that it is apparent from the officer's comments that she misunderstood the significance of the evidence.

[91] The evidence adduced by the applicants from the *kuruc.info* website was not offered as a reliable source of evidence regarding the truth of the comments about the applicants that appeared on the website. Rather, it was adduced to demonstrate that the applicants had been identified as targets for hatred on a Hungarian neo-Nazi website.

D. *Conclusion Regarding the PRRA Decision*

[92] For these reasons, the application for judicial review of the refusal of the applicants' PRRA application is allowed and the PRRA decision is quashed. Having concluded that the

original PRRA decision cannot stand, it is not necessary to address the application for judicial review of the officer's decision refusing to re-open the PRRA decision. The application for judicial review of the refusal to re-open is accordingly dismissed.

E. *Is Any Other Remedy Appropriate in Relation to the PRRA Decision?*

[93] The applicants submit that in the exceptional circumstances of this case, it would be appropriate for this Court to order the respondent to re-admit them to Canada pending a redetermination of their PRRA application. In the alternative, the applicants seek an order directing that the respondent not deny re-entry to the applicants, should they present themselves for admission to Canada.

[94] While recognizing that such an order would be unusual, the applicants say that it is within the power of this Court to make such an order, and that an order of this nature is necessary to remedy the injustice to which the applicants have been subjected as a result of the misconduct of their former counsel.

[95] Assuming, without deciding, that I have the jurisdiction to make the order requested, I have not been persuaded that an order of this nature would be appropriate in this case.

[96] The re-determination of the applicants' H&C application can take place without re-admitting the applicants to Canada.

[97] Insofar as applicants' PRRA application is concerned, it will be recalled that the reason that I decided to exercise my discretion to consider this otherwise moot application for judicial review was because, left unchallenged, the PRRA decision could have collateral consequences for the applicants in relation to other proceedings. That concern can be addressed by quashing

the PRRA decision and by directing that no consideration be given to any findings that were made by the immigration officer in the context of the PRRA decision in any subsequent proceedings.

V. Certification

[98] The parties agree that this case is largely fact-specific, and that a question would only arise that would be suitable for certification in this case if I were to grant either of the remedies sought by the applicants readmitting them to Canada or enjoining the respondent from refusing to readmit them.

[99] Having declined to grant either of the requested remedies, I agree with the parties that the case is otherwise fact-specific, and no question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. Application IMM-823-14 is granted. The applicants' application for permanent residence on humanitarian and compassionate grounds is remitted to a different immigration officer for redetermination with the direction that no weight is to be given to the decision of the Refugee Protection Division with respect to the applicants' refugee claims or to the reasons given by the immigration officer for refusing the applicants' second PRRA application;

2. Application IMM-2636-14 is dismissed;

3. Application IMM-824-14 is granted, and the decision relating to the applicants' PRRA application is set aside;

4. Application IMM-2633-14 is dismissed; and

5. A copy of these reasons shall be placed on each of these four Court files.

"Anne L. Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-823-14, IMM-824-14, IMM-2633-14, IMM-2636-14
STYLE OF CAUSE:	JOZSEF PUSMA, AGNES TIMEA DAROCZI, AND VIKTORIA LAURA PUSUMA DAROCZI (BY HER LITIGATION GUARDIAN, JOZSEF PUSUMA) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 16, 2015
JUDGMENT AND REASONS:	MACTAVISH J.
DATED:	MAY 21, 2015

APPEARANCES:

Andrew Brouwer	FOR THE APPLICANTS
Martin Anderson Amy King	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Refugee Law Office Toronto, Ontario	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS