

Federal Court



Cour fédérale

Date: 20160613

Docket: IMM-4933-15

Citation: 2016 FC 653

Ottawa, Ontario, June 13, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**LASILO CSOKA, ANNA CSOKA,
LASZLO CSOKA, MARTIN CSOKA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Lasilo Csoka, his wife Anna and their minor children [collectively the Applicants] are citizens of Hungary. They are all Romani. They have brought an application for judicial review of an adverse pre-removal risk assessment [PRRA] by a senior immigration officer [the Officer].

The Officer found that they are not at risk of persecution, danger of torture, risk to life, or risk of cruel and unusual treatment or punishment if they return to Hungary.

[2] For the Reasons that follow, I have concluded that the Officer's very brief reasons do not permit this Court to assess whether the Officer disbelieved the Applicants' narrative, or accepted their testimony as truthful but found that it was insufficient to satisfy the burden of proof. The inadequacy of the Officer's reasons also undermines the analysis of state protection. The application for judicial review is therefore allowed.

II. Background

[3] The Applicants entered Canada on January 15, 2011, and immediately made a claim for refugee protection.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board heard their claim on November 6, 2012. Before the RPD, Mr. Csoka recounted only one story involving his interaction with the police. He testified that he had witnessed an unspecified incident involving two Roma boys, was prevented from reporting the incident to the police, and was subsequently assaulted by the police. He filed a complaint, and was thereafter harassed by the police and wrongly made to pay a fine. He could not name the officer against whom he made the complaint. It does not appear that separate claims of persecution were advanced on behalf of Mrs. Csoka or the children.

[5] The RPD rejected the Applicants' claim in a decision dated December 7, 2012, on the ground that they had failed to rebut the presumption of adequate state protection. On April 29, 2013, this Court denied the Applicants' application for judicial review of the RPD's decision.

[6] Before the RPD, the Applicants were represented by a lawyer, Viktor Hohots, who has since been found by the Law Society of Upper Canada to have provided inadequate representation to thousands of Roma refugee claimants (*Law Society of Upper Canada v Hohots*, 2015 ONLSTH 72).

[7] The Officer acknowledged that the Applicants had been represented by a lawyer who later admitted professional misconduct. The Officer therefore undertook to consider all of the evidence provided, and waived the usual rule that prohibits the submission of new evidence in a PRRA application if it was reasonably available at the time of the RPD hearing.

[8] The Applicants were represented by new counsel in relation to their PRRA. In their supporting narrative, they stated that throughout their lives they had faced persecution in Hungary due to their Roma ethnicity. They recounted many incidents of discrimination and harassment, including the following:

- a) Mr. and Mrs. Csoka worked for the same company in Hungary. Prior to 2002, Mrs. Csoka's supervisor made repeated sexual advances towards her. He also subjected her to physical and verbal abuse. He threatened Mrs. Csoka with dismissal if she said anything. This did not prevent Mr. Csoka from making a complaint to his superiors, but they took no action, citing insufficient proof.

- b) Mr. Csoka's former boss, Erik Fulop, discriminated against him at work. He cut his salary in half for no reason and demoted him without justification. Mr. Csoka was eventually let go. He suspected that he was being targeted because of the sexual harassment complaint.
- c) In 2010, Mr. Csoka's former boss was elected Mayor of Mr. Csoka's home town. Mr. Fulop is currently an influential member of the Hungarian Guard. He is also a member of the far right Jobbik party, which has formed a "gendarmerie" in the Applicants' home town to combat "gypsy crime".
- d) In 2007, Mr. Csoka was subjected to harassment by a police officer named Csaba Kadar, who threatened to kill him on two occasions, once while pointing a gun at him. Mr. Csoka made several attempts to inform the police, but was told there would be "consequences" for filing a complaint. He eventually received a letter informing him that his complaint had been closed for lack of evidence. Mr. Csoka fled to Canada with his family because he feared that Mr. Kadar would be able to find him anywhere in Hungary. In 2015, Mr. Kadar visited Mr. Csoka's home and told his mother that they would kill the Applicants if they returned to Hungary.
- e) In 2010, one of the Applicants' children was labelled as mentally ill at school, solely due to his Roma ethnicity. He began to suffer from asthmatic seizures as a result of the stress. Child Services threatened to remove all of the children from their parents' care.

III. Decision under Review

[9] The Officer's decision is 22 pages in length. It comprises a brief statement of the background to the case, an overview of the risks allegedly faced by the Applicants, and a list of

the documentary evidence submitted on their behalf. The next 14 pages are devoted to lengthy excerpts from the United States Department of State's Country Report on Human Rights Practices in Hungary for the year 2014.

[10] The Officer's findings and decision are recorded on pages 19 and 20. The Officer renders an adverse PRRA on three grounds:

- a) The Applicants have adduced insufficient corroborative evidence to demonstrate, on a balance of probabilities, that they face a personalized, forward-looking risk upon their return to Hungary. There is insufficient evidence to indicate the Applicants are of ongoing interest to Mr. Kadar or Mr. Fulop, or to anyone else who might intend to harm them.
- b) There is no nexus to any of the five grounds for refugee status enumerated in the *Immigration and Refugee Protection Act, SC 2001, c 27*.
- c) The Applicants have not adduced sufficient evidence to rebut the presumption of state protection. Despite the disadvantages and discrimination faced by the Roma in Hungary, a number of initiatives have been implemented to address these concerns: life sentences have been imposed on individuals who commit racially-motivated crimes; a Roma Affairs Council has been established to monitor the implementation of government programs; and scholarship funds are available to socially-disadvantaged children.

IV. Issue

[11] The sole issue raised in this application for judicial review is whether the Officer's decision is reasonable.

V. Analysis

[12] The Officer's decision is reviewable by this Court against the standard of reasonableness (*Moreno Corona v Canada (Minister of Citizenship and Immigration)*, 2012 FC 759 at para 10; *Mbaraga v Canada (Minister of Citizenship and Immigration)*, 2015 FC 580 at para 22). This requires "respectful attention to the reasons offered or which could be offered in support of a decision" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-48). Reasons are adequate if they permit a reviewing court to understand why the decision-maker made its decision, and to determine whether the conclusions fall within the range of acceptable outcomes in light of the evidence before the decision-maker and the nature of the statutory task (*Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16-18 [*Newfoundland Nurses*]).

[13] Questions of procedural fairness are reviewable by this Court against the standard of correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[14] In this case, the Applicants requested that they be summoned for an interview if the Officer had any concerns regarding their credibility. This request is not addressed in the Officer's decision. An officer is not obliged to explain why an oral hearing was not provided if credibility is not in issue (*Ghavidel v Canada (Minister of Citizenship and Immigration)*, 2007 FC 939 at para 25). However, where credibility is a determinative factor, a failure to convene a hearing without adequate reasons may amount to a reviewable error.

[15] In *Zokai v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1103 at paras 11-12 [*Zokai*], Justice Kelen said the following:

In refusing to accord weight to the applicant's story without corroborating evidence, the PRRA Officer, in effect, concluded that the applicant was not credible. In my view, given these credibility concerns, it was incumbent on the Officer to consider the request for an oral hearing and to provide reasons for refusing to grant the request. The Officer's failure to do so in this case constitutes a breach of procedural fairness.

[16] In *Herman v Canada (Minister of Citizenship and Immigration)*, 2010 FC 629 at para 17, Justice Crampton, as he then was, cited *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 26 for the following proposition:

It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to ... [the question as to whether the evidence is credible] is irrelevant because the evidence is to be given little or no weight, even if it is found to be reliable evidence.

[17] If a PRRA officer concludes that an applicant's testimony, even if believed, does not satisfy the burden of proof, then he is not judging credibility but is making a finding on the sufficiency of the evidence (*Zokai* at para 12). If an applicant offers testimony that is potentially sufficient to satisfy the burden of proof, but this is rejected for lack of corroboration, then the officer is making an adverse credibility finding.

[18] According to the Applicants' narrative, as recently as 2015, state agents visited their Hungarian home and threatened to kill them. Mr. Csoka's former boss is now the local mayor of their hometown, an influential member of the Hungarian Guard, and a member of the far right

Jobbik party. He has formed a “gendarmerie” to combat “gypsy crime”. The Csokas’ children have experienced discrimination in school, and one has been wrongly labelled as suffering from mental illness. The Applicants report that he is functioning well in his Canadian school.

[19] The Officer states that he has considered all the evidence and concludes: “I place low probative value and little weight upon these submissions as they do not sufficiently demonstrate personalized, forward-looking risks to the applicants upon returning to Hungary.” He also finds that there is “insufficient corroborative evidence” to show personalized risk and notes, inexplicably, that there is no nexus to a Convention ground. The Minister of Citizenship and Immigration [Minister] acknowledges that this latter finding is erroneous.

[20] The Minister argues that the Applicants’ evidence of forward-facing persecution is weak, and corroborative evidence that one might expect to find is absent from the record. For example, the Applicants say they received a letter from the police notifying them that the file against Mr. Kadar was closed, but no such the letter was provided. Nor did Mr. Csoka’s mother provide an affidavit attesting to the threats made against the family by state authorities in 2015.

[21] It is possible that these considerations informed the Officer’s conclusions. However, it is far from clear. The Officer does not explain why the Applicants’ evidence falls short. Instead, the Officer makes conclusory statements that the Applicants’ submissions and evidence are to be given little weight, and there is insufficient corroborative evidence to justify their claims. Even applying *Newfoundland Nurses*, I am unable to “connect the dots” and determine, based on the very brief analysis provided, whether the Officer disbelieved the Applicants’ narrative, or

accepted their testimony as truthful but found that it was insufficient to satisfy the burden of proof. In this respect, the Officer's reasons are unintelligible.

[22] Particularly in circumstances where the Officer acknowledged that the Applicants may not have received a fair hearing before the RPD, it was important to address their request for an oral hearing, to state clearly whether credibility was in issue, and if not, why the evidence was insufficiently probative.

[23] The inadequacy of the Officer's reasons also undermines the analysis of state protection. The application of the legal test for the adequacy of state protection is subject to review against the standard of correctness, while the application of the test to the facts is subject to review against the standard of reasonableness (*Kina v Canada (Minister of Citizenship and Immigration)*, 2014 FC 284 at para 24).

[24] It appears that the Officer applied the correct test for state protection. The focus is on the adequacy of state protection, rather than the willingness of the state to offer protection or the efforts it has made (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 8-11). The Officer's analysis touches on both the efforts made by the Hungarian state to assist the Roma community, and the laws, services and programs that have been implemented.

[25] The Officer also applied the correct test to assess whether the Applicants had rebutted the presumption of adequate state protection. The Applicants were required to provide relevant, reliable and convincing evidence to satisfy the Officer, on a balance of probabilities, that state

protection was inadequate (*Ruiz Martinez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1163). The Officer notes that the Applicants did not rebut the presumption with “clear and convincing evidence”.

[26] I agree with the Minister that the Officer’s reasons do not have to be perfect or comprehensive, or identify all facts that formed the basis for the conclusion regarding the adequacy of state protection. However, this Court has previously found a decision to be unreasonable where the decision-maker failed to link general evidence to the point-specific problems faced by claimants (*Gjoka v Canada (Minister of Citizenship and Immigration)*, 2010 FC 426 at para 25). In my view, this is what occurred here.

[27] The Officer does not address the Applicants’ evidence that their former boss is now an influential member of the far right Jobbik party and mayor of their hometown, and that he has formed a private militia to deal with Roma. Furthermore, the Officer does not address any of the Applicants’ concerns regarding the unavailability of state protection on the basis that the police are an agent of persecution, or that they sought state protection by filing police reports that were not acted upon. This Court has found that “the police force is presumed to be the main institution mandated to protect citizens, and that other governmental or private institutions are presumed not to have the means nor the mandate to assume that responsibility” (*Graff v Canada (Minister of Citizenship and Immigration)*, 2015 FC 437 at para 24). None of the Applicants’ concerns regarding the unavailability of state protection are mentioned in the Officer’s reasons, nor are the separate claims of Mrs. Csoka and the children addressed. Instead, the Officer relies heavily on

general programs that have been implemented in Hungary without relating them to the Applicants' specific circumstances.

VI. Conclusion

[28] For the foregoing reasons, the application for judicial review is allowed and the matter is remitted to a different PRRA officer for re-determination. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is remitted to a different PRRA officer for re-determination. No question is certified for appeal.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4933-15

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