Federal Court  Cour fédérale

Date: 20161103

Docket: IMM-1243-16

Citation: 2016 FC 1230

Ottawa, Ontario, November 3, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

KAROLY MARK GALAMB
KRISZTINA GANYI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Karoly Mark Galamb and his common-law partner Ms. Krisztina Ganyi, are citizens of Hungary and members of the Roma ethnic group. In June 2015, they arrived in Canada and filed a refugee claim, alleging that they feared returning to Hungary due to

the widespread discrimination against the Roma, and the risk of violence they would face from organized racist groups such as skinheads and the Hungarian Guardists.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada denied their claim in September 2015, finding that Mr. Galamb and Ms. Ganyi were not Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In March 2016, the Refugee Appeal Division [RAD] dismissed Mr. Galamb and Ms. Ganyi's appeal, confirming the RPD's decision. The RAD was not satisfied that the discrimination suffered by Mr. Galamb and Ms. Ganyi in Hungary rose to the level of persecution, or that they had rebutted the presumption of availability of state protection in that country with clear and convincing evidence.

[3] Mr. Galamb and Ms. Ganyi have applied to this Court for judicial review of the RAD's decision. They argue that the decision is unreasonable as the RAD erred in refusing to accept their new evidence, in failing to assess their claims of persecution on a cumulative basis, and in conducting its state protection analysis. Mr. Galamb and Ms. Ganyi also contend that the RAD did not apply the right standard of intervention on appeal of the RPD's decision. They ask this Court to quash the RAD's decision and to send it back for redetermination by a different panel.

[4] The application filed by Mr. Galamb and Ms. Ganyi raises four issues: 1) did the RAD err by refusing to accept their new evidence pursuant to subsection 110(4) of the IRPA; 2) did the RAD fail to consider their claims of persecution on a cumulative basis; 3) was the RAD's analysis of state protection unreasonable; and 4) did the RAD apply the wrong standard of

review to the RPD's decision, given the Federal Court of Appeal ruling in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica FCA*].

[5] Having considered the evidence before the RAD and the applicable law, I can find no basis for overturning the RAD's decision. The decision was responsive to the evidence and the outcome is defensible based on the facts and the law. It falls within the range of possible, acceptable outcomes. There are no sufficient grounds to justify this Court's intervention, and I must therefore dismiss Mr. Galamb and Ms. Ganyi's application for judicial review.

II. Background

A. *The RAD's decision*

[6] In its decision, the RAD first indicated that it adopted and applied the test developed in *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 [*Huruglica FC*]. It therefore made its own "independent assessment of whether [Mr. Galamb and Ms. Ganyi] are Convention refugees or persons in need of protection", while also deferring "to the credibility findings of the RPD or to other findings where the RPD has a particular advantage in reaching its conclusions".

[7] The RAD started its analysis with the issue of new evidence submitted by Mr. Galamb and Ms. Ganyi pursuant to subsection 110(4) of the IRPA. The new evidence was described as an "[i]nternet article, dated October 1, 2015, entitled 'Hungary's minorities bear brunt of anti-migrant rhetoric'". The RAD indicated that subsection 110(4) of the IRPA allows the appellants to present new evidence that became available after the rejection of their claim or, if the evidence

was available prior to that, if it only became reasonably available for presentation after such rejection. The RAD indicated that "a document's 'newness' cannot be tested solely by the date of its creation". The RAD added that "what is important is the event or circumstance sought to be proved by the evidence", citing *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] at para 16. As no submissions were provided by Mr. Galamb and Ms. Ganyi regarding how the new evidence met the requirements of subsection 110(4), the RAD did not admit the document in evidence.

[8] The RAD mentioned some of the RPD's credibility findings, including that Mr. Galamb and Ms. Ganyi were credible witnesses, that they are of Roma ethnicity, that they encountered discrimination in education and employment, that they indeed lived in the numbered streets in Miskolc where the residents are essentially Roma, and that Ms. Ganyi gave birth to a stillborn girl in September 2014. However, the RAD found that the discrimination faced by Mr. Galamb and Ms. Ganyi did not amount to persecution. In addition, they had no restricted access to housing, though their choice was limited by their personal economic situation. Furthermore, the RAD noted that Mr. Galamb and Ms. Ganyi could be employed through public works programs in place in Hungary for the Roma. The RAD also found that they were not restricted in their access to health care. Even though the stillborn death of their daughter was tragic, the RAD found no persuasive evidence that Mr. Galamb and Ms. Ganyi did not receive adequate medical care. The RAD noted that Mr. Galamb and Ms. Ganyi's Roma ethnicity "may produce a feeling of apprehension and insecurity but on an objective basis not all Roma in Hungary are unable to obtain adequate education, employment, housing or health care". The RAD thus concluded that the discrimination affecting them did not separately or cumulatively amount to persecution.

[9] On the issue of state protection, the RAD determined that Mr. Galamb and Ms. Ganyi had not rebutted the presumption of availability of state protection. The RAD noted that, in order to qualify as a refugee, applicants must show that they "sought, but [were] unable to obtain, protection from their home state, or alternatively, that their home state, on an objective basis, could not be expected to provide protection", citing *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 [*Hinzman*] at para 37. Here, Mr. Galamb and Ms. Ganyi did not seek out state protection in Hungary. The RAD added that in order to rebut the presumption, clear and convincing evidence must be provided. The RAD indicated that state protection need not be perfect. While the RAD acknowledged that the evidence was mixed and that some documents showed discrimination from the police against Roma, it concluded that "civilian authorities maintained effective control over police, the NPS, and the armed forces, and the government has effective mechanisms to investigate and punish abuse and corruption".

B. ***The standard of review***

[10] The jurisprudence has already determined the applicable standard of review for all the issues raised in the present case. As a result, there is no need to proceed to an analysis to identify the appropriate standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 62). On all issues, the reasonableness standard applies.

[11] This is the case with respect to the issue of admission of new evidence under subsection 110(4) of the IRPA, as it is a matter of a tribunal interpreting its home statute (*Dunsmuir* at paras 47-49; *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928 [*Ajaj*] at para 48;

Olowolaiyemo v Canada (Citizenship and Immigration), 2015 FC 895 [*Olowolaiyemo*] at paras 9-10).

[12] For the analysis of the cumulative basis for persecution, the standard of reasonableness also applies (*Dubat v Canada (Citizenship and Immigration)*, 2016 FC 1061 at para 35; *Smirnova v Canada (Citizenship and Immigration)*, 2013 FC 347 at paras 19 and 25). Similarly, the issue of the adequacy of state protection is to be reviewed under the reasonableness standard as it involves questions of mixed fact and law (*The Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 [*Flores Carrillo*] at para 36; *Hinzman* at para 38; *Gomez Florez v Canada (Citizenship and Immigration)*, 2016 FC 659 at para 24; *Moran Gudiel v Canada (Citizenship and Immigration)*, 2015 FC 902 at para 15).

[13] Turning to the question of the applicable standard of review when reviewing the RAD's determination of its role with respect to the RPD's decision, the Federal Court of Appeal ruled that this Court should apply the reasonableness standard (*Huruglica FCA* at para 35).

[14] When reviewing a decision on the standard of reasonableness, the analysis is concerned "with the existence of justification, transparency and intelligibility within the decision-making process", and the RAD's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

III. Analysis

A. *New evidence under subsection 110(4) of the IRPA*

[15] Mr. Galamb and Ms. Ganyi first challenge the RAD's refusal of the new evidence they sought to present pursuant to subsection 110(4) of the IRPA, namely an article dated October 1, 2015 on the situation of Roma and Muslims in Hungary. According to them, the finding of the RAD is perverse. Since the document they wished to introduce is dated October 1, 2015, and therefore clearly "post-dates the hearing" before the RPD, it is "blatantly self-evident" that the document meets the criteria set out in subsection 110(4). According to Mr. Galamb and Ms. Ganyi, to reject a document so obviously meeting the criteria because they did not provide "full and detailed submissions" on it is a reviewable error.

[16] I disagree. The onus was on Mr. Galamb and Ms. Ganyi to demonstrate how the proposed new evidence was meeting the requirements of subsection 110(4) of the IRPA. The only submission they made was that the new evidence post-dated the *RPD hearing*. This is not what the provision requires, and a simple timing reference was not enough in any event.

[17] Subsection 110(4) of the IRPA expressly provides that new evidence can be presented if the evidence "arose after the rejection of their claim" (emphasis added), or if the evidence was "not reasonably available" or the person "could not reasonably have been expected" to have presented such evidence at the time of rejection. Given the use of the word "or", the test is disjunctive, not conjunctive (*Ajaj* at para 53; *Olowolaiyemo* at para 19). This means that new

evidence may be accepted by the RAD if an appellant's new evidence meets one of those two elements. Conversely, in order for the RAD to conclude that a new piece of evidence does not meet the statutory requirements of subsection 110(4), it must consider whether the evidence fails to meet both of the conditions laid out in the provision.

[18] The relevant timeframe does not end at the date of the hearing before the RPD; the deadline is the date of rejection of the claim. In the case of Mr. Galamb and Ms. Ganyi, that date was September 30, 2015. Therefore, the article sought to be presented as new evidence was dated *one single day* after the RPD's decision. No evidence whatsoever was provided by Mr. Galamb or Ms. Ganyi on the actual contents of the document, or on the issue of whether this evidence indeed arose after the date of rejection of their claim. Similarly, Mr. Galamb and Ms. Ganyi did not submit or contend that the evidence offered by the article was not reasonably available to them at the time of rejection, or could not reasonably have been obtained.

[19] It is well recognized that a document's "newness" cannot be tested solely by the date of its creation (*Raza* at para 16). What is important is the event or circumstance sought to be proven by the evidence, and this is what needs to post-date the rejection of the claim. Also, a demonstration of a document's relevance is necessary under subsection 110(4) of the IRPA, as "it would be difficult to imagine the introduction of new evidence being somehow exempt from this criterion" *(Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 45). In this case, no submissions were provided as to how the new evidence put forward by Mr. Galamb and Ms. Ganyi met the "newness" requirement, save for its apparent date, and no submissions were made about how the document was relevant to the case.

[20] In the circumstances, it cannot be said that the RAD's finding refusing the admissibility of new evidence does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The onus was on Mr. Galamb and Ms. Ganyi to provide full and detailed submissions as to how the new evidence they sought to file fell within the requirements of subsection 110(4) and how the evidence related to them, but they have failed to do so. I would add that even a cursory review of the new evidence intended to be submitted does not allow me to conclude that the factual information it contains arose after the rejection of Mr. Galamb and Ms. Ganyi's claim on September 30, 2015.

[21] This ground of judicial review is without merit.

B. ***Cumulative persecution***

[22] Mr. Galamb and Ms. Ganyi further argue that the RAD made a reviewable error in failing to consider the discrimination they encountered on a cumulative basis. They claim that the RAD instead reviewed the discrimination in housing, education, employment and health care on an individual basis, in isolation from each other. Mr. Galamb and Ms. Ganyi complain that the RAD simply indicated that the discrimination they encountered "did not cumulatively amount to persecution", without any supporting reasons. They submit that "it is insufficient for the [RAD] to simply state that it has considered the cumulative nature of the discriminatory acts" (*Rahman v Canada (Citizenship and Immigration)*, 2009 FC 768 [*Rahman*] at para 66, citing *Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 [*Mete*] at para 9). As a result, they say that "a failure to provide any real explanation as to why the cumulative actions do not amount to persecution is a reviewable error" (*Canada (Citizenship and Immigration) v Balogh*, 2014 FC

932 [*Balogh*] at para 32; *Hegedüs v Canada (Citizenship and Immigration)*, 2011 FC 1366 [*Hegedüs*] at para 2).

[23] I do not agree. Contrary to Mr. Galamb and Ms. Ganyi's submissions, a plain reading of the RAD's decision shows that the panel did consider all of the evidence to reach the conclusion that, cumulatively, the discrimination they faced did not amount to persecution. The RAD expressly referred to the cumulative dimension at the very beginning of its analysis. Then, the RAD found that Mr. Galamb and Ms. Ganyi were not persecuted in each of housing, education, employment and medical care. Finally, the RAD indicated that the discrimination faced by Mr. Galamb and Ms. Ganyi in education, employment, housing and health care "did not cumulatively amount to persecution", before concluding that the discrimination "in each of these individual areas was not persecutory and considered cumulatively, the discrimination does not rise to the level of persecution".

[24] Mr. Galamb and Ms. Ganyi complain that this finding on cumulation is not supported by enough reasons. I acknowledge that, as pointed out by Mr. Galamb and Ms. Ganyi, the RAD cannot simply affirm, without more, that "it has considered the cumulative nature of the discriminatory acts" (*Hegedüs* at para 2; *Rahman* at para 66; *Mete* at para 9).

[25] However, in this case, I am not persuaded that the finding made by the RAD lacks support. As pointed out by counsel for the Minister, the RAD found that, on a balance of probabilities, the "fundamental rights" of Mr. Galamb and Ms. Ganyi "have not been violated". The reasons contain several references to the cumulative effects of discrimination. In my view,

this is not a situation like in *Balogh* or *Hegedüs* where the panel's conclusion was not supported by any analysis or balancing of factors, or boiled down to a mere statement of the test made in passing. In its decision, the RAD reviewed and discussed thoroughly the various factors of discrimination, before determining that, both individually and cumulatively, they did not amount to persecution.

[26] Similarly to the situation in *Awadh v Canada (Citizenship and Immigration)*, 2014 FC 521 [*Awadh*], this decision shows that the RAD knew it was obliged to consider and assess the cumulative impact of discrimination, and that it did look at the discrimination factors both separately and together. The RAD's decision can be understood in light of its extensive consideration of the alleged instances of discrimination and their impact on Mr. Galamb and Ms. Ganyi. One can hardly see what more the RAD could usefully have said (*Awadh* at para 26).

[27] I thus find that the RAD's analysis of cumulative persecution falls within the realm of possible, acceptable outcomes and is reasonable. Mr. Galamb and Ms. Ganyi may have preferred that the RAD elaborate further on this point, but I am satisfied that the panel turned his mind to the issue of cumulation, and reasonably addressed it.

C. *The issue of state protection*

[28] Mr. Galamb and Ms. Ganyi claim that the RAD made numerous reviewable errors in its analysis of state protection.

[29] They argue that the RAD did not consider the effectiveness of state protection in Hungary and applied the wrong test. They submit that while Hungary's efforts to protect its citizens are relevant, they are neither determinative, nor sufficient. The RAD must instead consider the actual adequacy of state protection at an operational level, rather than simply the willingness of the state or the efforts made to correct the discrimination. Mr. Galamb and Ms. Ganyi also state that the RAD failed to assess contrary evidence regarding the adequacy of state protection for Roma. They argue that extensive evidence reflected the inability of Hungary to provide state protection and that the RAD unreasonably overlooked it.

[30] They add that it would have been unreasonable for them to report crimes to the police. Mr. Galamb and Ms. Ganyi plead that when the evidence demonstrates that the state protection will not be forthcoming, there is no obligation to seek it just to prove that point (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*] at 724). Mr. Galamb and Ms. Ganyi further submit that, in finding that the evidence "does not show that Roma never receive state protection", the RAD articulated an incorrect approach. Adequacy of state protection is neither perfect protection nor total absence of protection, they say, and finding that Mr. Galamb and Ms. Ganyi did not show that Roma *never* receive state protection was an error.

[31] I disagree with the submissions of Mr. Galamb and Ms. Ganyi.

(1) The RAD applied the proper test

[32] It is not disputed that the appropriate test in a state protection analysis commands an assessment of the adequacy of that protection at the operational level. The state protection test

must focus not only on the efforts of the state but also on actual results: "[i]t is what state protection is *actually provided* at the *present time* that is relevant" (*Hercegi v Canada (Citizenship and Immigration)*, 2012 FC 250 at paras 5-6 [emphasis in the original]). A state protection analysis must not just consider governmental aspirations. Stated otherwise, for a protection to be adequate, it must amount to a protection that works at the operational level. To measure the adequacy of state protection, the RAD has to consider the state's capacity to implement measures at the practical level for the persons concerned (*Bakos v Canada (Citizenship and Immigration)*, 2016 FC 191 [*Bakos*] at paras 26 and 29; *Juhasz v Canada (Citizenship and Immigration)*, 2015 FC 300 at para 44; *Molnar v Canada (Citizenship and Immigration)*, 2015 FC 273 at para 46).

[33] Efforts made by a government to achieve state protection may, of course, be relevant to the question of whether operational adequacy has been achieved. However, actual results in terms of what is concretely accomplished by the state must also be assessed (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2015 FC 337 [*Kovacs*] at paras 71-72). While "[a]dequacy remains the standard", what is adequate "will vary with the country and the circumstances" (*Kovacs* at para 72).

[34] I am satisfied that, in this case, the RAD indeed considered not only the efforts of Hungary to offer state protection to Mr. Galamb and Ms. Ganyi, but also the results of the measures undertaken in terms of investigations, prosecutions and convictions. While the RAD reviewed the efforts of the state to improve protection, it linked those efforts to the operational adequacy of state protection. Contrary to the submissions made by the applicants, I am not

convinced that the RAD selectively reviewed the documentary evidence. It is instead clear from the decision that the RAD considered Hungary's country documentation and the materials submitted by Mr. Galamb and Ms. Ganyi. In conducting its review, the RAD noted that there are several agencies and programs through which citizens can seek protection. The RAD even acknowledged that the evidence relating to the adequacy of state protection in Hungary is mixed. But the RAD also concluded that the concerns of Mr. Galamb and Ms. Ganyi with the adequacy of state protection were speculative, as they had never sought such protection themselves.

[35] In the end, and on the basis of this evidence, the RAD gave more weight to the documentary evidence relating to the adequacy of state protection than to the concerns expressed by Mr. Galamb and Ms. Ganyi. I am not convinced that this RAD's assessment was unreasonable.

[36] I find the RAD's reasoning to be transparent and intelligible. This is not a case where the RAD failed to address and assess the evidence provided or the contrary country conditions evidence. On the contrary, it specifically recognized the existence of mixed evidence. The RAD carried out a detailed analysis of the evidence. It accepted that there were serious problems facing the Roma population and that, at times, the state response to crimes had been less than satisfactory. I note that the RAD did not refer to all of the voluminous documentary evidence before it. However, looking at the reasons as a whole, I find that the RAD conducted a reasonably thorough and balanced assessment of the evidence. In my view, the nature of the information cited by the RAD in the course of its state protection analysis amply supports the conclusion that it was applying a test focused upon the operational adequacy of that protection.

[37] In their submissions, Mr. Galamb and Ms. Ganyi try to use case law and selected passages from the RAD's reasons to support the argument that the RAD used an incorrect state protection test. I do not subscribe to their analysis. I instead conclude that, when the decision is read as a whole, the RAD reasonably applied the right state protection test, considered the particular situation of Mr. Galamb and Ms. Ganyi and looked at whether the protection offered by Hungary actually worked and yielded concrete results.

(2) The presumption of state protection was not rebutted

[38] Mr. Galamb and Ms. Ganyi had the legal burden of providing clear and convincing evidence that Hungary was unable to provide adequate state protection (*Flores Carillo* at paras 18-19). It is settled law that courts in Canada must presume that state protection is available in the country of origin of the refugee claimant. Clear and convincing evidence is needed to rebut this presumption of state protection (*Ward* at 724-725), and it requires more than showing that state protection is not perfect or always effective (*Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ no 1189 (FCA) at para 7).

[39] It is also trite law that applicants seeking refugee protection cannot simply claim that they believe that state protection will not be forthcoming (*Moya v Canada (Citizenship and Immigration)*, 2016 FC 315 at para 75; *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 33). This claim must be supported by evidence.

[40] I am not convinced that the RAD erred in finding that Mr. Galamb and Ms. Ganyi failed to rebut the presumption of state protection. Not only were Mr. Galamb and Ms. Ganyi not

victims of any physical attacks or direct threats, but they also did not provide persuasive evidence that it would be unreasonable for them to report crimes to the police. The RAD's ultimate conclusion, to the effect that Mr. Galamb and Ms. Ganyi had not provided sufficient evidence to rebut the presumption of state protection, fell within the range of defensible outcomes based on the facts and the law.

[41] Mr. Galamb and Ms. Ganyi take particular issue with the conclusions of the RAD to the effect that they had not provided "any specific evidence that they themselves or similarly situated people failed to obtain state protection in Hungary". This claim is without merit.

[42] In its reasons, the RAD referred to three buckets of evidence to determine if Mr. Galamb and Ms. Ganyi had rebutted the presumption of state protection: evidence on Mr. Galamb and Ms. Ganyi's own personal experience, evidence on similarly situated individuals, and documentary evidence. The RAD found that Mr. Galamb and Ms. Ganyi had not provided clear and convincing evidence on any of those three fronts.

[43] There was no evidence of refusal to protect in the particular case of Mr. Galamb and Ms. Ganyi, as they reported no incidents involving them personally. Nor were there instances of "similarly situated individuals" in the evidence. While counsel for Mr. Galamb and Ms. Ganyi contended that the evidence provided to the RAD contained examples of similarly situated persons, I find that it did not. The extracts referred to by counsel at the hearing before this Court were indeed described by Mr. Galamb and Ms. Ganyi as "documentary evidence" in their own submissions. These submissions were overall general, referring to the broad discriminatory

treatment of Roma in Hungary, general lack of intervention by the police, and low levels of prosecutions of racially-motivated crimes. They mentioned attacks against Roma, but in general terms.

[44] Such evidence cannot be equated with evidence of "similarly situated individuals" as it does not refer to anyone in particular. This evidence does not contain examples of similarly situated individuals being let down by the state protection arrangement or unable to obtain protection (*Ward* at 724-725).

[45] I accept that evidence of similarly situated individuals need not necessarily be provided by direct testimonial evidence of particular persons, and that documentary evidence can sometimes support such a claim through references to similarly situated persons; however, the evidence nonetheless needs to relate to the experience of *individuals*. Such evidence was not presented by Mr. Galamb and Ms. Ganyi.

[46] Evidence on similarly situated persons was, of course, highly relevant in this case because the claim of persecution was based on speculation as to what will happen, since Mr. Galamb and Ms. Ganyi had no personal experience of failed state protection. However, what Mr. Galamb and Ms. Ganyi offered in their submissions in terms of evidence contradicting the RAD's statement is strictly *documentary* evidence on the country conditions in Hungary, not evidence of similarly situated persons. Nowhere do they go so far as providing evidence of individuals similarly situated to them who have been denied state protection or have failed to

obtain it when they requested it. Therefore, I do not find unreasonable the RAD's finding on the absence of any specific evidence that "similarly situated people failed to obtain state protection".

[47] As to the documentary evidence, the RAD considered a voluminous amount of documents and information. It more heavily relied on more recent documentary evidence from the US Department of State, and preferred that evidence to the references provided by Mr. Galamb and Ms. Ganyi. This does not amount to an unreasonable finding.

[48] Contrary to the submissions of Mr. Galamb and Ms. Ganyi, I do not find that this is a case where evidence on the record directly contradicts an essential element of a finding or where a decision is made without regard to the material before it (*Sanchez Mestre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 375 at para 15; *Hernandez Montoya v Canada (Citizenship and Immigration)*, 2014 FC 808 at para 36). It is well recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). A failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 16). A decision-maker is not required to refer to each and every piece of evidence supporting its conclusions if the reasons permit the Court to understand why the decision was made and determine whether the conclusion falls within the range of possible, acceptable outcomes. It is only when a tribunal is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact (*Ozdemir v*

Canada (Minister of Citizenship and Immigration), 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ no 1425 [*Cepeda-Gutierrez*] at paras 16-17). *Cepeda-Gutierrez* stands for the proposition that the more important the evidence not mentioned and the more the evidence contradicts a finding, the more ready a Court will be to find that a decision was erroneously made without regard to the evidence. In my view, this is not the case here.

[49] Rather, it was reasonably open to the RAD to conclude as it did. While a reviewing court might have liked to see more detailed reasoning relating to the evidence on availability of state protection, "[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis" (*Newfoundland Nurses* at para 16).

[50] Mr. Galamb and Ms. Ganyi also complain about the use of the word "never" by the RAD when it referred to state protection received by Roma. However, this reference is looked at out of context. In the paragraph immediately following, the RAD expressly states that it assessed the evidence on state protection on a balance of probabilities, in accordance with *Flores Carrillo* at paras 24 and 30.

[51] The reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). A judicial review is not a "line-by-line

treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should instead approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 at para 15). Pursuant to this approach, the RAD's decision is reasonable and does not fall outside the realm of acceptable, possible outcomes. The intervention of this Court is not warranted.

(3) Conclusion on state protection

[52] In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland Nurses* at para 17).

[53] As stated in *Majlat*, the issue is neither whether the court would have reached the same conclusion as the tribunal nor whether the conclusion the tribunal made is correct (*Majlat v Canada (Minister of Citizenship and Immigration)*, 2014 FC 965 [*Majlat*] at paras 24-25). Deference means that tribunals such as the RAD must be afforded latitude to make decisions in their specialized field of expertise when "their decisions are understandable, rational and reach one of the possible outcomes one could envisage legitimately being reached on the applicable

facts and law" (*Majlat* at para 24). The role of the Court on judicial review is "to assess the quality of the decision and reasons provided therefor with regards to an applicant's particular circumstances" (*Bakos* at para 34).

[54] In this case, the RAD found that Mr. Galamb and Ms. Ganyi did not provide reliable evidence of their potential persecution nor why state protection would be unavailable should they seek it. The documentary evidence about the adequacy of protection for Hungarian Roma was mixed, and Mr. Galamb and Ms. Ganyi relied solely on their subjective belief that the police would not help them. The RAD was satisfied that the evidence showed the reverse. Thus, it concluded Mr. Galamb and Ms. Ganyi did not provide the necessary clear and convincing evidence establishing on a balance of probabilities that state protection is inadequate. I am not persuaded that the RAD's finding was unreasonable. Except in the most exceptional circumstances, claimants are required to exhaust all possible avenues of protection available to them (*Hinzman* at paras 56-57). Mr. Galamb and Ms. Ganyi have not done so here.

D. *The Huruglica test*

[55] Finally, according to Mr. Galamb and Ms. Ganyi, the RAD did not apply the right standard of review to the RPD's decision. They claim that the RAD resorted to a reasonableness standard in its review of the RPD's decision, instead of applying a correctness standard and conducting a full-blown appeal. They argue that the RAD needs to conduct its own analysis in order to respect the Federal Court of Appeal's decision in *Huruglica FCA*. Mr. Galamb and Ms. Ganyi plead that it is not enough for the RAD to simply state that it will conduct its own independent analysis if there is no minimal discussion in the RAD's reasons and conclusions of

the errors raised by the appellant (*Ali v Canada (Citizenship and Immigration)*, 2016 FC 396 at para 4).

[56] I disagree with this reading of the RAD's decision. I instead find that the reasons provided by the RAD in this case amply demonstrate that the RAD met the standards set out in *Huruglica FCA*. I must first underline that the RAD specifically said that it was reviewing "all aspects of the RPD's decision" and was making an "independent assessment" of whether Mr. Galamb and Ms. Ganyi were Convention refugees or persons in need of protection. And this is what the RAD effectively did. When the decision is read as a whole, the suggestion made by Mr. Galamb and Ms. Ganyi that the RAD somehow articulated two different standards of review is totally without merit. Only a literal obedience to certain portions of the decision, in isolation from the balance of the RAD's reasons, could lead to such a conclusion.

[57] The RAD followed the *Huruglica FC* decision, and indicated that it will defer "to the credibility findings of the RPD or to other findings where the RPD has a particular advantage in reaching its conclusions", while still conducting "an independent assessment of whether [Mr. Galamb and Ms. Ganyi] are Convention refugees or persons in need of protection". This is exactly what the *Huruglica FCA* test now prescribes (*Huruglica FCA* at para 103). Mr. Galamb and Ms. Ganyi do not point to any evidence that has not been considered and analyzed by the RAD. Furthermore, choosing the *Huruglica FC* standard does not amount to a reviewable mistake as "long as the RAD conducted, in substance, a thorough, comprehensive, and independent review of the kind endorsed in *Huruglica FCA*" (*Shala v Canada (Citizenship and Immigration)*, 2016 FC 573 at para 9).

[58] Given the reasonableness standard that this Court has to apply to this issue, there is no doubt that the RAD's determination of its role with respect to the RPD's decision falls well within the range of possible, acceptable outcomes. The reasons clearly illustrate that the RAD conducted its own analysis and assessment of the evidence. The RAD therefore correctly exercised its appeal function, in accordance with the *Huruglica FCA* decision.

IV. Conclusion

[59] The RAD's refusal of the refugee claim made by Mr. Galamb and Ms. Ganyi represents a reasonable outcome based on the law and the evidence before it. In my view, the panel reasonably concluded that the discrimination affecting Mr. Galamb and Ms. Ganyi did not amount to persecution on a cumulative basis and that state protection was available to them in Hungary. On a standard of reasonableness, it suffices if the decision subject to judicial review has the required attributes of justification, transparency and intelligibility. This is the case here. Therefore, I cannot overturn the RAD's decision and must dismiss this application for judicial review.

[60] Neither party has proposed a question of general importance for me to certify. I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;

2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1243-16
STYLE OF CAUSE:	KAROLY MARK GALAMB, KRISZTINA GANYI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 25, 2016
JUDGMENT AND REASONS:	GASCON J.
DATED:	NOVEMBER 3, 2016

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