

Federal Court



Cour fédérale

Date: 20171107

Docket: IMM-1039-17

Citation: 2017 FC 1007

Ottawa, Ontario, November 07, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

ZSUZSANNA MATA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a Roma from Hungary. She seeks judicial review of the decision of a Pre-Removal Risk Assessment [PRRA] Officer [the Officer] who found that she is not a *Convention* refugee or a person in need of protection under ss. 96 or 97 of the *Immigration and Refugee Protection Act [IRPA]*, respectively. The Officer concluded that there was adequate state protection available to the Applicant in Hungary. For the reasons that follow, this judicial review

is allowed because the Officer applied the incorrect test in assessing the availability of state protection.

I. Background

[2] The Applicant came to Canada from Hungary in February 2011 and made a claim for refugee protection in March 2011. In April 2011, on advice from lawyer Jozsef Farkas (who has since been found guilty of professional misconduct) the Applicant withdrew her previous refugee application. Afterwards, the Applicant applied to have her claim reinstated; however, the Refugee Protection Division [RPD] dismissed her reinstatement request. In November 2011, the Applicant was removed from Canada.

[3] Upon return to Hungary, the Applicant alleges a number of incidents giving rise to a fear of persecution. In December 2013, the Applicant's brother (Roland) was attacked by a group at night. The Applicant's mother called the police twice, and both times the police allegedly responded that they were busy. A second incident occurred in June 2014, when neo-Nazis allegedly attacked the Applicant's pregnant mother. The Applicant alleges that there were witnesses to the attack, but no one intervened. As a result of the attack, the Applicant alleges that her mother lost the baby because doctors failed to treat her adequately.

[4] The Applicant alleges other incidents including being forcibly evicted by police officials in August 2015 and an attack on the Applicant and her friend while on public transportation in the summer of 2015. The Applicant also recounted an attack on her brother's partner (Alexandra) by a white Hungarian in December 2015, in which she lost her child and a further attack on

Roland and Alexandra in March 2016, in response to which police did not take notes or investigate at the hospital. Finally, in May 2016, police were notified of another attack on the Applicant's mother and stepfather by neo-Nazis, but allegedly did not show up to the hospital after the attack.

[5] These incidents caused the Applicant to flee Hungary. She returned to Canada on September 8, 2016 and made a claim for refugee protection. On September 11, 2016, the Applicant was found to be ineligible to claim refugee protection because of her prior withdrawn claim in 2011. The Applicant applied for a PRRA in October 2016.

II. PRRA Decision

[6] The Officer accepted that the Applicant is of Hungarian-Roma origin, though the Officer noted that her documents were photocopied, casting doubt on their weight. The Officer considered objective evidence in the form of the "Report on the Miskolc Situation" which alleged that the Applicants were victims of slum elimination. However because the report was undated and photocopied, the Officer concluded that it alone was insufficient to support a claim under ss.96 or 97 of the *IRPA*.

[7] The Officer considered affidavits from Alexandra and the Applicant, noting relative strengths and weaknesses. The Officer also considered medical evidence concerning family members. The Officer concluded that all of the medical reports were owed limited weight because they were photocopies; nonetheless, the Officer noted that the family were not denied access to medical care based on the medical reports.

[8] The Officer finally considered the country conditions evidence for Hungary, noting the exclusion and discrimination of Roma. However, the Officer concluded that state protection was adequate in Hungary and that the Hungarian government was working to improve the situation for Hungarian Roma.

III. Issue

[9] Although the Applicant raises a number of issues, the Officer's application of the state protection test is dispositive of the application.

IV. Standard of Review

[10] The standard of review with respect to the application of the proper test for state protection is correctness (*G.S. v Canada (Citizenship and Immigration)*, 2017 FC 599 at para 11). On the correctness standard of review, this Court will not defer to the Officer's decision if the wrong test for state protection was applied (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50).

V. Analysis

[11] The Applicant argues that the Officer failed to apply the correct test for state protection. She asserts that the Officer did not address the *operational* adequacy of state efforts.

[12] There is a presumption that the state can protect its citizens. In order to rebut this presumption, the Applicant must show "clear and convincing evidence" (*Canada (Attorney*

General) v *Ward*, [1993] 2 SCR 689 at 724 [*Ward*]). That evidence must be commensurate with the level of democracy in the country (*Kadenko v Canada (Solicitor General)*, [1996] FCJ No 1376 at 534). The Applicant must show that she is unable to obtain state protection or that she is unwilling to seek out state protection because of a well-founded fear of persecution (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 30 [*Ruszo*]).

[13] Whether state protection is adequate depends on its operational effectiveness, not the best efforts or intentions of the state (*Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 at para 11). It is a reviewable error for the Officer to focus on “best efforts” without assessing the operational effectiveness of those efforts (*Kotlarova v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 444 at paras 21-22).

[14] Here, while the Officer correctly states the general principle for state protection (adequate state protection) the decision does not demonstrate that the Officer actually considered the operational adequacy of state protection efforts. For example, the Officer notes that “Hungary is making serious efforts to address the problems that Roma individuals face in that country.” In absence of any analysis regarding the adequacy of those “serious efforts,” the Officer failed to apply the correct test for state protection.

[15] This was the error in *Ruszo*, at para 27, where the Court held that while the RPD identified the proper standard of adequacy, it failed to assess whether the various steps that have been taken actually provide adequate protection, at an operational level, to people of Roma ethnicity in Hungary.

[16] As the Chief Justice noted in *Ruszo*, at para 28, it is not necessarily fatal to a decision which fails to apply the proper state protection test if it can be shown that the Applicant failed to exhaust all avenues of redress in the home country. However, in this case, the Officer failed to analyze the Applicant's evidence that she and her family sought state protection a number of times. A number of these allegations are contained in the affidavit evidence, which the Officer claims he carefully considered. However, the Officer only addressed one incident pertaining to the Applicant specifically.

[17] The Officer should have considered the experiences of the Applicant's family members, as individuals "similarly situated" to the Applicant (*Ward*, at 724-725). Yet there is no analysis of this factor in the Officer's decision. This compounds the Officer's error in applying the incorrect test for state protection.

[18] The application for judicial review is therefore allowed.

JUDGMENT in IMM-1039-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision of the Officer is set aside and the matter is remitted for redetermination by a different officer;
2. No question of general importance is proposed by the parties and none arises;
and
3. There will be no order as to costs.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1039-17

STYLE OF CAUSE: ZSUZSANNA MATA v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

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JUDGMENT AND REASONS: MCDONALD J.

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