

Federal Court



Cour fédérale

Date: 20191025

Docket: IMM-1449-19

Citation: 2019 FC 1337

Ottawa, Ontario, October 25, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

IMRE TANARKI (A.K.A. IMRE HAUZER)

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the Pre-Removal Risk Assessment [PRRA] of Mr. Imre Tanarki [previously known as Imre Hauzer, the “Applicant”]. A Senior Immigration Officer at Immigration, Refugees and Citizenship Canada [the Officer] denied the Applicant’s PRRA application.

II. Background

[2] The Applicant is a Hungarian citizen of Roma ethnicity. He seeks refugee protection in Canada pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[3] As a Roma, the Applicant has suffered physical and verbal assaults at the hands of anti-Roma groups in Hungary. In May 2012, men in Hungarian Guard uniforms confronted the Applicant and his wife outside their home. The men physically assaulted the Applicant while shouting anti-Roma obscenities. The Applicant reported this incident to the police, but no action was taken to properly investigate the matter.

[4] After this incident, the Applicant's wife suffered a mental breakdown, and died by suicide in June 2012.

[5] Hungarian Guard members continued to target the Applicant's home, throwing bricks and stones, and shouting anti-Roma obscenities. The Applicant reported some of these incidents to the police, but they did not assist the Applicant or register police reports.

[6] The Applicant first came to Canada in October 2014 under the name Imre Hauzer, and filed a claim for refugee protection. This application was deemed abandoned on November 3, 2014 as the Applicant failed to sign his Basis of Claim.

[7] The Applicant failed to present himself for removal, and an immigration warrant was issued on January 28, 2015. The Applicant was removed from Canada on May 4, 2015.

[8] In April 2016, back in Hungary, the Applicant was attacked by “black-clad skinheads” while going to buy groceries, suffering injuries to his forehead.

[9] The Applicant returned to Canada on September 30, 2016, but was denied entry and removed back to Hungary on the same day.

[10] The Applicant claims that landlords refused to rent to him given his Roma ethnicity, and racist discrimination prevented him from securing stable employment. As a result, the Applicant felt that it was necessary to change his name so others could not recognize him as Romani.

[11] In February 2018, several skinheads attacked the Applicant with a baton and baseball bat. The Applicant suffered bruises and was in pain for several days. Despite reporting this attack to the police, the Applicant received no assistance.

[12] The Applicant again returned to Canada on April 20, 2018, this time using a different passport and the name Imre Tanarki. The Applicant obtained a Temporary Resident Visa [TRV] and Electronic Travel Authority [ETA] under the name Imre Tanarki. On the TRV and ETA application, he falsely stated that he had never been refused a visa or permit, denied entry, or ordered to leave Canada or any other country.

[13] On May 10, 2018, the Minister issued a report pursuant to subsection 44(1) of the IRPA stating that the Applicant was inadmissible to Canada because he had previously been deported under the name Imre Hauzer. A deportation order was issued on May 31, 2018.

[14] Prior to deportation, the Applicant submitted a PRRA.

III. Decision Under Review

[15] In a decision dated January 19, 2019, the Officer rejected the Applicant's PRRA application, finding that he would not be subject to a risk of torture, a risk of persecution, or face a risk to life or risk of cruel and unusual treatment if he was returned to Hungary.

[16] The Applicant argued that due to his Roma ethnicity he has suffered persecution, abuse and harassment through his life in Hungary. The Officer found that the Applicant provided insufficient objective evidence of harm or treatment tantamount to persecution that was personal to the Applicant.

[17] The Officer specifically noted the absence of the following objective evidence:

- Police reports, detailed accounts of the Applicant's attendance at police stations, including which stations he attended and which officers he spoke to
- Medical reports, hospital records, or notes from a doctor
- Photographs depicting the assaults

- Supporting letters from witnesses or anyone with knowledge of the Applicant's personal circumstances

[18] The Officer found that counsel's conclusions on discrimination, harassment, and racism faced by the Applicant were not substantiated with evidence particular to the Applicant's personal circumstances.

[19] After finding that the Applicant had not substantiated the risks he faced in Hungary, the Officer went on to consider the issue of state protection. The Officer concluded that the Applicant failed to rebut the presumption of state protection, finding that a number of organizations in Hungary assist Roma Hungarians seeking state protection. Rather than pursuing state protection in Hungary, the Applicant came to Canada.

[20] The Officer also noted that police officers receive training on conflict management related to members of social minorities, and police personnel orientation focuses on the prohibition of discrimination. The police force also has a working group tasked with maintaining relationships between the police and the Roma community. Further, there are procedures in place to lodge a formal complaint against a police officer in Hungary.

[21] The Officer acknowledged that some of the documentary evidence was mixed, however, he noted that Hungary is taking serious steps to "address the situation as it pertains to the Roma population." The Officer accepted that Hungary continues to face challenges with respect to the state of affairs for Roma persons, but concluded based on the documentary evidence that there is

adequate state protection in Hungary for Roma who are victims of crime, police abuse, discrimination, or persecution.

[22] After considering all of the evidence, the Officer concluded that the Applicant could live in Hungary and seek protection there should any issues with racists or skinheads arise. Taking into account the Applicant's personal circumstances, the Officer found that the Applicant provided insufficient objective evidence to support his stated risks.

[23] The Officer determined that the Applicant does not face more than a mere possibility of persecution in Hungary, nor is he more likely than not to face a danger of torture, or a risk to life, or a risk of cruel and unusual circumstances.

IV. Issues

- (1) Did the Officer correctly articulate the tests for persecution and state protection?
- (2) Did the Officer reasonably conclude that that the Applicant did not face more than a mere possibility of persecution in Hungary, and that the Applicant failed to rebut the presumption of state protection?

V. Standard of Review

[24] The Officer's articulation of the tests for state protection and persecution are questions of law, reviewable on a standard of correctness (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at paras 16-22 [*Ruszo I*]).

[25] The determination of whether the Applicant established a well-founded fear of persecution or rebutted the presumption of state protection are questions of mixed fact and law, reviewable on a standard of reasonableness (*Ruszo I*, above at 22).

VI. Analysis

[26] As a preliminary matter, the Minister submits that evidence contained in the Applicant's April 3, 2019 affidavit that was not before the Officer should not be considered. I agree.

[27] To the extent that it differs from the August 24, 2018 affidavit that was before the Officer, the evidence in paragraphs 10 and 12 of the Applicant's April 3, 2019 affidavit will not be considered.

A. *Persecution*

[28] The Applicant does not specifically argue that the Officer misstated the test for persecution, but submits that the Officer ignored evidence of specific harm to the Applicant as set out in his affidavit and general risk in the documentary evidence, and the "mischaracterization of the Applicant's evidence was an error of law."

[29] The Officer did not misstate the test for persecution, or conflate the tests with respect to sections 96 and 97. While the Officer did refer multiple times to "personalized" harm and evidence of the Applicant's personal circumstances, this does not suggest that the Officer conflated the two tests. Applicants claiming protection under section 96 must establish fear of

persecution on both a subjective and objective basis (*Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at paras 68-71).

[30] The Applicant submits that the harm he faces on a personal level, as well as the generalized risk against Roma in Hungary jointly constitute persecution. The Applicant reiterates his allegations of systemic racism and discrimination in Hungary due to his Roma ethnicity, pointing to unstable employment and physical and verbal attacks. He also reiterates that discrimination has left him with unstable housing in Hungary.

[31] The Applicant quotes from Responses to Information Requests [RIRs] HUN105586.E and HUN105587.E, a UN Human Rights Council Report, and a European Roma Rights Centre Report. These documents detail violent attacks on Roma individuals and their property, and systemic discrimination faced by Roma in the areas of employment, education, housing, healthcare, and political participation.

[32] Finally, the Applicant argues that the Officer erred by relying on the lack of objective evidence of his account, including police reports, medical reports, hospital records, photographs, and doctor's notes. The Applicant relies on the principle that his evidence is presumed to be true unless there is valid reason to doubt its truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA)). He alleges that absent any finding by the Officer that the evidence was contradictory, inconsistent, or implausible, insisting that the Applicant produce documentary evidence to support his sworn testimony breaches this principle (*Durrani v Canada (Citizenship and Immigration)*, 2014 FC 167 at para 6).

[33] While the country condition documentation clearly establishes that acts of violence and discrimination do occur against persons of Roma ethnicity, the evidence does not support the position that all Roma in Hungary face discrimination amounting to persecution.

[34] Decisions of this Court have held that the mere fact of being Roma in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return (*Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19; *Varga v Canada (Citizenship and Immigration)*, 2014 FC 510 at paras 1-2).

[35] In my view, the Officer's analysis of personalized risk in order to establish more than a mere possibility of persecution is reasonable.

B. *State Protection*

[36] The test for state protection is one of adequacy, and is concerned with whether "the actual outcome of state protection exists" in the country in question (*Harinarain v Canada (Citizenship and Immigration)*, 2012 FC 1519 at para 27). This Court has repeatedly instructed that "serious efforts" at state protection are not the same as actual, adequate state protection (*Burai v Canada (Citizenship and Immigration)*, 2013 FC 565 at para 28).

[37] The Officer found that the Applicant and his counsel "failed to provide clear and convincing evidence that, on a balance of probabilities, state protection in Hungary is inadequate." The Officer correctly articulated the test for state protection.

[38] With respect to state protection, the Officer found that:

- The Applicant was not diligent in his efforts to pursue state protection in Hungary
- The Applicant did not seek assistance from non-governmental agencies
- Hungary is taking serious steps to address the situation as it pertains to the Roma population

[39] The Applicant takes issue with each of these findings. The Applicant reproduces portions of his affidavit that was before the Officer detailing instances where he sought help from the police in Hungary, including following the May 2012 and February 2018 assaults. In both instances, the Applicant states that he contacted police to report the assaults, but was not provided any assistance, and the police took no action to investigate.

[40] The Applicant argues that the evidence does not support the Officer's conclusion that police and government officials are both willing and able to protect Roma persons who are victims of crime, police abuse, discrimination, or persecution. The Applicant quotes from RIRs HUN105197.E and HUN105587.E. These documents state that the police in Hungary lack the resources and awareness of proper procedures to respond to hate crimes, and suggest that Roma in Hungary continue to be inadequately protected against hate crimes.

[41] RIR HUN105197.E further states that while police in Hungary have been given new powers to counter the activities of paramilitary groups engaging in racist violence, the authorities are often criticized for not identifying and effectively responding to hate crimes.

[42] The Applicant acknowledges that he bears the burden of presenting clear and convincing evidence of the state's inability to protect him (*Canada (AG) v Ward*, [1993] 2 SCR 689).

However, the Applicant submits that his burden should not be impossible to meet, and he is not required to show that he has exhausted all avenues of protection. Rather, he need only show that he has taken all steps reasonable in the circumstances.

[43] Filing a police report is not a legal requirement for refugee protection. The decision maker must not lose sight of the inquiry into whether state protection in Hungary is adequate (*Allen v Canada (Citizenship and Immigration)*, 2015 FC 994 at para 21). The Applicant submits that the Officer's finding that he was not diligent in approaching authorities for help is unreasonable in light of the evidence in his affidavit, and the Officer erred by citing a lack of objective evidence supporting the Applicant's claim. Here, the Applicant provided evidence of his repeated attempts to seek police protection and the failure of the police to act in any fashion.

[44] The Applicant also takes issue with the Officer's finding that the Applicant failed to seek assistance from various organizations and agencies that assist Hungarians of Roma ethnicity in obtaining services and protections, including:

- The RMG
- The Roma Civil Rights Foundation
- The legal Defence Bureau for National and Ethnic Minorities
- The Legal Counselling Office of the Roma Parliament
- Parliamentary Commissioner for the Rights of National and Ethnic Minorities

- The Minorities Commissioner (or Ombudsman)
- The Equal Treatment Authority
- HCLU
- The European Roma Rights Centre

[45] This Court has repeatedly held that the assessment of availability of state protection should be focused on the operational effectiveness of a police force or law enforcement in the country in question. The existence of alternate institutions—even those tasked with investigating complaints of discrimination—does not constitute state protection (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 27 [*Ruszo II*]).

[46] The Officer’s detailed overview of non-governmental organizations that the Applicant could have, but did not, approach for assistance should not be the focus when considering the adequacy of state protection in Hungary. This analysis amounts to equating the availability of assistance from non-governmental agencies to the availability of adequate state protection. In my view, the Officer unreasonably erred by holding the Applicant to a standard of seeking assistance from non-police and non-government actors before seeking refugee protection outside of Hungary.

[47] Moreover, in the oft-repeated words of Justice Zinn, “[a]ctions, not good intentions, prove that protection from persecution is available” (*Orgona v Canada (Citizenship and Immigration)*, 2012 FC 1438 at para 11). The Officer’s finding that Hungary is taking serious

steps to address the situation does not constitute a reasonable inquiry into the actual existence of operational state protection.

[48] This Court has repeatedly stated that the situation in Hungary is difficult to gauge and that the adequacy of state protection must be assessed based on the evidence in each specific case (*Ruszo II*, above at para 28). The issue of whether Hungary can and will provide adequate protection for its Roma citizens is controversial and highly problematic. The determination will depend on the evidence and submissions made before the administrative decision maker, and the issues raised on review before this Court (*Tar v Canada (Citizenship and Immigration)*, 2014 FC 767 at paras 75-76).

[49] While the Officer refers to “serious efforts” and “serious steps” taken to address the problems of discrimination and abuse, the Officer then jumps to the conclusion that police and government officials are willing and able to protect victims. While the Officer refers to “changes at the operational level,” the Officer then underlines government programs and initiatives, rather than discussing the protections available after violence or discrimination has occurred, or as it occurs. Selectively parsing the documentary evidence on the record without considering that evidence contextually as a whole is not a reasonable approach to determine the adequacy of state protection in this case.

JUDGMENT in IMM-1449-19

THIS COURT'S JUDGMENT is that

1. The application is allowed and the matter is referred to a different officer for reconsideration.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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