

Federal Court



Cour fédérale

**Date: 20130702**

**Docket: IMM-8488-12**

**Citation: 2013 FC 734**

**Ottawa, Ontario, July 2, 2013**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**DEZSO MOCZO, KATALIN MOCZO,  
DEZSONE MOCZO, ZSOLT MOCZO (A  
MINOR), DEZSO MOCZO, ANDREA JUHASZ,  
JANOSNE MOLNAR, JOZSEF MOLNAR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] The applicants are an extended family from Hungary. In 2010, they sought refugee protection in Canada based on their experiences of discrimination and persecution as members of the Roma community. In particular, they allege that their home was attacked by a group that pushed a concrete wall onto its roof. Later, someone threw bricks at the house.

[2] A panel of the Immigration and Refugee Board dismissed the applicants' claim based on its conclusion that state protection is available to the Roma community in Hungary. The applicants argue that the Board's conclusion was unreasonable because it neglected to recognize that the various measures taken to improve the situation of the Roma in Hungary have failed to have any meaningful effect. They ask me to quash the Board's decision and order another panel of the Board to reconsider their claim.

[3] I agree that the Board's decision was unreasonable because it overlooked evidence showing that state authorities are unable to protect the Roma in Hungary. It also failed to acknowledge the applicants' evidence about how the police responded to their complaints. I must, therefore, allow this application for judicial review and order a new hearing.

## II. The Board's Decision

[4] The Board discussed the evidence of the principal applicant, Mr Deszo Moczo, in which he explained why he believed the police would not help him or his family. He had previously experienced their negative attitude toward the Roma. For example, the police had once asked him and his brother-in-law for identification, insulted them, and then chased them away.

[5] The Board did not find this testimony persuasive because it was contradicted by documentary evidence. Further, a claimant's subjective reluctance to approach the police does not establish a lack of state protection.

[6] According to the Board, the documentary evidence shows that, while there remain problems with discrimination, police corruption, and use of excessive force against the Roma, Hungary is making serious efforts to rectify the situation. For example, the Independent Police Complaints Board receives complaints about police conduct. Other organizations and programs also assist the Roma community. Further, Hungary is trying to meet the human rights standards of the European Union.

III. Was the Board's decision unreasonable?

[7] The Minister argues that the Board's decision was reasonable given that the applicants had not made reasonable efforts to obtain state protection. In addition, the documentary evidence supported the Board's finding that state protection was available to the applicants.

[8] I disagree.

[9] The Board failed to take account of evidence showing that two of the applicants had approached the police on separate occasions to complain about bricks being thrown at their house. The police did not make a report; they simply said there was nothing they could do.

[10] With regard to the documentary evidence, the Board concentrated on descriptions of the state's efforts to improve the situation in Hungary and the activities of non-state actors to help. However, evidence of a state's efforts does not help answer the main question that arises in cases of

state protection – that is, looking at the evidence as a whole, including the evidence relating to the state’s capacity to protect its citizens, has the claimant shown that he or she likely faces a reasonable chance of persecution in the country of origin? To answer that question, the Board had to decide whether the evidence relating to the state resources actually available to the applicants indicated that they would probably not encounter a reasonable chance of persecution if they returned to Hungary (see *Muvangua v Canada (Minister of Citizenship and Immigration)*, 2013 FC 542, at paras 7, 9).

[11] In my view, the Board concentrated on evidence relating to improvements not yet realized to the exclusion of the documentary evidence showing that Hungarian police often discriminate against and fail to investigate crimes of violence against the Roma.

[12] Therefore, I must conclude, given the evidence before it, that the Board’s decision fell outside the range of possible defensible outcomes based on the facts and the law. It was unreasonable.

#### IV. Conclusion and Disposition

[13] The Board overlooked evidence that supported the applicants’ reluctance to seek state protection, as well as documentary evidence of the lack of state protection in Hungary. Therefore, the Board’s conclusion was unreasonable and I must allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8488-12

**STYLE OF CAUSE:** DEZSO MOCZO, ET AL  
v  
MCI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 12, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** July 2, 2013

**APPEARANCES:**

Elyse Korman

FOR THE APPLICANTS

Suranjana Bhattacharyya

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Otis & Korman  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANTS

William F. Pentney  
Deputy Attorney General  
Toronto, Ontario

FOR THE RESPONDENT