

Federal Court



Cour fédérale

**Date: 20140717**

**Docket: IMM-7800-13**

**Citation: 2014 FC 710**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, July 17, 2014**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**GABOR TOTH, MONIKA TOTH-SZEPSI AND  
KAZMER GABOR TOTH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision dated November 18, 2013, by the Refugee Protection Division (RPD) of the Immigration and Refugee Board rejecting the

applicants' claim for protection as refugees or as persons in need of protection within the meaning of sections 96 and 97 of the IRPA.

[2] The applicants are citizens of Hungary. The principal female applicant, Monika Toth-Szepesi, is of Roma origin. Her husband, Gabor Toth, is Hungarian.

[3] The principal female applicant allegedly fears returning to her country because of an assault that occurred in January 2012 by members of the Hungarian Guard, as well as because of the cumulative discrimination she reportedly experienced by reason of her Roma ethnicity. In her Personal Information Form (PIF), the principal female applicant claims to have been a victim of racism since childhood. She further contends that her son was also discriminated against at school.

[4] In its decision, the RPD pointed out that there were serious doubts as to the credibility of the principal female applicant's allegations owing to a number of contradictions, inconsistencies and omissions in the evidence, and because of her behaviour, which it found to be inconsistent with her alleged fear. The RPD thus found that the discriminatory acts the principal female applicant claimed to have experienced, even cumulatively, did not constitute persecution. The RPD did not question the fact that the principal female applicant may have been subjected to insults and certain other forms of discrimination, nevertheless, it concluded that such discrimination was not sufficiently serious or systematic to amount to persecution. The RPD noted that even if the female applicant had been the subject of persecution, she had not provided clear and convincing proof of the state's inability to provide protection to her.

[5] In this case, the applicants appear to be primarily in disagreement with the RPD's assessment of the evidence. However, that function is within the SPR's expertise, and not that of the Court; it is not for the Court to substitute its own assessment for that of the RPD (*Martinez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 441). The Court therefore cannot intervene on that ground.

[6] The applicants' submissions in no way show how the impugned decision is not reasonable within the meaning of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. It was entirely open to the RPD to rely on the omissions and inconsistencies in the applicants' narrative to draw an adverse conclusion regarding their credibility (*Cortes v Canada (Minister of Citizenship and Immigration)*, 2009 FC 583). Furthermore, the applicants did not rebut the presumption of the availability of state protection. Indeed, the evidence in the record shows that the police were willing and able to help them following the assault on January 20, 2012. The principal female applicant herself during her testimony before the RPD attested to the fact that the police would [TRANSLATION] "surely" have helped her if she had been able to identify her assailants (Hearing Transcript at page 25).

[7] Considering the decision as a whole and the record before the RPD, the Court is of the view that the decision is reasonable, as it falls within a range of acceptable and possible outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at para 47).

[8] For all of the foregoing reasons, the applicants' application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the applicants' application for judicial review be dismissed, with no question of general importance to be certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
Sebastian Desbarats, Translator

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

**DOCKET:** IMM-7800-13

**STYLE OF CAUSE:** GABOR TOTH, MONIKA TOTH-SZEPSI ET  
KAZMER GABOR TOTH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 16, 2014

**JUDGMENT AND REASONS** SHORE J.

**DATED:** JULY 17, 2014

**APPEARANCES:**

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Lyne Prince FOR THE RESPONDENT

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