



freely, study, access medical coverage and social services. The RPD also concluded that the Appellants had not established a risk of discrimination amounting to persecution in Italy, and therefore this would not prohibit them from returning to Italy or place them at risk of persecution if they did return.

- [5] The Appellants argue that the RPD erred. They argue that the EC Residence Permit does not confer status substantially similar to a national because it can be revoked. They argue that the RPD erred in assessing exclusion because the evidence showed they cannot enjoy the rights they are entitled to under the EC Residence Permit due to their ethnicity, XXXX disability, and that they cannot return to Italy due to risks they face based on their ethnicity. They argue that the RPD erred in concluding that they had not established a risk of persecution in Italy and that the RPD did not properly weigh evidence establishing their risk. The Appellants also argue that they have new evidence which shows that their status in Italy has been canceled, and this is grounds to allow their appeal.
- [6] For the reasons that follow, I find that the Appellants' arguments are not persuasive. I concur with the RPD that the Appellants are excluded from refugee protection under Article 1E of the Convention and that they have not established a section 96 or 97 risk in Italy. NEW EVIDENCE AND ORAL HEARING
- [7] The Appellants submitted one piece of new evidence, after the perfection of appeal. This evidence is a "certificate of irreparability" stating that the Principal Appellant's residence is canceled and an affidavit explaining how the Principal Appellant obtained this document.<sup>2</sup> They later submitted a letter stating that they had received the original of the certificate by mail.<sup>3</sup>
- [8] I can only admit this evidence if the Appellants show that it meets certain criteria. Specifically, it must meet one of three legal tests. First, it is admissible if the content post-dates the rejection of the Appellants' claim. Second, it is admissible if the evidence was not reasonably available when the claim was rejected. Third, it is admissible if the Appellants could not reasonably have been expected to provide the evidence at the time of the rejection of their claims. If one of these conditions is met, then the Appellants must also show the evidence is credible, relevant and new for it to be admitted. If any new evidence is admitted, then I can consider whether to hold an oral hearing. As this evidence was submitted after the Appellants' record, I must also consider rule 29 of the RAD Rules which states that, in deciding whether to admit the evidence, I must consider any relevant factors, including: the document's relevance and probative value; whether it brings new evidence to the appeal; and whether the Appellants could have provided it with their record.
- [9] For the following reasons, I find that this evidence is admissible but does not meet the requirements for convening an oral hearing.
- [10] As argued by the Appellants, the certificate shows that the residency was cancelled after the date on which the Appellants perfected their RAD record.<sup>4</sup> Therefore, it post-dates the rejection of the Appellants' claim at the RPD and meets the requirements of subsection

110(4) of the Immigration and Refugee Protection Act (IRPA). I also find this makes it new for the purposes of rule 29 and the Singh/Raza<sup>5</sup> factors and explains why the Appellants could not have submitted the document with their appeal record. I further find that the document is relevant and credible, as it is an official government document with no prima facie deficiencies, and as it bears on the question of the Appellants' status in Italy which was before the RPD. For these reasons, I also find the evidence to be relevant and probative for the purposes of rule 29.

[11] Therefore, the evidence meets the requirements of rule 29 of the RAD Rules, subsection 110(4) of the IRPA and the factors set out in the Singh and Raza cases. I will admit the evidence.

[12] However, I do not find the evidence meets the requirements for holding an oral hearing. The new evidence is a government-issued document. It does not raise serious issues with regard to the credibility of the Appellants. This is a requirement to convene a hearing under subsection 110(6) of the IRPA. As the test is not met, I cannot hold an oral hearing. SCOPE OF THE APPEAL

[13] Generally, I must review a decision of the RPD on a standard of correctness. There is an exception to this, where the RAD defers to the RPD if the RPD had a meaningful advantage in assessing the credibility of oral evidence. I do not find this case falls into the exception. Therefore, I will be looking at whether the RPD's decision was correct.

## ANALYSIS

[14] The RPD concluded that the Appellants were excluded from refugee protection based on Article 1E of the Convention, as the Appellants had the requisite status in Italy. The RPD further concluded that the Appellants had not established a risk in Italy. I concur with this decision. Certificate of Irreparability and the Appellants' 1E status

[15] The Appellants argue that the Certificate of Irreparability, which indicates their residence in Italy was canceled as of September 17, 2019, justifies allowing their refugee claim, and therefore I should grant this appeal.<sup>6</sup> This is not in line with the case law.

[16] Based upon Zeng, the RPD assesses the question of exclusion under Article 1E on the date of the last day of the hearing before it.<sup>7</sup> Based upon Majebi, the RAD is to conduct a correctness review of this decision considering the Appellants' status on the same day as considered by the RPD.<sup>8</sup> The RPD hearing took place on January 3, 2019.<sup>9</sup> The Certificate of Irreparability states that the residence is cancelled "from" September 17, 2019.<sup>10</sup> Accordingly, the Certificate does not show that the Appellants did not have the requisite status as of the date of the RPD hearing. In fact, it appears to confirm that the Appellants had status in Italy as of the date of the hearing. Therefore, the Certificate of Irreparability supports a conclusion that the RPD's decision is correct.

- [17] This is the question I am directed to answer based upon Majebi, which is binding upon the RAD. Accordingly, the Appellants' argument must fail. The Appellants had a status substantially similar to nationals at the time of the RPD hearing
- [18] For the following reasons, I concur with the RPD's decision that the Appellants had a status substantially similar to that of Italian nationals at the time of the RPD hearing.
- [19] First, the RPD found that the Appellants had EC Residence Permits based upon the Principal Appellant's testimony that they had these permits.<sup>11</sup> The Appellants have not challenged this finding. This finding is also supported by the Certificate of Irreparability which indicates that the Appellants had residence in Italy until September 17, 2019.<sup>12</sup> At the time the Appellants filed their record, they had not obtained the Certificate of Irreparability and argued that, given they had been out of the EU for over 12 consecutive months, their EC residence permits would be subject to revocation.<sup>13</sup> However, as discussed above, the relevant date of consideration of whether they had status was the date of the hearing. The evidence shows that they did.
- [20] The Appellants argue that the RPD erred in concluding that the status they had in Italy was substantially similar to that of nationals because it can be revoked.<sup>14</sup> Additionally, they argue that, even if the status grants them rights which are substantially similar to those of nationals, they cannot actually enjoy those rights because they are Roma.
- [21] First, with regard to the argument about revocation, I do not find this argument persuasive. The Federal Court has considered the fact that the EC Residence Permit may be revoked under certain conditions and has concluded that it still confers a status which is substantially similar to that of an Italian national.<sup>15</sup> I am bound by these decisions. Furthermore, the Appellants' argument that the requirement to "obtain and not revoke" the EC Residence Permit is out of their control is not based on a complete reading of the evidence. The requirements for obtaining an EC Residence Permit, which the Appellants cite, are not applicable to the Appellants because the evidence states that "EU citizens do not have to apply for the EC residence permit," they must register and provide evidence that they are working or studying in the country."<sup>16</sup>
- [22] As for whether the Appellants can enjoy the rights guaranteed under the EC Residence Permit, they argue that they do not have the right to return because of discrimination and bullying of the children, particularly for their daughter, XXXX, who has Down's Syndrome, and because the Principal Appellant once tried to obtain social assistance and was refused. They therefore argue that their rights are restricted due to their ethnicity.<sup>17</sup> They further argue that they cannot return because the Interior Minister has a proposal to deport non-citizen Romani from Italy.
- [23] The RPD considered the bullying that the children faced. The RPD accepted that the eldest daughter was bullied due to her disability and that this may have been exacerbated by her ethnicity.<sup>18</sup> However, despite this, the evidence showed that XXXX was able to obtain education including receiving support in education for her Down's Syndrome such as having

her own counsellor who would go with her to her classes to assist her learning. The RPD found that therefore she was able to access education.<sup>19</sup> I see no error in this. Additionally, I am prepared to accept that the other children may have faced bullying in school. However, as with XXXX, the evidence also shows that the children were able to access school. They went to school until they left the country; they can speak Italian and were taught to read and write.<sup>20</sup> Therefore, I find that their right to education, as set out in Shamlou,<sup>21</sup> was not restricted due to their ethnicity or disability.

- [24] The Principal Appellant testified that, in Italy, he went to ask for social assistance, and he was refused because of his ethnicity.<sup>22</sup> I accept this evidence is credible. However, after reviewing the documentary evidence on file, I do not find any evidence of systemic, systematic or sustained attempts by the Italian state to deny Roma persons social assistance. Therefore, I find that this was an isolated incident of discrimination and does not demonstrate that, should the Appellants require social assistance in the future, they could not access it. I find this evidence does not establish, on a balance of probabilities, that the Appellants cannot enjoy the right to social services that they are entitled to under the EC Residence Permit.
- [25] Finally, I accept that Italy's Interior Minister has announced he plans to conduct a census of the Roma community in Italy in order to expel non-citizen Romani. This is confirmed in the most up-to-date National Documentation Package (NDP).<sup>23</sup> However, there is no evidence in the record to suggest that this is anything more than a threat by one racist government official. The Appellants have not pointed to any evidence that any steps have been taken to conduct such a census or expel any non-citizen Romani persons. Accordingly, I do not find that this statement establishes, on a balance of probabilities, that the Appellants do not have the right to return to Italy based on their EC Residence Permits. I also find that this statement is relevant to the assessment of the Appellants' allegations of discrimination in Italy, and I will address it in that context below.
- [26] Beyond this, the Appellants have not challenged the RPD's finding that their status was substantially similar to that of Italian nationals. Having reviewed the RPD's decision and the record, I see no error in the RPD's conclusion. I concur that, based upon the evidence on the record, the Appellants had a status substantially similar to that of Italian nationals, by virtue of their EC Residence Permits, at the time of the RPD hearing.
- [27] I note that the Appellants argue that the RPD should not have considered the issue of exclusion, as individuals are not excluded based on Article 1E, if they face a risk of persecution in the country where they have 1E status.<sup>24</sup> I agree that this is the law. However, as I will address below, I find that the RPD correctly concluded that the Appellants had not established a serious possibility of persecution in Italy. Therefore, the RPD correctly excluded the Appellants. The RPD correctly concluded that the Appellants had not established a risk of discrimination amounting to persecution in Italy based on their Roma ethnicity

- [28] The RPD concluded that the Appellants had not established that they would face a serious possibility of persecution or a personal risk of torture, risk to life or of cruel and unusual treatment or punishment, on a balance of probabilities, in Italy. In coming to this conclusion, the RPD considered the Appellants' evidence about their treatment in Italy, and it concluded that they did not face a risk of discrimination amounting to persecution in Italy on the basis of their Roma ethnicity. The Appellants argue that this conclusion is incorrect.
- [29] The Appellants argue that the RPD erred in assessing their risk in Italy by compartmentalizing the incidents of mistreatment they suffered rather than conducting a cumulative assessment and by improperly weighing country conditions evidence.<sup>25</sup> While I agree that the RPD's reasons on cumulative discrimination could have synthesized the evidence better, I concur with the conclusion. I do not find that the RPD improperly weighed the country conditions evidence, and I find that the RPD correctly concluded that the Appellants had not established a serious possibility of persecution.
- [30] The following factual findings were made by the RPD, which are unchallenged on appeal. Reviewing the record, I see no error in them. The RPD accepted that the Appellants had experienced some instances of discrimination. The RPD accepted that the Appellant had experienced discrimination in finding housing, although the RPD also noted that the Appellants had been able to find suitable housing with the help of a non-governmental organization (NGO).<sup>26</sup> The RPD also accepted that XXXX had faced bullying in education due to her disability, which was exacerbated by her ethnicity.<sup>27</sup> Elsewhere in its decision, the RPD noted that the Principal Appellant had once been turned away when requesting social assistance, but, as noted above, there was no evidence that this was anything other than an isolated instance.<sup>28</sup> The RPD characterized these situations as discriminatory not persecutory, and the Appellants have not contested this finding. Reviewing the record, I agree.
- [31] On the other hand, the RPD found that there were other areas where the Appellants had not faced discrimination, and the Appellants have not challenged these findings. Again, reviewing the record, I see no error in them. For example, the RPD held that the Principal Appellant (the only employed Appellant) did not face discrimination in employment in Italy.<sup>29</sup> The RPD held that the children all had access to schooling, and there was no evidence they faced discrimination in schooling based on their ethnicity in Italy.<sup>30</sup> The RPD held that the Appellants had access to healthcare without discrimination in Italy.<sup>31</sup> Even if the RPD compartmentalized the discriminatory incidents, I find that when I consider them cumulatively, along side the evidence of areas where they did not experience problems, the Appellants have failed to demonstrate cumulative discrimination rising to the level of persecution.
- [32] The Federal Court has held that, when looking at cumulative discrimination and whether it amounts to persecution, the Board should consider whether the cumulative effect of the discrimination gives rise to an insecure future existence.<sup>32</sup> The Appellants' experiences show this is not the case for them. While they suffered some instances of discrimination,

they were generally able to support themselves, find suitable housing, receive healthcare and access education for the children. Although XXXX experienced bullying in education, due to her disability and ethnicity, she was ultimately given support in schooling and able to pursue studies. The fact that the children received education, and the Principal Appellant was able to work, also demonstrate that their personal circumstances make discrimination in the future less likely.

- [33] I also find that this conclusion is supported by the country documentation. The Appellants argue that the RPD erred in assessing the country documents and that the documents show that they face a risk in Italy. I do not agree. As stated above, the country documents stating that the Interior Minister proposes to register and deport non-citizen Romanis shows that, at this time, this is just the idea of one Minister and not a government policy. I see no error in the RPD's conclusion that this is speculative. As noted above, even the most up-to-date information indicates that no action has been taken on this idea.<sup>33</sup>
- [34] Furthermore, based upon a review of the country conditions, I do not find evidence of a "sustained or systemic violation of basic human rights demonstrative of a failure of state protection."<sup>34</sup> The country documents relied upon by the Appellants show that violence and discrimination against Roma are a problem in Italy.<sup>35</sup> They also show that there are issues with regard to irregular Roma settlements and in access to housing.<sup>36</sup> This remains unchanged in up-to-date documents.<sup>37</sup> However, the documents do not indicate problems in accessing education, healthcare or social services. They do not document a systemic exclusion of the Roma from society, as is often the case in other countries. Contrary to the Appellants' arguments, I do not find that the country conditions alone establish a risk of persecution in Italy on the basis of their ethnicity.
- [35] Moreover, as noted by the Federal Court, in *Csonka*, there must be an objective link between the country documents and the Appellants' situation in assessing cumulative discrimination.<sup>38</sup> I do not find such a link here. Contrary to the situations described in the country documents, the Appellants did not allege any violence, and, although they initially had issues with accessing suitable housing, they ultimately were able to do so. As in *Csonka*, here, the Appellants were sufficiently integrated into Italian society such that they do not face a serious possibility of persecution.
- [36] Looking at the Appellants' personal circumstances, the country conditions and their allegations, I do not find that the Appellants face systemic or persistent harm which would expose them to the risk of an insecure future existence. For these reasons, I find that the RPD correctly concluded that the Appellants did not face a serious possibility of persecution or a section 97 risk, on a balance of probabilities, in Italy on the basis of their ethnicity.

## CONCLUSION

[37] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the IRPA. (signed) "E. Bobkin" E. Bobkin January 10, 2020 Date 1 <https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef10.aspx> 2 Exhibit P-3, Rule 29 Disclosure (December 4, 2019), at pp. 7, 12. 3 Exhibit P-4, Rule 29 Disclosure (December 14, 2019). 4 Exhibit P-3, Rule 29 Disclosure (December 4, 2019), at p. 12. 5 M.C.I. v. Singh, Parminder (F.C.A., no. A-512-14), Nadon, Gauthier, de Montigny, March 29, 2016, 2016 FCA 96; Raza, Syed Masood v. M.C.I. (F.C.A., no. A-11-07), Linden, Sharlow, Ryer, December 6, 2007, 2007 FCA 385 6 Exhibit P-3, Rule 29 Disclosure (December 4, 2019), at p. 4. 7 M.C.I. v. Zeng, Guanqiu (F.C.A., no. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010, 2010 FCA 118. 8 Majebi, Henry v. M.C.I. (F.C.A., no. A-52-16), Dawson, Near, Woods, November 9, 2016, 2016 FCA 274, at paras. 7-8. 9 Exhibit RPD-1, RPD Record, at p. 3. 10 Exhibit P-3, Rule 29 Disclosure (December 4, 2019), at p. 12. 11 Exhibit RPD-1, RPD Record, at p. 10; and Exhibit P-2, Appellants' Record, at p. 238. 12 Exhibit P-3, Rule 29 Disclosure (December 4, 2019), at p. 12. 13 Exhibit P-2, Appellants' Record, at p. 429. 14 Exhibit P-2, Appellants' Record, at pp. 428-429. 15 Rrotaj, Gjon v. M.C.I. (F.C., no. IMM-2919-15), Diner, February 8, 2016, 2016 FC 152; and 2016 FCA 292; Omorogie, Juan Jackson v. M.C.I. (F.C., no. IMM-2843-14), O'Keefe, November 5, 2015, 2015 FC 1255; and Tota, Mevlan v. M.C.I. (F.C., no. IMM-2798-14), Boswell, July 21, 2015, 2015 FC 890. 16 NDP for Italy (May 31, 2019), item 3.3, Immigration and Refugee Board (IRB), Response to Information Request (RIR) ITA104045.E, Italian residence permits, including the carta di soggiorno (permanent residence card); rights and obligations of holders; whether the holders have access to Italian citizenship, April 23, 2012, at p. 4. 17 Exhibit P-2, Appellants' Record, at p. 431. 18 Exhibit RPD-1, RPD Record, at p. 16. 19 Exhibit RPD-1, RPD Record, at pp. 15-16. 20 Exhibit RPD-1, RPD Record, at pp. 15-16. 21 Shamlou, Pasha v. M.C.I. (F.C.T.D., no. IMM-4967-94), Teitelbaum, November 15, 1995; (1995) 103 F.T.R. 241 (TD). 22 Exhibit P-2, Appellants' Record, at p. 240. 23 NDP for Italy (May 31, 2019), item 2.1, United States Department of State, Italy: Country Reports on Human Rights Practices for 2018, March 13, 2019, at pp. 18-19. 24 Exhibit P-2, Appellants' Record, at pp. 431-432. 25 Exhibit P-2, Appellants' Record, at pp. 432-438. 26 Exhibit RPD-1, RPD Record, RPD's Reasons and Decision, at para 34. 27 Exhibit RPD-1, RPD Record, RPD's Reasons and Decision, at para. 37. 28 Exhibit P-2, Appellants' Record, at p. 240. 29 Exhibit RPD-1, RPD Record, at pp. 14-15. 30 Exhibit RPD-1, RPD Record, at pp. 15-16. 31 Exhibit RPD-1, RPD Record, at pp. 16. 32 Tetik, Kristin v. M.C.I. (F.C., no. IMM-2137-09), de Montigny, December 4, 2009, 2009 FC 1240. 33 NDP for Italy (May 31, 2019) item 2.1 (supra, endnote 23), at pp. 18-19. 34 Canada (Attorney General) v. Ward, Patrick Francis, [1993] 2 S.C.R. 689, at 734. 35 Exhibit P-2, Appellants' Record, at p. 436. 36 Exhibit P-2, Appellants' Record, at pp. 436-437. 37 NDP for Italy (May 31, 2019), item 2.1 (supra, endnote 23); item 2.2, Amnesty International, Italy: Amnesty International Report 2017/2018: The State of the World's Human Rights, February 22, 2018; item 2.3, Freedom House, Italy: Freedom in the World 2018, item 2.4, Human Rights Watch, European Union: Italy, World Report 2019: Events of 2018, January 2019; and

item 13.1, European Roma Rights Centre, ERRC submission to the European Commission on the EU Roma Framework (February 2016), February 19, 2016. 38 Csonka, Zoltan v. M.C.I. (F.C., no. IMM-1144-12), Shore, September 7, 2012, 2012 FC 1056, at paras. 69-71.

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