

CANADA / JUDGMENT

TB9-06398

COURT

Refugee Appeal Division

DECIDED

30 January 2020

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RAD File / Dossier de la SAR : TB9-06398 TB9-06399 / TB9-06400 / TB9-06401 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision January 30, 2020 Date de la décision Panel S. Thompson Tribunal Counsel for the persons who are the subject of the appeal John W Grice Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION

INTRODUCTION

- [1] XXXX XXXX (the principal Appellant), along with his spouse XXXX XXXX and their daughters XXXX XXXX and XXXX XXXX (the associate Appellants), all citizens of Hungary, are appealing a decision of the Refugee Protection Division (RPD) dated February 11, 2019, rejecting their claims for refugee protection. BACKGROUND AND OVERVIEW OF APPEAL The Appellants' claim, the RPD's decision, and the Appellants' arguments before the Refugee Appeal Division (RAD)
- [2] The Appellants alleged that they faced a risk of persecution on the grounds of their Roma ethnicity, and that the discrimination they experienced in their native Hungary cumulatively amounted to persecution. The Appellants alleged a fear of the Hungarian Guard nationalist group, skinheads, and racist Hungarian people. They alleged further that they were severely discriminated in all aspects of their lives by Hungarian society at large. The Appellants arrived in Canada on November 13, 2017, on the same day and sought protection immediately upon their arrival.
- [3] The RPD refused their claim on the grounds of credibility. The RPD found the Appellants' embellished their explanations for inconsistencies between their intake forms, Basis of Claim (BOC) narratives and oral testimonies on their residency, education and employment in Hungary. It also found the Appellants failed to establish "that they had subjective fear and insecurity about their future"¹ in Hungary.
- [4] On appeal to the RAD the Appellants submit the RPD:

- 1) Microscopically analysed their refugee intake forms and over-relied on inconsistencies between those forms and the rest of their evidence that it used to impugn their credibility;
 - 2) Failed to consider their explanations for the inconsistencies in the context in which they were given;
 - 3) Demonstrated a lack of understanding of Roma culture and experience and viewing the appellants' histories through Canadian lens, causing it to dismiss evidence that the discrimination they experienced cumulatively amounted to persecution;
 - 4) Applied an incorrect legal test that conflated a section 96 and section 97 analysis and failed to consider evidence of similar-situated persons in Hungary; and
 - 5) Failed to properly analyze the objective evidence to assess the well-foundedness of their fear of persecution, independent of any credibility issues.
- [5] The Appellants have not applied to admit new evidence in these proceedings, nor have they asked that an oral hearing be convened.

DETERMINATION

- [6] 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 section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). THE ROLE OF THE RAD
- [7] The role of the RAD is to review RPD decisions by applying the correctness standard of review after conducting its own analysis of the record with a view to determining whether, as the appellant submits, the RPD erred.² The RAD will only show deference to RPD findings based on the assessment of the credibility or weight to be granted to the oral evidence given before it, in situations where it enjoys a particular advantage. If the RAD finds that the RPD had a particular advantage, the reasons will indicate as much.

ANALYSIS

- [8] My determination is based on my independent assessment of the evidence before me. This includes the records prepared by the RPD and the Appellants, an audio recording of both sittings of the Appellants' RPD hearing on January 23 and 31, 2019, and documents contained in the current compilation of the National Documentation Package (NDP) for Hungary. The RPD's credibility assessment
- [9] The Appellants submit that the RPD's analysis of their intake forms was microscopic and that it unreasonably rejected their explanations for inconsistencies between the content of those forms and their oral testimony and other evidence about their housing, employment and education in Hungary.

- [10] In their BOC narrative the Appellants wrote: We have basically been moving from place to place with relatives or friends or acquaintances for a couple [of] months at a time. We could never register ourselves to these addresses because they were temporary and usually exceeded the maximum amount of people allowed. [...]3
- [11] Concerning their residential history in Hungary, the RPD found that the Appellants' BOC narrative statement that "[f]rom about 2010 onwards, we have had an impossible time finding stable housing"4 was contradicted by their intake forms which "all declared consistent addresses for long periods of time since 2005."5
- [12] I have independently assessed the Appellants' intake documents. While their intake forms state that they were homeless from XXXX 2015 to XXXX 2017, the principal Appellant stated that he lived at XXXX XXXX XXXX XXXX XXXX XXXX XXXX, Hungary from XXXX 2007 to XXXX 2015, as did his spouse XXXX.8
- [13] Meanwhile, XXXX forms declared three addresses between XXXX 2009 and XXXX 2017, and indicated that her final two years in Hungary were divided between two addresses where she lived for four and three years, respectively.9 XXXX forms, too, declared three addresses between XXXX 2005 and XXXX 2017, and indicated that she lived at the first address for ten years between 2005 and 2015.10 During one of her intake interviews she gave her permanent address as XXXX XXXX XXXX XXXX XXXX, Hungary.11 According to her intake forms, she lived at this address from XXXX 2016 until XXXX 2017.12
- [14] In my independent assessment the evidence shows the Appellants between them had several stable periods of years-long residency at various addresses in Hungary between 2005 and 2017. While the Appellants submit that "it is not uncommon for persons who are frequently on the move to declare a single residence or address, even if they do not actually live there"13, this does not explain why their residential address history in their intake forms contradicts the account in their BOC narrative of "moving from place to place with relatives or friends or acquaintances for a couple [of] months at a time".
- [15] In my opinion it was open to the RPD to reject their explanation that "they declared whatever residential history they could recall".14 Even if, as the Appellants submit, they "were only declaring what they could recall at the border"15, I see no reason why they could not have amended their BOC narrative before the RPD hearing to more accurately and completely reflect the pattern of residence that they now assert meant that they were "frequently on the move".16
- [16] I also note that the Appellants have not directly disputed the RPD's findings that their declaration of "different address histories from one another [...] was inconsistent with their testimony that they all resided together at all times"17 and that their joint testimony that they were evicted from their home on XXXX XXXX, 2015 "was inconsistent with the addresses" declared by XXXX and XXXX in particular.18

- [17] Having independently assessed the evidence I reject the Appellants' submission that the panel misinterpreted their evidence about their residency and housing in Hungary by applying a "Canadian lens".¹⁹ The RPD did not err in finding that the Appellants' evidence concerning their residency and housing in Hungary was internally inconsistent.
- Employment history
- [18] The Appellants also criticize the RPD's findings concerning their employment history in Hungary as "microscopic and erroneous".²⁰ They submit the RPD failed to appreciate "the employment situation for Roma in Hungary" and submit further that country conditions evidence supports a finding that the Appellants working for the XXXX XXXX XXXX XXXX XXXX XXXX XXXX, made them targets for discrimination on the basis of their Roma ethnicity.²¹
- [19] The RPD found discrepancies between the Appellants' complaints in their BOC narrative about their inability to access gainful employment in Hungary and statements they made to Canada Border Services Agency (CBSA) officers upon arriving in Canada about their employment history in Hungary.
- [20] I agree with the Appellants' submission that the RPD's analysis of the Appellants' employment history focused only on the statements the Appellants made to CBSA officials at the border. Moreover, the RPD's assertion that it describes the female Appellants' unemployment as "a significant and chronic problem for the females in the family" is something of an exaggeration. Despite this, I find that the RPD was right to consider the evidence of the Appellants' past employment in Hungary in light of their allegations that the discrimination they experienced as Roma in Hungary frustrated their ability to support themselves by working.
- [21] My independent assessment of the Appellants' employment history has considered their testimony alongside the content of their intake forms. From XXXX 2007 to XXXX 2016 XXXX worked seasonally as a XXXX through XXXX XXXX XXXX XXXX, and thereafter trained as a XXXX XXXX from XXXX 2016 until XXXX 2017, before starting work as a XXXX with a private company in XXXX 2017 - a position she held until leaving Hungary for Canada.²² In her CBSA intake interview she confirmed that she had been working in Hungary as recently as two weeks before coming to Canada²³, and stated in another interview that until XXXX 2017 she "worked for a XXXX XXXX XXXX" in "XXXX XXXX XXXX XXXX XXXX XXXX".²⁴
- [22] This is a much more complete summary of the female Appellants' employment history than the one set out in the Appellants' BOC narrative, which states simply that XXXX "worked as a XXXX XXXX [...] for about two to three months every year since about 2010" through XXXX XXXX, a municipal "XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX"²⁵, while in 2011 XXXX "was doing XXXX work at a XXXX XXXX through XXXX."²⁶

- [23] XXXX employment appears to have been limited: from XXXX 2013 until XXXX 2014 XXXX worked as a XXXX with a private company, before being unemployed until she left Hungary in 2017.²⁷ However she was enrolled in a training program from XXXX 2015 to XXXX 2017.²⁸ I note that the Appellants do not dispute the RPD's finding that there were inconsistencies in the Appellants' evidence concerning XXXX and XXXX respective educational backgrounds.²⁹
- [24] The totality of the evidence shows the female Appellants, save for XXXX (who graduated from high school shortly before arriving in Canada), had a history of employment in Hungary that spans several years. While their employment prospects may not have been "excellent"³⁰, the evidence shows that they were able to support themselves through employment in Hungary. It also shows that they were able to access education and training well into adulthood.
- [25] The RPD rejected the Appellants' explanation that they embellished their education "to make themselves appear in a more positive light"³¹, finding that the embellishment served "no logical purpose".³² The Appellants submit they gave reasonable explanations for embellishing their refugee intake forms and that their explanation was "reasonable in the context in which those statements were made".³³
- [26] I agree with the RPD that the Appellants' explanation that they wanted to make themselves appear in a more positive light is not logical. If the account of their employment and education history they gave to CBSA upon entering Canada was exaggerated, they could have amended their intake forms before their RPD hearing, or acknowledged the embellishment in their BOC narrative.
- [27] Based on these inconsistencies, it was open to the RPD to find that the Appellants' credibility as witnesses was undermined. The Appellants have not substantively disputed the RPD's decision to extend this finding to the Appellants' allegations that they were the targets of anti-Roma violence in Hungary³⁴, and based on the preceding analysis I see no reason to disturb that finding.
- [28] In summary, I reject the Appellants' submissions that the RPD erred in its assessment of their credibility. Based on my independent assessment of the evidence, it was open to the RPD to find that the Appellants were not credible witnesses concerning matters that were relevant and material to their allegation that they faced anti-Roma discrimination in Hungary that rose to the level of persecution - this allegation being central to their claim. The Appellants' medical issues in Hungary
- [29] The Appellants submit further that the RPD ignored and dismissed the medical records concerning the principal Appellant's medical condition³⁵, which in their view showed that they were discriminated against by Hungary's health care system, and that this is evidence of discrimination amounting to persecution.

- [30] I am aware of evidence which shows the principal Appellant XXXX worked as a XXXX in Hungary before going on disability leave for medical reasons.³⁶ XXXX reported being on disability benefits for ten years from XXXX 2007 until leaving Hungary for Canada in November 2017. I also note, however, that when interviewed by CBSA upon his arrival in Canada XXXX indicated that he took medication "for diabetes, kidney problems, high blood pressure" and that he had the medications he needed with him upon his arrival.³⁷ This is consonant with the statement in his BOC narrative, that "[t]he amount from [his] disability pension [in Hungary] allowed [the Appellants] to make ends meet and buy [XXXX] medication."³⁸
- [31] This, alongside his statements to CBSA that XXXX and XXXX were also in possession of the medications that they needed upon arriving in Canada from Hungary indicates that the Appellants were able to access Hungary's medical system to the extent that they were able to obtain medications that they needed to address some of their health conditions. While this does not mean that they would never have experienced discrimination in Hungary's health care system, as they alleged before the RPD, it fails to "[prove] that [the Appellants were] not treated properly in Hungary"³⁹ specifically because they are Roma in dealing with their medical issues.
- [32] The only objective medical evidence are notes from doctors in Canada⁴⁰ who have assessed XXXX condition. The RPD's Reasons discuss XXXX medical records from Canada in light of his allegation that his health conditions are the product of him having limited access to medical care in Hungary due to systemic anti-Roma discrimination.⁴¹ Having independently assessed the medical notes⁴², I agree with the RPD that they fail to support a finding that the principal Appellant's pre-existing conditions were not "properly managed or followed"⁴³ specifically due to anti-Roma discrimination in Hungary.
- [33] I have considered the Appellants' submission that the RPD "failed to truly consider the claims on cumulative grounds" instead treating them as "separate incidences of discrimination."⁴⁴ I do not agree with the Appellants that the RPD erred as they alleged.
- [34] Rather, the RPD tested the Appellants' evidence to determine if it was credible enough to support a finding that they had experienced the incidents of targeting and discrimination in the social areas of housing, education and employment, as they alleged. It was logical for the RPD to want to assess whether the Appellants' specific allegations of discrimination were credible before determining whether these alleged experiences of discrimination, taken cumulatively, rose to the level of persecution.
- [35] The Appellants submit the RPD nonetheless had "an obligation [...] to assess the risk they faced independent of any credibility issues" based on their residual profile as Roma persons from Hungary.⁴⁵ While the Federal Court of Canada acknowledges that "persecution can be established by examining the treatment of similarly-situated individuals" it also confirms that where a negative credibility finding has been made, this finding is determinative⁴⁶ -- as it is in the present matter.

- [36] In this case, the mere fact that the Appellants are Roma persons from Hungary did not require the RPD to find them to be Convention refugees simply because the Appellants pointed to evidence of Hungary's poor human rights record vis-à-vis its Roma citizens. I reject the Appellants' submission that the RPD "was still required to take into account [their] established [Roma] identity and membership in the Roma ethnic group"⁴⁷ in quoting the Federal Court: In the case at bar, the Board member concluded that the Applicants testimony was contradictory and inconsistent, which undermined their credibility. This conclusion remains unchallenged. As a result, there was no basis for the Applicant's subjective fear of persecution. The Applicants only presented evidence of a general nature in support of their allegations of a general climate of intolerance and discrimination against Romani individuals. This is not enough to conclude that the Applicants are Convention refugees or persons in need of protection.⁴⁸
- [37] As the Appellants have failed to show that the RPD erred in its determination of their claim, their appeal fails.

CONCLUSION

- [38] 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 section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). (signed) "S. Thompson" S. Thompson January 30, 2020 Date 1 Exhibit RPD-1, RPD Record, RPD Reasons, p. 8 at para. 15. 2 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93. 3 Exhibit RPD-1, RPD Record, Exhibit 2, p. 51 at para. 2. 4 Exhibit RPD-1, RPD Record, Exhibit 2, p. 51 at para. 2. 5 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 5 at para. 7 ("Residential History"). 6 Exhibit RPD-1, RPD Record, Exhibit 1, pp. 64, 73. 7 Exhibit RPD-1, RPD Record, Exhibit 1, p. 64. 8 Exhibit RPD-1, RPD Record, Exhibit 1, p. 73. 9 Exhibit RPD-1, RPD Record, Exhibit 1, p. 91. 10 Exhibit RPD-1, RPD Record, Exhibit 1, pp. 101-102. 11 Exhibit RPD-1, RPD Record, Exhibit 1, p. 135. 12 Exhibit RPD-1, RPD Record, Exhibit 1, p. 101. 13 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 17 at para. 19. 14 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 7 at para. 8. 15 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 17 at para. 18. 16 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 17 at para. 19. 17 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 5 at para. 7. 18 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 6 at para. 7. 19 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 17 at para. 19. 20 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 20 at para. 25. 21 Exhibit P-2, Appellants' Record, Appellants' Memorandum, pp. 18-19 at paras. 20-22. 22 Exhibit RPD-1, RPD Record, Exhibit 1, p. 72. 23 Exhibit RPD-1, RPD Record, Exhibit 1, p. 120. 24 Exhibit RPD-1, RPD Record, Exhibit 1, p. 121. 25 Exhibit RPD-1, RPD Record, Exhibit 2, p. 51 at para. 5. 26 Exhibit RPD-1, RPD Record, Exhibit 2, p. 52 at para. 7. 27 Exhibit RPD-1, RPD Record, Exhibit 1, p. 100-101. 28 Exhibit RPD-1, RPD Record, Exhibit 1, p. 100. 29 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 6 at para. 7. 30 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 8 at para. 15. 31 Exhibit RPD-1, RPD Record, RPD

Reasons for Decision, p. 6 at para. 8. 32 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 7 at para. 9. 33 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 20 at para. 26. 34 Exhibit RPD-1, RPD Record, p. 9, at paras. 17-18. 35 Exhibit P-2, Appellants' Record, Appellants' Memorandum, pp. 21-22 at paras. 29-30. 36 Exhibit RPD-1, RPD Record, Exhibit 2, p. 51 at para. 5. 37 Exhibit RPD-1, RPD Record, Exhibit 1, pp. 143-144. 38 Exhibit RPD-1, RPD Record, Exhibit 2, p. 51 at para. 4. 39 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 22 at para. 30. 40 Exhibit RPD-1, RPD Record, Exhibit 5, pp. 231, Exhibit 6, 234. 41 Exhibit RPD-1, RPD Record, RPD Reasons for Decision, p. 9 at para. 19. 42 Exhibit RPD-1, RPD Record, Exhibit 5, pp. 231, Exhibit 6,, 234. 43 Exhibit RPD-1, RPD Record, Exhibit 5, p. 231. 44 Appellants' Record, Appellants' Memorandum, p. 22 at para. 32. 45 Appellants' Record, Appellants' Memorandum, p. 26 at para. 42. 46 See e.g. *Dudu v Canada (Citizenship and Immigration)*, 2014 FC 626 (Strickland J). 47 Appellants' Record, Appellants' Memorandum, p. 28 at para. 44. 48 *Kanto v Canada (Citizenship and Immigration)*, 2012 FC 1049 at para. 38 (de Montigny J).

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