

Federal Court



Cour fédérale

**Date: 20150511**

**Docket: IMM-3933-14**

**Citation: 2015 FC 619**

**Toronto, Ontario, May 11, 2015**

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

**BETWEEN:**

**ROZALIA PETER  
SZINDI LENA PETER  
LASZLO JOZSEFNE BERCZE  
VIKTOR BERCZE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] The Applicants in the present Application are members of a family composed of the principal claimant, her minor child, her common-law husband and his mother, all Romani citizens of Hungary who claim protection because of subjective and objective fear that, should they be required to return to Hungary, they will suffer more than a mere possibility of persecution under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, or

probable risk under s. 97 at the hands of the Hungarian Guards and her former common-law husband, the father of the minor claimant.

[2] The Refugee Protection Division of the Immigration and Refugee Board (RPD) accepted the Applicants' identity but made negative findings of credibility with respect to the evidence tendered by each adult applicant of past persecution suffered in Hungary. Nevertheless, with respect to prospective risk should the Applicants be required to return to Hungary, the RPD made the following acknowledgement supported in the decision by the quotation of extensive detailed evidence:

I acknowledge that there is information in the country documentation to indicate that there is widespread reporting of incidents of intolerance, discrimination and persecution of Romani individuals in Hungary.

(Decision, para. 63)

[3] As a result, the RPD made the following findings:

It is against this background and in taking into consideration the particular circumstances relating to this claim that I must determine whether or not adequate state protection exists for this [sic] particular claimants in Hungary. The Court has indicated that it is not enough to say that steps are being taken that some day may result in adequate state protection. It is what state protection is actually provided at the present time that is relevant. "Regard must be given to what is actually happening and not what the state is endeavouring to put in place." Any efforts must have "actually translated into adequate state protection" at the operational level.

(Decision, paras. 70 and 71)

[4] Further, as a result, the RPD made the following finding with respect to the existence of state protection in Hungary:

I recognize that there are some inconsistencies among several sources within the documentary evidence; however, the objective evidence regarding current country conditions suggests that, although not perfect, there is adequate state protection in Hungary for Roma who are victims of crime, police abuse, discrimination or persecution, that Hungary is making serious efforts to address these problems, and that the police and government officials are both willing and able to protect victims.

[Emphasis added] (Decision, para. 75)

[5] With respect to the RPD's findings, the Applicants make two basic arguments: the negative credibility findings of past persecution are perverse; and the finding that adequate state protection exists in Hungary is unintelligible. For the reasons that follow, I agree with both arguments.

#### I. The Negative Credibility Findings

[6] As an introduction to the making of a set of negative credibility findings, the RPD made the following statement:

Credibility is an issue to be considered in all claims before the Immigration and Refugee Board (IRB). In order to determine whether the claim is well-founded, I must find, on a balance of probabilities, that the evidence is credible and trustworthy. A claimant's testimony is presumed to be true unless there are valid reasons to doubt its truthfulness. The existence of contradictions, discrepancies, and implausibilities in the evidence of a claimant is a well-accepted basis for a finding of a lack of credibility. A general finding of lack of credibility may extend to all relevant evidence emanating from an applicant's testimony.

In assessing credibility, I was mindful of the claimants' ages, education, and background. In addition, I am cognizant of the difficulties faced by a claimant in establishing a claim, including cultural factors, the milieu of the hearing room, and the stress inherent in responding to oral questions through an interpreter. I

have taken these considerations into account in arriving at my negative credibility findings.

I have serious credibility concerns in regard to each of the adult claimants.

[7] In the introduction to the decision, the RPD correctly states the cardinal principle of making a credibility finding: a claimant's testimony is presumed to be true unless there are valid reasons to doubt its truthfulness [*Maldonado v Canada (MCI)*, [1980] 2 F.C. 302]. However, with respect to the balance of the introduction, I wish to express this caution. To find that a person is lying is a serious matter. Convincing reasons must support reaching such a conclusion. It is not every contradiction, discrepancy, or inconsistency that can ground such a finding. Each such incident must be carefully considered in the context in which it arises to reasonably and fairly determine whether its existence is evidence going to prove that a lie has been, or is being, told. If such a conclusion is reached, the reasons for reaching it must be carefully and clearly explained. Some twenty-four years ago, Justice Heald confirmed this requirement in *Hilo v. Canada (Minister of Employment & Immigration)* (1991), 15 Imm. L.R. (2d) 199 (C.A.) (*Hilo*):

In my view, the Board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The Board's credibility assessment quoted supra is defective because it is couched in vague and general terms.

The RPD's "serious credibility concerns" concluding in negative credibility findings are repeated immediately below, followed by my concerns about the quality of the decision-making undertaken.

A. *Regarding the Principal Claimant (Rozalia)*

[8] First, the RPD addressed Rozalia's credibility:

Claimants' counsel indicated that the principal claimant suffered from panic attacks. Therefore during the hearing I allowed the claimant to have a break whenever she needed one. I also attempted to minimize the number of questions directed at the claimant.

The claimant testified that she fears the Guardists and the father of the minor claimant. The claimant described how her former common-law husband, the father of the minor claimant, did not want her to give birth to the child and wanted her to have an abortion. His parents also threatened her unless she got an abortion because they did not want their son, who is in [sic] a non-Roma, to have a Roma child. The claimant went into some detail in describing how [sic] how this man was on drugs and even attacked her father. She testified that he used to stalk her and sit in front of her house, and when she called the police they would come and just release him a few blocks away. She stated that she was always afraid that he would kidnap the child when she went to school. She testified that this behavior continued even after she started living with her present common-law husband Viktor in 2007. She testified that she wanted to contact the police, but did not do so because they do not do anything in regard to cases of domestic violence unless there is blood.

She testified that he is still interested in locating her and has been harassing and threatening her parents. In fact, she submitted a letter from her parents to that effect. However in her CIC application for refugee protection, the claimant indicated that she has no idea where the father of the minor claimant is. She indicated further that when she got pregnant her daughter's father disappeared and he has never seen the child, and that she has the custody papers from the court stating that the father is unknown. The claimant had no explanation for the inconsistency, and said that she doesn't know why she indicated that he disappeared. I draw negative [sic] inference.

The claimant also gave confusing explanation as to why she fabricated the name of her daughter's father on the birth certificate. She testified that when she was getting a letter confirming custody that she was told that she had to fill in the father's name in the application, and that therefore she entered her own father's name, but with a different birthday that [sic] her father. She testified that

she obtained a new birth certificate for her daughter that actually had the child's grandfather's name on it and a birthday that she made up. I do not find the claimant credible that the authorities would actually ask her to provide false information or [sic] an official document.

I find that the claimants lack of credibility in regard to her daughter's father makes me question the veracity of the rest of her allegations. Since the claimant has no corroborative evidence, such as police reports or medical reports, to indicate that she was actually attacked, I find, on a balance of probabilities, that these incidents never actually happened as she alleges.

[Emphasis added] (Decision, paras. 37-40)

Thus, the RPD made three negative findings with respect to Rozalia's evidence, each of which will be addressed in turn.

[9] As to the "inconsistency" of Rozalia's evidence concerning her knowledge of the whereabouts of her daughter's father, as a possible explanation Counsel for the Applicants points to the dates of the two elements of evidence. The letter from Rozalia's parents post-dates her statements upon arrival in Canada; Rozalia entered Canada on June 26, 2011, and the letter is dated November 5, 2012. I accept Counsel for the Applicants' argument that the date details act to undermine the RPD's finding that an inconsistency exists in Rozalia's evidence.

[10] As to Rozalia's attributed statement that "she doesn't know why she indicated that he disappeared," there is no detail in the decision as to precisely what was said, where and when the statement was made, nor the context in which it was made. As a result, I find it is an error in fact-finding for the RPD to have used the statement in reaching a conclusion on credibility.

[11] As to Rozalia's conduct in registering her daughter's birth, on the evidence quoted there is no suggestion that she was told to provide false information; she did what she did for reasons of her own. To arrive at any other conclusion on the evidence, including the one attributed to her by the RPD, is perverse.

[12] As to extending the three negative findings to impugn the whole of Rozalia's evidence, I find that the RPD engaged in an unreasonable over-extension. In my opinion, for independent negative credibility findings to rise to a level of concern that warrants extending them to a global negative credibility finding, which essentially eradicates a claimant's claim for protection, requires far stronger supportable reasons for concern than those delivered by the RPD with respect to Rozalia's evidence.

[13] For the reasons provided, I find that the evaluation of Rozalia's evidence was conducted in reviewable error.

B. *Regarding Viktor Bercze (Viktor)*

[14] Second, the RPD addressed Viktor's credibility:

The claimant testified that the precipitating incident that caused him to leave Hungary occurred on June 8, 2011 when he was in a car accident. The claimant described how his car was hit from behind by another car when he was stopped at a stop sign, how he got out and then was attacked by two men who were in the other car. These two men called him a "stinking gypsy" and beat him. He testified that these two men were wearing Hungarian guard vests.

The claimant was asked whether he believes that this was an accident. He responded that he does not know that he believes that it was done on purpose. When it was noted for the claimant that these two men would not have known that he was Roma when they

hit him, the claimant then responded that they would know he was Roma by his appearance and then he changed his mind and said that he does not know. I find that it's unlikely that they would have known he was Roma if they were following behind. Since the claimant testified that the other car sustained some damage to its bumper, he was asked why these two men would purposely cause damage to their own car. Again the claimant responded that he does not know.

The claimant provided a police report in regards to this incident. It is presumed that the information in the police report would have originated with the claimant. However there are inconsistencies between the police report and the claimant's testimony. The claimant testified that he was stopped at the stop sign when he was hit from behind, whereas the police report indicates that he was decelerating, and not that he was stopped when he was hit from behind. The claimant had no explanation for the inconsistency, only reiterating that he was stopped. I find it would be reasonable to expect that the police would have indicated that he was stopped if that was what the claimant had told them.

In regard to the same incident the claimant testified that he got into his car and started driving away, but before he could get away the two men came and damaged his car. The claimant was asked if he saw the men get into their car and drive away. He responded that he did not, because he was the first who took off. However the same police report indicates that the two men sat in the car and then drove away. The claimant had no explanation for the discrepancy, only reiterating that he does [sic] what happened in that he took off right before they did.

Since this was the precipitating event that made the claimant leave Hungary, I find that his recollection of the events and what he told the police should be consistent. I draw a negative inference.

The claimant testified that he went to the Roma self-government organization allegedly for getting help in respect of legal matters concerned with the car accident. However the claimant was very vague as to what he expected them to do. He testified that he did not know what he wanted them to do because police did not help him. He was asked if the Roma community did not help him because they didn't have the opportunity to help or because they did not want to help him. The claimant responded that he felt that they could not help him. However in his PIF the claimant indicated that they did not help because they were afraid of losing their jobs, and therefore did not want to help him. As a way of explaining the inconsistency, the claimant stated that what is written in the PIF is



not correct and did not explain [sic] inconsistency. I draw negative [sic] inference.

In fact, the claimant testified that the last major problem he had was in the year 2000, when he alleges that he was attacked by security guards at a disco club. There is no indication that he was attacked because he was Roma; he could have been attacked, for example, if he had become unruly. What is obvious is that in the previous 11 years he was able to work, more or less continuously. He was involved with the Roma self-government organization. He must have earned good money because he was able to engage in his hobby of diving, traveling to several countries for diving, including Croatia, Austria and Egypt. He also indicated that as a child he traveled to Spain and Germany for holidays.

[Emphasis added] (Decision, paras. 41-47)

Thus, the RPD made four negative findings with respect to Viktor's evidence, each of which will be addressed in turn.

[15] As to the RPD's finding that "it's unlikely that they would have known [Viktor] was Roma if they were following behind", the RPD is speculating that the incident occurred for a reason other than persecution. The implausibility finding, which grounds this speculation, is unsupported conjecture delivered completely out of context. Viktor's account of the severity and duration of the violence supports the conclusion that the incident was based in persecution. In my opinion, the RPD's failure to consider the evidence in context negates its evaluation of the incident.

[16] As to whether Viktor said he was "stopped" as opposed to "decelerating," the RPD's fixation on a perceived difference exposes a willingness to engage in aggrandizing minutia to the point of making a finding that Viktor is lying about the whole incident. In my opinion, this

element of the RPD's decision is perverse fact-finding. The finding that "it would be reasonable to expect that the police would have indicated that he was stopped if that was what the claimant had told them" is merely speculation. Because the RPD's expectation is based on speculation, it is unreasonable.

[17] As to the "inconsistency" found by the RPD with respect to Viktor's experience with the Roma self-government organization, on a reasonable consideration of the evidence quoted, there is no inconsistency. Reasonably read together, the two statements identified go to establish the impotence of the organization. The RPD's unwillingness to consider this perspective cannot properly result in the ambiguous negative credibility finding, "I draw negative [sic] inference".

[18] In my opinion, the use of the phrase "I draw a negative inference" as a credibility finding does not conform to the standard required by the decision in *Hilo* as quoted above. The RPD was required to give specific reasons for finding that a credibility issue arises from the two statements quoted. It is simply not enough to find a perceived "inconsistency" and to use that perception as the basis of a negative credibility finding without providing a careful rationale.

[19] As to the RPD's dismissal of Viktor's evidence of being attacked in a bar in the year 2000, the only reason given by the RPD for not accepting his evidence is the fanciful statement that "there is no indication that he was attacked because he was Roma; he could have been attacked, for example, if he had become unruly". In my opinion, the RPD was required to consider the incident in context with the evidence it quoted in the decision of the horrific persecution of Roma in Hungary. The RPD's failure, presently under consideration, to

comprehend and consider this reality in receiving and concluding on Viktor's evidence constitutes capricious decision-making.

[20] For the reasons provided, I find that the evaluation of Viktor's evidence was conducted in reviewable error.

C. *Regarding Laszlo Jozsefne Bercze (Laszlo)*

[21] And third, the RPD addressed Laszlo's credibility:

The claimant described two major incidents that caused her great distress. I find that she was not credible in regard to either incident.

The first incident occurred in 2007 when her family went to the amusement park. The claimant testified that there was a right-wing party at the amusement park who attacked them, and that she tried to protect herself and her grandchildren but her older son was bleeding so they fled the scene. When the claimant was asked what happened to her grandchildren, she testified that they were running back and forth because they were scared. The claimant testified further that they went to get medical help for her son who was hurt, but that the doctor didn't even give them a bandage because he said there was no serious problem with her son. The claimant was asked if anyone else was hurt beside her son, she responded that no one else was hurt, and that her grandchildren were only scared and were not beaten up, although one of them had been pushed.

However when it was noted for the claimant that in her PIF she indicated that the Hungarian guard beat up her three sons and the grandchildren, the claimant then responded that there was a mistake in the PIF narrative, and that her son was the only one hurt. I draw a negative inference from the claimant's failure to explain inconsistency [sic].

The claimant testified that the second incident occurred on the same date as her son's car accident referred to above. In her PIF she indicates that this incident occurred in May 2011. The claimant was not questioned in regard to this discrepancy.

The claimant testified that on the evening of June 8, 2011, she was sitting on her porch and some skinheads came and attacked her.

They threw stones at her and spat at her. They called her a "stinky Gypsy" and said that she will die. The claimant went into her house and in the morning when her son came he told her that there was some graffiti on the house which said "you will die stinky Gypsy." The claimant called the police but they didn't seem to take the case seriously since they said perpetrators [sic] were unknown.

The claimant submitted a police report which refers only to the graffiti and nothing about the attack on the claimant. I do not find it credible that if the incident happened as alleged, that the police would have focused on some words instead of on the actual physical attack on the claimant.

In sum, I find that the claimants collectively were not credible in regard to their experiences of persecution in Hungary.

[Emphasis added] (Decision, paras. 48-53)

[22] Thus, the RPD made two negative findings with respect to Laszlo's evidence, each of which will be addressed in turn.

[23] As to the amusement park evidence and the negative inference drawn by the RPD from the perceived failure of Laszlo to explain the inconsistency in her evidence, I find that the RPD did not take sufficient care in reaching and expressing a conclusion. Laszlo gave an explanation for the inconsistency between her PIF and her evidence: a mistake was made in the PIF. She swore to the truth of this statement, and her statement must be accepted unless a reason is found not to believe her. On the face of the decision, the RPD failed to provide a reason. As was stated in the analysis of the RPD's findings with respect to Viktor, a "negative inference" finding is devoid of content. Reasons supported by evidence must be provided.

[24] As to the content of the police report, there is no evidence upon which a conclusion can be drawn as to why the report reads the way it does. The RPD's statement that "I do not find it

credible that if the incident happened as alleged, that the police would have focused on some words instead of on the actual physical attack on the claimant” is completely speculative. As a result, I find that the statement constitutes an unsupported implausibility finding (see: *Zakhour v Canada* (MCI), 2011 FC 1178).

[25] For the reasons provided, I find that the evaluation of Laszlo’s evidence was conducted in reviewable error.

## II. **The State Protection Finding**

[26] Further to the evidence of persecution of Roma in Hungary, and the RPD’s positive finding that state protection exists in Hungary as stated in paragraphs 2 to 4 above, in my opinion, there is no clear line of reasoning from the wealth of evidence that the state in Hungary does not provide adequate protection to Roma at the operational level, to the RPD’s conclusion that it does; the reasoning leading to the conclusion is unintelligible. As a result, I find that the RPD’s finding that the Applicants failed to rebut the presumption of state protection is not reasonable, and the decision under review is not defensible in respect of the facts and law (see: *Hanko v Canada* (MCI), 2014 FC 474).

## III. **Conclusion**

[27] For the reasons provided, I find the decision under review is unreasonable.

**ORDER**

**THIS COURT ORDERS** that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

---

Judge

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

**DOCKET:** IMM-3933-14

**STYLE OF CAUSE:** ROZALIA PETER, SZINDI LENA PETER,  
LASZLO JOZSEFNE BERCZE, VIKTOR  
BERCZE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 5, 2015

**ORDER AND REASONS:** CAMPBELL J.

**DATED:** MAY 11, 2015

**APPEARANCES:**

James Gildiner FOR THE APPLICANTS

Prathima Prashad FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

James Gildiner FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada