

Federal Court



Cour fédérale

**Date: 20150618**

**Docket: IMM-1772-14**

**Citation: 2015 FC 764**

**Ottawa, Ontario, June 18, 2015**

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

**BETWEEN:**

**LIDIA RYVINA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA or the Act] of a decision by the Refugee Protection Division [the Board or the Board Member] that the applicant is not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act.

[2] The applicant is seeking to have the Board's decision quashed and the matter remitted back for re-determination by a differently constituted panel.

[1] For the reasons that follow, the application is dismissed.

## II. Background

[2] The applicant, Ms. Lidia Ryvina, is an 83 year-old citizen of Russia who resided in St. Petersburg, Russia. The applicant alleges that she and her late husband, Mr. Volodar Ryvin, were persecuted by anti-Semitic elements in Russia.

[3] The applicant alleges that they began to receive threatening letters and phone calls in 2008 and that the doors to their apartment later began to be vandalized with anti-Semitic graffiti, which prompted them to make a complaint to the police. The officer was dismissive towards them and refused to open a file. Some of their Jewish friends reported similar treatment. They continued to receive threats but, believing that the perpetrators would not do anything more drastic, they decided to try to live with it.

[4] In the summer of 2010, the applicant and her husband decided to spend the summer months at a cottage, hoping to temporarily escape the harassment in St. Petersburg. However, many people in the surrounding area knew that the applicant and her husband are Jewish and she alleges that they experienced hostility there as well. They considered returning home, but instead decided to stay and try to be as inconspicuous as possible.

[5] The applicant alleges that on August 10, 2010, she and Mr. Ryvin were confronted by a group of young men with clean-shaven heads. The men yelled anti-Semitic threats and insults at the couple. Mr. Ryvin tried to stand up to their attackers, but he was pushed to the ground and hit his head, losing consciousness. The men spit on them several times and two of the men kicked them on the ground.

[6] The applicant and her husband were taken to hospital, where she told the staff that her husband's injuries were due to an attack and a local police officer was called. However, the applicant found the officer to be disinterested. On August 13, 2010, Mr. Ryvin succumbed to his injuries without regaining consciousness. She did not have any serious injuries.

[7] The applicant alleges that she went to the police station after Mr. Ryvin's death to insist that it be investigated as a murder and she learned that nothing had been done yet to investigate the attack. Mr. Ryvin's death certificate was issued on August 17, 2010, which the applicant alleges is an unusual delay that is indicative of an investigation. The police informed the applicant on August 23, 2010 that there had been an investigation and that they had not found any criminal basis for the incident. The applicant asserts that she felt that she had nowhere else to turn, since any complaint made to the prosecutor's office would be sent back to the same police department.

[8] The applicant alleges that she was verbally and physically attacked by a Russian man after visiting her husband's grave in a Jewish cemetery in St. Petersburg on September 23, 2010. He hit her on the forehead with something that looked like a brass knuckle and she fell to the

ground. The man ran away and she was taken to hospital. She reported this incident to the police and made a statement, but the officer was indifferent towards her and did not take any action.

[9] She alleges that she continued to receive threats and insults by letter and phone and that anti-Semitic graffiti continued to be painted on her apartment door. When she tried to follow-up with the police about the investigation of the September 23 incident, she was told that the police had no evidence that her story was true and the officer implied that she had made up the incident because she was a senior citizen looking for attention. When she asked whether the police could provide any protection, the officer told her that “the police did not have enough manpower to protect every panic-stricken Jew” and kicked her out of the office.

[10] The applicant’s son, Mr. Yakov Ryvin, lives in Canada and he invited her for a visit in the fall of 2010. At this point, she had not told him about the attack that led to his father’s death or about the harassment and persecution they had been suffering in Russia, allegedly due to her fears that calls abroad were under surveillance. She was issued a visitor visa on November 20, 2010 and arrived in Canada on December 8, 2010. After telling her son what had transpired in Russia and consulting with Jewish Immigration Aid Services, she made a claim for refugee protection on December 10, 2010.

[11] At the RPD hearing, the applicant was accompanied by her son Yakov and was represented by counsel. She began testifying through an interpreter, but there was an issue when she did not clearly answer the Board Member’s question about when she arrived in Canada. At that point, the Board Member asked Yakov if he knew the facts of the case and Yakov indicated

that he did. The Board Member asked the applicant's then-counsel if he wanted to make representations about getting Yakov to be the designated representative, to which her counsel responded that "[it] may be necessary if she continues in this way," but indicated that the applicant may not have understood the question (Certified Tribunal Record [CTR] at 395). The Board Member agreed that this was possible and continued questioning the applicant. After a few more questions about how and why she had left Russia, the applicant's former counsel suggested that Yakov be designated as her representative as it "would be more effective" since "clearly the lady's memory is not what it was" (CTR at 396). The Board Member agreed and told Yakov that if he was designated, he would have to give testimony on her behalf. Yakov agreed to do so. The applicant's former counsel then suggested that since there was a designated representative, the applicant no longer "needs to even be involved, she can sit back and relax" (CTR at 396). The Board Member asked that the applicant stay beside her son and indicated that they should proceed in Russian so that she could understand.

### III. Impugned Decision

[12] The applicant's claim was refused on February 19, 2014. The decision focused on two issues: credibility and state protection.

#### A. *Credibility*

[13] The Board took issue with Yakov's evidence regarding his father's cause of death. The Board Member noted that he testified that he had not been told the circumstances surrounding

the death, but that he had enquired about the cause of death. A friend who had spoken to the doctor told Yakov that his father had been taken to hospital and was there for three days and that the doctor “spoke about his kidneys, never mentioned the injury, they wrote something about the kidneys because he was there without refrigeration” (Decision at para 9). His friend had explained that his father had spots on his skin, so they thought he had suffered from kidney failure. The Board found these answers to be “somewhat vague and incoherent” and found that it was unreasonable that Yakov did not speak directly to any of his father’s doctors in Russia, since this could have been done by telephone (Decision at paras 9-10). The Board found it “instructive” that Yakov was satisfied with his friend’s explanation and saw no need for further enquiry until his mother arrived in Canada with a different story. On this basis, the Board found that “he was indeed told how his father died, even if what his mother has since told him was very different” (Decision at para 12).

[14] The Board found Yakov’s testimony to be contradictory since he had first said that no one told him how his father died and then he says that a friend told him that his father died of “some kidney failure” (Decision at para 13). The Board therefore rejected the applicant’s claim that her husband was murdered and found on a balance of probabilities that:

...she has used the fact that her husband died from natural causes, and through manipulation of those facts concocted a story that her husband was attacked, pushed, that he fell and hit his head and three days later died of his injuries [sp], which undermines her credibility”

(Decision at para 14).

[15] In support of this finding, the Board noted that the applicant had not produced the document referred to by Yakov's friend or any medical reports. The Board found it "reasonable to assume that the [applicant's] husband's death was from natural causes – kidney failure" because there was no mention of kidney failure or any cause of death on the death certificate and Yakov's friend told him that the doctor "wrote something about kidneys" and that the doctor "thought he had kidney failure" (Decision at para 15). The Board concluded that the applicant's allegation about her husband's death was a fabrication to enhance her claim.

[16] The Board also noted that despite the applicant's evidence in the PIF that she had reported the attack to the police and followed up at the police station, Yakov testified that she had given signed statements to the police but she was not given any official documentation in return. The Board found that if she had actually given signed statements to the police, on a balance of probabilities, they would have at least given her a copy of her statement.

[17] The Board drew another negative inference based on Yakov's testimony that his mother had gone to the prosecutor's office to complain about the police officer's conduct, since that was not included in the applicant's PIF. The Board did not accept Yakov's explanation that his mother had told him she was "checking it out with the prosecutor's office" since he did not know what was going on with his parents in Russia before she came to Canada and the applicant had written in her PIF that "even if I went with a complaint to the prosecutor's office, the rules are that they send it to the police department against which you complain" (Decision at para 17). The Board found Yakov's answers on this issue vague and confusing.

[18] The Board also rejected the applicant's evidence that the police likely did an investigation into her husband's death since the death certificate was issued later than usual, saying that she was "merely setting the [stage] to make the point that the police told her that they "didn't find anything suspicious or criminal" about her husband's death after their investigation" (Decision at para 23). The Board disbelieved her evidence since there was "absolutely no persuasive evidence before [the Board] that the claimant and her husband were physically attacked on August 10, 2010. In fact, there is absolutely no independent evidence before this panel that the claimant and her husband experienced anything she alleged that they did in terms of persecution" (Decision at para 23).

[19] The Board found that "on a balance of probabilities...the claimant's story of persecution was based on exaggerations and embellishments and the DR was central to the fraud," citing Yakov's testimony that his parents had thrown the threatening letters in the garbage (Decision at para 24). The Board found this unreasonable, since the letters were evidence in an alleged criminal matter and the applicant, though elderly, was educated, and if they had received such letters and made police complaints, then on a balance of probabilities they would have given the letters to the police. The Board found "on a balance of probabilities that the claimant made up the story that they received threatening letters and telephone calls and that in the summer of 2008 their apartment doors were written up with graffiti."

[20] Based on the foregoing findings, the Board concluded that the applicant had fabricated or at least exaggerated several allegations of harm in order to advance her claim for refugee protection.



*B. State Protection*

[21] The Board acknowledged that there was evidence that racial and other forms of discrimination have been increasing in Russia, that certain groups in Russia continue to engage in violent hate crimes against ethnic and religious minorities, and that the efforts by state officials are inconsistent and often ineffective. However, the Board found that there was also evidence that the authorities were taking steps to address issues of police misconduct and that these actions were taking place at an operational level. Based on this information, the Board preferred the documentary evidence over the applicant's testimony that she had been persecuted and would be persecuted again if she returns to Russia.

[22] With regard to Russia's protection of its Jewish citizens, the Board found that violent attacks against Jewish persons were infrequent and that the state was making efforts to denounce anti-Semitism and investigate and prosecute crimes against Jewish citizens. However, the Board recognized that anti-Semitism is still a serious societal problem in Russia and that, despite the government's official stance on anti-Semitism, authorities do not always investigate racial motives for crimes which adds to the perception of impunity.

[23] The Board concluded that the applicant had not presented clear and convincing evidence that, on a balance of probabilities, the state would not be forthcoming with adequate protection.

IV. Issues

[24] The following issues arise in this application:

1. Did the Board Member err in his appointment of the Designated Representative?
2. Did the Board Member err in his assessment of the applicant's credibility?
3. Did the Board err in the state protection analysis?

V. Standard of Review

[25] The first issue raises questions of procedural fairness and natural justice, which are to be reviewed on the correctness standard (*Mission Institute v Khela*, 2014 SCC 24, [2014] 1 SCR 502 at para 79, [2014] 1 SCR 502; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43, [2009] 1 SCR 339). However, I adopt the hybrid standard recently enunciated by the Federal Court of Appeal in *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 245, 246 ACWS (3d) 191 [*Forest Ethics*] which provides that while the procedural fairness issue is to be determined on the correctness standard, but the Court must give some deference to the Board's procedural choices (see also: *Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paras 34-42, 455 NR 87 and *Maritime*

*Broadcasting System Ltd. v Canadian Media Guild*, 2014 FCA 59 at paras 50-56, 373 DLR (4th 167)).

[26] It is well-established that the Board's credibility findings are reviewed on the reasonableness standard (*Aguebor v Canada (Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA) [*Aguebor*], *Singh v Canada (Employment and Immigration)* (1994), 169 NR 107, 47 ACWS (3d) 799 (FCA)).

[27] The Board's assessment of state protection involves questions of mixed fact and law and is also reviewable in a standard of reasonableness (*Hinzman v Canada (Citizenship and Immigration)*, 2006 FC 420 at para 199, aff'd 2007 FCA 171 at para 38; *Rusznayak v Canada (Citizenship and Immigration)*, 2014 FC 255 at para 23; *Bari v Canada (Citizenship and Immigration)*, 2014 FC 862 at para 19, *Varon v Canada (Citizenship and Immigration)*, 2015 FC 356 at para 29).

## VI. Statutory Provisions

[28] The following provisions of the Act are applicable in these proceedings:

*Immigration and Refugee Protection Act*, SC 2001, c 27

**167.** (1) A person who is the subject of proceedings before any Division of the Board and the Minister may, at their own

*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27

**167.** (1) L'intéressé qui fait l'objet de procédures devant une section de la Commission ainsi que le ministre peuvent

expense, be represented by legal or other counsel.

se faire représenter, à leurs frais, par un conseiller juridique ou un autre conseil.

(2) If a person who is the subject of proceedings is under 18 years of age or unable, in the opinion of the applicable Division, to appreciate the nature of the proceedings, the Division shall designate a person to represent the person.

(2) Est commis d'office un représentant à l'intéressé qui n'a pas dix-huit ans ou n'est pas, selon la section, en mesure de comprendre la nature de la procédure.

**170.** The Refugee Protection Division, in any proceeding before it,

**170.** Dans toute affaire dont elle est saisie, la Section de la protection des réfugiés :

(a) may inquire into any matter that it considers relevant to establishing whether a claim is well-founded;

a) procède à tous les actes qu'elle juge utiles à la manifestation du bien-fondé de la demande;

...

...

(g) is not bound by any legal or technical rules of evidence;

g) n'est pas liée par les règles légales ou techniques de présentation de la preuve;

(h) may receive and base a decision on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances; and

h) peut recevoir les éléments qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sur eux sa décision;

(i) may take notice of any facts that may be judicially noticed, any other generally recognized facts and any information or opinion that is within its specialized knowledge.

i) peut admettre d'office les faits admissibles en justice et les faits généralement reconnus et les renseignements ou opinions qui sont du ressort de sa spécialisation.

[Emphasis added.]

[Soulignement ajouté.]

[29] The following provisions of the *Refugee Protection Division Rules*, SOR/2012-256 [the RPD Rules] are relevant to this proceeding:

20. (1) If counsel for a party or if an officer believes that the Division should designate a representative for the claimant or protected person because the claimant or protected person is under 18 years of age or is unable to appreciate the nature of the proceedings, counsel or the officer must without delay notify the Division in writing.

...

(4) To be designated as a representative, a person must

(a) be 18 years of age or older;

(b) understand the nature of the proceedings;

(c) be willing and able to act in the best interests of the claimant or protected person; and

(d) not have interests that conflict with those of the claimant or protected person.

(5) When determining whether a claimant or protected person is unable to appreciate the nature of the proceedings, the Division must consider any relevant

20. (1) Si le conseil d'une partie ou l'agent est d'avis que la Section devrait désigner un représentant pour le demandeur d'asile ou la personne protégée parce que l'un ou l'autre est âgé de moins de dix-huit ans ou n'est pas en mesure de comprendre la nature de la procédure, il en avise la Section sans délai par écrit.

...

(4) Les conditions requises pour être désigné comme représentant sont les suivantes :

a) être âgé d'au moins dix-huit ans;

b) comprendre la nature de la procédure;

c) être disposé et apte à agir dans le meilleur intérêt du demandeur d'asile ou de la personne protégée;

d) ne pas avoir d'intérêts conflictuels par rapport à ceux du demandeur d'asile ou de la personne protégée.

(5) Pour établir si le demandeur d'asile ou la personne protégée est en mesure ou non de comprendre la nature de la procédure, la Section prend en compte tout élément pertinent,

factors, including

notamment :

(a) whether the person can understand the reason for the proceeding and can instruct counsel;

a) la capacité ou l'incapacité de la personne de comprendre la raison d'être de la procédure et de donner des directives à son conseil;

(b) the person's statements and behaviour at the proceeding;

b) ses déclarations et son comportement lors de la procédure;

(c) expert evidence, if any, on the person's intellectual or physical faculties, age or mental condition; and

c) toute preuve d'expert relative à ses facultés intellectuelles, à ses capacités physiques, à son âge ou à son état mental;

(d) whether the person has had a representative designated for a proceeding in another division of the Board.

d) la question de savoir si un représentant a déjà été désigné pour elle dans une procédure devant une autre section de la Commission.

...

...

(9) Before designating a person as a representative, the Division must

9) Avant de désigner une personne comme représentant, la Section :

(a) assess the person's ability to fulfil the responsibilities of a designated representative; and

a) évalue la capacité de la personne de s'acquitter des responsabilités d'un représentant désigné;

(b) ensure that the person has been informed of the responsibilities of a designated representative.

b) s'assure que la personne a été informée des responsabilités d'un représentant désigné.

(10) The responsibilities of a designated representative include

(a) deciding whether to retain counsel and, if counsel is retained, instructing counsel or assisting the represented person in instructing counsel;

(b) making decisions regarding the claim or application or assisting the represented person in making those decisions;

(c) informing the represented person about the various stages and procedures in the processing of their case;

(d) assisting in gathering evidence to support the represented person's case and in providing evidence and, if necessary, being a witness at the hearing;

(e) protecting the interests of the represented person and putting forward the best possible case to the Division;

(f) informing and consulting the

(10) Les responsabilités d'un représentant désigné sont notamment les suivantes :

a) décider s'il y a lieu de retenir les services d'un conseil et, le cas échéant, donner à celui-ci des directives, ou aider la personne représentée à lui donner des directives;

b) prendre des décisions concernant la demande d'asile ou toute autre demande ou aider la personne représentée à prendre de telles décisions;

c) informer la personne représentée des diverses étapes et procédures dans le traitement de son cas;

d) aider la personne représentée à réunir et à transmettre les éléments de preuve à l'appui de son cas et, au besoin, témoigner à l'audience;

e) protéger les intérêts de la personne représentée et présenter les meilleurs arguments possibles à l'appui de son cas devant la Section;

f) informer et consulter, dans la mesure du

represented person to the extent possible when making decisions about the case; and

possible, la personne représentée lorsqu'il prend des décisions relativement à l'affaire;

(g) filing and perfecting an appeal to the Refugee Appeal Division, if required.

g) interjeter et mettre en état un appel devant la Section d'appel des réfugiés, si nécessaire.

[Emphasis added.]

[Soulignement ajouté.]

VII. Analysis

A. *Did the Board Member err in his appointment of the Designated Representative?*

[30] Whether the Board Member discharged his duties in authorizing the son to act as his mother's designated representative requires a careful consideration of how the Board Member responded to the situation that developed before him. I would paraphrase the relevant portion of the proceedings, as evidenced in the transcript, as follows:

- The Board Member ensures that the applicant and Russian interpreter understand each other;
- The applicant is represented by counsel;
- The Board Member reviews preliminary matters and asks the applicant whether she understands events and she replies affirmatively;



- The person observing the hearing in the room is identified as the son of the applicant;
- The Board Member asks a simple question about when the applicant arrived in Canada, which the claimant has difficulty answering;
- The Board Member asks the son whether he knows the facts of the case to which he responds affirmatively. The Board Member asks the applicant's lawyer whether he wishes to make representations to have the son designated as a representative. Counsel replies that "it may be necessary if she continues in this way," adding that the confusion may be because she did not understand the question;
- The Board Member asks further questions about the alleged threats, to which the applicant responded "Well they kept threatening me all the time but what type of threats or how and which way they threatened me, you know, I am very nervous right now;"
- At this point applicant's counsel states "let's designate the son as a representative, I think would be more effective, sir. Clearly the lady's memory is not what it was;"
- The Board Member indicates that he has the authority to appoint the son as the designated representative, meaning that the son would give testimony on his mother's behalf. The Member indicates that he thinks it might be in her best interest;
- To this suggestion, the applicant's counsel states that "it cannot hurt;"

- The Board Member asks the son whether he understands the reasoning, to which he replies affirmatively;
- The Board Member asks the son to pull up a chair and sit beside his mother;
- Applicant's counsel states because the son speaks English, the applicant does not need to be involved and can sit back and relax;
- The Board Member indicates that he wants the applicant to remain seated beside the son and does not want her ignored to the extent that she does not get to hear what is being said. The Board Member states that the proceedings will continue in Russian since the applicant does not speak English and he wishes her to understand the proceedings.
- The Board Member indicates to the applicant that if there is something the son does not know, she can provide it to the Member. He asks the applicant if that is okay and she replies in the affirmative;
- The son is sworn in to testify and is asked questions about to his mother's actions. At one point in the questioning, the son advises that he could not answer the question regarding the identity of the alleged assailants and asks the applicant, who advises on the record that she was unable to identify them; and
- In argument, the applicant's counsel points out the difficulty in testing credibility where the claimant is older and "clearly is not as good with her memory as she probably was

earlier in life” and states “this is why the Member gave us the consideration of allowing the son to testify...”

[31] On the basis of the foregoing summary of the relevant evidence from the transcript, the Court concludes that the applicant was having difficulty relating her narrative and both her counsel and the Member recognized this problem. After the Board Member’s initial offer to have the son testify on the applicant’s narrative and after she had further difficulty in testifying, her counsel requested that the son act as her representative. The son indicated that he knew his mother’s reasoning. It was agreed that it would be in her best interest for him to testify to relate her narrative.

[32] The Board Member ensured that the applicant remained involved in the events by rejecting her counsel’s suggestion that the proceedings be conducted in English, or that she should not sit beside her son while he testified. The applicant understood that she was there to advise her son as he testified. During the course of the testimony when her son could not answer a question, she provided the answer indicating she was engaged and understanding the proceedings.

[33] During closing argument the applicant’s counsel recognized the infirmities of the applicant in being able to relate her story, and in effect, thanked the Member for the consideration of permitting her son to provide the necessary evidence.

[34] I dismiss the applicant's arguments that the Board Member did not adhere or properly apply the requirements for designating her son as a representative to testify on her behalf. In considering this submission, I think it important to recognize that the provisions will apply differently in different circumstances.

[35] In this matter, where the applicant was represented by counsel, the issue only arose once the applicant attempted to testify and was experiencing difficulty in doing so. Accordingly, most of the matters discussed in Rule 20 have no application. This would include the requirements such as deciding whether to retain counsel and instructing counsel [Rule 20(10)(a)], making or assisting in making decisions regarding the claim or application [Rule 20(10)(b)], informing the represented person about the various stages and procedures in the processing of their case [Rule 20(10)(c)], assisting in gathering evidence to support the represented person's case [Rule 20(10)(d)], informing and consulting the represented person when making decisions about the case [Rule 20(10)(f)], and in filing and perfecting an appeal [Rule 20(10)(g)].

[36] In this particular case, the applicant son's role as a representative was limited to providing evidence, and if necessary, being a witness at the hearing [Rule 20 (d)], and also protecting the interests of the represented person in putting forward the best possible case [Rule 20 (e)].

[37] Before designating the representative, the Board Member appropriately assessed the applicant's ability to appreciate the nature of the proceedings in accordance with the section 167(2) of the Act. At this stage of the proceedings, the applicant was required to be capable of

sufficiently understanding the questions of the Board Member, as well as those of her lawyer, so as to be able to answer them.

[38] Moreover, this assessment was not made alone by the Board Member, but approvingly agreed to by the applicant's counsel, who must have understood that the case was in jeopardy if the applicant could not describe such basic circumstances as to how she had been threatened.

[39] The Board Member also met any requirement to ensure that the applicant's son understood the nature of the proceedings and was willing and able to act in his mother's best interests as required by Rule 20(4). The nature of the proceedings at this stage was obvious, as was the son's role to answer questions on her behalf. He was also willing and able to continue to act in her best interests, as evidenced by his supporting role throughout her refugee claim.

[40] The Board Member also discharged any requirement under Rule 20(9) to assess the son's ability to fulfill his responsibilities and to ensure that he been informed of those responsibilities. At this stage of the proceedings, the son's only responsibility was to testify in place of his mother, so that her narrative could be considered by the Board Member. He indicated that he was aware of her narrative. His role, to relate her story to the best of his abilities to the Board Member, could not have been clearer.

[41] In that capacity he carried out his role as a witness at the hearing by protecting the interests of his mother and putting forward the best possible case on her behalf, as required by Rules 20(10)(d) and (e).

[42] I also conclude that the decision of *Espinoza v Canada (Citizenship and Immigration)* (1999), 164 FTR 194 at para 29 does not apply to the present case. It reads as follows:

It is not enough that persons may be represented by counsel. Section 69.4 clearly states that it is the Board who shall designate a representative for the children and the Board should have addressed the issue to the applicant's counsel who could have been expected to have knowledge of the legal issues that could flow from such a designation, and in turn inform his clients so they would have the benefit of a fair hearing. What I mean by the above is that it is the responsibility of the Board, before designating a representative to ensure that the representative understands what is to be a representative and the consequences of being named a representative by the Board.

[Emphasis added.]

[43] In my view, there was no issue that the son understood that he was to be a witness testifying in the place of his mother, because she was experiencing difficulty in understanding and expressing her answers, and that he understood the consequences of his testifying on her behalf.

*B. Did the Board Member err in his assessment of the applicant's credibility?*

[44] The Court has little difficulty in rejecting the applicant's arguments that the Board's credibility findings were perverse or that the Board did not properly apply the law of state protection to her circumstances.

It is well-established that boards and tribunals are ideally placed to assess credibility, so the Board's credibility findings are to be given significant deference (*Aguebor* at para 4, *Lin v*

*Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13, *Fatih v Canada (Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82). In assessing the Board's credibility findings, the Court must consider whether the decision as a whole supports a negative credibility finding, not scrutinize sections of the decision in isolation (*Caicedo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1092 at para 30).

[45] The evidence was sufficient to support the Board Member's many adverse credibility findings, particularly with respect to the principal finding rejecting the applicant's claim that her husband was murdered by skinheads in Russia. On this issue, the applicant's evidence was significantly contradicted by that of her son, including his testimony that he was unaware that his father had been murdered until advised by his mother when she arrived in Canada three months later. He further stated that he was told in a telephone conversation with a friend in Russia that his father died of kidney failure and that the medical documentation, which was not produced, made reference to problems with his father's kidneys.

*C. Did the Board err in the state protection analysis?*

[46] Similarly, I can find no reviewable error in the Board's conclusions that the state protection for the applicant was inadequate in Russia. There were similar inconsistencies or serious shortcomings in the son's testimony regarding her efforts to seek state protection. In addition, the Board Member's review of the evidence of the actions taken by the Russian government at the legislative level and operational level to combat anti-Semitism and extremism was sufficient to support his conclusion that there is adequate state protection in Russia and that there were positive signs of progress.

VIII. Conclusion

Accordingly, for all the reasons discussed above, the application is dismissed. The parties indicated that no certified question was necessary and none shall be certified.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified for appeal.

"Peter Annis"

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Judge

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

**DOCKET:** IMM-1772-14

**STYLE OF CAUSE:** LIDIA RYVINA v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 14, 2015

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ANNIS J.

**DATED:** JUNE 18, 2015

**APPEARANCES:**

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FOR THE APPLICANT  
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