

Federal Court



Cour fédérale

Date: 20171005

Docket: IMM-1068-17

Citation: 2017 FC 882

Toronto, Ontario, October 5, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**SANDOR KALTENEKKER
SANDORNE KALTENEKKER
SANDOR KALTENEKKER JR.
ERZEBET LOVAS
MARIO GYORGY TOTH
JENNIFER ANDREA HERSICS**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

[1] On September 9, 2011, the Refugee Protection Division (RPD) rejected the Applicants' claim as Roma citizens of Hungary, and, as a result, the Applicants left Canada on August 30, 2012. The Applicants returned to Canada on June 20, 2016 and were provided with a Pre-

Removal Risk Assessment (PRRA) application. The present Application challenges the PRRA Decision, dated January 17, 2017, in which the Applicants' claim for protection was again refused.

[2] Counsel for the Applicants argues that the decision under review is rendered in error of law. In assessing the PRRA application, the Officer was required to correctly apply the requirement in s.113(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 that only "new evidence" is relevant.

[3] In seven findings with respect to the Applicants' evidence the PRRA Officer repeats the following phrase in rejecting the Applicants' evidence as new evidence: "I find that this evidence is materially the same as the evidence that was considered by the RPD" [Emphasis added] (Decision, Certified Tribunal Record, p. 10). Counsel for the Applicants argues that the Officer has misconstrued the meaning of the word materiality as that word is defined by the Federal Court of Appeal in *Raza v Canada (Minister of Citizenship and Immigration)* 2007 FCA 385 at paragraph 13:

Materiality: is the evidence material, in the sense that the refugee claim probably would have succeeded if the evidence had been made available to the RPD? If not, the evidence need not be considered.

[4] I agree with Counsel for the Applicants that the PRRA Officer's decision is made in error of law and is therefore unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1068-17

STYLE OF CAUSE: SANDOR KALTENEKKER, SANDORNE
KALTENEKKER, SANDOR KALTENEKKER JR.,
ERZEBET LOVAS, MARIO GYORGY TOTH,
JENNIFER ANDREA HERSICS v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP, THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 28, 2017

JUDGMENT AND REASONS: CAMPBELL J.

DATED: OCTOBER 5, 2017

APPEARANCES:

John W. Grice FOR THE APPLICANTS

Stephen Jarvis FOR THE RESPONDENTS

SOLICITORS OF RECORD:

DAVIS AND GRICE FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

The Attorney General of Canada FOR THE RESPONDENTS