

Federal Court



Cour fédérale

**Date: 20181120**

**Docket: IMM-522-18**

**Citation: 2018 FC 1168**

**Ottawa, Ontario, November 20, 2018**

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

**BETWEEN:**

**JOZSEF KOMAROMI  
ILDIKO KOMAROMINE REVESZ  
GABOR JOZSEF KOMAROMI  
AKOS ROBERT KOMAROMI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The applicants are citizens of Hungary and ethnic Hungarians. They sought protection in Canada under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The principal basis for their claim is that the applicant Jozsef Komaromi has been

targeted for extortion by criminal elements in Hungary. The other applicants are, respectively, Mr. Komaromi's wife and their two sons (who were minors when refugee protection was first sought). The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada denied their claims in a decision dated January 11, 2018. The applicants now apply for judicial review of that decision under section 72(1) of the *IRPA*.

[2] For the following reasons, I have concluded that this application should be dismissed.

## II. BACKGROUND

[3] Sometime in 2011, Mr. Komaromi started his own business, Prolite Kft. He purchased food products from a supplier and then re-sold them to retailers. The business was based in Délegyháza, Hungary.

[4] Mr. Komaromi's supplier for the products he distributed was a company called Roland Sun Kft. According to Mr. Komaromi, an individual named Barnabas Atila Nagy approached him in early 2012, saying he was now a director at Roland Sun Kft. Mr. Nagy demanded that Mr. Komaromi pay him 20% of the retail price on each item delivered as protection money. Mr. Komaromi refused initially but some men came to his home, abused him, and threatened him and his family. The men came by his house every day. Mr. Komaromi stated that Mr. Nagy was part of a criminal organization but he did not provide any details about this organization.

[5] The exact timeframe is unclear but Mr. Komaromi claims to have made payments to Mr. Nagy for as long as six months. The total amount of money he paid to Mr. Nagy is not reflected in the record.

[6] Mr. Komaromi states that he went to the police for assistance in July 2012 but they told him they could not help. As he was leaving the police station, members of Mr. Nagy's group apprehended Mr. Komaromi, pointed a gun at him and forced him into a car. They hit him several times. They warned him not to involve the police because they had high-ranking police connections.

[7] Eventually, Mr. Komaromi could no longer afford to pay the protection money. He shut down his business. On August 31, 2012, he and the other applicants drove to Regelsburg, Germany, where Ms. Revesz's sister lived. While they were there, Ms. Revesz's daughter, who had remained in Hungary, informed the applicants that Mr. Nagy's group had told her that they would come after them and that they had put an 8 million Hungarian forint bounty on the family (at current exchange rates, approximately \$37,550 CDN).

[8] The applicants drove to Frankfurt, Germany, where they took a flight to Canada. They arrived in Toronto on September 7, 2012, and made claims for refugee protection.

[9] According to the applicants, in early 2013, members of Mr. Nagy's group went to the home of Ms. Revesz's daughter and to the home of Mr. Komaromi's mother looking for them.

They offered Mr. Komaromi's mother 5 million Hungarian forint (approximately \$23,470.00 CDN) if she would help them find the applicants.

[10] In September 2017, a few months before the hearing before the RPD, Gabor Komaromi was hospitalized after attempting suicide. He was 17 years of age at the time.

### III. DECISION UNDER REVIEW

[11] The RPD addressed two central issues. First, do the applicants face a serious possibility of persecution in Hungary on the basis of a Convention ground? Second, on a balance of probabilities, do the applicants face a personal as opposed to generalized risk to their lives or a risk of cruel and unusual treatment or punishment if they return to Hungary? If either or both of these questions were answered in the affirmative, the applicants would be entitled to protection under either or both of sections 96 and 97(1)(b) of the *IRPA*, respectively.

[12] The RPD concluded there was no nexus between the allegations made by the applicants relating to extortion and a Convention ground. Mr. Komaromi had submitted that he met the definition of "membership in a particular social group" under section 96 by virtue of being a business person who had been targeted by criminals and for whom police protection was unavailable. The RPD rejected this argument. The applicants do not contest this conclusion on this application for judicial review.

[13] The RPD also determined the applicants are not persons in need of protection as their removal to Hungary would not subject them personally to a risk to life or a risk of cruel and

unusual treatment or punishment. The applicants had the burden of establishing such risks on a balance of probabilities. The RPD concluded that any risks the applicants faced were “speculative at best.” Moreover, the RPD found that the fear of being subjected to extortion in the circumstances described by the applicants constituted no more than a fear of a generalized risk.

[14] The RPD made two key findings in assessing the applicants’ claim for protection under section 97(1)(b) of the *IRPA*.

[15] First, the RPD did not accept that Mr. Nagy or anyone else would still be interested in Mr. Komaromi today. Several years had passed since he had closed up his business and left Hungary. It had also been several years since Mr. Nagy or his group had last had contact with Mr. Komaromi. Mr. Nagy and his group would have no reason to think that Mr. Komaromi was in any position to pay them protection money now and, thus, no reason to continue to target him. As a result, the RPD judged it to be implausible that Mr. Nagy would place a bounty on Mr. Komaromi and his family. It was more likely that Mr. Nagy would just move on and target someone else.

[16] Second, while it may be true that if Mr. Komaromi returned to Hungary and opened another business, he could be subjected to extortion again, this was a risk faced by all business people there. The RPD recognized that criminal elements may be able to threaten and extort business owners in Hungary but it found that the fear of being a victim of crime is a fear “that would be faced by any other citizen of Hungary who might open a business and who might

encounter people who attempt to extort money from them.” In other words, Mr. Komaromi did not face a personal risk.

[17] On the basis of these findings, the RPD concluded that the applicants are not persons in need of protection pursuant to section 97(1)(b) of the *IRPA* as a result of their having been targeted for extortion.

[18] The RPD also considered whether Gabor Komaromi’s mental health challenges gave rise to a basis for granting protection. Mr. Komaromi and Ms. Revesz had maintained before the RPD that Gabor’s attempt at suicide was the result of finding out the family’s refugee hearing was approaching. They also maintained that Gabor was scared of returning to Hungary and was worried their problems with the criminals would begin again. Further, the applicants submitted that Gabor would not be able to obtain the mental health support services he required in Hungary.

[19] The RPD rejected Mr. Komaromi’s and Ms. Revesz’s allegations about the link between Gabor’s experiences and the refugee claim. Gabor himself testified before the RPD that the mental and emotional issues that had led to his suicide attempt were due to pressures he was facing at school. The RPD was impressed with Gabor as a witness, describing him as well-spoken, articulate, intelligent and thoughtful. The member found him to be “highly credible regarding the reasons for his past mental issues.” There was no other evidence to support his parents’ attempt to link Gabor’s difficulties to the claim for protection. Gabor had been hospitalized for eleven days following the suicide attempt and medical documentation from this

period of hospitalization was filed at the RPD. However, nothing linked Gabor's experiences to what had happened to the family previously or to fears of returning to Hungary. The discharge diagnosis was social anxiety disorder and attention deficit disorder.

[20] In any event, the RPD found there was no evidence that Gabor would not have access to continuing mental health support in Hungary if he required it. The RPD therefore concluded that Gabor's mental health condition did not bring him within the definition of Convention refugee or person in need of protection.

#### IV. ISSUES

[21] I would frame the issues raised by the applicants as follows:

- a) Did the RPD err in finding that a risk of extortion was not a personal risk in the circumstances of this case?
- b) Did the RPD err in its assessment of Gabor's mental health issues?
- c) Did the RPD err in failing to apply section 108(4) of the IRPA?

#### V. STANDARD OF REVIEW

[22] Conclusions by the RPD under section 97(1)(b) of the *IRPA* concerning whether a claimant faces a personal or a generalized risk are findings of mixed fact and law. It is well-established that, as such, they are reviewed on a reasonableness standard (*Barragan Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 502 at para 27; *Correa v Canada (Citizenship*

*and Immigration*), 2014 FC 252 at para 19 [*Correa*]; *Lozano Navarro v Canada (Citizenship and Immigration)*, 2011 FC 768 at para 15; *Garcia Vasquez v Canada (Citizenship and Immigration)*, 2011 FC 477 at paras 13 and 14, and *Innocent v Canada (Citizenship and Immigration)*, 2009 FC 1019). The same standard also applies to whether section 108(4) of the *IRPA* is engaged (*Velez v Canada (Citizenship and Immigration)*, 2018 FC 290 at para 13 [*Velez*]).

[23] Reasonableness review “is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome” (*Canada (Attorney General) v Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 SCR 80 at para 18). The reviewing court examines the decision for “the existence of justification, transparency and intelligibility within the decision-making process” and determines “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). These criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).



VI. ANALYSIS

A. *Did the RPD err in finding that a risk of extortion was not a personal risk in the circumstances of this case?*

[24] Section 97(1)(b) of the *IRPA* requires, *inter alia*, that the risk to life or of cruel and unusual treatment or punishment faced by a person seeking protection under that provision would not be faced generally by other individuals in or from the person's country of nationality. The applicants submit that the RPD relied on outdated case law in its assessment of the nature of the risk Mr. Komaromi faced if he returned to Hungary. They point to more recent jurisprudence where the RPD had found that claimants who fled their countries because of extortion and death threats from gang members faced only a generalized risk but, on review, this Court set aside the RPD's conclusions. In this regard, the applicants place particular reliance on *Correa*, especially at paragraphs 83 and 84, where Justice Russell set out a number of principles that should be considered when determining whether a risk is personal or generalized.

[25] I cannot accept the applicants' submission. This Court has addressed how to draw a principled distinction between personal and generalized risks in many decisions. One oft-cited decision is *Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 [*Portillo*], where Justice Mary Gleason, who was then a member of this Court, concluded from a review of a long line of jurisprudence that section 97 mandates the following inquiry. First, the RPD should consider whether there is an ongoing future risk, and if so, what precisely the risk is. Once this is done, the RPD must next compare the risk faced by the claimant to that faced by a significant group in the country of nationality to determine whether the risks are of the same nature and

degree. If the risks are not the same, the claimant will be entitled to protection under section 97. See *Portillo* at paras 40-41. As Justice Gleason later explained in *Ortega Arenas v Canada (Citizenship and Immigration)*, 2013 FC 344, the second step in the inquiry “is a forward-looking inquiry and is concerned not so much with the cause of the risk but rather with the likelihood of what will happen to the claimant in the future as compared to all or a significant segment of the general population” (at para 14). I would note that in the decision under review in the present application the RPD member cites *Portillo* and states what it stands for correctly.

[26] *Correa* is consistent with this analytical framework. As I understand his reasons, what Justice Russell was attempting to do there was reconcile two lines of authority in this Court concerning how to distinguish between personal and generalized risk. In *Correa*, as in some other cases under section 97, the reviewable error arose from the RPD conflating the reason for targeting with the risk itself (at paras 93-94). Thus, in the case of, say, a business person who had been targeted for extortion, it would be an error for the RPD to find that the risk was generalized because business people generally are targeted for extortion without considering the particular manner in which the claimant had been targeted in the past and whether it gave rise to an ongoing future risk to the claimant personally as compared to others.

[27] Here, the RPD made no such error. Rather, having considered why Mr. Komaromi was targeted in the first place, the RPD found that his future risk was speculative. If Mr. Nagy and his group still had the interest in Mr. Komaromi that they had in the past, this could very well have demonstrated that the latter’s risk was personal, not generalized. But the member found that it was unlikely that they would still have such an interest in him. Once Mr. Komaromi was

no longer in business in Hungary, it is more likely than not that Mr. Nagy and his group had simply moved on to someone else. This does not preclude their taking an interest in Mr. Komaromi again if he were to return to Hungary, but presumably they would do so only if they judged it to be worth their while. There was no evidence suggesting they would. In the same connection, the member found the very idea that the group had offered a bounty for Mr. Komaromi to be implausible. Thus, the claim failed at the first stage of the *Portillo* analysis; the applicants had failed to establish an ongoing, particularized future risk. Considering the evidence before the RPD and the reasons provided, the member's conclusions fall within the range of reasonable determinations. Further, once the member determined that Mr. Komaromi had not established that he would likely be targeted again in Hungary as he had been in the past, the only risk he faced was that faced by other business people there – in other words, a generalized risk, not a personal one – and this cannot satisfy section 97(1)(b). The member understood that these were two separate issues and applied the test appropriately.

B. *Did the RPD err in its assessment of Gabor's mental health issues?*

[28] The applicants contend that the RPD erred by discounting the opinion of Gabor's parents that his mental health difficulties were related to the family's experiences in Hungary. They also contend that the RPD failed to exhibit the requisite degree of sensitivity when considering Gabor's prospects should he have to return to Hungary.

[29] Once again, I cannot accept these submissions. The RPD gave clear and cogent reasons for preferring Gabor's evidence about the cause of his problems over that of his parents. While it is true that one can easily be mistaken about the causes of one's mental health problems, there

was no reason to think that this was the case with Gabor. The opinion of the medical professionals who treated Gabor in hospital was consistent with Gabor's own insights. In such circumstances, it was open to the RPD to reject Mr. Komaromi's and Ms. Revesz's views to the contrary, and the member explained why this result was reached. There is no basis for this Court to interfere with this conclusion.

[30] The member accepted that Gabor was genuinely apprehensive about the care he would be able to obtain in Hungary. However, as the member recognized, this could provide a basis for protection only if Gabor faced the prospect of a denial of such care for persecutory reasons. The member found that there was no evidence that this would be the case. This conclusion was open to the member and the reasons explain why it was reached. There is no basis for this Court to interfere with this conclusion, either.

C. *Did the RPD err in failing to apply section 108(4) of the IRPA?*

[31] Section 108(1)(e) of the *IRPA* provides that a claim for refugee protection shall be rejected if "the reasons for which the person sought refugee protection have ceased to exist." However, section 108(4) of the *IRPA* states that this provision "does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment."

[32] The applicants submit that the RPD erred in failing to consider the potential application of section 108(4) of the *IRPA*. They do so despite the fact that they did not raise section 108(4) before the RPD.

[33] The case law is clear that section 108(4) applies only in cases where the RPD has concluded that there was a valid refugee or protected person claim and that the reasons for the claim have ceased to exist (*Velez* at para 31; *Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at para 5; *Yamba v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 457 at para 6 (FCA)). The RPD made no such finding here. As a result, it did not err in failing to consider whether section 108(4) applied.

## VII. CONCLUSION

[34] For these reasons, this application for judicial review is dismissed.

[35] The parties did not suggest any questions of general importance for certification. I agree that none arise.

[36] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *IRPA*, s 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

**JUDGMENT IN IMM-522-18**

**THIS COURT'S JUDGMENT is that**

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.
2. The application for judicial review is dismissed.
3. No question of general importance is stated.

“John Norris”

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Judge

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

**DOCKET:** IMM-522-18

**STYLE OF CAUSE:** KOMAROMI ET AL V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 17, 2018

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**DATED:** NOVEMBER 20, 2018

**APPEARANCES:**

Daniel M. Fine FOR THE APPLICANTS

Manuel Mendelzon FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Daniel M. Fine FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario