

Federal Court



Cour fédérale

**Date: 20200428**

**Docket: IMM-5337-19**

**Citation: 2020 FC 564**

**Ottawa, Ontario, April 28, 2020**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**EUGENIUSZ KOZLOWSKI  
MALGORZATA KOZLOWSKA  
GRZESKIEWICZ DAWID**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Eugeniusz Kozlowski (the “Principal Applicant”), his wife Malgorzata Kozlowski and their nephew Dawid Grzeskiewicz (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”) dated July 26, 2019. In the decision, the RPD found that the Applicants were not Convention refugees

nor persons in need of protection pursuant to section 96 and subsection 97 (1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Poland. The Principal Applicant and his wife are guardians of their nephew who has intellectual disabilities. The Principal Applicant was appointed the Designated Representative of his nephew, pursuant to subsection 167(2) of the Act.

[3] Upon their arrival in Canada in 2011, the Applicants sought protection on the basis of their Roma ethnicity. They allege that due to this fact, the Principal Applicant was physically assaulted, their home was burned down and that Ms. Kozlowski was the victim of an attempted sexual assault.

[4] The RPD refused the Applicants’ application but that decision was set aside, following an application for judicial review in this Court; see the decision in *Kozlowski v. Canada (Citizenship and Immigration)*, 2014 FC 506.

[5] Upon a rehearing, the RPD again denied that Applicants’ application for protection, on the grounds that the Applicants failed to establish a subjective fear of persecution and that there was adequate state protection.

[6] The Applicants now argue that the RPD breached the duty of procedural fairness by failing to take into account the intellectual limitations of Mr. Grzeskiewicz. Otherwise, they

submit that the RPD failed to consider the totality of the evidence and made an unreasonable decision.

[7] The Minister of Citizenship and Immigration (the “Respondent”) argues that the RPD observed the required duty of procedural fairness and committed no reviewable error.

[8] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339. The merits of the decision, involving questions of mixed fact and law, are reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[9] In *Vavilov, supra*, the Supreme Court of Canada confirmed the content of the standard of reasonableness, as set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[10] According to the decision in *Dunsmuir, supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[11] In my opinion, upon consideration of the contents of the Certified Tribunal Record (the “CTR”), of the affidavit filed by the Principal Applicant in support of this application for judicial review and of the arguments of the parties, both written and oral, the RPD’s assessment of state protection was not reasonable.

[12] Although, the RPD found that Poland is making efforts to combat violence against the Roma population, it failed to consider whether those efforts resulted in adequate state protection, taking into account the circumstances of the Applicants.

[13] It is not necessary for me to address the issue of procedural fairness.

[14] In the result, this application for judicial review is allowed, the decision of the RPD is set aside and the matter remitted to a differently constituted panel of the RPD for redetermination.

[15] There is no question for certification arising.

**JUDGMENT in IMM-5337-19**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision of the Refugee Protection Division is set aside and the matter remitted to a differently constituted panel for redetermination.

There is no question for certification arising.

"E. Heneghan"

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Judge

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

**DOCKET:** IMM-5337-19

**STYLE OF CAUSE:** EUGENIUSZ KOZLOWSKI, MALGORZATA  
KOZLOWSKA, GRZESKIEWICZ DAWID v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 3, 2020

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** APRIL 28, 2020

**APPEARANCES:**

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