

Date: 20090203

Docket: IMM-2470-08

Citation: 2009 FC 95

Montréal, Quebec, February 3, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

KLARA LUGOSSY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated April 16, 2008, wherein the applicant is found not to be a “Convention refugee” or a “person in need of protection”, in that her removal to Hungary would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment, or a danger to torture.

I. The Facts

[2] The applicant is a citizen of Hungary who claimed to have been harassed, threatened verbally and physically and continued to be sexually abused by her husband until she decided to put his belongings outside the apartment and changed the locks.

[3] For several weeks after, the applicant's husband continued to threaten her, and ultimately fearing for her safety the applicant left for Canada and claimed refugee protection on the basis of being a victim of domestic violence.

[4] The Board accepted that the applicant was in an abusive relationship with her husband and that she was seeing a doctor for her depression. However, the Board concluded that there was adequate state protection in Hungary. It noted that Hungary is a functioning democracy that has ratified the *United Nations Convention on the Elimination of All Forms of Discrimination against Women*.

[5] The Board further noted that the applicant had failed to make any efforts to obtain state protection and that she had also failed to rebut the presumption of state protection.

[6] The Board considered, concluding as it did, that the applicant did not report the harassment and threats of her ex-husband because he had friends within the police. But the Board took note of documentary evidence which stated that the state was making serious efforts to combat abuse and corruption, including the police.

II. Issue

Did the Board misapprehend the evidence leading it to unreasonably determine the availability of state protection?

III. Analysis

[7] The appropriate standard of review here is reasonableness. The question at issue falls within the expertise of the Board and as a result deference is owed to its decision (*Dunsmuir v. New Brunswick*, 2008 SCC 9; *Zamora Huerta v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 586).

[8] State protection is the determinative issue in this case. The applicant claims that state protection is inadequate for her in Hungary. However, she “bears the evidentiary burden of adducing evidence to that effect and the legal burden of persuading the trier of fact that [...] her claim in this respect is founded” (*Canada (Minister of Citizenship and Immigration) v. Flores Carrillo*, 2008 FCA 94).

[9] The applicant faces the presumption of state protection in her home country, meaning that the Hungarian state must “be presumed capable of protecting its nationals”, including the applicant. This presumption can be rebutted however with “clear and convincing” evidence by the applicant of the state’s inability to protect her (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). Further, the applicant was required to seek the protection of the authorities of her home country unless it was objectively unreasonable for her to do so.

[10] Documentary evidence revealed to the Board that the Hungarian state provides various avenues of redress for women who are victims of domestic violence, such as 24 –hour hotline and government shelters for such victims. There is also a restraining order law to protect persons from abusive spouses, and prison penalties for rape. The evidence on file indicates that the applicant failed to make any efforts to explore any of these avenues or to look for state protection before leaving for Canada to claim refugee protection.

[11] The applicant never went to the authorities to report the alleged rape or physical attacks that she allegedly suffered, and this although she had ample time to do so before choosing to claim refuge in Canada. As a result of her inaction, we do not know if the state protection available to her in her home country was inadequate considering her situation and the alleged connections of her ex-husband with police officers.

[12] The applicant cites *Ward*, above, to argue that the claimant was not required risking her life in the “seeking ineffective protection of a state, merely to demonstrate that ineffectiveness”. However, *Ward*, above, also directed that refugee protection is not available where there has been inadequate attempt to seek out the protections available in one’s home country. With respect to *Ward*, it is now stated law that the Supreme Court of Canada in that decision “did not intend that refugee claimants would easily be able to avoid the requirement that they approach their home countries for protection before seeking international refugee protection” (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at paras. 50-52, 56. The Board’s reasoning reflects this jurisprudence.

[13] True the evidence demonstrates that there might be numerous problems in Hungary involving victims of domestic violence. But the Board however did not ignore these problems contrarily to the applicant's pretensions; the Board cited documentary evidence which acknowledged that there may not be perfect state protection in the applicant's home country; however state protection does not need to be perfect.

[14] The applicant's asserts that the Board misapprehended the evidence with respect to the continued abuse of her ex-husband. However, the Board's reasons clearly indicate that the Board understood that the ex-husband did not sleep at her house after June 9, 2006, that the abuse continued on until August 1, 2007, and that as a result "she [decided to] put his belongings outside the apartment and changed the locks on the apartment door".

[15] In any event, with respect to the passage cited by the applicant to support her assertion that the Board misapprehended the evidence, whether the Board misapprehended or not the evidence on the continued abuse suffered by the applicant does not change the crux of the panel's negative finding with regard to the applicant's allegation that she was prevented to approach the authorities during the period of her ex-husband's abuse. The Court concludes that the Board's finding on this issue was reasonable and goes to the heart of the Board's decision on the applicant's failure to make any effort to obtain state protection.

[16] Contrarily to the applicant's argument, the Board did not have to refer to and comment every piece of evidence she cited (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and*

Immigration), [1998] F.C.J. No. 1425 (T.D.) (QL)). The Board is presumed to have considered all evidence, and is not required to refer to all the evidence unless the contrary is shown (*Florea v. Canada (Minister of Employment and Immigration)*), [1993] F.C.J. No. 598 (F.C.A.) (QL)). In this case, it appears from the Board's reasons that it did consider essential evidence supporting the applicant's thesis.

[17] Upon review, it appears that the Board did review the available information on Hungary before it came to a clear and reasonable conclusion on the evidence before it, even though it might not be the only reasonable conclusion possible.

[18] For all these reasons, the Court has no other alternative but to find that the impugned decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, and that for her part the applicant has failed with her burden to demonstrate the decision's unreasonableness.

[19] The Court agrees with the parties that there is no important question of general interest to certify.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the application.

“Maurice E. Lagacé”

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2470-08

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AND JUDGMENT:** LAGACÉ D.J.

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