Federal Court  Cour fédérale

Date: 20101213

Docket: IMM-1798-10

Citation: 2010 FC 1281

Toronto, Ontario, December 13, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

IVANA CERVENAKOVA
SARKA CERVENAKOVA,
ANDREA CERVENAKOVA

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are citizens of the Czech Republic and of Roma ethnicity. They seek to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board in which their claims for refugee protection were rejected.

[2] The grounds upon which they seek to set aside the Board's decision are as follows:

i. Comments made by the Minister of Citizenship, Immigration and Multiculturalism during the period April 2009 to August 2009 give rise to a reasonable apprehension that the Board was biased against their claims for protection;

ii. the Board erred by failing to conduct an appropriate analysis under section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA);

iii. the Board erred by misapprehending or ignoring evidence and by unreasonably assessing the evidence as a whole; and

iv. the Board erred by failing to consider whether the various incidents of discrimination that they or similarly situated persons experienced cumulatively amounted to persecution.

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

I. Background

[4] The principal Applicant and her daughters, Andrea and Sarka, came to Canada on December 1, 2007 and applied for refugee protection approximately two weeks later.

[5] She claims that she and her daughters were persecuted in the Czech Republic because of their Roma ethnicity. She states that as a child, she was taunted by other children and by her teachers, was put in a lower grade school and was tied to a tree on one occasion. After she had

children and needed to take them to a doctor, she was required to wait in the hallway instead of in the waiting room. Her oldest daughter, Andrea, was sent to a lower grade school and she was forced to leave her secondary school because of racially motivated abuse.

[6] The principal Applicant further claims that when her youngest daughter, Sarka, was two years old, she contracted a form of meningitis. When she took her to the doctor, the doctor provided negligent treatment. As a result, Sarka is now deaf. The principal Applicant states that she wanted to take legal action against the doctor, but no one wanted anything to do with suing her.

[7] The principal Applicant also claims that, at a school for the hearing impaired, Sarka was beaten by her teacher on at least two occasions. She states that she reported the incidents to the principal, but nothing was done to resolve the situation.

[8] The principal Applicant also claims that she had a racist neighbour who constantly kicked her door, threatened her, and beat and spat at her daughters. In addition, she alleges that her building superintendent exposed himself to Andrea.

[9] She claims that they moved to a larger city to escape their persecution, but they continued to face the same problems. She also alleges that people often threw eggs, meat, bones or water balloons at her and her Roma neighbours.

II. The decision under review

[10] After summarizing the Applicants' claims and accepting their identities, the Board addressed the principal Applicant's credibility. It began by noting that "it was apparent throughout

the hearing that there were a number of serious discrepancies in the claimant's evidence when the oral testimony was compared to the Personal Information Form (PIF) and the other documents available." The Board then provided some examples.

[11] The Board noted that, in the principal Applicant's oral testimony, she stated that her former spouse, who is also of Roma ethnicity, was attacked and injured in her presence in the subway by racists in 1997. However, this incident, which was one of the main reasons why she and her former spouse sought asylum in the United Kingdom, was not mentioned in her PIF.

[12] The Board then observed that, in her PIF and oral testimony, the principal Applicant identified the doctor who initially treated Sarka for meningitis as being a woman whose son was a skinhead. However, at the time she made her claim for refugee protection, she identified the doctor as a man whose brother was a skinhead. The principal Applicant's explanation for the discrepancy was simply that she had intended to state that the doctor was a woman.

[13] The Board also noted that, in her oral testimony, the principal Applicant stated that when she learned that Sarka had been beaten by her teacher she informed the school principal and then reported the matter to the police, who did nothing because there were no witnesses. However, in her PIF, she made no mention of having reported the matter to the police. The Board was not satisfied with her explanation that "she had forgotten a lot when she filled out the PIF," particularly given that she made amendments to other parts of her PIF.

[14] In addition to the foregoing, the Board observed that, in her oral testimony, the principal Applicant spoke about a racist neighbour who constantly kicked her door, made racist threats, beat

her children and did other bad things. The Board noted that she claimed that the police did not respond to her telephone calls, except on one occasion when they ended up talking and laughing with the racist neighbour, and then did nothing. However, once again, this was not mentioned in her PIF.

[15] The Board further noted that the principal Applicant stated that her ex-spouse was delinquent in paying child support. When she contacted the police about this, they allegedly refused to get involved. However, as with the other matters mentioned above, this entire matter was not discussed in her PIF.

[16] Based on the foregoing, the Board found the principal Applicant to be generally lacking in credibility. It stated that it did not believe, on a balance of probabilities, that any of the significant events that she alleged happened to her and her children, actually happened.

[17] Notwithstanding this finding, the Board proceeded to assess whether the Applicants had rebutted the presumption of state protection. After reviewing the evidence, it concluded that they had failed to rebut this presumption. It therefore dismissed their claims under section 96 of the IRPA. After noting that there was no other evidence that the Applicants would be at risk of the harms delineated under section 97, it dismissed those claims as well.

III. Preliminary issue

[18] At the outset of the oral hearing before me in this proceeding, counsel for the Applicants referenced *Halsbury's Laws of Canada – Civil Procedure* and stated that courtesy required him to

provide me with the opportunity to recuse myself from this matter, before having heard the parties' oral arguments.

[19] In short, he submitted that the Applicants perceive that I have a pre-disposition to deny their application because: (i) I denied the application for judicial review in *Dunova v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 438; and (ii) I denied, last month, the application for leave and judicial review in *Cervanak v. Canada (Minister of Citizenship and Immigration)*, IMM-4574-10. Both of those cases involved allegations of bias that are similar to the allegations being made in this proceeding.

[20] Counsel for the Applicants expressed a particular concern about my denial of the application for leave to commence an application for judicial review in *Cervanak*, above. He stated that 51 of the 54 paragraphs in the written Memorandum of Argument that he submitted on behalf of the Applicants in this proceeding are virtually identical to corresponding paragraphs in the Memorandum of Argument that he prepared on behalf of the Applicants in *Cervanak*, above. He asserted that because I concluded that his arguments in *Cervanak* had not even met the test for granting leave, he did not believe that he had "a chance to win" in this proceeding. He added the issue that has been raised in respect of the Board's bias in this case is the Applicants' "best issue."

[21] There is a big difference between being biased and exercising, even consistently, one's judicial responsibilities based on one's interpretation of the law.

[22] The classic expression of the test for bias was articulated by Justice de Grandpré in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at 394,

when he observed that "the apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information." He added that the "test is 'what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude…'"

[23] In *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259, at para. 76, the Supreme Court confirmed the high test to be met when alleging bias, when it observed that "the standard refers to an apprehension of bias that rests on serious grounds, in light of the strong presumption of judicial impartiality." The Court proceeded to approvingly quote Justice de Grandpré's observation, in *Committee for Justice and Liberty*, above, at 394, that "[t]he grounds for this apprehension must, however, be substantial, and I … refus[e] to accept the suggestion that the test be related to the 'very sensitive or scrupulous conscience'."

[24] In *Geza v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124, at paras. 52 and 53, it was held that the approach described above applies to the determination of refugee claims by the Board, given the Board's independence, its adjudicative procedure and functions, and the fact that its decisions affect the rights of claimants under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

[25] As counsel to the Applicants conceded, the allegations of bias that were made in *Dunova* were based on facts and evidence that differ in a number of important respects from the facts and evidence that have been presented in the case at bar. *Dunova* also involved different counsel and a different type of decision-maker, namely, a pre-removal risk assessment officer, rather than the Board. In these circumstances, I do not believe that an informed person, viewing the matter

realistically and practically, and having thought the matter through, would conclude that I would be predisposed to reaching the same conclusion in the case at bar as I reached in *Dunova*, let alone that I may be biased, simply because I rejected the allegation of bias that was raised in *Dunova* and that has been raised again in the case at bar.

[26] Turning to *Cervanak*, above, the similarities between, on the one hand, the facts and allegations in that case and, on the other hand, those that have been made the case at bar are greater than they were between *Dunova* and the case at bar. Nevertheless, once again, I have concluded that an informed person, viewing the matter realistically and practically, and having thought the matter through, would not conclude, upon learning how I dealt with the applications in *Cervanak* and *Dunova*, that I am biased against the Applicants in the case at bar.

[27] I acknowledge that a reasonable and informed person might conclude that it is more likely than not that an adjudicator who is faced with a case that is highly similar to a case recently considered by that same adjudicator would approach the issues in the two cases in a similar fashion. In the absence of any facts, evidence or new arguments that might provide a basis for distinguishing two cases, such a person might also reasonably believe that it is more likely than not that the adjudicator would make determinations in the second case that are similar to those made in the first case. However, believing that it is more likely than not that an adjudicator will approach similar issues in a consistent manner is a far cry from apprehending, on substantial grounds, that the adjudicator is or may be biased.

[28] It would be entirely reasonable for the public to expect that an adjudicator would be consistent in his or her approach to, and disposition of, cases involving highly similar facts,

evidence and arguments. Indeed, the principle of judicial comity encourages consistency as between judges in such circumstances. That principle is "that a substantially similar decision rendered by a judge of this Court should be followed in the interest of advancing certainty in the law" (*Almrei v. Canada (Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness)*, 2007 FC 1025, at para. 61). This principle is relevant in this case not just because of my prior decisions in *Dunova*, above, and *Cervanak*, above, but also because of Justice Zinn's more recent decision in *Gabor v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1162, where he rejected a very similar allegation of bias.

[29] That said, there are exceptions to the principle of judicial comity, which recognize that it may well be appropriate not to follow a prior case where the case involved: (i) different facts, evidence or issues; (ii) a failure to consider relevant legislation or authorities in the prior case; or (iii) the prospect of creating an injustice if the prior decision were followed (*Almrei*, above, at para. 62). Determining whether there is a factual, evidentiary or legal basis for reaching a conclusion in this case which is different from the conclusions I reached on the question of bias that was raised in *Dunova*, above, and in *Cervanak*, above, and that Justice Zinn reached in *Gabor*, above, will be the focus of my assessment below.

[30] The cases relied upon by the Applicants are all distinguishable. In short, *Mitsui & Co. (Point Aconi) Ltd. v. Jones Power Co.*, 2001 NSCA 112 and *R. v. Bertram*, [1989] O.J. No. 2123 (S. Ct.) involved prior inappropriate comments made by a trial judge in respect of the same case that was before him. Those comments suggested that the judge had prematurely made up his mind on a serious issue. *R. v. Yalahow*, [1998] N.W.T.J. No. 67 (S. Ct.) involved an attack on a warrant before the same judge who issued the warrant. *Children's Aid Society of Halifax v. M.B.*, [1988] N.S.J. No.

539 (Fam. Ct.) concerned a child protection hearing involving the second child of a father in respect of whom the judge had previously made very broad and adverse credibility findings in proceedings involving the father's first child. In *R. v. Bird*, [1997] O.J. No. 2074 (Gen. Div.), Justice McIsaac decided to take "the high road" and withdraw as the trial judge, after having dismissed the application for judicial disqualification. However, that case involved statements made by that judge which were alleged to have implied certain adverse findings with respect to the accused's character and the preliminary evidence.

[31] The Applicants also relied upon two other cases in which an allegation of bias against a judge was dismissed. In *Arsenault-Cameron v. Prince Edward Island*, [1999] 3 S.C.R. 851, at para. 5, Justice Bastarache observed that "partiality is 'a state of mind or attitude . . . in relation to the issues and the parties in a particular case', a real disposition to a particular result. The applicant would have to show wrongful or inappropriate declarations showing a state of mind that sways judgment in order to succeed" (emphasis added). He proceeded to find that there was no evidence adduced to demonstrate that his beliefs or opinions expressed when he was counsel, a law professor or otherwise would prevent him from coming to a decision in the case before him, on the basis of the evidence. In my view, those comments and findings are applicable to the case at bar, particularly given that the only basis upon which the Applicants base their apprehension of bias is that I did not accept similar arguments made in other cases.

[32] This brings me to the final case relied upon by the Applicants in respect of this issue. In *Ahani v. Canada (Minister of Citizenship and Immigration)* (2000), 7 Imm. L.R. (3d) 1, at para. 7 (F.C.A.), the Court quoted approvingly the following passage from *Arthur v. Canada*, [1993] 1 F.C. 94 at 105:

> The most accurate statement of the law would thus appear to be that the mere fact of a second hearing before the same adjudicator, without more, does not give rise to a reasonable apprehension of bias, but that the presence of other factors indicating a predisposition by the adjudicator as to the issue to be decided on the second hearing may do so.

[33] The Applicants suggest that in this case, there are such "other factors." I disagree. The mere fact that I made adverse determinations in respect of a similar issue, in two different prior cases, based on the facts, the evidence adduced and the arguments made in those cases, is not a sufficient basis upon which to conclude that such "other factors" exist. To reiterate, the mere fact that I rejected similar arguments in two previous cases involving different applicants is not a sufficient basis upon which to conclude that an informed person, viewing the matter realistically and practically, and having thought the matter through, would apprehend that I am biased in relation to the issue that the Applicants in this case have raised in respect of bias by the Board.

[34] To establish the existence of "substantial grounds" for a reasonable apprehension of bias, one must go further and demonstrate that a judge "has been influenced by some extraneous or improper consideration," (*Geza*, above, at para. 57), has made "inappropriate declarations showing a state of mind that sways judgment in order to succeed" (*Arsenault-Cameron*, above), or has prejudged one or more important issues.

IV. Standard of review

[35] The issue that the Applicants have raised with respect to whether the Board's decision was made in breach of the duty of fairness, including the requirement of impartiality, is reviewable on a standard of correctness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1

S.C.R. 190, at paras. 55 and 90; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 42; *Geza*, above, at para. 44).

[36] The remaining issues that the Applicants have raised are reviewable on a standard of reasonableness (*Dunsmuir*, above, at paras. 51 to 55; *Khosa*, above, at para. 45; *Velez v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 923, at para. 23).

[37] In *Khosa*, at para. 59, reasonableness was articulated by Justice Ian Binnie as follows:

> Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

V. Analysis

A. Did comments made by the Minister give rise to a reasonable apprehension of bias?

[38] The Applicants submit that they have a reasonable apprehension that the Board is biased against claimants for refugee protection who are from the Czech Republic and of Roma ethnicity. They base this claim on:

i. comments reportedly made, and actions taken, by the Minister of Citizenship, Immigration and Multiculturalism;

ii. their view that the Board has a recent history of bias against Roma and a history of attenuated independence;

iii. the fact that the number of successful claims for refugee protection by persons from the Czech Republic allegedly declined from over 90% to zero after the Minister made the comments in question; and

iv. the alleged corruption of Board members.

[39] The Respondent submitted that the Applicants were required to raise their allegations of bias at the earliest opportunity (*Geza*, above, at para. 66). The Respondent noted that since the comments of the Minister that provided the foundation of the Applicants' claims of bias were reported between April 2009 and August 2009, the Applicants should have raised their concerns regarding bias at the time of the Board's hearing in this matter, which took place on January 5, 2010. In the absence of any evidence that the Applicants were aware of the comments in question, I am not satisfied that the Applicants were in a position to have raised their allegations of bias at the time of their hearing before the Board.

(1) Comments reportedly made, and actions taken, by the Minister

[40] The Applicants submit that over a dozen comments reported to have been made by the Minister between April and August 2009, together with his announcement of a visa restriction on foreign nationals from the Czech Republic in mid-July 2009, demonstrate that he had a strategy of reducing the level of acceptance of refugee claims by Roma from the Czech Republic. The

Applicants assert that this alleged strategy is similar to the strategy that was found to exist in *Geza*, above. They add that this strategy distinguishes the case at bar from *Dunova*, above, where I found that the two reported comments by the Minister that formed the basis of the bias allegation in that case "appear to have been spontaneous and not made pursuant to or in relation to any strategy" (*Dunova*, above, at para. 58).

[41] In *Geza*, above, the key factor that led the Federal Court of Appeal to accept the appellants' claims on the issue of bias was that Mr. Bubrin, one of the two members of the Board panel in that case, had played a leading role in the development of the Board's "lead case strategy." After noting that the participation of Mr. Bubrin in the panel was "particularly unfortunate," and that this "provided a link between the adjudication of the appellants' claims, and the activities on the part of the Board's management," the Court concluded:

> To summarize, given the high standard of impartiality to which the Board is held in its adjudicative capacity, a reasonable person might well have concluded on the basis of the above that the panel hearing the appellants' claims was not impartial. This is because one of its two panel members may have been predisposed towards denying the appellants' claims since he had played a leading role in an exercise that may seem to have been partly motivated by a desire by CIC and the Board to produce an authoritative, if non-binding legal and factual "precedent", particularly on the adequacy of state protection, which would be used to reduce the percentage of positive decisions in claims for refugee status by Hungarian Roma. The panel may reasonably be seen to have been insufficiently independent from Board management and thus tainted by the Board's motivation for the leading case strategy. Support for a belief that the lead case strategy was motivated by a desire to deter potential claimants is the apparent leak to the Hungarian media of the negative decisions before they were released, and the ensuing publicity calculated to deter Roma from leaving for Canada in order to claim refugee status. (*Geza*, above, at paras. 59, 64 and 65).

[42] In addition to the involvement of Mr. Bubrin in the panel, there were two other significant elements of the factual matrix which led the Court in *Geza* to accept the appellants' claims of bias. The first was the fact that the lead case strategy was developed by the Board's senior management to, at least in part, reduce the number of positive decisions that might otherwise be rendered in favour of the approximately 15,000 Hungarian Roma claimants expected to arrive in Canada in 1998 (*Geza*, above, at paras. 61, 62 and 65). The second was the absence of any involvement of the immigration and refugee bar or interested non-governmental organizations in the development of the planning process for this initiative (*Geza*, above, at paras. 59 and 63).

[43] This factual matrix is very different from the one in the case at bar. In short, there is no evidence whatsoever of: (i) any strategy by the Board to reduce the number of positive decisions that might otherwise be made in favour of refugee claimants from the Czech Republic who are of Roma ethnicity; or (ii) any involvement by the Board member who rendered the decision under review in the case at bar in any such strategy or in other initiative targeted at such refugee claimants. Thus, even if the Applicants were able to demonstrate that the Minister had such a strategy, they have not established the critical "link" to either the Board as a whole or the Board member who adjudicated their claims. This is further discussed below.

[44] In the oral hearing before me, counsel to the Applicants conceded that it is entirely appropriate for the Minister to concern himself with, and to comment upon, policy issues that may arise from trends or significant fluctuations in immigration from particular regions of the world. However, he maintained that the comments made by the Minister in this case were specifically directed towards influencing the Board in respect of its approach to refugee claims by persons from the Czech Republic.

[45] I disagree. The evidence adduced by the Applicants does not demonstrate the existence of "serious grounds" to support this allegation.

[46] The reported statements of the Minister upon which the Applicants rely to support their claims are as follows:

i. In connection with the reported "diplomatic row between the Czech Republic and Canada," the Minister was reported to have stated: "We are obviously concerned about the number of false refugee claimants" ("Canada rethinks Czech visa law – Minister blames fraud for influx of Roma asylum seekers," *Prague Post*, April 23, 2009).

ii. In connection with his reported view that the substantial increase in asylum applications by claimants from the Czech Republic may be attributable to "profiteers," the Minister was quoted as saying: "If indeed there are commercial operations, I would hope that the Czech authorities are able to identify those and crack down on them" (Emphasis added. *Prague Post*, above). Elsewhere, he was quoted as having encouraged the Czech government to "crack down on unscrupulous operators believed to be behind a massive surge" in the number of Roma refugee claimants ("Canada calls on Czech govt to stop Roma Refugees," *Aktuálně*, April 16, 2009). Reports of essentially the same alleged comments by the Minister were made in a number of other news articles submitted by the Applicants.

iii. In connection with his reported threat to re-impose the visa requirements that were lifted on visitors from the Czech Republic in late 2007, the Minister was quoted as stating: "The increase in asylum claims from the Czech Republic – hardly an island of persecution in Europe – is a real concern and Canada is monitoring the situation closely" (*Canwest News Service*, July 2, 2009). Essentially the same comment was reported to have been made in a number of other news articles submitted by the Applicants.

iv. In connection with one of two issue papers that were released in June and July 2009, respectively, after the Research Directorate of the Board sent a fact finding mission to the Czech Republic, the Minister was quoted as stating: "The report, as I've read it, says there are difficulties for Roma in the Czech Republic. We all know that but the government is doing its best to improve the legal treatment of, and economic opportunities for, members of that community" ("Czech Roma aren't discriminated against: Kenney," Canwest News Service, undated). This comment was also quoted in an article published by the *Financial Post*, which added: "Kenny stressed on Thursday the decision-making process at the IRB, an independent tribunal whose members are appointed by the federal government, is based on the facts of each claim" (Emphasis added. "Czech Roma aren't discriminated against: Kenney," *Financial Post*, June 24, 2009).

v. Also in connection with that issue paper, the Minister was quoted as stating: "If someone comes in and says the police have been beating the crap out of them, the IRB panellist can then go to their report and say, 'Well, actually, there's been no evidence of police brutality.'" The Minister is reported to have added: "The IRB does not accept or reject claims on the basis of the country of origin or any general finding. They assess each claim on its merits, as it should be" (Emphasis added. "Czech Roma aren't discriminated against: Kenney," *Canwest News Service*, June 25, 2009).

vi. In connection with the imposition of new visa requirements for visitors from Mexico and the Czech Republic, the Minister is reported to have stated: "We're not talking about the kinds of people that are living in UN refugee camps by the millions, who are victims of war and state-sponsored persecution … It's an insult to the important concept of refugee protection to allow it [to] be systematically violated by people who are overwhelmingly economic migrants … In addition to creating significant delays, the sheer volume of these claims is undermining our ability to help people fleeing real persecution" ("'Don't Fool Us' – Canada Tells Mexicans and Czechs," *Global Perspectives*, August 14, 2009).

vii. Also in connection with the new visa requirements, the Minister was quoted as stating: "This does underscore the need to reform our asylum system so that it ensures that real victims of persecution get swift relief and protection in Canada, and that economic migrants seeking to abuse our generosity are

shown to the door quickly." The Minister reportedly added: "When we raise with our partners in foreign countries the issue of false asylum claims, or large flows like we've seen from Mexico and Czech Republic, they turn the discussion back on us, and say, 'Your system is inviting this kind of abuse. And you need to fix your system.'" He apparently also observed: "It is not lost on economic migrants who want to jump the queue that we have a system that's fairly easy to abuse. And where people can settle in Canada, sometimes for several years, with a mixture of a work permit and/or social benefits, and if they're determined to, they can game our system and abuse our generosity" ("Minister calls for overhaul of Canada's refugee system," *The Globe and Mail*, August 21, 2009). Reports of similar comments by the Minister appeared in several other news articles submitted by the Applicants;

viii. In a press release issued by Citizenship and Immigration on July 13, 2009, announcing the imposition of the visa requirement on visitors from the Czech Republic, the Minister is quoted as having stated, among other things:

> In addition to creating significant delays and spiralling new costs in our refugee program, the sheer volume of these claims is undermining our ability to help people fleeing real persecution.
>
> ...
>
> All too often, people who really need Canada's protection find themselves in a long line, waiting for months and sometimes years to have their claims heard. This is unacceptable.
>
> ...

> The visa requirement that I am announcing will give us a greater ability to manage the flow of people into Canada and verify bona fides. By taking this important step towards reducing the burden on our refugee system, we will be better equipped to process genuine refugee claims faster.

[47] In my view, the above-quoted statements reported to have been made by the Minister, together with the imposition of the visa requirement that was announced by the Minister, would not, individually or collectively, provide reasonable and right minded persons with serious or substantial grounds upon which to apprehend: (i) that the Minister had intended to influence the manner in which Board members conduct their assessment of individual refugee claims from the Czech Republic; or (ii) that Board members would actually be influenced by the Minister's statements and his announcement of the visa requirement. As reflected in the two comments that I have underlined from the above-referenced articles dated June, 24 2009 and June 25, 2009, the Minister appears to have been very careful to underscore that decisions are made by the Board, which he noted is independent, on the basis of the facts in each case.

[48] Having underscored that decisions in individual cases are made by an independent Board, on the facts of each case, it was open to the Minister to express his concerns with respect to: (i) the dramatic surge in the number of refugee claimants from the Czech Republic, immediately following the lifting of the previous visa restriction in late 2007; and (ii) the impact that the surge was having on other refugee claimants, on Canada's ability to process their claims, and on Canada's refugee policy. It was also open to the Minister to express his personal views with respect to the content of the two issue papers released by the Board in June and July 2009.

[49] In this particular context, the Minister's statements did not compromise the independence of the Board, even though he may have been better advised to refrain from publicly commenting upon the extent to which he believed some refugee claimants from the Czech Republic might not be genuine refugees.

[50] The Minister was also entitled to comment upon his perception of the underlying cause of the surge in the number of refugee claimants from the Czech Republic. As reflected in his above-quoted comments, he appears to have had reason to believe that "unscrupulous operators" in the Czech Republic were behind the surge. The Applicants adduced no evidence to demonstrate that this belief was unreasonable. It must therefore be assumed that it was reasonable. It was entirely open to the Minister to share that belief with the public and to raise it in diplomatic discussions with representatives of the Czech Republic. It was also entirely open to the Minister to seek to address the serious policy issues that he had identified by announcing a visa restriction on visitors from the Czech Republic.

[51] In passing, I should note that the Applicants' claim that the Minister announced the aforementioned visa restriction because the Board was not responding to his attempts to reduce the rate of acceptance of refugee claims being made by citizens from the Czech Republic is inconsistent with their claim that the Board was biased.

(2) <u>The Board's alleged history of bias and absence of independence</u>

[52] This allegation by the Applicants is based on: (i) the Federal Court of Appeal's conclusions in *Geza*, discussed above, regarding the lead case strategy developed by the Board in 1998 and

1999; (ii) claims made by former Board member Lloyd Fournier that he was subjected to influence, in late 2003 and 2004, to reject the applications of Hungarian Roma refugee claimants; and (iii) the Applicants' assertion that Board members are dependent on the Minister to be appointed and reappointed to the Board.

[53] The claims of Mr. Fournier, as reported in *Walrus Magazine*, constitute the only evidence adduced by the Applicants in support of their allegation that the Board's bias towards Hungarian or Czech refugee claimants of Roma ethnicity extended beyond the lead case strategy that was at issue in *Geza*. However, the article in *Walrus Magazine* also noted that Mr. Fournier was the subject of an internal investigation by the Board involving allegations of inappropriate conduct, some of which he appears to have acknowledged. That article proceeded to report that an independent investigator who was appointed in connection with those allegations ultimately exonerated Mr. Fournier, but also found that he "did on occasion display unwelcome and improper conduct in the workplace."

[54] This evidence that the Board has a historical bias against Czech and Hungarian refugee claimants is tenuous, at best, particularly considering that: (i) Mr. Fournier's claims date back over six years; (ii) he was involved in a serious dispute with the Board involving his own conduct; and (iii) no other evidence of bias by the Board against Hungarian or Czech claimants has emerged in the intervening period or been adduced by the Applicants.

[55] As to the Applicants' claim that Board members are dependent on the Minister to be appointed and reappointed to the Board, this is simply a bald assertion. Apart from what has been discussed above, the Applicants have adduced no other evidence of: (i) historical or current bias by

the Board or any of its members against Hungarian or Czech refugee claimants; or (ii) attenuated independence on the part of the Board or any of its members.

[56] Indeed, one of the articles submitted by the Applicants contains a very favourable implicit assessment of the Board from Mr. Abraham Abraham, who is identified as the top representative in Canada of the United Nations High Commission for Refugees. In that article, Mr. Abraham is quoted as having stated that "Canada's refugee determination system is perhaps the best in the world, due to its objectivity and insulation from outside interference" ("UN Refugee Agency Cries Foul on Mexican, Czech Visas," *Embassy Magazine*, August 19, 2009).

[57] In the course of addressing the applicant's allegations of bias in *Zrig v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1043, aff'd 2003 FCA 178, Justice Tremblay-Lamer discussed Justice Joyal's decision in *Van Rassel v. Canada (Superintendant of the Royal Canadian Mounted Police)*, [1987] 1 F.C. 473. In the latter case, the applicant alleged the existence of a reasonable apprehension of bias on the basis that members of a disciplinary tribunal had been appointed by the Commissioner of the RCMP, whom the applicant suspected of having made negative statements about him. In dismissing the claim, Justice Joyal observed (at 487):

> The Commissioner of the RCM Police is not the tribunal. It is true that he has appointed the tribunal but once appointed, the tribunal is as independent and as seemingly impartial as any tribunal dealing with a service-related offence. One cannot reasonably conclude that the bias of the Commissioner, if bias there is, is the bias of the tribunal and that as a result the applicant would not get a fair trial.

[58] The foregoing statement applies equally, if not more strongly, to Board members, who are appointed by the Governor in Council (IRPA, para. 153(1)(a)).

[59] It is also relevant to note that Board members are subject to a Code of Conduct, which, among other things, provides:

> 5. The standards of conduct set out in the Code are based on and recognize two fundamental principles: (i) that public confidence and trust in the integrity, objectivity and impartiality of the IRB must be conserved and enhanced; and (ii) that independence in decision-making is required.
>
> …
>
> 29. Members shall not be influenced by extraneous or improper considerations in their decision-making. Members shall make their decisions free from the improper influence of other persons, institutions, interest groups or the political process. (Code of Conduct for Members of the Immigration and Refugee Board of Canada, June 1, 2008.)

[60] The Board member in the case at bar must be presumed to be impartial, absent serious grounds for concluding that a reasonable and informed person, viewing the matter realistically and practically, would believe that he was not impartial. It cannot simply be inferred, solely from the political nature of the Minister's comments, that they give rise to a reasonable apprehension of bias on the part of the Board member (*Fehr v. Canada (National Parole Board)* (1995), 93 F.T.R. 161, at para. 22, quoting with approval *Bertillo v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1617).

(3) The decline in the success rate of refugee claimants from the Czech Republic

[61] The Applicants assert that the decline in the level of acceptance of Czech refugee claimants from above 90% to virtually zero strongly substantiates their allegations of bias on the part of the Board. In support of this assertion, they provided Board data which they claim indicates that the level of acceptance of such claims dropped from almost 97% in the last quarter of 2008 to 80% in the first quarter of 2009, to 79% in the second quarter of 2009, to 30% in the third quarter of 2009, and then to virtually 0% in the last quarter of 2009.

[62] When one takes account of abandonments and withdrawals, which accounted for approximately 54% and 81% of all such claims finalized in 2008 and 2009, respectively, the adjusted level of acceptance rates for those years is approximately 30% and 10%, respectively. For the last two quarters of 2009, those adjusted rates are approximately 4% and 0%. That said, it is important to note that the total number of claims rejected in the fourth quarter of 2009 was only 13.

[63] In the first two quarters of 2010, the adjusted rate of acceptances was approximately 2%. However, over 70% of the finalized claims in that period were withdrawn or abandoned.

[64] In *Zrig*, above, the applicant alleged, among other things, that a panel of what was then the Refugee Division was biased and lacked independence. This allegation was based on the fact that the two members of that panel had been selected because they were less accepting of claimants from the Maghreb region of Northern Africa. In rejecting this claim, Justice Tremblay-Lamer stated (at para. 130):

> Each claim stands on its own merits and the members of the Refugee Division have to assess each case based on the evidence

> and applicable law. Such an assertion reflects directly on the integrity of the members in question and cannot be accepted unless there is good evidence. Mere suspicion based on "rates" does not meet the applicable standard of the well-informed individual considering the matter in depth in a realistic and practical way.

[65] This scepticism of the relevance of statistics is particularly warranted in this case.

[66] This is because, after conducting a fact-finding mission of conditions faced by the Roma in the Czech Republic, the Board released the two issue papers mentioned above. In *Dunova*, above, those two papers were not included in the evidentiary record. Indeed, the decision under review was made before the second of those papers was released in July 2009. However, at para. 54 of my decision, I noted that "[i]t is entirely possible that the content of [the first of those issue papers] affected the number of accepted, rejected, abandoned and withdrawn refugee claims by Roma from the Czech Republic."

[67] In *Gabor*, above, where the applicant relied on the same 2008 and 2009 statistics discussed above, Justice Zinn stated, at para. 30: "Absent evidentiary support divorcing [the Board's two issue papers] from the acceptance rate for refugee claims, the submission of the applicant is mere speculation and insufficient to warrant the conclusion he urges upon the Court."

[68] Now that I have had an opportunity to review the Board's two issue papers, I am satisfied that content of those papers provides an entirely plausible explanation for the decline in the level of acceptance of refugee claimants from the Czech Republic, from the last quarter of 2008 to the second quarter of 2010.

(4) The alleged corruption of Board members

[69] In their written submissions, the Applicants claim that "the criminal misconduct and corruption of some Board Members" has contributed to undermining the integrity and impartiality of the Board. In his oral submissions, counsel for the Applicant went further and made the sweeping claim that the Board as an organization is "corrupt" and "rotten."

[70] The evidence adduced by the Applicants in support of this very serious allegation consisted of nine news articles spanning the period 1992 to 2010 and a 2007 posting that appeared on the website of the Conservative Party of Canada. The news articles reported on: (i) the convictions or firings of four former Board members for criminal or inappropriate conduct; (ii) the removal of another Board member from her job; (iii) investigations into the conduct of four other Board members; (iv) the charging and eventual acquittal of another Board member; (v) the appointment of another Board member after he pleaded guilty to five counts of professional misconduct as a lawyer; (vi) the appointment of a Board member who was the former Chief of Staff to former Haitian President Bertrand Aristide; (vii) the political nature of appointments to the Board and the fact that some appointees are poorly qualified for the job; and (viii) the pressure that some former Board members felt to approve applications by refugee claimants. The website posting commented upon patronage appointments to the Board by the former Liberal government.

[71] Keeping in mind that there were a very large number of members of the Board during the period covered by the above-mentioned news articles, I find the Applicants' sweeping allegations that the Board as an organization is "corrupt" and "rotten" to be entirely unfounded and bordering

on unprofessional. Moreover, there is absolutely nothing in those articles that would support the bias allegations that the Applicants have raised in respect of the Board.

Summary

[72] In summary, I am satisfied that a reasonably informed person, viewing the matter realistically and practically, would not reasonably apprehend the Board member to have been biased against Roma refugee claimants from the Czech Republic, as a result of: (i) the comments that were reported to have been made by the Minister; (ii) his announcement of a visa restriction on visitors from the Czech Republic; or (iii) the allegations that the Applicants have made with respect to the history of bias at the Board and the impropriety of a few former Board members. Moreover, I do not believe that the evidence adduced regarding the decline in the level of acceptance of refugee claimants from the Czech Republic substantiates the Applicants' claims.

B. Did the Board err by failing to conduct an appropriate analysis under s. 97 of the IRPA?

[73] The Applicants submit that once the Board accepted their identities as citizens of the Czech Republic, of Roma ethnicity, the Board was obliged to conduct an analysis under s. 97, yet failed to do so.

[74] I disagree.

[75] In contrast to the situation in *Bouaouni v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211, the Board did not fail to analyse the Applicants' claims under section 97. Rather, it analysed them together with their claims under section 96, which is permissible (*Sida v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 901, at para. 15).

[76] Whether the omission of a separate section 97 analysis amounts to a reviewable error depends on the particular circumstances of each case (*Kandiah v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 181, at para. 16). Where no claims have been made or evidence adduced that would warrant such a separate analysis, it will not be required (*Brovina v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 635, at paras. 17-18).

[77] In the case at bar, the Board's integrated assessment focused on two issues, both which were relevant to the claims made by the Applicants under each of sections 96 and 97 of the IRPA. These issues were credibility and state protection. In this context, it was not necessary for the Board to conduct a separate analysis of the Applicants' claims under sections 96 and 97 of the IRPA, as those claims and the evidence adduced could comfortably be assessed in an integrated fashion.

[78] The Board's decision makes it clear that the Applicants' claims and supporting evidence were assessed in terms of the distinct requirements of each of sections 96 and 97. As in *Nagaratnam v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 204, at paras. 42-43, the Board's conclusions plainly apply to both sections of the IRPA. This was very different from the type of situation that arose in *Kilic v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 84, where the Board failed to explain the basis for its determination with respect to section 97 and to discuss in its integrated assessment claims that were relevant under that section. In this case, the Board specifically stated, at the end of its analysis: "There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the IRPA, the claims pursuant to that section fail as well."

[79] In my view, on the particular facts of this case, it was reasonably open for the Board to conduct a single integrated assessment of the Applicants' claims under sections 96 and 97 and to dispose of the Applicants' claims under section 97 in the manner quoted immediately above. I am unable to agree with the Applicants' submission that the Board erred in this regard.

C. Did the Board err by misapprehending or ignoring evidence, or unreasonably assessing the evidence as a whole?

[80] The Applicants submit that the Board erred by ignoring or selectively referring to much of the evidence which contradicted its conclusion that they had failed to rebut the presumption of state protection. They further assert that the Board: (i) completely failed to explain why that evidence was rejected; (ii) failed to reasonably explain the evidentiary basis upon which its conclusions were made; (iii) failed to assess the extent to which efforts of the Czech government have been effective in improving the situation of the Roma and in protecting them; and (iv) made an unreasonable assessment of the evidence as a whole.

[81] I disagree.

[82] In support of their submissions, the Applicants rely on this Court's decision in *Kaleja v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 252. However, that case is distinguishable on the basis that: (i) the applicants' claims were "uncontradicted"; and (ii) the decision that was set aside failed to "sufficiently distinguish persecution from what the applicants experienced." In addition, there was only a single paragraph in the decision dealing with country conditions, and the Court found that this "did not really address the evidence regarding country conditions" (*Kaleja*, above, at paras. 21, 23 and 24).

[83] In the case at bar, as has been mentioned, the Board found that the principal Applicant "was generally lacking in credibility." It stated that it did not believe that "any of the significant events that the claimant alleged happened to her and her children, actually happened." The Board then devoted over four pages to its assessment of the issue of state protection. In the course of doing so, it specifically acknowledged that Roma do face some discrimination and that there have been some attacks perpetrated against Roma by skinheads, neo-Nazis and other extremists. However, it also specifically found that:

i. legislation that has been enacted does in fact provide protection for the Roma;

ii. the fact that "the Czech Republic is a member of the European Union has had a positive impact on the country by setting standards concerning human rights, as well as [providing] access to the European Court of Human Rights and access to multilateral programs such as the Decade of Roma Inclusion";

iii. the establishment of programs known as Roma Police Assistants and Minority Liaison Officers "have been helpful and represent progress in the relationship between Roma and the authorities";

iv. other programs established by the Ministry of the Interior to combat extremists "is showing signs of success";

v. neo-Nazis have been arrested and prosecuted;

vi. the police also have successfully prevented or broken up extremist clashes and demonstrations;

vii. the judiciary has prosecuted hate crimes committed against Roma people on several occasions;

viii. the Ombudsman has successfully intervened in areas such as housing but has yet to receive any formal complaints against the police;

ix. there are many governmental agencies and non-governmental organizations (NGOs) available to assist the Roma, including 400 Roma NGOs, the Czech Trade Inspectorate and the Social Inclusion Agency; and

x. "the Czech government in recent years is making very serious strides to have this discrimination overcome."

[84] Given these findings, and the fact that the Board specifically addressed and rejected on credibility grounds each of the claims made by the Applicants in their PIF statements and testimony, I am satisfied that it was reasonably open to the Board to conclude that the Applicants had failed to rebut the presumption of state protection. Contrary to the Applicants' submissions, it is readily apparent from the foregoing findings made by the Board that the Board did in fact: (i) explain the basis for its conclusion on the issue of state protection; and (ii) assess the extent to which the efforts

that have been taken by the Czech government have been effective in assisting Roma and in providing adequate state protection to them.

[85] It was also open to the Board to prefer the 2008 country documentation referred to in its decision, to the more dated documentation referred to by the Applicants' counsel in the hearing before the Board and in oral argument before this Court. In addition, it was open to the Board to prefer the various sources referred to in its decision, to the 2009 Report by Amnesty International that the Applicants state should have been explicitly addressed. The Officer was not required to "detail every piece of evidence provided and every argument raised", so long as the decision reached was within the bounds of reasonableness (*Rachewiski v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 244, at para. 17).

[86] The only other specific information that the Applicants assert should have been addressed by the Board were passages from two pages in a 2008 report prepared by the U.S. Department of State (DOS), entitled *Human Rights Reports: Czech Republic*. Those pages appear at pages 115 and 116 of the Certified Tribunal Record (CTR). In its decision, the Board specifically quoted from one of those two pages. As previously mentioned, the Board also specifically noted that there have been demonstrations and even some attacks on Roma by skinheads, neo-Nazis and other extremists. Having reviewed the DOS report in its entirety as well as the rest of the CTR, I am satisfied that the Board did not fail to consider any other important information in the DOS report that contradicted its conclusion. There was no requirement on the Board to go further than it did in addressing information contained in that DOS report (*Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (C.A.); *Hassan v. Canada (Minister of Employment and*

Immigration) (1992), 147 N.R. 317, at para. 3 (F.C.A.); *Ayala v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1258, at para. 10).

[87] As the Board aptly noted in its decision, "it is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation" (*Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (C.A.); *Zhuravlvev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3, at para. 19 (T.D.)). The Applicants needed to go further and demonstrate, with clear and convincing evidence, that the government of the Czech Republic is so weak or corrupt that there are extensive shortcomings in its ability or willingness to provide protection either to the public at large or to persons similarly situated to them, as demonstrated by "a broad pattern of state inability or refusal to extend protection" (*Zhuravlvev*, at para. 31; see also *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at 724-725; *Villafranca*, above; *Resulaj v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 269, at para. 20; and *Alfaro v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 92, at paras. 43-45). Ultimately, the Applicants failed to discharge their burden in this regard.

[88] In addition to failing to provide clear and convincing documentary evidence on this issue, the Applicants failed to demonstrate that they personally had made failed attempts, despite reasonable efforts, to obtain state protection (*Ward*, above; *Santiago v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 247, at para. 23; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 66, at paras. 11 to 13; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 134, at paras. 9-10; *Cruz v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 929, at paras. 28 and 37).

[89] Given all of the foregoing, I am satisfied that the Board's assessment of the evidence as a whole was not unreasonable. The Board's assessment was well within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above).

[90] The Applicants also allege that the Board erred by failing to analyze whether they would be unable to earn a living in the Czech Republic. I disagree. Having rejected the Applicants' claims of persecution on the basis of its finding that the principal Applicant was generally lacking in credibility, the Board was not obliged to consider whether the Applicants might face sufficient discrimination in this regard to have a well-founded fear of persecution, as contemplated by s. 96 of the IRPA (*Odetoyinbo v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 501, at para. 7). This is not a type of risk contemplated by s. 97 of the IRPA. It is also not a risk that was mentioned in the Applicants' PIF, in their respective narratives or in their testimony before the Board.

[91] In addition, the Applicants allege that the Board failed to consider the various forms of discrimination and persecution suffered by other Roma in the Czech Republic and to assess whether such discrimination might be sufficient to establish the well-foundedness of their fear of persecution. For the reasons provided in the paragraph immediately above, I disagree.

[92] The Applicants further allege that the Board failed to assess whether Roma in the Czech Republic are discriminated against in the provision of health care services and whether this would put the Applicants, especially Sarka, who has a disability, at risk under section 97 of the IRPA. However, in paragraph 20 of its decision, the Board did assess this risk, even though it had

previously stated that it did not believe that any of the significant events that the principal Applicant alleged happened to her and her children, actually happened. After noting that this issue had not been "actively argued at the hearing," the Board quoted the following statement from the above-mentioned 2008 U.S. DOS report: "The law prohibits discrimination against persons with disabilities in employment, education, access to health care, and the provision of other state services, and the government generally enforced these provisions" (emphasis added). The Board then proceeded, in the next paragraph of its decision, to state: "There being no other evidence that the claimants would be at risk of the harms delineated under section 97 of the *IRPA*, the claims pursuant to that section fail as well." In addition, at paragraph 19 of its decision, the Board found that the Czech government is making very serious strides to overcome various types of discrimination, including discrimination in the provision of social services. Accordingly, the Board did not in fact fail to assess this issue, as asserted by the Applicants. In my view, having regard to the particular facts of this case, the Board's assessment of this issue was not unreasonable.

[93] In summary, I am satisfied that the Board did not err by misapprehending or ignoring evidence, or by unreasonably assessing the evidence as a whole. In my view, the Board's assessment of the evidence was within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above). It was also appropriately transparent, intelligible and justified.

D. Did the Board err by failing to consider whether the various incidents of discrimination that they or similarly situated persons experienced cumulatively amounted to persecution?

[94] Relying on this Court's decision in *Tetik v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1240, at para. 26, the Applicants submit the Board erred by failing to consider whether the various incidents that they or similarly situated persons experienced and continue to experience cumulatively amounted to persecution. However, *Tetik* is distinguishable from the case at bar. In that case, it does not appear that the Board questioned the credibility of any of the Applicants' claims. Rather, it found that the various types of discrimination that they had experienced did not amount to persecution, as contemplated by section 96 of the IRPA.

[95] By contrast, as I have already noted, in the case at bar the Board found that the principal Applicant was generally lacking in credibility. In addition, it did not believe any of her significant claims about what happened to her and her children. Having made these findings, the Board was under no obligation to proceed any further with its assessment of the Applicants' claims under section 96 (*Odetoynibo*, above; *Canada (Minister of Citizenship and Immigration) v. Sellan*, 2008 FCA 381, at para. 5).

VI. Conclusion

[96] This application for judicial review is dismissed.

[97] The Applicant suggested that consideration be given to certifying the following question: "Should the Minister comment on the merits of cases from a particular country?"

[98] It is by no means clear that the answer to this question would be dispositive of the question that has been raised by the Applicants with respect to the bias of the Board (*Varela v. Canada*

(Minister of Citizenship and Immigration), 2009 FCA 145, at para. 28). Even if the answer were negative, that would not necessarily suffice to enable a determination to be made on the issue of bias that has been raised in this particular case (*Varela*, above, at para. 37).

[99] Assessments of bias allegations invariably are highly dependent on the specific facts and context of each particular case. Insofar as such allegations may be based on comments reported to have been made by a Minister, they are also highly dependent on the specific comments in question and on the context in which they were made.

[100] Moreover, the question that has been suggested for certification is not a question that was raised and dealt with in this proceeding. The question that was raised in this proceeding is whether the specific comments reported to have been made by the Minister in connection with Roma refugee claimants from the Czech Republic gave rise to a reasonable apprehension that the Board was biased when it assessed and rejected the Applicants' claims. Therefore, the suggested question is not an appropriate one for certification (*Varela*, above, at para. 32).

[101] Accordingly, I do not believe that the proposed question raises "a serious question of general importance," as contemplated by paragraph 74(d) of the IRPA.

[102] Therefore, there is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed.

"Paul S. Crampton"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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