

Federal Court



Cour fédérale

**Date: 20110620**

**Docket: IMM-7259-10**

**Citation: 2011 FC 723**

**Toronto, Ontario, June 20, 2011**

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

**BETWEEN:**

**IMRENE NAGY  
HELENA MERCEDESZ HORVATH  
(A.K.A. HELENA MERCEDES HORVATH)  
(a minor)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The principal applicant, Imrene Nagy, is Hungarian. The minor applicant, Helena Horvath, is her six-year-old daughter, whose father, Sandor Horvath, is a Roma.

[2] The principal applicant's claim for refugee protection was denied based on the finding of the Refugee Protection Division (RPD) of the Immigration and Refugee Board that she was lacking in

credibility and therefore that the significant events she alleged happened to her did not actually happen. The RPD gave the following reason for denying the claim of the minor applicant:

As the claim of the minor applicant relies entirely on the evidence of the principal claimant's [*sic*] and no persuasive evidence was adduced to differentiate her claim from that of the principal claimant, the claim of the minor applicant must also fail. [emphasis added]

[3] The applicants raise two issues. They submit that the finding of the RPD with respect to the credibility of the principal applicant was unreasonable and they submit that the Board Member failed to adequately consider the claim of the minor applicant.

[4] The principal applicant's claim for status was based on her allegation that she suffered emotional and physical abuse at the hands of her ex-husband, Imre Nagy, a police officer.

[5] I agree with the principal applicant that the Member's finding that she was lying about being abused by her husband during their marriage does not seem to be based on an analysis that began with a presumption of the truth of her allegations. The Member's main explanation for the finding that the principal applicant was not credible in this respect was her failure to raise allegations of abuse during her uncontested divorce proceeding in 2000. This reasoning not only rests on unsupported assumptions about the principal applicant's personal situation but appears to be grounded in stereotypical assumptions about how women escaping domestic violence should behave. There is no basis for the Member's assumptions that the principal applicant would want to discuss the abuse she suffered in a public forum or that she was not still afraid of her husband, with whom she would have to have a continuing relationship given that they have children together and given that he was to have custody of them.

[6] Notwithstanding this problematic finding, it is clear that the Member found that most of the principal applicant's narrative was not credible. These findings were reasonable and it is clear that the Member would have reached the same decision regardless of the above-noted error. The Member simply did not believe anything the principal applicant said regarding abuse suffered at the hands of her former spouse, and with good reason: her story was filled with omissions and contradictions and her explanations were unsatisfactory. The Member was in the best position to assess the principal applicant's credibility, and his assessment was negative. Even leaving aside the Member's first-hand experience of the hearing, the hearing transcript, particularly at pages 284, 286, and 288 of the Certified Tribunal Record, shows that the principal applicant's answers to omissions and contradictions in her story were unconvincing:

MEMBER: ... So can you explain why we have two different answers here?

CLAIMANT: I forgot. There were so many things happening and I was so nervous.

...

MEMBER: ... Why did you not mention that in your narrative?

CLAIMANT: Because I did not think it was very important.

...

MEMBER: Why is this incident not mentioned in your PIF [Personal Information Form]?

CLAIMANT: I did not think it was that important, every information. Because when those papers were getting ready I was very depressed and I got treatment in Hungary.

...

MEMBER: Ma'am why is this incident not mentioned in your PIF?

CLAIMANT: Because I forgot. I forget a lot of things unfortunately.

These four exchanges were with respect to four different problems with the applicant's evidence.

[7] These inconsistencies led the Member to a finding, at paras. 29 and 31 of the Decision, that the principal applicant was simply not a credible witness:

Given the serious inconsistencies, discrepancies, [and] omissions with respect to numerous major issues [relating] to these claims, I find that the PC [Principal Claimant] was generally lacking in credibility. I simply do not find that, on a balance of probabilities, any of the significant events that the PC alleges happened to her, actually happened.

...

I am obligated to make a determination on the evidence deemed credible and trustworthy. I find none.

[8] Notwithstanding the Member's suspect finding on plausibility relating to the failure to raise the allegations of abuse during the divorce proceeding, I find that the Member's determination on the principal applicant's credibility was reasonable. He identified numerous important problems with the evidence which served as the basis for a negative credibility finding, and he was best-positioned to make that finding. Further, a review of the transcript supports these findings.

[9] Far more troubling is the failure of the Member to properly consider the claim of the minor applicant. It is evident from the transcript and from the written submissions of counsel filed after the hearing that her claim had two bases: first that as the child of the principal applicant she was at

risk from her mother's ex-husband, and second that as a person of Roma origin in Hungary she was at risk of persecution.

[10] The first fell with her mother's claim. However, the Member never disputed the fact that Helena Horvath is half Roma. Her identity was accepted and she bears her Roma father's name. The issue of Helena's ethnic identity was squarely before the RPD as is apparent both from the testimony of her mother and counsel's subsequent written submissions.

[11] The Member made no findings with respect to risk Helena might face due to her partial Roma ethnicity, instead holding that her claim was indistinguishable from her mother's – even though her mother was not Roma. The Board's complete failure to deal with this aspect of Helena's claim requires that the application, insofar as it relates to this aspect of the claim of the minor applicant, be allowed.

[12] The respondent submits that the applicants did not submit any evidence linking the country condition documents to the particular circumstances of the minor applicant, and that the principal applicant did not testify to any incidents of persecution relating to her daughter's ethnicity. While these may have been valid reasons to reject Helena's claim, they were not reasons offered by the Member. It is not open to the respondent to propose reasons the RPD could have and should have provided for rejecting Helena's claim. Nor is it the role of this Court to make such a finding.

[13] The applicants submit that the principal applicant also has a claim for refugee status based on the persecution she fears as the mother of a Roma child (persecution she might face generally in

Hungary, not specifically at the hands of her ex-husband). This claim was not set out in her PIF nor in the written submissions made by her counsel after the evidence was given. She relies upon the following exchange to support such a claim:

COUNSEL: Okay, I want to talk about you first. Your life would be in danger.

CLAIMANT: Yes that is true.

COUNSEL: By whom?

CLAIMANT: Because of Imre, by Imre.

COUNSEL: Anybody else? Is there anybody else that you fear in Hungary?

CLAIMANT: (Inaudible) because of my daughter, there might be problems because she is half Roma.

COUNSEL: Problems for you?

CLAIMANT: I am raising my daughter, she is my child.

COUNSEL: Who would cause these problems?

CLAIMANT: The people who do not like Romas. She is my child, I would protect her.

COUNSEL: When you say the people that do not like Romas, is there a name for these people or just...

CLAIMANT: I forgot, there is a name.

COUNSEL: But you are not talking about people that you know personally?

CLAIMANT: No, no.

COUNSEL: Anybody else that you fear?

CLAIMANT: No, only these.  
[emphasis added]

[14] It is evident from this exchange that the principal applicant's evidence was not that she had experienced any problems as a consequence of being the mother of a half-Roma child, but that she might in the future. While her refugee claim on this basis may have been tenuous, it was not considered by the Member.

[15] Accordingly, the claims of the applicants arising out of the Roma ethnicity of the minor applicant must be remitted back to the RPD for determination. Neither counsel proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed in part; the application of the applicants is allowed and their claim for refugee protection on the basis of the Roma ethnicity of Helena Mercedesz Horvath (a.k.a. Helena Mercedes Horvath) is referred back to the Board for determination by a different Member, who will consider alleged persecution generally in Hungary, but not from the alleged agent of persecution Imre Nagy.

"Russel W. Zinn"

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Judge



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

**DOCKET:** IMM-7259-10

**STYLE OF CAUSE:** IMRENE NAGY ET AL v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 14, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN J.

**DATED:** June 20, 2011

**APPEARANCES:**

Elyse Korman FOR THE APPLICANT

Kevin Doyle FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

OTIS & KOREMAN FOR THE APPLICANT  
Barristers & Solicitors  
Toronto, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario