



**Date: 20120613**

**Docket: IMM-8248-11**

**Citation: 2012 FC 742**

**Ottawa, Ontario, June 13, 2012**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**PETER SZABO  
MONIKA KORBELY**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] In early 2010, Sandorne Korbely (the Female Claimant), Peter Szabo (the common law spouse of the Female Claimant, referred to as the Male Applicant) and Monika Korbely (the daughter of the Female Claimant, referred to as the Daughter Applicant) arrived in Canada from Hungary and claimed refugee protection. The Female Claimant alleged a fear of her ex-husband and persecution as a Roma. The Daughter Applicant alleged fear of her father and because of her

ethnicity. The Male Applicant's fear was based primarily on his fear of persecution due to his Roma ethnicity, although he also stated that he feared the ex-husband.

[2] In a decision dated October 14, 2011, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) determined that the Female Claimant was a Convention refugee pursuant to s. 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. In the same decision, the Board found that the Male Applicant and the Daughter Applicant (collectively, the Applicants) were neither Convention refugees under s. 96 of *IRPA* nor persons in need of protection under s. 97. The Applicants seek to overturn the decision, insofar as it relates to them.

[3] For the reasons that follow, I have concluded that this Application for Judicial Review should be allowed.

## **II. Issues**

[4] The issues raised by this application are as follows:

1. Was the Board's conclusion that the Applicants would not face persecution in Hungary unreasonable; and
2. Did the Board err in its analysis of state protection?

### **III. Standard of Review**

[5] The parties agree that the Board's decision is reviewable on a standard of reasonableness. As taught by the Supreme Court, in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190, "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

### **IV. Analysis**

[6] It is important to note that the Board made no adverse credibility findings with respect to any of the three claimants. In its decision, the Board, in very detailed and comprehensive reasons, dealt with the situation of the Female Claimant and accepted her claim for protection. In brief, the Board concluded that: (a) the Female Claimant's fear of her ex-husband was well-founded; and (b) on the facts presented, the Female Claimant, as a victim of domestic violence and someone who had unsuccessfully sought police protection on multiple occasions, had successfully rebutted the presumption of state protection.

[7] The decision, with respect to the Applicants, was exceedingly brief.

[8] I will deal with each of the Applicants separately.

A. *The Daughter Applicant*

[9] With respect to the Daughter Applicant, the entirety of the decision is as follows:

Although the principal claimant's daughter, Monika, observed a number of the beatings her mother received at the hands of her father, she, herself was not abused. We accept that she was undoubtedly emotionally affected by this, however there was no evidence adduced to persuade the Board that she would have a well-founded fear of her father, if she were to return to Hungary. On the contrary, sadly, it appeared that her father, given the evidence that he had made no contact with the claimant since her parents' divorce, did not wish to maintain a relationship with her.

Although the principal claimant describes a few incidents relating to racism at the hands of the Hungarian guards, there was no evidence adduced to persuade the Board that this was tantamount to persecution. The narrative of the principal claimant's Personal Information Form (PIF) describes incidents during Monika's school years, however, for the most part, her PIF relates to racism targeted at the principal claimant and not her daughter.

[10] The testimony and evidence before the Board with respect to the Daughter Applicant included that she had not only observed the beatings suffered by her mother but that she had been assaulted trying to defend her mother. The Female Claimant testified that her daughter had also been beaten. The Daughter Applicant also testified to being present when her mother went to the police. In addition, she described a nervous breakdown allegedly due to her relationship with her father. The statement that the Daughter Applicant was "not abused", in light of this evidence, is simply unsupportable. Given the importance of this evidence, an inference can be drawn from the Board's failure to explicitly mention and analyze it that the Board failed to have regard to the evidence: *Cepeda-Gutierrez et al v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17 (TD), [1998] FCJ No 1425 (QL).

[11] While a finding by the Board that there was state protection for the Daughter Applicant in Hungary may have nonetheless been determinative of her claim, the Board made no such finding in this case. I accordingly conclude that the Board's decision with respect to the Daughter Applicant lacks justification, transparency and intelligibility within the decision-making process.

B. *The Male Applicant*

[12] The Board's reasons for rejecting the Male Applicant's claim for protection are as follows:

This claimant alleges he, too, fears the principal claimant's former husband. He described one incident when her former husband hit him with a brick. He also described an incident which occurred in September 2008 when he was threatened by a Hungarian guard. There was no persuasive evidence that this claimant had suffered harm at the hands of either the principal claimant's former husband, or at the hands of the Hungarian Guards, which would be tantamount to persecution.

Moreover, there was no persuasive evidence that this claimant had rebutted the presumption of state protection.

[13] The Board's findings with respect to the Male Applicant vis-à-vis the ex-husband are not unreasonable. The record demonstrates that interaction between the Male Applicant and the ex-husband was not extensive or marked by targeted violence (other than the incident with the brick). This is in contrast to the experiences of the Female Claimant and the Daughter Applicant whose experiences with the ex-husband extended over the course of a lengthy period of time. The one incident of being hit with a brick was not only isolated but was reported to and acted on by the police.

[14] The problem that I have with the Board's decision relates to the failure of the Board to consider the totality of the Male Applicant's experiences with racist acts experienced by him, arguably due to his Roma ethnicity. In the PIF narrative filed in this case, the following allegations are contained that reference the Male Applicant:

- in 1999, two men pushed and spat on him and refused to sell him a Christmas tree saying "gypsies do not celebrate Christmas";
- in July 2003, he was assaulted by three skinheads who followed him into a washroom at a train station; although he reported the incident to the police, the matter was closed a week later and the attackers were never found;
- in May 2004, he was riding a local bus when men spat on him, cursed him and called him names and told him to get off because the "air was unclean";
- in 2006, he was attacked by racists while fishing; a police report was made but the police dropped the matter;
- in September 2008, the Hungarian Guards threatened him when he tried to cross a street to attend a job interview; the police officer told him to go home;
- in August 2009, he and the Female Claimant were assaulted by skinheads; the police file was closed prematurely;

- on November 10, 2009, Hungarian Guards broke their windows and threatened to kill them all; he moved to a friend's house; and
- there is a group of Hungarian Guards with weapons in their village and the police have not stopped them.

[15] The Respondent is correct in his argument that there is a distinction between discrimination and persecution. However, in this case, the Board completely failed to consider whether the cumulative effect of the discriminatory acts suffered by the Male Applicant amounted to persecution. This is a reviewable error (see, for example, *Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840, 46 Imm LR (3d) 232).

[16] Again, a reasonable finding by the Board that there was state protection for the Male Applicant would have been determinative of his claim. While the Board did address the issue of state protection with respect to the Male Applicant, its analysis was limited to the statement that “there was no persuasive evidence that this claimant had rebutted the presumption of state protection”. In reaching this conclusion, the Board makes no attempt to address the evidence of the Male Applicant's many attempts to seek protection from the authorities. Viewed in this context, the Board's finding that the Male Applicant had failed to rebut the presumption of state protection is simply unreasonable.

**V. Conclusion**

[17] In conclusion, the Court will intervene with respect to the decision for both Applicants.

The decision is not reasonable.

[18] Neither party proposes a question for certification. None will be certified.



**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. the Application for Leave and Judicial Review is allowed, the decision of the Board quashed and the matter referred back to the Board for reconsideration by a different panel of the Board; and
2. no question of general importance is certified.

“Judith A. Snider”

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Judge

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

**DOCKET:** IMM-8248-11

**STYLE OF CAUSE:** PETER SZABO et al v THE MINISTER OF  
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