



**Date: 20120619**

**Docket: IMM-8586-11**

**Citation: 2012 FC 778**

**Toronto, Ontario, June 19, 2012**

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

**BETWEEN:**

**TOMAS JANIAK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This application must be allowed and the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada set aside.

[2] In my view, only one of the many grounds of review raised by the applicant, has merit. In his refugee claim, Mr. Janiak wrote: “After school I couldn’t find any job [because] I am Roma and no one gave me [an] opportunity to work for them. I had to go on social welfare to get some money for a life.”

[3] The Board in its decision, rightly or wrongly, defined the difference between discrimination and persecution in the following manner: “When discrimination rises to such a level that it *prevents* a person from accessing health care or education, or the protection of the state, or housing or employment to allow a person to survive, discrimination can become persecution [italics in original, emphasis added].”

[4] With respect to the claim of the applicant that he suffered persecution because he was unable to secure employment, the Board held as follows: “Although the claimant was denied employment opportunities because of his Roma ethnicity, and was never able to find any work, the claimant was able to access social welfare assistance from the government such that he was able to survive during his adult years after completing school in the Slovak Republic.” Accordingly, because the applicant had the benefit of social assistance, the Board found that the lack of employment has not risen to the level of persecution.

[5] The Board erred in its recitation of the evidence. The transcript of the applicant’s hearing indicates that he testified that although he did receive social assistance after he finished school in 1998, it ended in 2001 – he appears to have been cut off through no apparent fault of his own. He continued to live in the Slovak Republic until he came to Canada in 2008. For those seven years he lived with and off his parents.

[6] It may well be that the applicant will not establish persecution on the basis of lack of employment and lack of social assistance because he is Roma; however, that is a question for the

Board and not this Court. Although there was a finding of state protection, it has no application to this ground of persecution.

[7] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is allowed, the application for refugee protection is remitted back to the Board to be determined by a different panel, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-8586-11

**STYLE OF CAUSE:** TOMAS JANIAK v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 4, 2012

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

**DATED:** June 19, 2012

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