



**Date: 20130819**

**Docket: IMM-10084-12**

**Citation: 2013 FC 880**

**Ottawa, Ontario, August 19, 2013**

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

**BETWEEN:**

**ZLATKO STRUGAR, SANDRA STRUGAR,  
LEONARDA STRUGAR, TEODOR STRUGAR,  
and KAROLA PONGRAC**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant family members are all Croatian citizens. They arrived together in Canada on August 24, 2011, and sought refugee protection on August 31, 2011, on the basis that Mrs. Strugar is a lesbian and because of that she and her family suffered persecution in Croatia.

[2] Mrs. Strugar is legally married to Mr. Strugar who knew that she was a lesbian when he married her; however, they agreed to raise children together and to have separate sexual

relationships. The marriage would allow them to have a family, and would provide a cover for Mrs. Strugar's homosexuality.

[3] Two years prior to fleeing Croatia, people in Mrs. Strugar's community witnessed her kissing her girlfriend goodbye in a parked car near a bus stop. Members of her community then began to threaten her, her husband, her mother, and her children. Mrs. Strugar's son, Teodor, was targeted at school and got into several fights with children who had found out that Mrs. Strugar was a lesbian. Teodor has been hospitalized twice as a result of these incidents – once for a broken arm, and once after his calf muscle on his right leg was cut.

[4] The Board determined that the applicants were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. It found that Mrs. Strugar was not credible and that the applicants had failed to rebut the presumption of state protection. Both findings are challenged by the applicants and they further submit that the Board erred in failing to make any clear finding as to whether or not Mrs. Strugar was lesbian and thus failed to provide a transparent factual analysis underlying its conclusion that the applicants do not have a fear of persecution based on a Convention ground.

[5] I agree with the applicants that the Board's credibility finding is unreasonable. The Board found that Mrs. Strugar's credibility had been undermined primarily because it found her explanation as to how she met other lesbian women in coffee shops to be implausible and

because the act of risking a passionate kiss near a public bus stop in the middle of the day was inconsistent with her testimony that she was careful to hide her sexual orientation.

[6] *Latsabidze v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1429, and other decisions of this Court have cautioned against making credibility findings supported merely by the fact that the trier of fact found the evidence to be implausible without any explanation or analysis to explain why that was found to be so. Here, in this very brief decision, the Board fails to provide any factual or legal analysis underlying its view as to implausibility.

[7] I agree with the respondent that the Board also rested its credibility finding on the observation that significant events were omitted from the Personal Information Form. Nonetheless, the Board, in my view, was clearly unreasonable in stating that her failure to list and name her lovers in Croatia was one such omission. The form directs the claimant to “set out the significant events and reasons that have led you to claim refugee protection in Canada” and in this case it had nothing to do with her lovers’ identities but only with her sexual orientation. It was open to the Board, as it did, to question her as to their identities and relationship, but the mere omission from her PIF of this information is not a reasonable basis to bring her credibility into question.

[8] Although the Board’s state protection analysis is a mere paragraph, I find it to be reasonable. The only attempt made by any of the applicants was one inquiring as to state protection. Mrs. Strugar asked a friend who was a police officer for advice and was told that she should not approach the police unless she was harmed, as doing so would reveal her to be a

lesbian. That advice was received prior to her being revealed to be a lesbian and prior to the “attacks” that led the family to leave Croatia. It is not unreasonable for the Board to conclude that this was not an attempt to seek state protection. It was the only effort made by these applicants. Accordingly, the finding that no attempt had been made to seek protection is reasonable.

[9] Further, the Board’s conclusion, based on the record, that protection was available to gays and lesbians, is also reasonable and was not rebutted by the applicants who “provided no evidence other than her words or belief” that they would not obtain any protection. I note that even her friend, the police officer, made no such statement to her but rather advised her to wait until she had been harmed to seek police protection. Presumably he based his advice on his belief that police protection would be forthcoming.

[10] Lastly, I agree with the respondent that this case is distinguishable from *Odetoyinbo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 501. At paragraph 8, Justice Martineau observed:

In the case at bar the Board did not explicitly state in its reasons that it did not believe that the applicant was bisexual. Accordingly, it could not ignore compelling objective evidence on record demonstrating the abuses which gay men are subjected to in Nigeria. Therefore, even if the Board rejected the applicant’s account of what happened to him in Nigeria, it still had a duty to consider whether the applicant’s sexual orientation would put him personally at risk in his country.

[11] Although there was no explicit statement that the Board found Mrs. Strugar to be a lesbian, the Board did consider whether that sexual orientation would put her personally at risk in Croatia and found that state protection was available and adequate.

[12] Although the Board's credibility findings are unreasonable, the state protection finding cannot be disturbed and thus this application is dismissed. No question was proposed for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-10084-12

**STYLE OF CAUSE:** ZLATKO STRUGAR ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 15, 2013

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

**DATED:** August 19, 2013

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