



RPD File No. / N° de dossier de la SPR : TB2-07918
TB2-07919
TB2-07922
TB2-07920
TB2-07921

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	February 22, 2018 March 8, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	May 22, 2018	Date de la décision et des motifs
Panel	Anthony da Silva	Tribunal
Counsel for the Claimant(s)	Preevanda K. Sapru Barrister and Solicitor	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

[1] XXXX XXXX, the principal claimant (PC), a citizen of Hungary, seeks refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).¹ Joined to the claim are the PC's children's, XXXX XXXX, XXXX XXXX, XXXX XXXX, and XXXX XXXX, who are also citizens of Hungary. The claimants' identities as nationals of Hungary have been established by the testimony of their and the documentary evidence.²

PROCEDURAL ISSUES

[2] All five claims were held jointly pursuant to Rule 55 of the Refugee Protection Division Rules.³ Further, the PC was designated representative (DR) for the minor claimant, XXXX XXXX. The claimants all relied on the PC's narrative for their claim.

[3] Prior to the hearing, the panel discussed with the claimants' counsel what special accommodations should be made based on the Chairperson's Guideline 4⁴ and in light of the domestic violence suffered by the PC. It was agreed that the PC would be questioned initially by her counsel. The panel also recognized that women who have been victims of domestic violence require special sensitivity and awareness when testifying at the hearing. Questioning by the panel was subsequently conducted within the context of Guideline 4.

ALLEGATIONS

[4] The PC alleges as follows:

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 as amended, sections 96 and 97(1).

² Exhibit 1, Package of information from the referring CBSA/CIC.

³ Rule 55, Immigration and Refugee Board, Refugee Protection Division Rules, SOR/2012-256.

⁴ Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution: Update*, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the *Immigration Act*, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

[5] She left Hungary initially with her common law husband, XXXX XXXX, and their children because of problems with the Mayor of XXXX where they lived. As a result of the Mayor's enmity towards the Romani people and the PC's husband, who was not only Roma, but also had complained about the Mayor to the Labour Board, her husband had lost his job and Children's Aid had threatened to take their children.

[6] After coming to Canada, the PC suffered significant physical and emotional abuse at the hands of her husband. She reported the abuse to Toronto Police who charged the husband. During criminal proceedings against the husband, he was placed under a restraining order, but came to her home and attacked her. She filed another complaint with Toronto Police, but withdrew the charges after her the husband coerced the children to convince her to withdraw her complaint.

DETERMINATION

[7] The panel finds that the claimants are not Convention refugees as they do not have a well-founded fear of persecution for a Convention ground in Hungary. Further, the panel finds that they are not persons in need of protection as their removal to Hungary would not subject them personally to a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture.

ISSUES

The determinative issue in this case is state protection.

State protection of Roma

[8] The documentary evidence, with respect to state protection of Roma, is mixed. While it appears that the Hungarian government has made efforts to address problems with the protection of its Roma population from extremist elements, isolated incidents of violence continue to take

place,⁵ in some ways exacerbated by recent xenophobic responses by extremists and even Hungarian authorities to migrants and refugee claimants entering the country.⁶

[9] The panel notes that the PC is not ethnically Roma, and was initially married to a non-Roma man. It was only after she entered into a common law relationship with a Roma man and began living in a Roma community, that she was viewed as Roma. Her children are only half Roma. While the panel acknowledges that the claimants appear to have experienced discrimination while living in the Roma community, there is no indication that they would settle there, were they to return to Hungary.

[10] Despite their insistence that their appearance identifies them as Roma, the panel is not persuaded that they are visibly different from other Hungarians. The PC's children have been in Canada since 2012, are fluent in English and Hungarian, and all but the minor claimant have completed, or are close to completing, secondary school in Canada. The PC's oldest child, XXXX, lives on her own and has trained as an aesthetician. While the panel acknowledges the potential difficulties the claimants will encounter during their re-entry and transition into Hungarian society, it does not find that they would be forced to live in a Roma community. There is also insufficient evidence that the Hungarian **authorities** will not assist them or even impede their re-entry into Hungarian society. Further, the PC has siblings who can assist her and her children during the period of transition. The panel finds therefore, that while they will face challenges re-integrating into Hungarian society, their situation is different from and arguably better than most Roma returnees to Hungary.

State protection of domestic violence

[11] The claimants submit that they should be granted Convention refugee status based on their membership in a particular social group: victims of severe and prolonged domestic violence. They further submit that they will face a risk to their lives and a risk of cruel and unusual punishment were they to be returned to Hungary.

⁵ Exhibit 7, National Documentation Package (NDP) for Hungary (August 31, 2017), Item 13.6.

⁶ Ibid., Item 2.2.

[12] The claimants' fear is based almost entirely on their experience in Canada with the PC's husband and father of the four children. The PC has provided evidence⁷ of the abuse she has suffered at the hands of her husband and its impact on the children who are estranged from their father, apart from the youngest who is currently ten years old and is allowed to visit the father on a regular basis.

[13] The PC fears a return to Hungary as a result of threats made by her husband in Canada. The husband has threatened to harm her once she returns to Hungary. He realizes that he would suffer significant consequences in Canada where he has already been convicted of several charges, but believes he could act with impunity in Hungary.

[14] The panel has considered the well-foundedness of the PC's fear concerning her husband. She has testified that after suffering abuse from husband while in Hungary, she received little protection. Although police interrogated her husband concerning his abuse of the PC, they released him, indicating that this was a family matter. The PC also sought refuge with her children at a shelter in Hungary, but her husband found her and brought her back home. She believes that based on her past experience, the police would not protect her from her husband were she to return to Hungary. The PC also believes that were her husband to return to Hungary, he would seek revenge on her for having complained to police in Canada about his abuse of her. Her belief is based on threats made by her husband and heard by relatives in Canada as to what he would do to her if they returned to Hungary.

[15] The panel notes that no decision has been made as to the husband's claim for refugee protection. Further, given his difficulties in Hungary, there is a strong possibility that the husband would remain in Canada without status even if his claim was rejected. Regardless of future possibilities, the current situation is that the PC's husband is in Canada and not in Hungary, and therefore her fear of being attacked by him in Hungary is speculative and therefore not adequately well-founded.

⁷ Exhibit 12, Additional personal documents, received February 9, 2018; Exhibit 13, Additional personal documents, received February 13, 2018.

[16] The panel has also reviewed the documentary evidence with respect to state protection of domestic violence. Human Rights Watch research from 2015 indicates that "...Roma women do not trust the police and do not turn to the police for assistance; furthermore, the police do not respond to calls for assistance, if they are approached."⁸ Further research indicates that there is "a general lack of effective institutional response" with respect to domestic violence in Hungary.⁹

[17] The panel notes that the PC's situation is different from most Roma women and indeed most Hungarian women. In the event that she would require assistance from the authorities in Hungary with respect to her husband, she would be viewed differently in that she has legal documents from Canada highlighting the husband's criminal charges. Not only does she not fit the profile of a Roma victim of domestic violence, there is insufficient evidence to indicate that her husband would return to Hungary and subsequently pursue her. In considering the PC's fear that she will be sought, found, and attacked by her husband were she to be returned to Hungary, the panel finds her fear to be not well-founded.

[18] Both she and her children testified that they will be harmed by the father upon a return to Hungary. As with the PC, the panel also finds the children's fear of their father not well-founded. The panel notes that the difficulties they experienced in Canada with the father was a result of the father's abuse of the PC. Since their parents are no longer together and there is insufficient evidence to indicate that the father will return to Hungary and subsequently seek out and attack the PC, the panel finds their fear to be likewise unfounded.

CONCLUSION

[19] After careful consideration of the evidence, including the claimants' testimony and submissions by the claimant's counsel, the panel determines that the claimants have not satisfied the burden of establishing a serious possibility of persecution on Convention grounds, or that, on a balance of probabilities, they would be subject personally to a danger of torture, or face a risk of cruel and unusual treatment or punishment, were they to be returned to Hungary.

⁸ Exhibit 3, NDP for Hungary, (August 31, 2017), Item 5.2, at p. 3, para 2.

⁹ Ibid., at p. 6, s. 3.1, para. 1.

[20] The panel concludes that the claimants are neither Convention refugees nor persons in need of protection and rejects their claim.

(signed)

“Anthony da Silva”

Anthony da Silva

May 22, 2018

Date