



RPD File No. / N° de dossier de la SPR : TB2-04527
TB2-04561

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXXXXXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	March 22, 2019	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	April 5, 2019	Date de la décision et des motifs
Panel	Sarwanjit Randhawa	Tribunal
Counsel for the Claimant(s)	Anna Shabotynsky 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

[1] XXXX XXXX, the principal claimant, born on XXXX XXXX, 1989, and her minor daughter, XXXX XXXX XXXX, born on XXXX XXXX, 2012, claim to be citizens of Hungary, and are claiming refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).¹

[2] The principal claimant was appointed as the designated representative as she is the mother of the child.

[3] The claim was heard jointly, as required by Rule 55 of the *Refugee Protection Division (RPD) Rules*.²

[4] The principal claimant will be referred to as “the claimant” from here on.

[5] The claimant’s original claim was with her foster family. An application was made to disjoin her and her daughter’s claims from that of the foster family, which was denied on August 10, 2018. However, a second application was made to disjoin, which was allowed on August 16, 2018.³ An amended narrative was submitted.⁴

[6] In my questioning and in rendering this decision, I have considered the Chairperson’s Guideline 4: *Women Refugee Claimants Fearing Gender-Related Persecution*.⁵

ALLEGATIONS

[7] The allegations of the claimant are in her Personal Information Form (PIF): one with the foster family⁶ and her amended one.⁷

[8] The claimant alleges she is an orphan who was adopted by Hungarian parents. She attended school but was transferred to specials-need school. She was pushed down the stairs in school. After elementary school, she went to vocational school to graduate as a XXXX, but did not get work. She alleges an incident in XXXX of 2007 when while she was travelling in a XXXX, she was kicked and suffered a broken tooth and her lip was bleeding; she got off the XXXX at the next XXXX. The claimant was able to buy a house with the help of the government, for she is an orphan. She alleges she was gang raped in XXXX 2011, while she was celebrating

her XXXX in a XXXX but did not file a report. Two months later, she found out she was pregnant and she gave birth to her daughter XXXX. Her claim with her foster family was filed in 2012.⁸

[9] In Canada, she met her common-law partner, XXXX XXXX who is a Canadian citizen, Roma and 29 years older than her in 2015. They are now living as common-law partners and as of XXXX 2017, she has a daughter with him.

DETERMINATION

[10] I find that the claimant is not a Convention refugee nor is she in need of protection. I find that the claimant has not established that there is a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, she would be subjected to a danger of torture or face a risk to life or risk of cruel and unusual treatment or punishment, upon return to her country and my reasons are as follows.

ANALYSIS

[11] The determinative issue in this claim is credibility.

Identity

[12] The claimant and her minor child's identities are established by way of the certified true copies of their Hungarian passports.⁹

[13] Her Roma identity was established by a document from the Roma Community Center dated XXXX XXXX, 2018, and signed by XXXX XXXX XXXX XXXX.¹⁰

Credibility

[14] In counsel's questioning, the claimant stated that she needed extra help at school, for she was slow in her studies; she was provided that help by the state. She also stated that she took XXXX course in Hungary, which was only added to her amended PIF.¹¹ However, the psychologist's report¹² mentions that she experienced XXXX disabilities, but makes no mention of any XXXX issues. The panel is aware of the stress and the anxiety in testifying in the hearing

room and gave the claimant the opportunity to explain the inconsistencies, with the assistance of a Hungarian interrupter.

[15] There were many inconsistencies for which there were no reasonable explanation between her oral testimony and the evidence and documents that she presented. There was no persuasive evidence to explain the omissions between her Personal Information Form (PIF) and the supporting documents.

[16] I am aware of the case law as it relates to credibility. However, even if one is to give the claimant the benefit of the doubt, there were serious credibility concerns as it relates to the claimant's testimony and the two incidents referred to in her PIF that happened in Hungary.

Incident of 2007/2008

[17] The claimant was asked who she fears in Hungary. She testified that she fears her attackers – specifically, they are skinheads and a group. When asked which group they belonged to, she testified that they do not have a name, but they wear black clothing. When asked when they attacked her, she stated it was in XXXX 2007. In her original PIF,¹³ this particular incident was alleged to have taken place in XXXX 2008. In her amended PIF, she stated that this incident of being attacked on the XXXX and suffering a broken tooth and bloody lip, actually happened in 2007.¹⁴ When the panel pointed out to her that in the psychological report,¹⁵ she told the psychologist that the attack happened in 2008, the claimant stated there must be some mistake. When asked why the psychologist would state that, she stated it must be a mix up.

[18] When asked if she filed a police report of that incident, the claimant stated: “No, I did not.” However, the panel noted that the psychologist states the following in the report: “Ms. XXXX reported she eventually did inform her foster-mother what happened on the XXXX, and she was taken to the police station to give a report. She explained the case was closed because the perpetrators' identities were unknown.”¹⁶

[19] The claimant stated that she did not file a report. When asked to explain the inconsistency, she did not have an answer to that. I draw an adverse inference from the inconsistency and the lack of explanation.

*Omissions in her written/oral/psychological reports*¹⁷

[20] In her amended PIF, the claimant added that she was gang raped while she was celebrating her XXXX in XXXX 2011.¹⁸ When asked why this incident was not mentioned in her original PIF with her family, she testified that the family did not know about it.

[21] When asked if she needed any medical assistance after the rape or if she reported the incident to the police, she testified that she did not. However, the panel pointed out to the claimant that the psychologist report on page 21 states: “She explained she took herself to the hospital and then made a report to police.”¹⁹ In response, the claimant stated that she did not go to the hospital or report it to the police. When asked why the psychologist would write that in the report presented to the Board, at this point, the counsel requested to take a break to speak to her client. A ten minute break was taken. When the hearing resumed, the claimant stated it is hard for her to talk about it.

[22] It was pointed out to the claimant that the panel did not ask her to give details but only pointed out the inconsistencies in her written and oral testimony and the documents she presented. The claimant had no explanation.

[23] These were the two main incidents in her PIF which had inconsistencies that were not explained. There was also no medical report presented of her alleged gang rape.

[24] The counsel asked the claimant if she has spoken to anyone about the incidents and she replied she only spoke about it to the psychologist. She was also asked if she followed up the treatment recommended by the psychologist and if it helped her; she stated that she did not follow it and that it did not benefit her. When counsel asked her why not, she stated that she does not want to talk about it. The panel finds that the claimant has been here since April 2012 and the psychologist was only sought in 2018 for the letter is dated XXXX XXXX, 2018.²⁰ Even after the psychological assessment, the claimant has not taken the advice of the psychologist. I find that the claimant’s inconsistencies without any explanations, detracts from her credibility.

Child born in Hungary

[25] The panel asked the claimant why she kept a child that she alleges was conceived of rape, her explanation was that it was her first child and that she is against abortion. The panel is

sensitive to the subject of rape, but the claimant's explanation does not make sense as to why she would keep a child who would remind her of being raped, unless that is not the case. She also stated that her family had no idea of her being raped. One would expect some medical documents and that her family would know about such a crime if, indeed, it took place.

Common-law Partner

[26] When asked what the status of her common-law partner is, she stated that he is a Canadian citizen. When asked if there was a sponsorship on file for her, she stated that there is no sponsorship on file because she does not accept other peoples' help. When asked if she is living with him because they have a child together, she stated that she is not with him because he is a Canadian citizen. When asked why she is with him, she testified it is because she loves him. When asked why he would not sponsor her, or if they had talked about that, she answered that they have not talked about it. She further stated that "he could sponsor me, but I will not like that." I find that the claimant is living with her common-law partner, as a family, and I do not find her statement to be reasonable.

Her home in Hungary

[27] The claimant stated that the state helped her to buy a home in Hungary. When asked what happened to that house, she stated that the government took it. When asked why they would take it, she stated it is because she owes money. When asked if she had any documents to show that her house was taken by the government, she said that the documents are in her home in Hungary. When asked what kind of documents, she stated they were just bills. When asked if she has any documents that she had a house which was taken by the government, she stated she did not have any documents. The panel draws an adverse inference from lack of any documents to show that, indeed, her house, which the state helped her buy, was taken away.

STATE PROTECTION

[28] While the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return.²¹ Both subjective fear and objective fear are components in respect of a valid claim

for refugee status.²² The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances.²³

[29] I find that not every Roma in Hungary has experienced what amounts to persecution. Each case must be decided on its own merits. In this regard, I find persuasive words of Justice Harrington in *Varga*: "Each case turns on the particular history of the claimant, the record, the adequacy of the analysis by the Tribunal and, indeed, the appreciation of that evidence by various judges of this Court."²⁴

[30] Is there adequate state protection in Hungary in a forward looking manner? In *Ruszo*, Chief Justice Crampton of the Federal Court set out the law regarding state protection:²⁵

It is settled law that absent a complete breakdown of state apparatus, it should be presumed that a state is capable of protecting its citizens.²⁶ Moreover, "the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her."²⁷

[31] In the case at hand, there were inconsistencies in the claimant's oral testimony and the documents she presented and she did not have a reasonable explanation for such discrepancies. On one hand, the claimant stated that she did not go to the police; however, on the other hand, the evidence she presented²⁸ to the Board states that she sought medical help and went to the police. In her oral testimony, she maintained that she did not go to the police and instead chose to leave the country without seeking help. On one hand, in the psychological report, she states that the police could not do anything and "the case was closed because the perpetrators' identities were unknown."²⁹ Whereas in her oral testimony and written narratives, she stated that she did not seek protection.

[32] *Ward*³⁰ has established that the onus is on the claimant to produce clear and convincing evidence that the state cannot provide protection. The recent Federal Court of Appeal decision of *Mudrak* upheld the principle that the onus rests on the claimant to rebut the presumption of state protection.³¹ In this case, the claimant has not rebutted this presumption of state protection and the credibility concerns raised, further negates her claim.

CONCLUSION

[33] Having considered all of the evidence, I find that claimant has not established that she faces a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, she would be subjected to a risk of life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to Hungary.

[34] Therefore, this claim and that of the minor child are rejected.

(signed)

“Sarwanjit Randhawa”

Sarwanjit Randhawa

April 5, 2019

Date

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

² *Refugee Protection Division Rules* (SOR/2012-256), Rule 55.

³ Exhibit 9, Disjoinder Application Result, dated XXXXX, 2018.

⁴ Exhibit 7, Personal Information Form (PIF) Amendments and Documents, pp.1-17, received March 4, 2019.

⁵ Chairperson's 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*.

⁶ Exhibit 2, PIF – TB2-04527, received May 1, 2012; Exhibit 8, Amended PIF of Family, received May 3, 2013.

⁷ Exhibit 7, PIF Amendments and Documents, pp.1-17, received March 4, 2019.

⁸ Exhibit 1, Package of information from the referring CBSA/CIC, received April 11, 2012.

⁹ Ibid.

¹⁰ Exhibit 7, PIF Amendments and Documents, p.18, received March 4, 2019.

¹¹ Ibid., p.8.

¹² Ibid., pp.19-23.

¹³ Exhibit 2, PIF – TB2-04527, Narrative, para 38, received May 1, 2012.

¹⁴ Exhibit 7, PIF Amendments and Documents, p.8, para 10, received March 4, 2019.

¹⁵ Ibid., p.20.

¹⁶ Ibid.

¹⁷ Ibid., pp.19-23.

¹⁸ Ibid., p.9, paras 16-18.

¹⁹ Ibid., p.21.

²⁰ Ibid., pp.19-23.

²¹ *Csonka, Zoltan v. M.C.I.* (F.C., no.IMM-1144-12), Shore, September 7, 2012, 2012 FC 1056, at para 71; *Ahmad, Hasib v. M.C.I.* (F.C., no. IMM-9188-03), Rouleau, June 4, 2004, 2004 FC 808, at para 22.

²² *Csonka, supra*, at para 3; *Rajudeen, Zahirdeen v. M.E.I.* (F.C.A., no. A-1779-83), Heald, Hugessen, Stone (concurring), July 4, 1984. **Reported:** *Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 (F.C.A.), at para 14.

²³ *Prophète, Ralph v. M.C.I.* (F.C., no. IMM-3077-07), Tremblay-Lamer, March 12, 2008, 2008 FC 331; *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31, at para 17; *Ahmad, supra*, at para 22.

²⁴ *Varga, Mario Gyula v. M.C.I.* (F.C., no. IMM-1823-13), Harrington, May 27, 2014; 2014 FC 510, at para 20.

²⁵ *Ruszo, Zsolt v. Canada (Citizenship and Immigration)* (F.C., no. IMM-5386-12), Crampton, October 1, 2013, 2013 FC 1004, at para 29.

²⁶ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, 20 Imm. L.R. (2d) 85.

²⁷ *Kadenko: M.C.I. v. Kadenko, Ninal* (F.C.A., no. A-388-95), Hugessen, Décary, Chevalier, October 15, 1996.

Reported: *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4th) 532 (F.C.A.), at para 5.

²⁸ Exhibit 7, PIF Amendments and Documents, p.21, received March 4, 2019.

²⁹ *Ibid.*, p.20.

³⁰ *Ward, supra*, at pp.724-725.

³¹ *Mudrak, Zsolt Jozsef v. M.C.I.* (F.C.A., no. A-147-15), Stratas, Webb, Scott, June 14, 2016, 2016 FCA 178, at para 29.