

Federal Court



Cour fédérale

Date: 20190917

Docket: IMM-6291-18

Citation: 2019 FC 1174

Ottawa, Ontario, September 17, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

**TIBOR LAKATOS
ERZSEBET ALMASSY
ADAM PALFI
MARTON PALFI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Tibor Lakatos, his wife, Erzsebet Almassy, and her two sons, Adam Palfi and Marton Palfi are citizens of Hungary who claim refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The primary ground for their refugee claim was their risk at the hands of Ms. Almassy's ex-husband, Zoltan Palfi. The Refugee Protection Division (RPD) rejected their claim.

[2] For the reasons that follow, this judicial review is granted as the RPD failed to assess the *sur place* claim.

Decision under Review

[3] In its June 5, 2018 decision, the RPD determined the Applicants were not Convention refugees or persons in need of protection. The determinative issue was Ms. Almassy's credibility, which the RPD found to be lacking. Mr. Laktos's and children's claims were dependent upon Ms. Almassy's, thus all the claims were rejected. Ms. Almassy's claim was based on the allegation that her ex-husband sexually abused her sons. Her evidence was that upon learning this she confronted her ex-husband, reported it to the police, and moved with her sons to her parents' home.

[4] The RPD accepted her testimony that she left her husband in 2007 and that something perhaps occurred in the couple's relationship for her to file for divorce. However, the RPD was not persuaded that the minor claimants were sexually abused, as there was not enough credible evidence or testimony to support this claim.

[5] Both boys have been diagnosed with mental health conditions and referred to therapy, with one of them diagnosed with post-traumatic stress disorder.

[6] In the court-approved divorce settlement, the ex-husband was ordered to pay child support and was granted access and visitation rights. The RPD found her narrative and testimony contradictory on this point. In her narrative, she claimed that her ex-husband used his power and

influence to persuade the judge to grant access to the boys, but in her oral testimony she claimed that the lawyers negotiated the divorce settlement.

[7] Following the divorce, the Ms. Almassy claimed that further abuse occurred while her sons were vacationing with their father in Italy. The RPD found that her evidence on reporting this incident was inconsistent and therefore unreliable. The RPD concluded that there was no evidence of a lack of state protection in Hungary even if the Applicants' claim was true.

[8] The RPD found that the events as recounted did not occur, and that Ms. Almassy used the circumstances of a routine divorce proceeding as grounds for a refugee claim. The RPD therefore did not assign any weight to the supporting statements that she provided as they were of no probative value to the assessment of her credibility.

[9] The Applicants claimed refugee status as part of a particular social group as Convention refugees, i.e. adults protecting minor-age children from an adult pedophile. However, based on the definition in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [Ward] the RPD determined that the Applicants did not constitute a particular social group.

[10] In their amended narrative the Applicants also claimed refugee protection as a result of threats from a Hungarian man they met while living in Canada named Laszlo Fustos.

Issue

[11] Although the Applicants raise a number of issues with the RPD decision, the determinative issue is if the RPD erred in failing to consider the *sur place* claim.

Standard of Review

[12] The failure of the RPD to address the Applicants' *sur place* claim is an error of law and is reviewable on the correctness standard (*Mohajery v Canada (Citizenship and Immigration)* 2007 FC 185 at para 26; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50).

Analysis

Consideration of the Sur Place Claim

[13] “A ‘sur place’ refugee is an individual who was not a refugee when leaving his or her country of origin, but fears persecution upon return because of circumstances arising in the host country” (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, at para 29). Such circumstances may arise due to the claimant’s own actions while outside their country of origin (*Michal v Canada (Minister of Citizenship and Immigration)* 2005 FC 1507 at para 14).

[14] The Applicants argue that the RPD did not consider the *sur place* risk identified in the amended narrative. In the amended narrative, Ms. Almassy stated that she and her husband received threats from a Hungarian man they met while living in Canada named Laszlo Fustos. The Applicants believe Mr. Fustos is associated with a criminal organization in Hungary, and they claim they have been threatened if they return.

[15] This risk arose when the Applicants helped Mr. Fustos's wife leave him amid abuse allegations. Mr. Fustos was placed in immigration detention and ultimately deported back to Hungary. After he was placed in detention, he allegedly made threats against the Applicants. Ms. Almassy was also called in to give testimony about domestic violence she witnessed. She then learned that Mr. Fustos was connected to a criminal organization in Hungary, which Ms. Almassy claimed made her even more afraid for her family's safety in returning.

[16] The RPD decision itself does not make any reference to the *sur place* claim. The only reference the RPD appears to make to this element of the refugee claim is at paragraph 40 where the RPD states: "Given this finding of a lack of credibility regarding her testimony as identified, and in respect of the paper permitting to be her ex-husband's permissions statement, the panel is unable to proceed further with other allegations in her claim." Here, the RPD acknowledges that the only issue it analyzes is credibility, thereby excluding consideration of the *sur place* claim.

[17] A review of the certified tribunal record indicates that the *sur place* claim was raised. Although it is clear from the decision that the RPD did not believe the Applicants' basis for their refugee claim, the RPD still had an obligation to assess the *sur place* claim notwithstanding their doubt. In fact, this obligation would exist even if the Applicants had not explicitly raised a *sur place* claim, as stated by Mr. Justice O'Keefe in *Hannoon v Canada (Citizenship and Immigration)* 2012 FC 448 at paragraph 47:

It is established jurisprudence that even if an applicant does not explicitly raise a *sur place* claim, it must still be examined if it perceptibly emerges from the evidential record that activities likely to cause negative consequences on return took place in Canada.... Where there is trustworthy evidence that supports the claim this

analysis must be conducted whether or not the decision maker deems the applicant credible.

[18] As noted, in this case the *sur place* claim was raised in the context of the RPD hearing. However it is clear that the RPD did not deal with this part of the claim in its decision. This constitutes an error of law.

[19] This judicial review is therefore granted and the matter is remitted for redetermination by a different Officer.

JUDGMENT in IMM-6291-18

THIS COURT'S JUDGMENT is that this judicial review is granted the matter is remitted for redetermination. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6291-18

STYLE OF CAUSE: TIBOR LAKATOS ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 14, 2019

JUDGMENT AND REASONS: MCDONALD J.

DATED: SEPTEMBER 17, 2019

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