

Federal Court



Cour fédérale

**Date: 20220516**

**Docket: IMM-5974-21**

**Citation: 2022 FC 716**

**Toronto, Ontario, May 16, 2022**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**EDIT SZEPESI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ms. Edit Szepesi, is a Roma woman born in Hungary. The Applicant alleges that she faced discrimination in school, in accessing health care, and employment. The Applicant further claims she suffered several attacks by skinheads or racists from 2001 to 2011 and the police generally refused to help. She also alleges that in June 2014 she suffered an acid attack from a co-worker and was fired after she reported this incident to her employer.

[2] The Applicant further alleges abuse from her former boyfriend, G.S., an ethnic Hungarian, whom she started seeing in March 2015. The Applicant states that G.S. assaulted and threatened to kill her, and when the Applicant sought police assistance, they did not assist. The Applicant claims G.S. once drugged her at a party where she was raped by two men, and in March 2016, attempted to hit the Applicant, and her sister-in-law, with his car before assaulting the Applicant on the street. The Applicant sought help from an advocate for Roma rights, who was unable to assist due to police corruption and who advised the Applicant to leave Hungary.

[3] The Applicant arrived in Canada on October 11, 2016, and made a refugee claim under s. 96 and s. 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 on the grounds that she feared persecution based on her Roma ethnicity as well as gender-based domestic violence in Hungary.

[4] The Respondent intervened in the Refugee Protection Division [RPD] proceedings, submitting evidence that the Applicant had been in the United States [US] for about seven months starting in August 2012, which the Applicant had not previously disclosed. The Applicant claimed she went to the US hoping to avoid further abuse in Hungary. However, she did not seek refugee protection given the language barrier and her lack of contacts in the US. The Applicant claimed she omitted the trip to the US on the advice of former counsel.

[5] On November 26, 2019, the RPD rejected her claim. The Refugee Appeal Division [RAD] dismissed her appeal, finding that she lacked credibility and subjective fear [the

Decision]. The RAD also found the Applicant has failed to provide clear and convincing evidence that adequate state protection is unavailable to her.

[6] The Applicant argues that the RAD failed to apply the Immigration and Refugee Board's *Chairperson's Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [the Guidelines]. The Applicant also argues that the RAD made errors in its analysis of credibility, subjective fear, and state protection.

[7] I dismiss the application as I find that the RAD reasonably determined the issues of credibility and state protection, and that the RAD did not err in applying the Guidelines or in finding a lack of subjective fear.

## II. Issues and Standard of Review

[8] The Applicant argues that the RAD erred: (1) in its application of the Guidelines; (2) in impugning her credibility; (3) in assessing subjective fear and her failure to seek asylum in the US; and (4) in its assessment of state protection related to her forward-looking risk.

[9] The parties agree that these issues are reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[10] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant

administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[11] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”: *Vavilov*, at para 100.

### III. Analysis

#### *Issue 1: Credibility Finding*

[12] I begin my analysis with the RAD’s findings on credibility.

[13] The Applicant argues that the RAD erred in its credibility analysis and failed to provide her with the presumption of truthfulness in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA). She objects to the RAD’s treatment of (a) her lack of medical records relating to her claim, (b) her letters of support, (c) her psychological report, and (d) her residency in the US. I will start my analysis with the last issue.

#### (a) *Residency in the United States*

[14] As noted above, the Applicant initially did not disclose her 7-month stay in the US. After the omission came to light, the Applicant filed an amended Basis of Claim narrative stating that the date of one of the incidents set out in her original claim documents was incorrect, as this incident would have happened when she was in the US.

[15] The RPD found that the omission of her trip to the US and her subsequent return to Hungary were significant and undermined her overall credibility. While the Applicant argued that she omitted the trip to the US on the advice of former counsel, the RPD found that she was represented by experienced counsel who would have been aware of the biometrics information routinely shared between Canada and the US Department of Homeland Security and that this error would have eventually come to light.

[16] The RAD agreed with the RPD, noting that there was no indication that former counsel had been put on notice nor that a complaint was made to the Law Society of Ontario or the Immigration and Refugee Board. Citing the serious nature of the Applicant's allegations and the absence of evidence supporting them, the RAD rejected her argument that having experience does not necessarily equate to being principled.

[17] Now on judicial review, the Applicant argues that it is possible she misconstrued her previous counsel's advice, given her lack of sophistication and unfamiliarity with the refugee application process, although the Applicant also continued to argue she acted on her previous counsel's advice. At the hearing, the Applicant's current counsel cited her mental health as a possible reason for the difficulties in communication with former counsel, while reiterating the

Applicant's genuine belief that her former counsel advised her the US trip was not relevant. In either case, the Applicant argues it was unreasonable to assume she was being deliberately misleading in omitting her residency in the US, and to impose the burden of making a formal complaint against former counsel.

[18] While I do not consider it necessary for a claimant to make a formal complaint with the Law Society before alleging issues of incompetence and ethics with respect to counsel, I do agree with the RAD that the allegations made by the Applicant against her former counsel are "serious, and if accurate, strike at the core of the integrity of the refugee protection system." In my view, an allegation that counsel is not "principled" is more serious than an allegation of incompetence. Yet, as the RAD rightly pointed out, there is an absence of any such evidence regarding former counsel's conduct, both before the RPD and the RAD.

[19] Such a lack of evidence led the RAD to reasonably concur with the RPD's finding that the Applicant's failure to disclose her 7 months' stay in the US "undermines her credibility and the credibility of her claim." I see no reason to disturb that finding.

[20] As the RAD stated: "omission of what she alleges was a flight from Hungary due to persecution, subsequently returning from a safe haven to the country of origin where the persecution occurred is not a minor omission and relates to the fundamental underpinning of her claim." I see no error with this finding.

(b) *Medical Records*

[21] The RAD shared the RPD's concern that the Applicant "had provided a fairly extensive set of medical records, none of which dealt with any of the incidents in which she alleged serious assaultive persecutory conduct had been suffered." The RAD found that when the RPD questioned her about this, she gave "non-responsive, inconsistent and evolving testimony." The RAD also found that her explanation contradicted evidence in the National Documentation Package [NDP] indicating that procedures are available for former patients both within and outside of the country to obtain medical reports.

[22] The Applicant argues that the RAD disregarded her reason for providing the documents she did, and erred in finding her testimony to be inconsistent and evolving. I reject the Applicant's argument. As noted in the Decision, the Applicant provided several responses to the question regarding the missing medical reports: "the police did not come", the Applicant did not remember to bring such documents with her, "most likely" her ex-husband had them; and that certain doctors did not care about her. Given this range of responses, I see nothing unreasonable about the RAD's findings that the Applicant provided "non-responsive", "inconsistent" and "evolving" testimony.

(c) *Letter of Support*

[23] The Applicant provided a support letter from her mother, which recounted violent actions from the Applicant's former partner. The RPD dismissed the letter on the grounds that its authenticity could not be determined. The RAD stated that "while it may have been within the RPD's ability to further investigate this letter, I find that the letter itself makes certain statements which bring its reliability into question." The RAD found that the letter contained certain

information about injuries to the Applicant, as well as information about assaults and threats to her parents, which were not included in the Applicant's own narrative.

[24] The Applicant argues that the RAD erred in finding her mother's letter unreliable without engaging in any attempt to ascertain its veracity or make further inquiries: *Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 [*Paxi*] at para 52. The Applicant submits the richness of details of the letter and the lack of those details in the Applicant's own evidence does not amount to an inconsistency or cause concern about the reliability or accuracy of the letter.

[25] *Paxi* does not apply, in my view, as the RAD's issue with the mother's letter is not with its authenticity or lack thereof, but rather the inconsistencies between the letter and the Applicant's own narrative.

[26] I am also not persuaded by the Applicant's argument that one problematic document cannot be the basis to reject all other documents provided: *Lin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 84 at paras 11-12. I agree with the Respondent that the RAD weighed all of the Applicant's support letters and found they fell short of corroborating her claim. It is not my role to reweigh the evidence.

(d) *Psychological Report*

[27] The Applicant disputes the RAD's credibility concerns about the report from her psychotherapist, which stated that she exhibited symptoms consistent with post-traumatic stress disorder, generalized anxiety disorder, and major depressive disorder. The RAD found that the



author of the report “steps over the line from therapist to advocate with her comment that [the Applicant’s] symptoms will increase considerably should she be forced to return to Hungary and references a “history of self-harm” for which no evidence has been adduced.” The RAD further found that the contents of the report are entirely based on self-reporting by the Applicant.

[28] The Applicant argues that “a non-expert decision maker...errs when he or she rejects expert psychological evidence without basis” simply because the document is not based on first-hand knowledge: *Lainez v Canada (Citizenship and Immigration)*, 2012 FC 914 at para 42.

[29] I acknowledge, as the Applicant points out, that psychological reports often have to rely on self-reporting and such documents should not be rejected on that basis alone. However, in this particular case, as the RAD found, the report in question was *entirely* based on the Applicant’s self reporting. As the RAD noted, there is “no evidence in the report as to any diagnostic testing which may have been conducted” to verify the conclusions.

[30] As such, I reject the Applicant’s argument that the psychological report relies on objective testing done by an experienced psychologist. Instead, the RAD reasonably found the report has little probative value.

[31] At the hearing, counsel referred to two medical reports from Hungary indicating that the Applicant was seeking treatment for her anxiety. I note, however, the psychotherapist did not indicate that they had access to the Applicant’s past medical reports at the time of assessment.

[32] Counsel further submitted at the hearing that the Applicant is a person with serious mental health issues. This may well be the case, but the evidence on record was thin, and the issue of how the Applicant's mental health may have impacted her testimony was never raised before the RPD or the RAD.

*Issue 2: Gender Guidelines*

[33] Before the RAD, the Applicant argues that the RPD failed to acknowledge the persecution she had faced as a woman enduring domestic abuse and imposed an evidentiary standard inconsistent with the Guidelines. The RAD dismissed this argument, finding that "the hearing was conducted through the lens of the Guidelines and the Reasons which followed are, likewise, consistent with and apply the objectives stated therein." The RAD Member also confirmed that they had listened to the hearing recording and that questioning was done with sensitivity. Having heard the recording and reviewed the transcript, I agree.

[34] The RAD also disagreed with the Applicant's argument that the Guidelines require a "loosening" of evidentiary considerations, stating that "evidence which lacks credibility is not rehabilitated by resort to the Guideline[s] but still requires [Immigration and Refugee Board] decision-makers to conduct the hearing, and to analyze the claim and the evidence in support of the claim in a manner that is consistent with its principles."

[35] The Applicant argues that the RAD erred when trying to explain the evidentiary standard in light of the Guidelines, because first the RAD stated that the Guidelines do not promote a relaxation of the standard and are not a shield to prevent a claimant's evidence from being tested, but then the RAD stated that the Guidelines advocate and establish a commitment on the part of

decision makers to be aware of certain evidentiary considerations that may be missing or difficult to obtain in gender-based claims.

[36] The Applicant's argument has no merit. To start, the Applicant provides no support for the position that the Guidelines require a "loosening" of evidentiary considerations. Second, the Applicant has selectively quoted from the RAD's analysis with respect to the Guidelines and thereby misconstrued its reasoning.

[37] In the Decision, the RAD recognized the Guidelines mandate sensitivity to claimants with gender-related claims and indicated an awareness of certain evidentiary considerations. But the RAD also acknowledged that these considerations have to be balanced with the fundamentals of the refugee process including credibility assessment and the proof required of a well-founded fear of persecution or being a person in need of protection. The RAD's interpretation of the Guidelines, in my view, is reasonable.

[38] In the Applicant's view, the RAD's analysis is insufficient and did not address all the points from the Guidelines, especially the ones regarding the evidentiary expectations pertaining to state protection. I reject this argument. As the Respondent argues, and I agree, that the Guidelines "cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth": *Pazmandi v Canada (Citizenship and Immigration)*, 2020 FC 1094 at para 29, citing *Newton v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15385 at para 18.

*Issue 3: Subjective Fear*

[39] The RPD and the RAD agreed that the Applicant's failure to claim asylum in the US and her subsequent return to Hungary undermined her subjective fear.

[40] The Applicant argues that the RAD disregarded the fact that her legal status in the US was precarious, and that she was unable to seek assistance from a legal professional because of her lack of resources, contacts, and inability to communicate in English, as well as her lack of knowledge about the refugee claim procedure in the US, contrary to *Nezhalskyi v Canada (Citizenship and Immigration)*, 2015 FC 299 at para 12.

[41] I am not persuaded by the Applicant's submission. I note, first of all, that the RAD did consider her explanations and acknowledged "her legal status was precarious" in the US. The RAD's main issue with the Applicant's claim in this regard is her decision to return to Hungary, as opposed to her decision not to make a claim in the US.

[42] The Applicant argues that a refugee claimant's failure to claim may not be fatal to a refugee claim even in cases where there are allegations of reavilment, citing *Akpojiyovwi v Canada (Citizenship and Immigration)*, 2018 FC 745 at paras 3, 8. However, I note that the determinative issue for the Court was not the issue of reavilment.

[43] Further, the Applicant argues that the RAD ignored the fact that the persecution she faced in Hungary intensified after her return and was further exacerbated by the domestic violence she experienced beginning in 2015. Once again, the Applicant's argument has no merit. The RAD did consider the "persecutory events" following the Applicant's re-availment to Hungary as a

result of her relationship with G.S but ultimately rejected the Applicant's allegations based on "inconsistencies and credibility concerns which undermined her credibility."

*Issue 4: State Protection*

[44] The RAD found that the RPD had performed an incorrect state protection analysis, as "[r]egardless of whether past persecution is established or not, the RPD accepted that [the Applicant] is of Roma ethnicity and, as such, that profile requires analysis having regard to the country conditions and her particular facts and circumstances." The RAD performed its own state protection analysis to correct the RPD's error, but nonetheless found that state protection in Hungary was operationally adequate. Despite the evidence being "mixed and, at times, difficult to reconcile", the RAD found that there were robust complaint procedures for Roma people who suffer indifference from the authorities.

[45] The Applicant argues that the RPD - and presumably, the RAD - erred by failing to consider that the pattern of harassment, mistreatment, and deprivation she endured indicated a significant risk of future persecution. The Applicant cites *Kadhm v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7257 (FC) at para 12, which states that "harassment in some circumstances may constitute persecution if sufficiently serious and [if] it occurred over such a long period of time that it can be said that a claimant's physical or moral integrity is threatened." In addition, the Applicant cites *Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 at para 42, which states that the decision maker must consider "events which, if taken individually, do not amount to persecution, but if taken together, may justify a claim to a well founded fear of persecution."

[46] The Applicant also argues that the Federal Court has found the treatment of Roma persons in Hungary to amount to persecution, citing *Majoros v Canada (Citizenship and Immigration)*, 2017 FC 667 at para 88. The Applicant argues that while it is not the Court's role to reweigh the evidence, if the RAD's finding contradicts prior findings of the court it should not stand: *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 1220 at para 25.

[47] While the RAD acknowledged that the evidence on state protection for Roma citizens of Hungary was mixed and difficult to reconcile, the Applicant argues that the RAD ignored evidence in her favour contrary to *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC). The Applicant referenced specific country condition reports in the NDP that demonstrate the mechanisms for state protection are simply not effective in Hungary, especially for Roma. In light of this evidence, the Applicant argues that the RAD applied an erroneous interpretation of the state protection test, as well as erroneously assessing the NDP, when it found that conditions in Hungary are not so dire as to render all Roma persons subject to discrimination amounting to persecution.

[48] In my view, the Applicant is asking the Court to reweigh the evidence, which with respect is not a role the Court should play.

[49] The RAD recognized it is insufficient to establish that a state is making its "best efforts" or is "attempting to make improvements to its domestic situation with respect to the adequacy of state protection." Rather, the RAD stated that the appropriate test "is the test of operational

adequacy which involves in assessment as to whether state protection is adequate at the operational level.” The RAD made no error in identifying the appropriate test.

[50] Next, the RAD conducted its own independent review of the documentary evidence found in the NDP, finding that it “is mixed on the issue of state protection in Hungary.” The RAD acknowledged that the evidence is often “conflicting and difficult to reconcile”, and that the evidence “shows a history of discrimination against Roma in Hungary.” The RAD then went on to conduct a review of the documentary evidence, while taking into account the Applicant’s own experiences in notifying the police about events in which she alleges persecution, noting that at least one instance involved perpetrators who could not be identified while others involved contacting police “but nothing more”, and concluding as such that the Applicant “has not attempted to fully avail herself” of state protection within Hungary. Again, I am not able to conclude that this finding was unreasonable, in light of the evidence.

[51] While a different decision maker may have reached a different conclusion about the issue of state protection for Roma in Hungary, in light of the analysis conducted by the RAD in this case and the evidence before it, I conclude that there exists “justification, transparency and intelligibility within the decision-making process” and that the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Vavilov*, para 86.

#### IV. Conclusion

[52] The application for judicial review is dismissed.

[53] There is no question for certification.



**JUDGMENT in IMM-5974-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Avvy Yao-Yao Go"

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Judge

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

**DOCKET:** IMM-5974-21

**STYLE OF CAUSE:** EDIT SZEPESI v THE MINISTER OF CITIZENSHIP  
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**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

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**DATED:** MAY 16, 2022

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