

Federal Court



Cour fédérale

Date: 20130423

Docket: IMM-6258-12

Citation: 2013 FC 412

Ottawa, Ontario, April 23, 2013

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

JOZSEF KOTAI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Jozsef Kotai [the Applicant] seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], dated June 5, 2012, wherein the Board determined that the Applicant is not a Convention refugee or a person in need of protection [the Decision].

[2] For the following reasons, the application will be allowed.

Background

[3] The Applicant is a 31 year-old male, a citizen of Hungary and of Roma ethnicity. His refugee claim is based on years of discrimination, harassment and threats from skinheads in his hometown of Miskolc. A number of threats, intimidating encounters and an assault are detailed in his Personal Information Form [PIF]. The Applicant also claims that he was constantly harassed by the local police with frequent stops and requests for identification. Although the Applicant held a job when he left Hungary, he testified that finding work in Hungary as a Roma was extremely difficult. He also explained that in 2009, while at work, he experienced intimidation and threats from his co-workers which caused him to fear for his safety. Those threats were triggered by the widely-publicised stabbing of a Hungarian man by a group of Roma. For his safety, the Applicant's employer transferred him to another section of the company.

[4] When those threats were made, the Applicant began to consider leaving Hungary and made a plan to save money and come to Canada. He arrived in Canada on February 23, 2010 and made his refugee claim a few days later. He states that he is afraid of returning to Hungary because he will continue to be harassed by the police. He also fears being attacked and claims that he will live in constant fear of violence from skinheads and nationalists.

The Decision

[5] The Board's decision included a negative assessment of the Applicant's credibility and a finding that he failed to rebut the presumption of adequate state protection in Hungary.

Discussion

[6] The Applicant's PIF stated that he was stopped and questioned by the police on a regular basis. He explained that the harassment became worse as he grew older. The transcript shows that when asked at the hearing why he did not report an assault which occurred in 2003 ("the Assault"), the Applicant stated that "during these years" the police often harassed him when he was out in public. He then described one incident in which he was stopped by police officers three times within thirty minutes. The Applicant was asked about the timing of this event and he stated that it occurred in 2006. However, he reiterated that his interactions with the police went beyond this single occasion. At a later point in the hearing, in response to questions from his counsel, the Applicant added that police first started harassing him in his late teens, starting in 1998. When asked how often he would be stopped by the police, he replied that it was "almost on a daily basis".

[7] The Board appears to have overlooked the Applicant's evidence of constant police harassment. It appears to have decided that there was only one such incident and that it took place in 2006. The Board understood the testimony to be that the Applicant was using a single incident of harassment in 2006 to explain his failure to report the Assault to police in 2003 and this caused it to doubt his credibility. However, the Board, as outlined above, failed to appreciate the evidence.

Accordingly, this adverse credibility finding cannot stand.

[8] The Board's misunderstanding of the Applicant's evidence also tainted its analysis of state protection. The Board could not properly assess the Applicant's failure to approach the police for assistance when it failed to appreciate the overwhelming evidence of regular police harassment. The failure to come to terms with the Applicant's evidence also caused the Board to overlook

documentary evidence which corroborated the Applicant's experience with the police in Hungary. These errors render the Board's conclusion regarding state protection unreasonable.

[9] No question was posed for certification pursuant to section 74(d) of the Act.

ORDER

THIS COURT ORDERS that:

The Decision is hereby set aside and sent back for reconsideration by a differently constituted panel of the Board.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6258-12

STYLE OF CAUSE: JOZSEF KOTAI v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 20, 2013

**REASONS FOR ORDER
AND ORDER:** SIMPSON J.

DATED: April 23, 2013

APPEARANCES:

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FOR THE APPLICANT

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