

Federal Court



Cour fédérale

Date: 20140526

Docket: IMM-2130-13

Citation: 2014 FC 497

Ottawa, Ontario, May 26, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**ATTILANE DJUBOK
JOZSEF VARADI BY HIS LITIGATION
GUARDIAN ATTILANE DJUBOK**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Attilane Djubok and her son, Jozsef Varadi, seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board which rejected their claim for refugee protection on the basis that adequate state protection was available to them in Hungary.

[2] I agree with the applicants that the Board erred in failing to properly address the risk faced by Ms. Djubok in Hungary as a result of her status as a female Roma victim of serious

domestic violence. I am also satisfied that the Board erred in failing to consider the risk faced by Jozsef, as a developmentally-delayed Roma citizen of Hungary.

[3] Consequently the application for judicial review will be granted.

I. Background

[4] Ms. Djubok began her relationship with Jozsef Varadi Sr. in 1996. The relationship quickly became abusive, and the Board appears to have accepted that Ms. Djubok was subjected to some fifteen years of horrific physical, sexual and emotional abuse at the hands of her ex-partner.

[5] Mr. Varadi's abuse led to Ms. Djubok being hospitalized in 1998. She reported Mr. Varadi to the police, the result of which was that he was charged and detained for seven or eight days.

[6] Ms. Djubok ultimately dropped the charges against Mr. Varadi because of threats and intimidation by Mr. Varadi and his family, who threatened to burn her house down with her children inside. After Ms. Djubok withdrew the charges, Mr. Varadi was released from detention and he returned to live with Ms. Djubok and her children. Ms. Djubok says that the abuse escalated after this episode.

[7] After Ms. Djubok withdrew the charges against Mr. Varadi, the police charged her with obstruction of justice, which led to her being put on probation for eighty days. Ms. Djubok says that after this incident, she was afraid that the police would not take her claims of abuse seriously and she did not approach the police again for assistance.

[8] Ms. Djubok, Mr. Varadi and Jozsef came to Canada in 2011. The family then claimed refugee protection based upon the persecution that they claimed to face in Hungary by reason of their Roma ethnicity.

[9] Although Ms. Djubok had hoped that things would be better once they came to Canada, Mr. Varadi continued to abuse her. He also began to abuse Jozsef – something that evidently had not happened while the family was living in Hungary.

[10] In January of 2012, Mr. Varadi struck Jozsef in the course of an argument. This was evidently the last straw for Ms. Djubok, and she took Jozsef and left the family home. Mr. Varadi was charged with assault, and a restraining order was taken out against him. Since then, Mr. Varadi has contacted Ms. Djubok on at least one occasion, threatening her in an effort to persuade her to withdraw the charges against him. It appears that the criminal charges against Mr. Varadi are still outstanding.

[11] After her separation, Ms. Djubok severed her and her son's refugee claims from that of Mr. Varadi. Before the Board, Ms. Djubok based her claim on her fear of continued domestic violence and reprisals from Mr. Varadi and his family.

[12] Ms. Djubok also asserted that Jozsef was at risk at the hands of his father and that he also faced persecution in Hungary as a result of his status as a Roma with a developmental delay. In support of this latter aspect of the claim, evidence was led as to the marginalization to which Jozsef had been subjected in a school for "special needs" students in Hungary, and the bullying to which he was subjected because he was a Roma student with a developmental delay.

II. The Board's Decision

[13] The Board did not question the credibility of Ms. Djubok's story, and it appears to have accepted that she was indeed the victim of longstanding and serious domestic violence at the hands of Mr. Varadi. The determinative issue for the Board was the availability of state protection for Ms. Djubok and Jozsef in Hungary.

[14] After reviewing the country condition information with respect to the situation in Hungary for Roma and for victims of domestic violence, the Board concluded that adequate state protection would be available to both Ms. Djubok and Jozsef in Hungary.

III. The Assessment of Ms. Djubok's Claim

[15] The Board went through a lengthy analysis of conditions within Hungary and the availability of state protection for that country's Roma population. That this was something of a template or "cookie-cutter" analysis is confirmed by the Board's repeated use of the male pronoun in reference to Ms. Djubok.

[16] While recognizing that conditions for Roma are grim, and that some Roma do indeed face persecution in Hungary, the Board ultimately concluded that adequate state protection is available for the Roma population of Hungary.

[17] The Board also looked to the availability of state protection within Hungary for victims of domestic violence. It observed that Hungarian law did not specifically prohibit domestic violence, and that no protocols were in place or training provided to Hungarian police to assist them in dealing with cases of domestic violence. The Board further noted that the government had recently reduced the number of state-funded shelters for victims of domestic violence. The

Board nevertheless concluded that adequate state protection was available for victims of domestic violence in Hungary.

[18] The difficulty with the Board's assessment is that it appears to have approached the various aspects of Ms. Djubok's risk profile as if they existed in discrete silos, never considering whether or how her various risk factors intersected or combined in a way that could affect her level of risk. The Board looked at her risk as a Roma and her risk as a victim of domestic violence, but never really engaged with, or assessed the risk that she faced in Hungary as a female Roma victim of serious domestic violence.

[19] While the Board acknowledged and accepted counsel's argument that the risk factors in this case had to be considered cumulatively, it did not actually do so. The failure to address the intersectionality of Ms. Djubok's risk grounds is an error: see *Gorzsas v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 458, at para. 36, 346 F.T.R. 169.

[20] The failure of the Board to consider the intersecting nature of the risk grounds is a real concern in this case, as the evidence that was before the Board demonstrated that female Roma victims of domestic violence are a particularly vulnerable group with a distinct risk profile in Hungary.

[21] Indeed, the Immigration and Refugee Board has prepared a specific *Request for Information Report* (RIR) dealing with the unique vulnerability of this group. This document indicates that domestic violence is viewed as a socially acceptable practice in many Roma communities, and that women who complain about domestic violence are likely to face scorn and punishment from their own community.

[22] According to the RIR, only twenty percent of Roma women suffering domestic violence seek police assistance. This same report indicates that police sometimes do not answer calls from Roma communities. Moreover, when they do answer a call for assistance, the police may take a long time to respond.

[23] Most importantly for our purposes, the RIR notes that Hungarian police respond effectively *in only one of seven cases* of domestic violence against Roma women, a statistic that is repeated in other country condition information that was before the Board.

[24] It is true that the Board is not required to refer to every piece of evidence in the record, and that it will be presumed to have considered all of the evidence before it: see, for example, *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317, [1992] F.C.J. No. 946 (F.C.A.). That said, the more important the evidence that is not specifically mentioned and analyzed in the Board's reasons, the more willing a court may be to infer that the Board made an erroneous finding of fact without regard to the evidence: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, at paras. 14-17, [1998] F.C.J. No. 1425.

[25] In this case, the evidence in question was directly relevant to the central issue in the case and directly contradicted the Board's finding that adequate state protection would be available in Hungary for a woman with Ms. Djubok's specific risk profile. In the circumstances, the Board had an obligation to address this evidence and its failure to do so constitutes a reviewable error.

IV. The Assessment of Jozsef's Refugee Claim

[26] The Board's error was carried forward into its assessment of Jozsef's claim. Not only did the Board fail to consider whether adequate state protection would be available in Hungary for a Roma victim of child abuse, it also failed to consider the risk that Jozsef faced as a Roma citizen of Hungary suffering from a developmental delay.

V. Conclusion

[27] For these reasons, the application for judicial review is allowed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination in accordance with these reasons.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2130-13

STYLE OF CAUSE: ATTILANE DJUBOK JOZSEF VARADI BY HIS
LITIGATION GUARDIAN ATTILANE DJUBOK v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 15, 2014

JUDGMENT AND REASONS: MACTAVISH J.

DATED: MAY 26, 2014

APPEARANCES:

Aadil Mangalji FOR THE APPLICANTS

Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Long Mangali LLP FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario