

Federal Court



Cour fédérale

**Date: 20141008**

**Docket: IMM-4103-13**

**Citation: 2014 FC 956**

**Toronto, Ontario, October 8, 2014**

**PRESENT: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**LASZLO CSERKUTI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board [Board], dated May 7, 2013, finding that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], on the grounds that he did not rebut the presumption of state of protection and that a viable internal flight alternative [IFA] exists for the applicant in Hungary.

[2] The applicant is a Hungarian citizen who was the victim of a large human trafficking ring in Canada. Mainly a victim of Attila Kolompar, he is not an ethnic Roma and describes himself as Magyar. He comes from Papa, a small town situated around 200 kilometres from Budapest. In 2010, he provided a witness statement to the Royal Canadian Mounted Police [RCMP]. His statement was provided as evidence to support the charges brought in Canada against the Hungarian organized crime group who were involved with trafficking in human beings for Hungary. Kolompar pleaded guilty to the charges. In 2012, the applicant appeared on the sentencing day to provide his victim impact statement. The applicant fears that if he returns to Hungary, he would be harmed by the Roma he implicated in crimes in Canada or by their family members or other members of their criminal organization.

[3] On May 7, 2013, the Board refused the applicant's claim for protection. The Board found that the applicant failed to rebut the presumption of state protection with clear and convincing evidence. The Board noted that the documentary evidence showed that various members of the criminal organization had been charged with crimes in Hungary which indicates that the authorities prosecute those suspected of crimes, including those the applicant fears. The Board also noted that Hungarian police had protected the family members of another victim and that the applicant would be able to access a witness protection program if necessary. Further, the Board indicated that while there were problems with regards to police corruption and deficiencies, these problems were not systemic and civilians had various modes of redress if they were victim of police abuse. The Board also found that the applicant would have an IFA in the city of Budapest as there was no credible evidence that the individuals the applicant fears have any affiliation with criminals in Budapest nor any credible evidence that they would know that the applicant returned

to Hungary or would attempt to locate him there. The Board added that considering the educational and work background of the applicant, it would not be unduly harsh for him to relocate to Budapest.

[4] The point in issue in this case is whether the Board fully considered and properly reviewed the evidence with regards to both state protection and internal flight alternative. As this point is a question of mixed fact and law, it is reviewable on the reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[5] The applicant submits that the impugned decision is unreasonable. According to the applicant, the Board failed to consider the effective nature of Hungary's measures and instead only considered the efforts made. This constitutes a reviewable error: *Fazekas v Canada (Citizenship and Immigration)*, 2013 FC 694 [*Fazekas*] at para 9; *Kina v Canada (Citizenship and Immigration)*, 2014 FC 284 at paras 49-50; *Tar v Canada (Citizenship and Immigration)*, 2014 FC 767 at paras 75-79. The applicant further argues that the Board failed to fully consider the documentary evidence which contradicts the Board's findings and did not properly review the evidence with regards to the effectiveness of the measures taken by Hungary. In particular, the applicant's counsel referred the Court during his oral submissions to documents appended to the applicant's affidavit in this judicial review proceeding.

[6] In turn, the respondent submits that the Board's decision is reasonable. Hungary is a functioning democracy and the applicant therefore had a heavy onus to show that he shouldn't be

required to exhaust all the recourses available domestically. While the applicant did indicate a reluctance to approach the state for protection, the respondent argues that there was not sufficient evidence to show that protection would be unavailable. The respondent also submits that the applicant did not provide a reasonable explanation for why he would not have an IFA in Budapest nor why it would be unreasonable for him to move to Budapest. Finally, the respondent argues that due consideration was given to the evidence submitted by the applicant and it was open to the Board to conclude that the evidence was not clear and convincing.

[7] Before me, the applicant's learned counsel, relying on 2012 newspaper clippings, stated in reply that if the criminal organization was able to hire a "hitman" to murder the victims of the human trafficking ring in Hamilton (the project was never carried), he will never be safe in his home country.

[8] I find that the Board's decision is reasonable and constitutes an acceptable outcome in light of the evidence on record and applicable legal principles. It is not the function of the Court to re-evaluate the evidence that was before the Board, nor to come to my own conclusion with respect to the allegations made by the applicant in his affidavit submitted in support of the present application for judicial review.

[9] First, contrary to what the applicant submits, it is clear from a reading of the Board's reasons that it fully considered the totality of the evidence, including the effectiveness of the measures taken by Hungary. The Board repeatedly refers to the results of various measures, including the protection the police provided to family members of one of the victims (decision at

para 28), the results of the operations aimed at eliminating corruption within law enforcement agencies (decision at paras 35-38), the increased identification of human trafficking victims (decision at para 40) and the crime and sentencing rates in Hungary (decision at para 42). Unlike in *Fazekas*, above, the Board considered the success level of the measures, not only their existence. The Board also noted that the applicant recognized that the police might investigate if he had problems with the people he feared and that some of these people were already being prosecuted for unrelated crimes (decision at paras 25-27). Indeed, the Board recognizes that evidence criticizing the effectiveness of state protection exists, and that there are some problems, notably police corruption and deficiencies (decision at paras 31, 42). However, the Board comes to the conclusion that Hungary is making important efforts to remedy these problems, efforts that have concrete results, and that state protection, while not perfect, is adequate in the circumstances. This conclusion is supported by the evidence and it not unreasonable.

[10] Secondly, the Board's conclusion with regards to the IFA is also reasonable. The Board found that no credible evidence had been submitted showing that the individuals feared by the applicant have any connections to criminals or criminal organizations outside of Papa or that they would know that the claimant returned to Hungary or would attempt to locate him there. The Board indicated that the only evidence was speculative, remote and unsubstantiated. The inference made by the Board is supported by the applicant's testimony, which indicated that he was not personally threatened prior to his appearance in court in the sentencing of Mr. Kolompar, and there was no credible evidence that the Kolompar family would be looking for him after his appearance. The Board also indicated that if the applicant entered the witness protection program, he could benefit from such measures as personal protection, change of

identity and change of residence. In addition, the Board found that the educational and work background of the applicant showed that he would be able to readjust to life in a different locality of Hungary and that it would not be unduly harsh for him to reside in Budapest. The Applicant has not shown that these findings were not reasonable.

[11] For these reasons, the present application must fail. Counsel did not raise any question of general importance.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

No question is certified.

“Luc Martineau”

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Judge

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

**DOCKET:** IMM-4103-13

**STYLE OF CAUSE:** LASZLO CSERKUTI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 6, 2014

**JUDGMENT AND REASONS:** MARTINEAU J.

**DATED:** OCTOBER 8, 2014

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