

Federal Court



Cour fédérale

**Date: 20150123**

**Docket: IMM-6661-13**

**Citation: 2015 FC 89**

**Ottawa, Ontario, January 23, 2015**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**PETER VARGA**

**Defendant**

**JUDGMENT AND REASONS**

[1] Mr. Varga's claim for protection as a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 was accepted by the Refugee Protection Division of the Immigration and Refugee Board on September 11, 2013. The Minister is asking that the decision be set aside because (1) the Board failed to correctly assess the availability of state protection, and (2) the Board failed to conduct an adequate analysis of how it found that the discrimination Mr. Varga had and would experience in Hungary amounted to persecution.

[2] Mr. Varga was found to be credible and the Board accepted that he was a gay Roma male from Hungary. Although he knew his sexual orientation when he was in Hungary, he did not come out until he was in Canada. As a result, he has now been disowned by his family in Hungary.

[3] At the conclusion of the oral hearing, the Board member stated: "I have had an opportunity to consider all of the evidence and when I consider the country conditions in Hungary I'm of the opinion that if you are a gay Roma you're a refugee, you need protection." The member then asked for further evidence to be submitted in order to be persuaded that Mr. Varga was a homosexual. Following receipt of that evidence it was held that he is a gay Roma Hungarian.

[4] The Minister submits that the Board failed to acknowledge in its written decision that Hungary is a democracy and that it is presumed to be able to protect its citizens. It is submitted that the panel "shifted the presumption regarding state protection to Hungary being unable to protect its citizens" by not requiring Mr. Varga to establish on a balance of probabilities that the Hungarian government is unable or unwilling to protect him, despite the fact that he bore that onus: See *Canada (Minister of Citizenship and Immigration) v Flores Carillo*, 2008 FCA 94 at paras 17-19, [2008] 4 FCR 636).

[5] The Minister noted that the Board did not mention whether Mr. Varga had attempted to seek protection from the Hungarian authorities and submits that, where state protection might

reasonably be forthcoming, it is incumbent upon all refugee claimants to seek protection from their state.

[6] There is no obligation on a person to seek protection from the authorities where the evidence establishes that such protection would not be forthcoming.

[7] In this case, the Board does not truly engage in an analysis of state protection for gay Roma in Hungary. Mention is made of some of the documentary evidence, and it is mixed in terms of the availability and adequacy of protection. It is likely that the analysis is cursory because the Board member had already decided that all gay Roma in Hungary are in need of refugee protection. However, an uncompromising finding of that magnitude does not meet the requirement set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 that decisions have transparency, intelligibility, and justifiability. When there is no analysis or explanation given as to how a conclusion was reached, that standard has not been met. It may well be that all gay Roma in Hungary meet the criteria for Convention refugee protection; however, absent an explanation as to how such a conclusion is reached, the decision is unreasonable and cannot stand.

[8] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is allowed, the decision of the Refugee Protection Division is set aside, the application for protection is to be redetermined by a differently constituted panel, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-6661-13

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v PETER VARGA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 12, 2015

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JANUARY 23, 2015

**APPEARANCES:**

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