

Federal Court



Cour fédérale

**Date: 20160418**

**Docket: IMM-4331-15**

**Citation: 2016 FC 426**

**Ottawa, Ontario, April 18, 2016**

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

**BETWEEN:**

**TIBOR BALOGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (RPD) on August 25, 2015 whereby

the RPD determined that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 or 97 of the Act respectively.

[1] For the reasons that follow, this application for judicial review is dismissed.

## **II. Background**

[2] The Applicant is a forty year-old male from Hungary who claims to be of Roma ethnicity.

[3] He alleges that he began a relationship with Monica Gallo, a non-Roma 20 years his junior, in February 2011. He states that Monica's parents did not approve of the relationship and began threatening the Applicant to force him to break off the relationship. Despite the threats, Monica moved in with the Applicant in April 2011. A child was born of the relationship in March 2012.

[4] The Applicant alleges that Monica's parents invited him for lunch one day while he visited Monica at the hospital following the child's birth. Following the lunch, Monica's parents beat up the Applicant in a deserted parking lot and threatened him to end the relationship or else they would kill his family. They also told the Applicant that they were members of Magyar-Garda, a political group that conducts anti-Roma activity throughout Hungary, and warned him not to go to the police.

[5] Following this incident, the Applicant claims that Monica's father convinced her to give up the baby for adoption.

[6] Afraid for his life, the Applicant sold his house and fled Hungary in June 2012. He claimed refugee protection upon landing in Canada.

[7] The RPD found that the Applicant lacked credibility and that much of his testimony was implausible because of several inconsistencies, discrepancies, contradictions and omissions between his personal information form (PIF), claim form and testimony. Notably:

- (1) The Applicant's PIF says that the Applicant was continually threatened by Monica's parents, yet, he testified that only one confrontational incident occurred on or about March 24 or 25<sup>th</sup>, 2012.
- (2) The Applicant gave inconsistent responses for the date of the alleged altercation. He also gave contradictory testimony regarding which members of Monica's family committed the assault. In his claim form, the Applicant stated that Monica's father and brother beat him up on February 10, 2012. Yet, he testified that Monica's parents threatened him and then the father and brother beat him following the birth of his daughter, which occurred in March. During the hearing, the Applicant also testified that the father and both brothers beat him. He contradicted himself later during the hearing when he stated that only Monica's father threatened him.
- (3) The Applicant also testified that he received threats for about six months following the birth of his daughter, which the RPD found to be implausible since the Applicant left Hungary three months after the birth of the child.
- (4) The Applicant provided no documentation to support his claims that he had a daughter with Monica. While he indicated in his PIF that his daughter was born in March 2012, he did not disclose her name under the "family information" heading in his claim form or in

the PIF. When confronted with this discrepancy during the hearing, the Applicant stated that the omission was due to an error in translation.

(5) The Applicant gave contradictory testimony regarding where Monica lived upon being discharged from the hospital and for how long. He testified that Monica returned to live with him at the end of April or early May 2012. Later he testified that Monica moved back to his apartment from her parents' home in December 2012. When the RPD reminded him that it was impossible for Monica to have moved back to his apartment with him in December 2012 as he arrived in Canada in June 2012, the Applicant responded by saying "I don't remember when I got here."

(6) The Applicant also gave contradictory dates as to when the baby was put up for adoption and did not provide any documents to support his claim that the baby was put for adoption.

(7) The Applicant testified that he did not know where the baby was, however, he later testified that Monica had visitation rights to see the baby and would visit the baby regularly.

[8] The RPD also found that the Applicant failed to establish his identity as a member of the Roma ethnic minority since he did not submit any documents to establish his identity or make any reasonable efforts to do so.

[9] The RPD also found that the Applicant's testimony regarding Monica's father and brothers being part of the Magyar-Garda to be a fabrication to enhance his refugee claim. The RPD also found it implausible that Monica's family or other members of the Magyar-Garda would not have found out where the Applicant lived for the purposes of harassing and intimidating him.

[10] Moreover, the RPD found that the Applicant did not have a subjective fear as he delayed his departure from Hungary for 16 months following the first time Monica's parents began threatening him.

[11] The RPD was also of the opinion that the Applicant had an internal flight alternative (IFA) in a city such as Budapest or Győr since the Applicant's fear is localized to the city where Monica's family lives, Miskolc.

[12] The Applicant submits that the RPD erred in finding that the Applicant did not establish his Roma ethnicity. The Applicant further contends that the RPD erred in its credibility analysis by providing unclear and incomplete reasons supporting its decision that the Applicant was not credible and by conducting an over-vigilant, microscopic assessment of the evidence. The Applicant is also of the view that the RPD erred in its assessment of the Applicant's delay to leave Hungary and the possibility of a viable IFA.

[13] Moreover, the Applicant made submissions to the effect that the Board member breached the Applicant's right to procedural fairness by failing to take into account the fact that the Applicant was unrepresented before the RPD member and was unprepared for the hearing. The Applicant submits that the RPD ought to have afforded the Applicant a chance to provide corroborating documents before rejecting the claim. The Applicant further alleges that the RPD erred by not exercising its discretion to accept post-hearing evidence or to adjourn the hearing to allow the Applicant to provide evidence.

### III. Issue and Standard of Review

[14] The issue to be determined in this case is whether the RPD committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC 1985, c F-7.

[15] It is well-established that the standard of review applicable to the RPD's credibility and plausibility findings is that of reasonableness. These matters raise questions of fact or mixed fact and law falling within the RPD's area of expertise and, as a result, are owed deference (*New Brunswick (Board of Management) v Dunsmuir*, [2008] 1 RCS 190, 2008 SCC 9 [*Dunsmuir*]; *Nava Flores v Canada (Citizenship and Immigration)*, 2010 FC 1147, at paras 25-26, 378 FTR 95; *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 274, at para 33 [*Navaratnam*]). Issues of procedural fairness are reviewed on the standard of correctness (*Navaratnam*, at para 32; *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12, at para 43, [2009] 1 SCR 339).

### IV. Analysis

#### A. *RPD's decision is reasonable*

[16] As a specialized tribunal, the RPD has complete jurisdiction to determine the plausibility of testimony and gauge a claimant's credibility (*Aguebor v Canada (Minister of Citizenship and Immigration)* (1993), 160 NR 315, at para 4, 42 ACWS (3d) 886 [*Aguebor*]). The RPD's findings with respect to same are not open to judicial review unless the inferences drawn by the tribunal are unreasonable and unsupported in any way by the evidence (*Aguebor*, at para 4;

*Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87, at para 11[*Sinan*], cited in *Eustace v Canada (Citizenship and Immigration)*, 2005 FC 1553, at para 18). Where a party merely presents alternative lines of reasoning that may provide reasonable explanations, the Court cannot intervene (*Sinan*, at para 11).

[17] The Applicant had been sent a Notice to Appear on four separate occasions. Each notice indicated that the Applicant was required to provide “acceptable documents establishing your identity and other elements of the claim.” Despite these reminders to submit identity documents, the Applicant provided no identity documents to the panel member. When asked why he did not provide such documents, the Applicant testified that the help centre did not translate the portion in the Notice to Appear relating to the Applicant’s obligation to provide acceptable documents establishing his identity and other elements of the claim. The RPD rejected the Applicant’s explanation and found that the Applicant had the opportunity to obtain a translation of the entire document, including the paragraph referring to the need to provide identity documents and other collaborative evidence. The Applicant submits that his explanation is reasonable and ought not have been ignored by the RPD. In this regard, I am of the view that the Applicant is merely providing an alternative reasoning. He has not demonstrated that the RPD’s conclusion is not supported in any evidence. As such, it would be inappropriate for the Court to disturb the RPD’s decision on this point.

[18] Moreover, while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility

of persecution upon return (*Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056, at paras 67-70 [*Csonka*]; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, at para 22 [*Ahmad*]). Both subjective fear and objective fear are components in respect of a valid claim for refugee status (*Csonka*, at para 3). The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Prophète v Canada (Citizenship & Immigration)*, 2008 FC 331, at para 17; *Jarada v Canada (Minster of Citizenship and Immigration)*, 2005 FC 409, at para 28; *Ahmad*, at para 22).

[19] In my view, it was reasonably open for the RPD to infer that the Applicant did not have any problems from the Magyar-Garda after becoming involved with Monica. The Applicant contends that the RPD made mere speculations in this regard, which is improper because this Court has taken the view that the RPD cannot require an applicant to prove that their agents of persecution act rationally or justifiably (*Taboada v Canada (Citizenship and Immigration)*, 2008 FC 1122, at para 35). While this may be true, in my view, this is not a case where the RPD made mere speculations. The Applicant testified that he was not personally afraid of anyone. He also testified that he had no problems with any members of the Magyar-Garda (besides Monica's father and brother or brothers). Thus, it was reasonably open for the RPD to infer that the Applicant fabricated his claims that Monica's father and brother or brothers were members of Magyar-Garda in order to enhance his refugee claim.

[20] It was also reasonably open for the RPD to find that the Applicant's delay from leaving Hungary is relevant to an assessment of an applicant's subjective fear (*Heurta v Canada (Minister of Employment and Immigration)* (1993), 157 NR 225, 40 ACWS (3d) 487). Even if I



were to find that the RPD erred by not taking into account the cumulative nature of the harassment suffered at the hands of Monica's family, this error on the part of the RPD is not material to the question of the Applicant's subjective fear since the Applicant testified that he was not personally afraid of anybody. Indeed, when the RPD panel member asked the Applicant what he believes would happen if he were to return to Hungary, the Applicant responded by saying "I don't know. I would only know if I returned, but it would be very bad. That's for sure." When asked why it would be very bad, the Applicant responded by saying, "one thing, I don't have a house or living. I don't have work. [...] It would be a totally bad situation." In my view, the Applicant's responses are not indicative of someone subjectively afraid of being persecuted.

[21] Regarding the reasons provided in the RPD's decision, I am satisfied that they are adequate. Merely stating that not all credibility concerns are addressed in a decision does not make the reasons contained therein unclear and incomplete. The RPD does not have to refer to every instance where an applicant contradicts him or herself in order to demonstrate a lack of credibility (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)* (1998), 157 FTR 35, 83 ACWS (3d) 264 at paras 16 – 17 [*Cepeda-Gutierrez*]).

[22] The Applicant also contends that the RPD conducted an overly microscopic analysis of the evidence. In this regard, I agree with the Respondent's position that the RPD did not focus on peripheral issues and did not make microscopic findings since the Applicant contradicted himself on facts central to his claim, such as the date he was physically assaulted by Monica's family and the persons who carried out the assault. The Applicant also failed to establish his

Roma ethnicity or the birth of his child. In my view, the RPD's reasons are justifiable, transparent and intelligible and defensible in respect of the facts and law (*Dunsmuir*, at para 47). The Applicant is simply requesting the Court to reweigh the evidence.

[23] Regarding the RPD's finding of a viable IFA, I am of the opinion that this finding is reasonable. The authority cited by the Applicant, *Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326, 421 FTR 107, is distinguishable on the facts of this case since the Applicant's fear is localized to Monica's family. The Applicant did not testify that he had been targeted because of his Roma ethnicity. Moreover, although the RPD did not address the issue of whether there is sufficient state protection in Budapest or Gyor, the RPD found that on a balance of probabilities, the Applicant's agents of persecution did not have the interest, motivation, means or resources to pursue him at the IFA. In my view, these findings, coupled with the fact that the Applicant testified that he is not personally afraid of anyone in Hungary, make it so that it was reasonably open for the RPD to find that the Applicant has a viable IFA.

**B. *No breach of procedural fairness***

[24] In my view, the RPD did not breach the Applicant's right to fairness. The RPD does not have a duty to provide an unrepresented litigant an opportunity to provide evidence inquired about during a hearing. However, while the right to counsel is not absolute, the right to a fair hearing is (*Austria v Canada (Minister of Citizenship and Immigration)*, 2006 FC 423, at para 6 [*Austria*]; *Jacobs v Canada (Citizenship and Immigration)*, 2007 FC 646, at para 7). In this respect, the following passage in *Law v Canada (Citizenship and Immigration)*, 2007 FC 1006, describes procedural rights that should be afforded to unrepresented claimants before the RPD:

[16] Specifically, in the context of the procedural rights afforded to a self represented party, this Court has held that an administrative tribunal has no obligation to act as the attorney for a claimant who refused counsel, and that:

[...] it is not the obligation of the Board to "teach" the Applicant the law on a particular matter involving his or her claim. (*Ngyuen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1001, [2005] F.C.J. No. 1244 (QL), at para. 17)

[17] However, while administrative tribunals are not required to act as counsel for unrepresented parties, they must still ensure that a fair hearing takes place. In *Nemeth v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 590, [2003] F.C.J. No. 776 (QL), at para. 13, O'Reilly J. asserted: [...] But the Board's freedom to proceed in the absence of counsel obviously does not absolve it of the over-arching obligation to ensure a fair hearing. Indeed, the Board's obligations in situation where claimants are without legal representation may actually be more onerous because it cannot rely on counsel to protect their interests.

[18] It has also been recognized that an unrepresented party "[...] is entitled to every possible and reasonable leeway to present a case in its entirety and that strict and technical rules should be relaxed for unrepresented litigants [...]" (*Soares v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 190, [2007] F.C.J. No. 254 (QL), at para. 22).

[19] Therefore, it is evident that the specific content of procedural rights afforded to unrepresented parties is context-dependent. The paramount concern is ensuring a fair hearing where the unrepresented party will have the opportunity to fully present their case.

[25] Further to a review of the record, I am of the opinion that the RPD conducted a fair hearing, which allowed the Applicant to participate meaningfully. An interpreter was present during the hearing. Moreover, the presiding member explained how she was going to conduct the proceeding, the various issues to be discussed and the importance of being truthful (see *Austria*, at para 9).

[26] Regarding the Applicant's submissions that the RPD ought to have afforded the Applicant a chance to provide corroborating documents, this Court has found that, in the absence of request for adjournment, the RPD is not required to offer an adjournment whenever there is a case involving a self-represented claimant since "to find otherwise would result in a tremendous burden on the Board and the refugee claim process" (*Navaratnam*, at para 42).

[27] Moreover, even if I were to conclude that the RPD had an obligation to allow the Applicant to provide post-hearing evidence to corroborate the birth of his daughter and his Roma identity, I am of the view that this potential failure on the part of the RPD is not material given all the inconsistencies in the Applicant's evidence (*Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283, at paras 40- 41).

[28] No question is certified.

**JUDGMENT**

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

1. The judicial review application is dismissed;
2. No question is certified.

"René LeBlanc"

---

Judge

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

**DOCKET:** IMM-4331-15

**STYLE OF CAUSE:** TIBOR BALOGH v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 23, 2016

**JUDGMENT AND REASONS:** LEBLANC J.

**DATED:** APRIL 18, 2016

**APPEARANCES:**

Jack Davis FOR THE APPLICANT

Negar Hashemi FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Davis & Grice FOR THE APPLICANT  
Barristers and Solicitors  
North York, Ontario

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