

Federal Court



Cour fédérale

**Date: 20170516**

**Docket: IMM-4855-16**

**Citation: 2017 FC 504**

**Toronto, Ontario, May 16, 2017**

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

**BETWEEN:**

**NERA VALIDZIC  
RINO VALIDZIC**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application concerns an RPD decision to reject the s.97 claim of two minor children Applicants (the Children) who are citizens of Croatia and fear risk from a “high-ranking organized criminal” (the Criminal) in Croatia (Decision, para 5).

[2] The prime evidence given in the hearing before the RPD in support of the Children’s claim was that of their father who, himself, was not a claimant. The father’s evidence was that, in

Croatia, he was convicted of the crime of possession of narcotics and became a jailhouse informant against the Criminal whom, as a result, is the Children's risk agent should they be sent to Croatia. Thus, the Children's objective risk arises from their father's conduct.

[3] The RPD member made the following findings about the approach to be taken in determining the Children's claims, which are directly challenged by the present Application:

In the Panels' view, these claims hinge entirely on the credibility of the father, and the fact that he is a witness and not a claimant per se changes nothing. The Claimants rely entirely on the father's allegations. The father is the only person with direct knowledge of the events that the claimants rely on. The father is the person who decided that the Claimants would make refugee claims when they did. Further, the Panel respectfully disagrees with counsel's framing of the delay issue. Negative inferences such as from delay in claiming, are never about "punishing" a claimant. The Panel must do what is necessary to find out whether the Claimants and their designated representative have established their allegations on a balance of probabilities with credible or trustworthy evidence. The mere fact that the father is not a claimant in these proceedings does not mean that his credibility, and therefore the credibility of the Claimants' allegations as he wrote them, are immune from proper examination (Decision, para 24).

In assessing Mr. Validzic's evidence, the Panel has applied the presumption that his sworn allegations are true unless there is a valid reason to doubt their truth. In short, the Panel treated his evidence as though he were a refugee claimant. There is no reason to do otherwise as he is the author of the Claimants' BOCs and the source of all their evidence. Were it not for the finding that he is ineligible, he would have been a party to these proceedings as the principal claimant, and his evidence would have been tested in the same way (Decision, para 65). [Emphasis added]

[4] With respect to the RPD's position that there is no reason not to treat the father's evidence as that of a refugee claimant, I find that there is a reason: it is manifestly unfair to the Children.

[5] Counsel for the Children argues that the decision is unreasonable because negative findings made with respect to the father's conduct in Canada, as if he were a claimant, are attributed to the Children against their interests. Two such findings were made on the issue of subjective fear. The RPD found that the father's failure to regularize his Children's status in Canada, and the father's delay in claiming protection due to his management of his business interests in Canada, is evidence inconsistent with his alleged subjective fear (Decision, para. 48). In the result, the findings of the father's lack of subjective fear were attributed to the Children resulting in a rejection of their claim for protection.

[6] As mentioned, the father's evidence of objective risk in Croatia was accepted. Not surprisingly, there is no evidence that the Children themselves do not have subjective fear of the risk in Croatia. In my opinion, the only finding that the RPD could logically and fairly make is that objective and subjective fear was in issue in determining the Children's claim.

[7] The cardinal error in the decision under review is that the RPD simply failed to conduct a proper risk analysis with respect to the Children's claim. Accordingly, I find the decision is unreasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

Judge

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

**DOCKET:** IMM-4855-16

**STYLE OF CAUSE:** NERA VALIDZIC, RINO VALIDZIC v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 8, 2017

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** MAY 16, 2017

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