

Federal Court



Cour fédérale

**Date: 20200309**

**Docket: IMM-3542-19**

**Citation: 2020 FC 349**

**Ottawa, Ontario, March 9, 2020**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**TIBOR LAKATOS, ETELKA FAJKO,  
ERIK TIBOR LAKATOS,  
AND MARKO JOZEF LAKATOS,  
BY HIS LITIGATION GUARDIAN  
TIBOR LAKATOS**

**Applicants**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants seek judicial review of a decision (Decision) of an inland enforcement officer of the Canada Border Services Agency (CBSA) refusing their request for a deferral of their removal to Hungary then scheduled for June 10, 2019. The application for judicial review is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the reasons that follow, the application is allowed.

I. Overview and Analysis

[3] The Applicants' immigration history in Canada is set out in the Decision. Briefly, the Applicants are a family of Hungarian Roma who made a refugee claim in 2011. Their claim was refused by the Refugee Protection Division in 2013 and the Applicants received a negative response to their Pre-removal Risk Assessment application in December 2016.

[4] The Applicants were scheduled for removal on June 10, 2019. They sought deferral of the removal by way of letter to the CBSA on May 14, 2019, as supplemented on June 4, 2019. The deferral request was based on:

1. A pending application for permanent residence on humanitarian and compassionate grounds for Mr. Tibor Lakatos, Ms. Fajko and, in particular, their minor son;
2. A pending application for permanent residence as a protected person by the common law partner of Mr. Erik Lakatos. Erik had made a request to be added to the application as an accompanying dependent. He submitted that his removal from Canada was not in the best interests of his one-year-old child; and
3. The serious medical condition of Mr. Tibor Lakatos who had been declared unfit to fly. His cardiologist indicated that Mr. Lakatos should not fly until he had undergone defibrillator installation surgery.

[5] The Decision is dated June 7, 2019. The CBSA officer refused the Applicants' request for deferral, finding that neither of the applications for permanent residency warranted a deferral of removal. The officer also discounted Mr. Lakatos' medical condition, noting that an independent medical review had concluded that Mr. Lakatos was in fact medically fit to fly.

[6] The Applicants filed this application for leave and judicial review of the Decision on June 6, 2019 and, on June 7, 2019, brought a motion to the Court for an interim stay of their

removal to Hungary. Justice Zinn granted the motion on June 10, 2019 and stayed the Applicants' removal. Justice Zinn found that the officer erred in their consideration of the medical evidence regarding Mr. Lakatos and failed to consider the best interests of either child implicated in the pending removal of the family.

[7] Subsequently, the parties discussed settlement of this application. The Respondent moved for an order granting the application, conceding that the officer erred in the exercise of their discretion to defer removal of the Applicants.

[8] The Applicants opposed the Respondent's motion on the basis that the motion did not address the substantive issues raised in the application. They request that the Court assess the alleged deficiencies in the Decision. The Applicants argue that these issues remain outstanding and would have to be addressed should their removal from Canada be rescheduled.

[9] I have reviewed the Decision, the submissions of both parties made in the context of the Applicant's stay motion, the Order of Justice Zinn staying removal, and the parties' submissions in this application. I have also reviewed relevant portions of the evidence adduced by the Applicants in support of their stay motion.

[10] The issue before me is whether the Officer erred in their review of the Applicants' deferral request, as reflected by the reasons set out in the Decision.

[11] The parties submit and I agree that the Decision must be reviewed for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*); see also *Galusic v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 223 at para 15 (*Galusic*); *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para

43 (*Lewis*)). None of the situations identified by the Supreme Court of Canada in *Vavilov* for departing from the presumptive standard of review apply in this case.

[12] I agree with the parties and find that the Decision is not reasonable. The officer erred in their consideration of the then current medical evidence for Mr. Tibor Lakatos. The officer also failed to consider the best interests of the then minor Applicant and the infant son of Mr. Erik Lakatos (see *Huang v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 446).

[13] The Applicants also submit that the officer erred in refusing to defer their removal due to the two pending applications for permanent residence. Despite the fact that the officer misstated the date on which Erik was added as an accompanying dependent on his spouse's application, I find that the officer did not err in their conclusion that the outstanding applications did not warrant deferral based on special considerations or imminent decision (*Lewis* at paras 56-57, 80; *Forde v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1029 at para 36; *Galusic* at para 25).

[14] In my view, it is not necessary to more fully address the substantive shortcomings of the Decision in light of the Respondent's agreement that the Decision is unreasonable. The Decision was based on facts and evidence, including the status of the pending permanent residency applications, that are now significantly outdated. I agree with the Respondent's submission that, if and when a new removal date for the Applicants is fixed, they will have the opportunity to place current evidence before a CBSA officer addressing each of the three issues they raised before the first CBSA officer in June 2019.

[15] The Respondent has agreed that, should the Applicants again be scheduled for removal, they will be given a minimum of 21 days' notice of removal and be provided an opportunity to update their request for deferral before any new decision is rendered by a different CBSA officer. My order will include the Respondent's agreement to ensure the Applicants have full opportunity to provide current medical evidence regarding Mr. Tibor Lakatos; to update the status of the permanent residency applications in issue; and to make submissions regarding the best interests of the children in the family.

II. Conclusion

[16] The application is allowed.

[17] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-3542-19**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed.
2. If the Applicants are scheduled for removal from Canada, they will be provided with a minimum of 21 days' notice of the date of removal and will be provided the opportunity to update their request for deferral of removal before any new deferral decision is rendered by a different CBSA inland enforcement officer.
3. No question of general importance is certified.

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-3542-19

**STYLE OF CAUSE:** TIBOR LAKATOS, ETELKA FAJKO, ERIK TIBOR LAKATOS, AND MARKO JOZEF LAKATOS, BY HIS LITIGATION GUARDIAN TIBOR LAKATOS v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 3, 2020

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** MARCH 9, 2020

**APPEARANCES:**

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