

Federal Court



Cour fédérale

**Date: 20210609**

**Docket: IMM-4582-20**

**Citation: 2021 FC 577**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, June 9, 2021**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**ELENA ALEXANDRA, BUZA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

[1] The applicant, Elena Alexandra Buza, is a citizen of Romania. She is seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated September 4, 2020. In that decision, the RAD dismissed her appeal and confirmed the decision of the Refugee Protection

Division that she is 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 [IRPA].

[2] The applicant entered Canada on March 2, 2018. According to her Basis of Claim Form [BOC Form], dated March 17, 2018, the applicant alleges that she fears physical and emotional abuse in Romania. She states that she came to Canada to have a better life.

[3] On February 4, 2019, the applicant amended her BOC Form. In it, she stated that in the summer of 2017, she was kidnapped by a mafia group that operates throughout Europe. The group forced her to work as a prostitute. She filed a complaint with the police, but a few days later members of the group beat her and threatened to kill her. She was hospitalized in intensive care for 12 days. When she was discharged from hospital, she was again forced to work as a prostitute for the group. She was not brave enough to return to her parents' house, where she was living, and therefore fled to other cities where she hid. Her father was beaten, and his car was vandalized. These events took place in 2017 and 2018, in Romania, where, according to the applicant, the police is friends with criminals.

[4] On June 4, 2019, the Minister intervened before the RPD on the issue of credibility. He submitted into evidence a police report stating that on March 16, 2018, the applicant was spotted at an erotic massage parlour. According to the report, the applicant had stated that she was working there voluntarily and that she was performing erotic massages for clients. The Minister also produced excerpts from one of the applicant's social media accounts, which included photos of her taken and posted in London, England, in December 2017. The Minister argues that the

applicant's claim for refugee protection engages subsection 107(2) of the IRPA as the applicant did not adduce any credible and trustworthy evidence to support her claim.

[5] On July 29, 2019, the RPD rejected the claim for refugee protection. It found that the applicant was not credible. In this regard, it stated that it believed the police report more than the applicant's assertions that she was at the massage parlour to pick someone or something up and that she had never told the police that she was working there. Given that in the RPD's view, the applicant was working in a massage parlour voluntarily shortly after arriving in Canada, the RPD did not give any probative value to the psychological report produced by the applicant, which noted that she was suffering from several symptoms associated with post-traumatic stress disorder. Moreover, the RPD believed that waiting almost a year to amend her story in order to include her allegations of fear of the European mafia undermined her credibility.

[6] The RAD dismissed the applicant's appeal on September 4, 2020. The RAD recognized that the RPD had erred in drawing a negative inference from the fact that the applicant had not mentioned in her initial account the risk she faced because of her history of sexual exploitation. It also found that the RPD had erred in not giving any weight to the psychological report because of its view that the applicant's work in a massage parlour in Montréal contradicted that report. Notwithstanding these errors, the RAD upheld the RPD's findings as to the applicant's lack of credibility.

[7] The applicant is seeking judicial review of that decision, raising two grounds.

[8] First, she criticizes the RAD for its assessment of the psychological report. Although the RAD admitted that the RPD had erred in disregarding the psychological report, it did not reconsider the applicant's testimony in light of the report. According to the applicant, the failure to do so renders the decision unreasonable.

[9] Second, she argues that the RAD erred in concluding that the applicant is not at risk of persecution as a sex worker in Romania. In this regard, she criticizes the RAD for failing to consider documentary evidence that Romanian women are most at risk of being trafficked for sexual exploitation owing to Romanian authorities' lacking response and a rape culture in Romania. She alleges that she is at risk based on her membership in this particular social group. Furthermore, by focusing on whether she engaged in this work voluntarily or not, the RAD did not apply Canadian law, under which people working in the sex industry are considered to be victims, regardless of whether their involvement is voluntary or involuntary.

## II. Analysis

[10] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4 (FCA) (QL)).

[11] When the reasonableness standard applies, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the

outcome” (*Vavilov* at para 83). The Court must ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[12] Contrary to what the applicant alleges, the RAD did consider the psychological report. It acknowledged that the psychological report establishes that the applicant suffers from post-traumatic stress disorder, anxiety and depression. However, the determinative issue for the RAD was the applicant’s lack of credibility. It concluded that the psychological report did not restore her credibility because it did not explain the lack of evidence to support the refugee protection claim, the omission of important facts from the BOC Form and the applicant’s behaviour that was inconsistent with the alleged fear.

[13] In this regard, the RAD first noted that the applicant did not provide any documentation to corroborate her allegations or any reasonable explanation for not doing so, as required by rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256. Although the applicant alleges that she was hospitalized for 12 days, she provided no reasonable explanation for her failure to provide a copy of her medical report and made no attempt to obtain it after she arrived in Canada, despite the fact that she was represented by counsel before both the RPD and the RAD.

[14] The RAD pointed out that in her amended account the applicant had alleged that she moved from one house to another when she managed to escape from her persecutors because she

had not been brave enough to return to her parents. However, pictures of her in London, England, on December 25, 2017, were posted on the applicant's social media account. When questioned as to why she posted a series of selfies when she was allegedly hiding in Romania, the applicant admitted that she had travelled to London in December 2017 to visit a close friend and had returned to Romania on January 8, 2018. The RAD rejected the applicant's explanation that her persecutors took her phone and posted photographs and messages on her account before she could retrieve it and regain control of her account. The RAD found this explanation unreasonable given the personal nature of the messages and her failure to mention it in her stories.

[15] Finally, the RAD noted the applicant's inconsistent behaviour in relation to her alleged fear. After her trip to England, the applicant returned to Romania despite her allegation that members of the mafia had assaulted her and were actively looking for her. The RAD did not find credible the explanation that she returned to Romania at the request of her father, who wanted to give her a plane ticket to Canada.

[16] The psychological report indicates that the applicant sometimes forgets important details and that if she feels threatened or harassed, her account can become confused and she experiences moments of absence or panic. It also recommends [TRANSLATION] "patience, gentleness and understanding". In light of these findings and recommendations, the RAD could reasonably conclude that the psychological report could not cure the identified deficiencies as they did not arise from the applicant's testimony and were not related to her psychological state

*(Boyce v Canada (Citizenship and Immigration)*, 2016 FC 922 at para 56, citing *Khatun v Canada (Citizenship and Immigration)*, 2012 FC 159 at para 86).

[17] As for the argument that the RAD erred in concluding that the applicant was not at risk of persecution as a sex worker in Romania, the burden was on the applicant to make the link between the objective documentary evidence on the record and her personal situation. Having not found the applicant's story to be credible, the RAD did not have to go on to analyze whether sex workers are at risk of persecution in Romania. The objective documentary evidence, in itself, could not supplement the applicant's story (*Ayikeze v Canada (Citizenship and Immigration)*, 2012 FC 1395 at para 22).

[18] It is important to recall that findings regarding a claimant's credibility and the assessment of the evidence command a high degree of deference from this Court. While the applicant may not agree with the RAD's findings or those of the RPD, it is not for this Court to reassess or reweigh the evidence in order to make a finding that would be favourable to the applicant (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[19] To conclude, the Court finds that when the RAD's reasons are read holistically and contextually, the decision bears the hallmarks of reasonableness (*Vavilov* at paras 97, 99).

[20] For these reasons, the application for judicial review is dismissed. No question of general importance has been submitted for certification, and the Court is of the view that this case does not raise any.

**JUDGMENT in IMM-4582-20**

**THE COURT’S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. The style of cause is amended to replace the “Minister of Immigration, Refugees and Citizenship” with the “Minister of Citizenship and Immigration”; and
3. No question of general importance is certified.

“Sylvie E. Roussel”

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Judge

Certified true translation  
Johanna Kratz, Reviser



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

**DOCKET:** IMM-4582-20

**STYLE OF CAUSE:** ELENA ALEXANDRA, BUZA v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 2, 2021

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** JUNE 9, 2021

**APPEARANCES:**

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