

Federal Court



Cour fédérale

**Date: 20210615**

**Docket: IMM-1254-20**

**Citation: 2021 FC 605**

**Ottawa, Ontario, June 15, 2021**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**ZOLTANNE BALOG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Zoltanne Balog is a citizen of Hungary. She seeks judicial review of a January 22, 2020 decision (Decision) of a Senior Immigration Officer rejecting her Pre-Removal Risk Assessment (PRRA) application. Ms. Balog left Hungary fearing serious discrimination in several aspects of her life due to her Roma ethnicity. The PRRA officer acknowledged the discriminatory treatment that is widespread in Hungary but concluded that the discrimination

Ms. Balog faces does not amount to persecution and that she would not be subject to a risk of torture or serious harm if returned to Hungary.

[2] Ms. Balog comes to the Court having failed to comply with a valid removal order despite this Court's decision to dismiss her motion to stay the removal. I have reviewed the parties' arguments regarding the factors to be considered in determining whether this application should be dismissed on the basis of Ms. Balog's serious misconduct.

[3] One of the factors set out in the jurisprudence is the strength of an applicant's case. In the present matter, this factor must be weighed very carefully because the Decision under review is the only determination that has been made of the risk Ms. Balog states she will face should she be returned to Hungary. I have considered each of her arguments challenging the Decision and find that the PRRA officer undertook a detailed review of Ms. Balog's allegations of discrimination. The Decision explains the reasons for the refusal of her PRRA application comprehensively and intelligibly. I find that the refusal is justified and that Ms. Balog's case is not strong.

[4] This finding, coupled with the nature of the misconduct, the need to deter others from similar conduct and the direct relationship between the misconduct and the PRRA process, lead me to conclude that Ms. Balog's application must be dismissed.

I. Overview

[5] Ms. Balog first arrived in Canada from Hungary on November 12, 2011 and made a refugee claim based on discriminatory treatment she faced there as a result of her Roma ethnicity.

[6] Ms. Balog withdrew her refugee claim in November 2012 and returned to Hungary in January 2013 to care for her mother. Her mother passed away in January 2014 and, two years later, Ms. Balog returned to Canada.

[7] In early 2016, Ms. Balog submitted her PRRA application. She supplemented the initial application with additional submissions in March and December 2016. The PRRA application was rejected in January 2020 in the Decision now under review.

[8] Ms. Balog was directed to report for removal to Hungary on March 12, 2020. In early March, she filed a motion with the Court for a stay of her removal. On March 11, 2020, my colleague Justice Mosley dismissed the motion but Ms. Balog failed to appear for her scheduled removal.

II. Decision under review

[9] The PRRA officer reviewed Ms. Balog's evidence of the discrimination she suffered in Hungary in healthcare, employment, social assistance, education and housing. In the course of the review, the officer acknowledged the objective evidence for Hungary that uniformly speaks to the discrimination its Roma population faces in many areas of life. The officer then stated that

Ms. Balog bore the onus of establishing that any adverse treatment she experienced was persecutory and not discriminatory.

[10] With respect to healthcare, the officer stated that Ms. Balog's own evidence supports her ability to access healthcare in Hungary, including psychiatric care. Ms. Balog's PRRA application included a 2015 report from the Healthcare Centre Miskolc, Psychiatry Department, indicating she had received psychiatric care from as early as 2008, attended a follow-up appointment in 2013, obtained prescription medicine in connection with her 2015 appointment, and held a health insurance card. The officer also stated that Ms. Balog had provided no evidence of discrimination by healthcare workers because of her Roma ethnicity.

[11] The PRRA officer next addressed Ms. Balog's allegations relating to employment and found that she provided no evidence linking any employment issues she encountered to the fact she is Roma. Ms. Balog had secured temporary employment that made her eligible for social assistance and health care.

[12] With respect to housing, the officer stated that Ms. Balog furnished insufficient evidence in support of her allegation that she had faced eviction from her mother's home, where she had been living since her return to Hungary. The same was true of her fear of future eviction from her daughter's home in Miskolc.

[13] Finally, the officer discounted the Refugee Appeal Division decisions involving other Hungarian Roma claimants Ms. Balog submitted with her application on the basis that each refugee decision is made on the particular claimant's circumstances.

[14] In light of all of the evidence, the foregoing findings, and the presence of non-governmental organizations to help her access social and civil services, the officer concluded that Ms. Balog had not established more than a mere possibility of persecution and is not a person in need of protection as described in sections 96 and 97(1) respectively of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

III. Preliminary issue - Ms. Balog's failure to report for removal

[15] As stated above, Ms. Balog was scheduled for removal from Canada on March 12, 2020. On March 6, 2020, she filed a motion with the Court requesting a stay of her removal pending the determination of this application for judicial review. Her request was denied by order of the Court dated March 11, 2020.

[16] Despite the valid order for her removal and the Court's refusal to grant her stay motion, Ms. Balog did not report for removal.

[17] Ms. Balog acknowledges that her decision not to report demonstrates serious misconduct and that she does not come before the Court with clean hands. She has failed to respect Canadian immigration laws and processes and this Court's order. Nevertheless, Ms. Balog requests that I entertain the merits of her application for judicial review because: she is not accused of

criminality and has no criminal convictions; she has not been evading removal for years and has not misrepresented herself to Canadian immigration authorities; she is a grandmother who has lived in Canada for five years without issue; and her arguments in this application have strength.

[18] The parties agree that the Federal Court of Appeal (FCA) decision in *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 (*Thanabalasingham*), sets out the principles that guide my consideration of Ms. Balog's request. Where the parties differ is in their application of the *Thanabalasingham* principles to Ms. Balog's conduct and circumstances.

[19] The FCA confirmed that a reviewing court may dismiss an application for judicial review without determining its merits where the applicant is guilty of misconduct. Indeed, a reviewing court may decline to grant relief even after having found reviewable error in the underlying decision. This Court has also held that an applicant's serious misconduct may, in and of itself, warrant dismissal of the application (*Wu v Canada (Citizenship and Immigration)*, 2018 FC 779; *Debnath v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 332 (*Debnath*)). However, the FCA emphasized that a reviewing court's exercise of its ability to proceed in this manner must balance its roles in safeguarding the integrity of administrative and judicial processes, ensuring governmental actions and decisions are lawful, and protecting an applicant's fundamental human rights (*Thanabalasingham* at para 10).

[20] In the same paragraph, the FCA set out four factors a reviewing court is to take into account in achieving the required balance and deciding whether to dismiss an application due to misconduct:

1. The seriousness of the misconduct and the extent to which it undermines the proceeding;
2. The need to deter others from similar conduct;
3. The nature of the administrative unlawfulness and the apparent strength of the applicant's case; and
4. The importance of the individual rights affected and the likely impact on the applicant if the impugned decision is allowed to stand.

[21] One of the *Thanabalasingham* factors in determining whether an applicant's misconduct warrants dismissal is the apparent strength of their case. Therefore, I must consider the merits of Ms. Balog's case in the course of assessing the Respondent's submissions regarding unclean hands. I do so now and will then assess the remaining factors.

#### IV. Analysis of the merits of Ms. Balog's application for judicial review

[22] Ms. Balog emphasizes the significance of the Decision as the only assessment of the merits of her core claim of risk in Hungary. I agree that this is an important consideration in this case. The strength of Ms. Balog's arguments challenging the Decision relates directly to the FCA's requirement that an applicant's fundamental human rights be considered by the Court (see, *Surmanidze v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1615 at para 19). As the Decision is a PRRA decision, its impact on Ms. Balog is also significant. If the Decision cannot withstand a review for reasonableness, the consequences to her of a return to Hungary may well be severe.

[23] Ms. Balog challenges a number of the PRRA officer's findings and alleges that the officer failed to undertake a cumulative assessment of her allegations of discrimination. The parties agree that these arguments question the merits of the Decision and must be reviewed for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23).

[24] Ms. Balog also argues that the PRRA officer breached her right to procedural fairness by making veiled credibility findings and failing to hold an oral hearing. Ms. Balog submits that the Court must review the failure to hold an oral hearing for correctness but I disagree. The standard of reasonableness applies to an officer's determination of whether to hold an oral hearing as part of their consideration of a PRRA application. The officer makes the determination pursuant to paragraph 113(b) of the IRPA and the factors set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Hare v Canada (Citizenship and Immigration)*, 2020 FC 763 at paras 11-12, citing *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 12).

[25] Ms. Balog first argues that the officer failed to conduct a cumulative assessment of the discrimination she faces in Hungary. In addition, she states that the officer omitted entirely any mention of her fear of continued domestic violence at the hands of her ex-husband. I have considered Ms. Balog's arguments in light of the Decision and her PRRA submissions and cannot agree that the officer committed a reviewable error in either regard. The Decision as a whole reflects a review of each area of alleged discrimination and a cumulative assessment of Ms. Balog's vulnerability to persecution or serious harm in Hungary. The officer began the



substance of their analysis by confirming they had considered all of Ms. Balog's submissions and that, as a whole, she had provided insufficient objective evidence to establish her allegations and arguments. The officer then reviewed each of Ms. Balog's stated fears and concluded the analysis with a second, albeit brief, overall assessment.

[26] With respect to Ms. Balog's submission concerning the abuse she suffered from her husband, I agree that she mentioned the very serious 2013 assault he inflicted in her PRRA submissions. The difficulty with her position is that she did not suggest her ex-husband poses a prospective risk in Hungary, nor is there any evidence of contact since 2013. Ms. Balog's fear of return is expressed solely in terms of ongoing discrimination. Before me, Ms. Balog argued that the fact she is Roma means she is necessarily more at risk from her ex-husband. She states that, regardless of her PRRA submissions, the officer ought to have assessed the risk posed by her ex-husband against the lack of support she would receive in Hungary. Ms. Balog did not make this argument to the PRRA officer, nor can it be inferred from her PRRA submissions. I find no reviewable error in the officer's focus in the Decision on Ms. Balog's fear of continued discrimination.

[27] Second, Ms. Balog submits that the officer made veiled credibility findings throughout the Decision but I find there is simply no basis for the submission. Ms. Balog states that there are 300 pages of objective evidence in her PRRA application and that the officer must grapple with that evidence. In my opinion, the officer did so. The officer's consideration of the objective evidence concerning the treatment of Roma in Hungary is measured and even-handed. So too is the officer's assessment of the evidence personal to Ms. Balog.

[28] Ms. Balog also questions the officer's statement that her fear of eviction from her daughter's home was speculative. She argues that the statement must be a credibility finding. I disagree. Ms. Balog provided no evidence of an imminent or threatened eviction. Her statement that such an event may occur was speculative in the absence of an evidentiary basis.

[29] Third, Ms. Balog submitted in her written arguments that the officer failed to consult updated sources of information. She stated that this failure was a reviewable error because of the long delay between her application and the date of the Decision. Ms. Balog now concedes that the Decision demonstrates the officer considered recent information from the September 2019 National Documentation Package (NDP) for Hungary. However, she continues to argue that the officer's consideration was selective (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 91-93) and that the officer erred in faulting her for not updating her PRRA information.

[30] I find that the officer's review of the information in the NDP was balanced. The officer set out the significant discrimination to which individuals of Roma ethnicity are subject in Hungary. The officer thoroughly assessed Ms. Balog's personal experiences against the documentary information. It was open to the officer to conclude that any discrimination experienced by Ms. Balog in Hungary did not and would not amount to persecution. I also find that the officer made no reviewable error in noting the absence of updated information regarding the feared eviction of her daughter from her Hungarian home. If Ms. Balog wanted to update her information, including information regarding her daughter's subsequent departure for Canada, it was open for her to do so to bolster her position.

[31] Finally, and briefly, Ms. Balog argues that the officer undertook a flawed state protection analysis. She bases the argument on the officer's reference to a number of NGO organizations that provide social services and access assistance to the Roma community. In my opinion, the officer's brief reference to the NGOs was in no way an inadequate attempt at a state protection analysis. I note also that the officer was under no obligation to assess the availability and effectiveness of state protection once they concluded that Ms. Balog would not face persecution or risk of serious harm if she returns to Hungary.

[32] In summary, I find that Ms. Balog's application for judicial review is not strong and would not be successful on its merits.

V. Return to the issue of Ms. Balog's unclean hands

[33] I return to the parties' submissions regarding the remaining *Thanabalasingham* factors.

[34] In *Debnath*, the Court considered the seriousness of an applicant's misconduct (para 25):

[25] In my view, it is clear that in these circumstances the Applicants come before this Court without clean hands. Despite a valid deportation order and the dismissal of their stay motion, the Applicants failed to report for removal and went into hiding to avoid removal. This misconduct was very serious and undermined the valid removal process and shows disregard for a decision of this Court. The Applicants also benefitted from this action. This is because they were not entitled to a PRRA if less than 12 months had elapsed since their refugee claim was last rejected, [...].

[35] As Ms. Balog acknowledges, her failure to report for removal demonstrates serious misconduct. It not only undermined a valid removal process, her conduct disregards a decision of this Court. The need to deter others from similar conduct is clear. Further, Ms. Balog's

misconduct is directly connected to the subject matter of this proceeding because the question of her removal and the issue before the PRRA officer both center on her allegations of persecution and harm in Hungary (*Nsungani v Canada (Citizenship and Immigration)*, 2019 FC 1172 at para 13). These factors all favour dismissal of this application.

[36] What then of the remaining *Thanabalasingham* factors? I agree with Ms. Balog that the fourth factor strongly favours her position because the impact on her of the refusal of her PRRA application is significant. The officer's Decision permits her removal to Hungary where she has alleged discrimination and persecution. However, the potential consequences of a return to Hungary must be weighed against my conclusion that Ms. Balog's arguments impugning the Decision are not strong and that the Decision reasonably assesses her risk of renewed discrimination and persecution in Hungary.

[37] In her reply submissions in this application, Ms. Balog states that the global COVID-19 pandemic was underway at the time of her removal. She argues that "the extraordinary nature of the current international health crisis should be taken into account in considering the nature of the misconduct in her decision not to leave Canada".

[38] I place no weight on this submission because any issues surrounding the pandemic were not raised by Ms. Balog in her stay motion heard on March 11, 2020, nor had international travel or domestic restrictions been put in place at the time. It follows that Ms. Balog's decision not to report for removal the next day, March 12, 2020, was likely not influenced by the COVID-19 pandemic.

[39] I have considered each of the factors set out by the FCA in *Thanabalasingham* and Ms. Balog's submissions and evidence. I conclude that the present application may and will be dismissed based on Ms. Balog's serious misconduct. In reaching this conclusion, I have carefully considered Ms. Balog's submissions challenging the merits of the Decision to ensure respect for her fundamental right to seek refuge from persecution and serious harm.

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

**JUDGMENT IN IMM-1254-20**

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

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-1254-20

**STYLE OF CAUSE:** ZOLTANNE BALOG v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 31, 2021

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**DATED:** JUNE 15, 2021

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