

Federal Court



Cour fédérale

Date: 20120222

Docket: IMM-4635-11

Citation: 2012 FC 233

Toronto, Ontario, February 22, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**ZOLTAN ISTVAN MOLNAR
KRISZTINA KORONCZAYNE MOLNAR
ROBERT KAROLY KORONCZAY**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek to set aside the decision of the Refugee Protection Division of the Immigration and Refugee Board that found that they were neither Convention refugees nor persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27. For the reasons that follow, their application is dismissed.

Background

[2] Zoltan Molnar and his sister, Krisztina Molnar, are both Roma, and Hungarian adults. They based their applications for refugee protection on that of their mother, Veronika Kalocsai, who was the principal applicant before the Board. She feared her ex-husband and the consequences of being Roma. Robert Karoly Koroncay is Krisztina's infant son and he based his application on that of his mother.

[3] The Board considered Ms. Kalocsai's claim for refugee protection separate to that of these applicants. It concluded that she was as diligent as she could have been in seeking state protection from her ex-husband. The Board cited several portions of the documentary evidence and concluded that there was "a serious possibility that [Ms. Kalocsai] would be persecuted by her former husband if returned to Hungary." It noted that this finding was based not only on the allegations of domestic abuse, but also on the fact that the perpetrator is involved with a neo-Nazi group. State protection was available, but it was not reasonable for her to obtain it. As a result, her claim for refugee protection was accepted.

[4] Zoltan's claim was not accepted. The Board noted that he did not submit a separate Personal Information Form (PIF) narrative and that he did not testify at the hearing. His mother's testimony indicated that while he may have suffered discrimination in terms of abuse by his father, he had never been harmed. On occasion he would get slapped on the face by his father, but it was nothing serious. The Board found that unlike his mother, he never required medical attention and never went to the police. In sum, "[t]here was no evidence adduced to lead

the Board to conclude that what he suffered was tantamount to persecution.” Also, there was no evidence which persuaded the Board that the state was unable to protect Zoltan.

[5] Krisztina’s claim was rejected, together with that of her son. She did not testify but she did submit a PIF narrative separate from that provided by her mother. The Board noted that according to her mother’s testimony Krisztina was not harmed by her father. In fact, it was found that she married and moved away. With respect to the allegations that she received discrimination relating to her schooling, her employment and treatment of her husband, it was found that there was no denial of basic human rights which equated to persecution. Even though the PIF indicated that Krisztina’s son was once grabbed by neo-Nazis, there was no evidence of this. As it had for Zoltan, the Board decided that state protection was available.

Issues

[6] The issues raised in this application are:

1. Did the Board misconstrue the evidence before it and come to an unreasonable conclusion relating to Zoltan’s fear of persecution?
2. Did the Board misconstrue the evidence before it and come to an unreasonable conclusion relating to Krisztina’s fear of persecution?

Analysis

Decision Respecting Zoltan

[7] The Board found that Zoltan had never been harmed, never required medical attention and never sought police protection. This, according to the applicants, was an erroneous finding

made without regard for the material before it. They cite different passages in the PIF of Ms. Kalocsai, summarized below, which state the opposite. It was submitted that the Board accepted these statements; however, it is noted that they appear in the decision under the heading “Allegations” and I cannot find that they were accepted by the Board as fact; they were merely a recitation of the allegations made by the claimants in their PIF narratives.

- In October 2006 his mother was attacked on the way to the subway station. “Zoltan tried to protect me, he was injured, getting cut and beaten (Record, page 43 para 11).”
- “Zoltan was treated in the E&R Minor Surgery department (Record, page 43 para 12).”
- “Zoltan and I moved to escape my former husband’s calls and visits. We went to the police... (Record, page 44 para 14).”
- “May 2008: We were assaulted while I was going to medical treatment with Zoltan (Record, page 44 para 15).”
- “We reported the attack, providing police medical reports of our injuries (Record, page 44 para 16).”
- “Spring 2009: ... Our house was watched continuously by one or two black dressed people, or we were followed by them, wherever we went (Record, page 44 para 18).”
- “[My ex-husband] said, his duty is to kill us... He said he doesn’t have to kill us, if we leave the country ourselves (Record, page 44 para 18).”
- “The police did not start any investigation. We begged them, but they told us they don’t want to interfere in a family argument (Record, page 44 para 18).”

- “[Zoltan] started receiving threatening phone calls again (Record, page 45 para 21).”

[8] The Board’s statement relating to Zoltan’s alleged persecution is found at paragraph 36 of the reasons:

[36] The principal claimant’s son’s claim is based on the allegations of his mother. He did not submit a separate narrative. He did not testify and the testimony of his mother indicated that, while he may have suffered discrimination, in terms of abuse at the hands of his father, he had never been harmed. In fact, as stated above, he attempted to come to the aid of his mother and lived with her during the timeframe described by his mother. His mother testified that, on occasion, his father would slap his face, but nothing serious. He never required any medical attention, nor did he ever go to the police. There was no evidence adduced to lead the Board to conclude that what he suffered was tantamount to persecution.

[9] First, other than the occasional slap to the face, there was no evidence that Zoltan was directly harmed at the hand of his father. Second, the Board cannot be faulted for stating that Zoltan never required medical attention or that he never went to the police. The transcript illustrates the following interaction between the Board and Zoltan’s mother at page 376 of the Certified Tribunal Record:

PRESIDING MEMBER: Did [Zoltan] ever require any medical attention?

PRINCIPLE CLAIMANT: No.

PRESIDING MEMBER: Did he ever go to the police?

PRINCIPLE CLAIMANT: No.

[10] The Board preferred the oral evidence over the evidence in the PIF as it was entitled to do. Further, the Board's finding that the harm suffered by Zoltan was not tantamount to persecution is purely a question of weight and is not a matter for this Court's intervention.

[11] When it turned to consider state protection, the Board found that the circumstances of the mother's case were not the same as Zoltan's and found on a balance of probabilities that state protection was available for him. It is relevant to note that Zoltan's mother seemed to have always been the principle target of the attacks and that the police had labelled her problems as a "marital dispute." Those were not circumstances present in Zoltan's case. The only evidence relating to Zoltan that was arguably not at the hand of his father or at his instigation was not of such magnitude that the Board's finding that he was not subjected to persecution can be said to be unreasonable.

[12] Accordingly, I find that the Board's conclusions that Zoltan's harm was not tantamount to persecution and that there was state protection available for him, were reasonable findings in the circumstances of the case.

Decision Respecting Krisztina

[13] The applicants challenge the Board's finding that Krisztina did not face persecution. They submit that having been denied adequate education at a young age, which today leads to a loss of adequate employment, amounts to persecution. They highlight that the minor applicant was, at one point, prevented from getting a health card, putting his life in danger. Also, the government failed to provide support payments to Krisztina, denying her basic government

support. Moreover, Krisztina and her late Hungarian husband used to be discriminated on a daily basis for being a “mixed racial couple.” The applicants submit that the Board failed to consider those factors, rendering its decision unreasonable: *Agalliu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1035.

[14] They also submit that the Board failed to consider the statement in Krisztina’s PIF that “My husband’s family insulted me saying: I am the reason why he died. They threatened me saying I will pay the price for their loss.” At paragraph 17 Krisztina says that she, her son, and the family they were living with would receive threats by neo-Nazis “once or twice a week.”

[15] In the applicants’ view, the Board failed to articulate the basis for Krisztina’s fear. They submit that Krisztina and her son “are not simple Roma fleeing problems all Roma face, they have a unique set of circumstances, which the panel has simply failed to consider...” The applicants then highlight different portions of the documentary evidence relating to their objective fear and submit that the Board failed to provide reasons in that regard.

[16] I disagree with all of these submissions. A review of the decision reveals that the Board did not fail to consider the circumstances particular to Krisztina’s case. Its statements relating to her persecution are found at paragraphs 11 and 37 of the reasons, as follows:

She also alleges, according to the narrative of her [PIF], that she received discriminatory treatment when her son was a newborn, however eventually they were able to acquire the proper health card and other documents.

...

With respect to the principal claimant’s daughter [Krisztina] she, too, did not testify. However, in addition to relying on her mother’s PIF,

her allegations are summarized above. According to her mother's testimony, she too was not harmed. In fact, she got married and moved away. With respect to her allegations regarding the discriminatory treatment she received during her school years, her employment and the treatment at the hands of her late husband's family, again there was no evidence adduced that would constitute a denial of basic human rights, tantamount to persecution. There was no evidence adduced with respect to her son, although his mother's PIF indicates that on one occasion he was grabbed by Neo Nazis.

[17] The threat of Krisztina's late husband that she would "pay the price for their loss" does not necessarily amount to a risk to her life or a risk of cruel and unusual treatment or punishment. The Board was under no obligation to mention it.

[18] Further, the finding that the evidence adduced was not tantamount to persecution related purely to the weighing of the evidence and this Court cannot intervene. The applicants have not rebutted the presumption that the Board failed to consider any evidence: *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598.

Agents of Persecution and State Protection

[19] Lastly, I wish to make a few comments about the submissions made at the hearing that the Board focused its decision only on the ex-husband as the agent of persecution and failed to consider the plight of Roma in Hungary.

[20] A review of the transcript indicates that in the very brief submissions made by counsel for these applicants at the hearing and he focused on the actions of the ex-husband and the "family" nature of the dispute. Having failed to make any material representations as to the situation of Roma generally, it hardly lies in his mouth to now fault the Board for doing the

same. In any event, the evidence that was tendered of risk as Roma, outside the relationship with the former husband and father, was scant. The applicants were given the opportunity to testify before the Board and chose not to do so. The Board Member very clearly indicated at the commencement of the hearing that the relevant issues were “discrimination versus persecution, and state protection.” Having failed to provide any testimony of their own on either point, and knowing that their mother’s claim focused on the spousal abuse she suffered, they can hardly be surprised by the result.

[21] The applicants proposed the following question for certification which relates to the Board’s focus on the ex-husband as the agent of persecution: “If the Board is addressing testimony with respect to a particular agent of persecution does the testimony provided in answer address all agents of persecution?” I agree with the respondent that this is not a question of general importance, even if the other conditions of a certified question were satisfied. I shall not certify any question.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4635-11

STYLE OF CAUSE: ZOLTAN ISTVAN MOLNAR ET AL v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: February 22, 2012

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