

Federal Court



Cour fédérale

**Date: 20130527**

**Docket: IMM-7368-12**

**Citation: 2013 FC 552**

**Ottawa, Ontario, May 27, 2013**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**CSABA BUDAI  
ILONA TURJANYI  
CSABA BUDAI JR / (CSABA BUDAI)  
ALEXANDRA BUDAI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Csaba Budai, his wife Llona Turjanyi and their children Csaba Budai Jr. and Alexandra Budai are Roma citizens of Hungary who claim to fear persecution by ethnic Hungarians and Neo Nazis. The Refugee Protection Division of the Immigration and Refugee Board rejected the family's claim for refugee protection on the basis that they had failed to rebut the presumption that adequate state protection would be available for the family in Hungary.

[2] For the reasons that follow, I have found that the Board's decision was unreasonable. As a consequence, the application for judicial review will be granted.

### **The Applicants' Experiences in Hungary**

[3] The Board identified credibility and state protection as the determinative issues in this case. However, while the Board seemed to question aspects of the applicants' story, its decision ultimately turned on its state protection finding.

[4] However, the availability of state protection must be assessed in light of an applicant's personal circumstances and the particular factual context of the refugee claim: see for example *Bali v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 414, [2013] F.C.J. No. 456 at para. 11. As stated in *Zepeda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 491, [2008] F.C.J. No. 625 at para. 20, "decision-makers must engage in a full assessment of the evidence placed before them" when analyzing state protection. Such an assessment "should include the context of the country of origin in general, all the steps that the applicants did in fact take, and their interaction with the authorities".

[5] As a consequence, it is necessary to examine the Board's factual findings with respect to the applicants' own experiences prior to considering the reasonableness of its finding with respect to the issue of state protection.

[6] The Board did express concerns with respect to the lack of corroborative evidence produced by the applicants, but does not state what, if any, conclusions should be drawn from this.

[7] The only explicit negative credibility finding made by the Board related to a medical report for the applicants' daughter, Alexandra, which stated that she had a fever and blood in her stool. The applicants state that this was the result of an attack on their daughter by the parent of one of their daughter's school mates. The Board rejected the applicants' evidence in this regard on the basis that the evidence "was contradicted" by the fact that Alexandra was better after two weeks had passed. However, the fact that Alexandra was better two weeks later does not 'contradict' the fact that she was initially ill or that she had been attacked.

[8] More problematic is the Board's finding with respect to the fire at the applicants' apartment building. The applicants stated that their building was set on fire because it housed Roma families, and that the police refused to investigate the fire because the victims were "just Roma". The Board seemingly did not place any stock on this aspect of the applicants' story on the basis that Mr. Budai was not himself "personally" targeted by the arsonists. This was clearly unreasonable.

[9] Not only was there no requirement that Mr. Budai show that he himself was personally targeted by the attackers, the Board also appears to have completely ignored the fact that the attack was clearly racially-motivated and the fact that the police allegedly refused to investigate the crime, again for racist reasons.

[10] The Board also does not appear to have given any weight to the evidence that Mr. Budai was allegedly fired from his employment because of complaints received by his employer from co-workers who did not want to work with a Roma. After addressing this allegation, the Board stated:

“However, his employer was aware of them when he was fired.” While it is not the task of this Court sitting in judicial review to reweigh the evidence that was before the Board, in this case, the Board’s finding was simply incomprehensible.

[11] Finally, and most importantly, the Board does not appear to have appreciated the central role played by the police themselves as agents of persecution in this case.

[12] The applicants described a lengthy history of serious mistreatment that they themselves suffered, as well as the lack of response to these attacks on the part of the police. In addition to this, however, the applicants also described the mistreatment that they encountered in the course of several interactions with the police. None of this evidence was rejected by the Board in clear and unmistakable terms. Indeed, most of it was simply never addressed.

[13] The applicants described the attempted rape of Ms. Turjanyi by police officers and the serious beating inflicted on Mr. Budai when he attempted to intervene to stop the assault on his wife, in the course of which his teeth were kicked in. The police then threatened Mr. Budai to ensure that he would not report the incident.

[14] Mr. Budai also stated that after he was knifed in June of 2006, the police refused to come to the hospital when they found out that he was Roma. After Ms. Turjanyi was assaulted in a park, the police laughed at her, accused her of being a prostitute, and refused to take a statement from her, despite her obvious injuries.

[15] The Board's reasons contain only a very brief summary of the applicants' allegations, and there is no reference to most of the allegations relating to police misconduct (as opposed to police inaction). As discussed below, this raises concerns with respect to the Board's state protection analysis.

### **State Protection**

[16] I agree with the applicants that the Board erred by failing to meaningfully consider the applicants' interactions with the authorities in determining whether adequate state protection would be available to them in Hungary. Indeed, it is apparent that the Board's discussion of state protection is essentially a "cookie-cutter" analysis, dealing at great length with issues such as education reform and grant programs for disadvantaged families - issues that bear little or no relation to the case before it.

[17] Nowhere in its analysis does the Board fully engage with the question of whether it was reasonable to expect the applicants to seek the protection of the Hungarian state in light of the country condition information and their own personal experiences with the police, or whether it was reasonable to expect that protection would have been forthcoming.

[18] Nor is it apparent from either the Board's reasons or the documentary record how complaints by the applicants to organizations such as the Parliamentary Commissioner for the Rights of National and Ethnic Minorities or the Independent Police Complaints Board would actually translate into adequate state protection becoming available to them.

[19] The Board accepted that the criticisms levelled at Hungary with respect to its implementation of laws designed to protect its Roma citizens “may be deserved”. However, it went on to note that Hungary is part of the European Union and reports regularly through the governance structures and that it was “taking the measures to implement the standards that are mandated as a member of the European Union”. However, nowhere in its reasons does the Board consider whether these measures actually translated into adequate state protection for Hungary’s Roma citizens at the operational level: see *Varela v. Canada (Minister of Citizenship & Immigration)*, 2011 FC 1364, [2011] F.C.J. No. 1663 at para. 16. This is an error that renders the Board’s decision unreasonable.

### **Conclusion**

[20] For these reasons, the application for judicial review is granted. I agree with the parties that the case does not raise a question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination.

“Anne L. Mactavish”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-7368-12

**STYLE OF CAUSE:** CSABA BUDAI ET AL v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 21, 2013

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

**DATED:** May 27, 2013

**APPEARANCES:**

Jeffrey L. Goldman FOR THE APPLICANTS

Ndija Anderson FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

JEFFREY L. GOLDMAN FOR THE APPLICANTS

Barrister and Solicitor

Toronto, Ontario

WILLIAM F. PENTNEY FOR THE RESPONDENT

Deputy Attorney General of Canada