

Federal Court



Cour fédérale

**Date: 20140225**

**Docket: IMM-11649-12**

**Citation: 2014 FC 177**

**Ottawa, Ontario, February 25, 2014**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**CSABANE BABOS  
CSABA BABOS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of Michele Pettinella, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicants' claim for refugee protection, concluding that they were not convention refugees or persons in need of protection under sections 96 and 97 of the Act.

I. Issue

[2] The issue raised in the present application is as follows:

A. Was the Board's decision unreasonable with respect to its findings on credibility and state protection?

II. Background

[3] The Applicants consist of Csabane Babos [the Principal Applicant or PA] and her son, Csaba Babos [the Minor Applicant or MA]. They are Hungarian citizens of Romani origin.

[4] The PA alleges in a half-page initial Personal Information Form narrative [First PIF Narrative], filed on April 5, 2011, that harassment and attacks are everyday issues in Hungary as a result of her race. She states that the MA has been physically assaulted many times at school because of his Roma ethnicity. In 2010, the PA states that the MA was attacked on the street, and when she turned to the court system for help, the man suspected in the MA's beating threatened him in an attempt to dissuade him from pursuing the incident with the police. In addition, she stated that she has been chased off of public transit and insulted because of her ethnicity. On September 12, 2011, the Applicants filed a first amended Personal Information Form narrative. This mainly corrects typographical errors and is functionally identical to the First PIF Narrative.

[5] On February 11, 2012, the Applicants filed a second amended Personal Information Form narrative [Amended PIF Narrative]. This Narrative is ten pages long and contains many substantial allegations that were not included in the First PIF Narrative. These include refusal of medical help,

difficulty finding employment, and many incidences of verbal and physical abuse of the Applicants by skinheads and Hungarian Guardists, starting in the early 1990s.

[6] The Applicants left Hungary on February 8, 2011, to claim refugee protection in Canada.

[7] The Board found that the Applicants' allegations were not credible and that they had not rebutted the presumption of state protection.

#### A. *Credibility*

[8] With regard to credibility, the Board made six primary findings.

[9] First, the Board found the PA's explanation as to the differences between the First and Amended PIF Narratives to be unconvincing. The Amended PIF Narrative contained one specific incident of persecution while the Amended PIF Narrative contained approximately 36. When asked by the Board for an explanation regarding this discrepancy, the PA stated that her former lawyer told her to keep her First PIF Narrative to one or two pages in length. The Board did not find it credible, instructions from counsel notwithstanding, that the PA would not at least provide a cursory description of these additional incidences in her First PIF Narrative.

[10] Second, the PA states in her Amended PIF Narrative that she contacted police "more than 5-6 times," but describes in the same Narrative more than 15 incidents when police were contacted. When asked by the Board as to how many times she contacted police, she stated that she did not

know and only guessed in her Amended PIF Narrative. The Board found it not credible that someone could not recall a more consistent estimate of how many times police were contacted.

[11] Third, the PA failed to provide the Board with police or medical reports for incidences other than one which occurred in February, 2010. The Board did not accept the PA's explanation that she had to obtain them personally, as documentary evidence suggests the contrary. The Board drew a negative inference on her credibility.

[12] Fourth, the PA told the immigration officer at her Port of Entry interview about the February, 2010 incident by stating that the MA's bracelet was taken and the police did nothing to respond. Despite this, no police reports indicate the MA's bracelet was taken. When questioned by the Board, the PA stated that it either fell off during the incident or was taken. The Board drew a negative inference from this inconsistency.

[13] Fifth, the Board noted several incidents during testimony where the PA and her common-law spouse [the Witness] had difficulty remembering events described in the Amended PIF Narrative. This was evident by the PA and the Witness failing to respond, stating that she did not know the answer, or misremembering key details about the incidents on which she was being questioned. While noting that it is natural that some details may be difficult to recall, the Board drew a negative inference based on the fact that both the Witness and the PA repeatedly had great difficulty remembering many events which allegedly led them to flee Canada.

[14] Finally, the Board addressed submissions from the Applicants' counsel that the PA suffers from depression, migraines, and tremors and the Witness was sedated at the time of the hearing, factors that would have impacted their credibility. The Board rejected this explanation on the basis that insufficient credible medical evidence was presented that showed that the Witness was sedated on the date of the hearing or that the conditions and prescriptions at issue would impact the credibility of the PA.

[15] Consequently, the Board did not believe the persecution described by the Applicants occurred, except for the assault of the MA in February, 2010.

#### *B. State Protection*

[16] With respect to the assault on the MA in February, 2010, the Board found that the police responded quickly and appropriately to the MA's complaint, as they tracked the suspected perpetrators based on the MA's description and a license plate number, brought the perpetrators to the police station, and a court date was set. The police kept the MA and the PA apprised of developments in their investigation. No evidence was provided that would suggest the police would have not followed through on the court case had the MA remained in Hungary.

[17] The Board also reviewed country condition information that notes that while Hungary has problems with discrimination against the Roma minority, on balance Hungary is a democracy with appropriate police, political and administrative agencies to offer recourse to persecuted individuals.

[18] The Board considered this information in light of the particular circumstances of the Applicants' case, including the February, 2010, incident and the police follow-up.

### III. Standard of Review

[19] The standard of review is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47; *Tamas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1361, at paras 20, 22).

### IV. Analysis

[20] The Applicants dispute the Board's credibility findings for several reasons. First, they assert that the Board showed no sensitivity to the PA's medical issues, noting *Wardi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1509, at paras 19-20.

[21] Second, the Applicants state that the Board erred by making a negative credibility finding on the basis of the substantive changes in the Amended PIF Narrative. In *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101, at paras 18-19, the Court stated that a PIF amendment alone is not a basis to undermine the Applicant's credibility where the amendment adds detail to the Applicant's story. Further, the Applicants note that they have filed a complaint to the Law Society about their original lawyer advising the PA to write a short First PIF Narrative – a fact which helps explain the differences between the two narratives.

[22] In addition, the Applicants argue that the Board erred when it drew a negative credibility inference from the fact that the PA described at one point in her Amended PIF Narrative that she

contacted the police “more than 5-6” times but later described 15 times. The Applicants note that “more than 5-6” is not inconsistent with 15, and the Board ought to have examined the credibility of the incidences themselves, but did not do so.

[23] The Applicants also argue that the Board conducted a microscopic analysis of the evidence and inappropriately required corroboration as a condition precedent to finding the evidence credible. The Applicants draw particular attention to the Board’s finding regarding the inconsistency between the PA’s Port of Entry interview and her testimony as to how the MA’s bracelet went missing during the February, 2010 assault. The alleged discrepancy only arises to the extent that the police report states that the MA’s bracelet “disappears,” not that it was “stolen.” The Applicants argue that this inconsistency is minor and a negative credibility inference ought not to be drawn (*Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857, at paras 67-69).

[24] The Board’s credibility analysis was well within the *Dunsmuir* standard of reasonableness. The Board noted the substantial differences between the First and Amended PIF Narratives and was not convinced by the PA’s explanation that it was on her lawyer’s direction. The Board’s decision was supported by several other findings, including the inconsistencies between the number of incidences described in the Amended PIF Narrative, the failure by the Witness and the PA to recall key events during testimony, and the lack of corroborating evidence save for the February, 2010 incident. Moreover, the Board considered the PA’s medical condition and concluded that insufficient evidence existed to justify the argument that the PA was unable to give complete testimony.

[25] On the whole, the Board's credibility findings were justifiable, intelligible and sufficient.

[26] With regard to state protection, given that I accept the Board's credibility finding, the only incident necessary to assess is the February, 2010 incident. It was the Applicants' burden to show state protection is inadequate. The facts that are known are that the police identified the perpetrators based on the information provided by the MA, a court date was set, and witnesses were summoned. The absence of information as to what happened to the court case after the Applicants left Hungary does not aid the Applicants in discharging their burden to show that state protection was inadequate.

[27] In this case, it was reasonable for the Board to conclude, after reviewing country condition information and the Applicants' personal circumstances, that state protection was adequate.



**JUDGMENT**

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

1. The application is dismissed;
2. No question is to be certified.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-11649-12

**STYLE OF CAUSE:** Babos et al v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 24, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** MANSON J.

**DATED:** February 25, 2014

**APPEARANCES:**

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