

Federal Court



Cour fédérale

Date: 20140410

Docket: IMM-2150-13

Citation: 2014 FC 346

Ottawa, Ontario, April 10, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ELEMERNE BABOS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

(Reasons given orally in Toronto on April 2, 2014)

[1] This application for judicial review was initially brought by four claimants: Baeta Babos [the Principal Claimant], her daughter, her daughter's son and her mother Elemerne Babos [the Co-Claimant]. The Principal Claimant, her daughter and grandson arrived in Canada on May 23, 2011 and a Personal Information Form [PIF] was filed describing the Principal Claimant's experiences as a person of Roma ethnicity in Hungary. The Co-Claimant arrived on August 19,

2011 and she filed a separate PIF which described her experiences in Hungary. They were entirely different from those mentioned in the PIF filed by the Principal Claimant.

[2] At the hearing, the claims of the Principal Claimant and the Co-Claimant were joined and the Principal Claimant gave evidence about her PIF. The Co-Claimant chose not to give evidence about her PIF and her experiences were not addressed in counsel's submissions. However, the Co-Claimant's PIF was not withdrawn.

[3] This application for judicial review was initially brought by all four Claimants but the Principal Claimant, her daughter and her grandson discontinued their judicial review application on October 8, 2013. This meant that the Co-Claimant was the only applicant on judicial review.

[4] The negative decision of the Immigration and Refugee Board [the Board] is dated February 5, 2013 [the Decision]. It shows at paragraph 1 that the Board was aware of the Co-Claimant. However, the Decision never again referred to the Co-Claimant and failed to deal with any of the events described in her PIF. The Board reached its conclusions about state protection based solely on the evidence about the Principal Claimant's experiences. In other words, the Decision simply did not address the Co-Claimant's refugee claim. This is illustrated by the question the Board posed for itself at paragraph 13 of the Decision. There it says "It is against this background and taking into consideration the particular circumstances relating to this claim that the panel must determine whether or not adequate state protection exists for this particular claimant in Hungary" [my emphasis]. The problem is also revealed in paragraph 18 of the Decision where the Board says "The claimant has not demonstrated that she took all reasonable

efforts to seek state protection before fleeing Hungary..." [my emphasis]. Finally, paragraph 19 of the Decision shows that the Co-Claimant's case was not separately considered. It states "In view of the foregoing, the panel finds that the principal claimant has not provided the requisite clear and convincing evidence that, on a balance of probabilities, state protection in Hungary is inadequate" [my emphasis]. This finding was made after a review of the evidence in the Principal Claimant's PIF.

I. Conclusion

[5] I have concluded that the Co-Claimant's application for judicial review will be granted because her claim for refugee protection was not considered.

II. Certification

[6] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The Co-Claimant, Elemerne Babos' refugee claim is hereby referred back for consideration by another member of the Board.
2. The style of cause is hereby amended to show that the Co-Claimant is the only remaining Applicant.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2150-13

STYLE OF CAUSE: ELEMERNE BABOS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 2, 2014

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

DATED: APRIL 9, 2014

APPEARANCES:

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Mr. Charles Jubenville FOR THE RESPONDENT

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