

Federal Court



Cour fédérale

**Date: 20160628**

**Docket: IMM-2696-16**

**Citation: 2016 FC 730**

**Ottawa, Ontario, June 28, 2016**

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

**BETWEEN:**

**ZOLTAN DANYI  
VERONIKA MATYAS  
ALEX DANYI**

**Applicants**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**ORDER AND REASONS**  
**(Delivered from the bench on June 27, 2016)**

[1] The Applicants are a Roma family from Hungary. Zoltan Danyi and Veronika Matyas constitute a couple. Their son, Alex Danyi, is five years old.

[2] The Applicants have come to Court with an application for a stay of removal to be effected this evening. An underlying application for leave and judicial review has been submitted

to the Court in regard to a Removal Officer deferral denied, also, a humanitarian and compassionate [H&C] grounds application has been submitted by the Applicants.

[3] The Court recognizes the evidence of serious psychological harm that has been ignored in respect of the female Applicant due to a possibility of suicide in Hungary, due to trauma in facing return therein.

[4] Also, a failure to appropriately consider the best interests of the child as to the potential post-traumatic stress disorder that has been diagnosed in evidence is evident from the record (referenced below in the decision of *Kanhasamy* of the Supreme Court).

[5] As previously stated by the undersigned in *Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056:

[68] Whether the Applicants' situation rises to the level of persecution depends on whether their basic human rights are threatened "in a fundamental way" (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 70; *Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)*, 2004 FC 282). In determining this issue, the Board must consider the cumulative effect of the events of persecution (*Munderere v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 84).

[69] The documentary evidence on the general country conditions of the Hungarian Roma raises serious human rights concerns. Educational, employment, housing, economic, and health barriers and anti-Roma violence described in the evidence could show that the conditions of certain Roma in Hungary could rise to the level of persecution.

[6] The Court also specifically refers to *Bors v Canada (Citizenship and Immigration)*, 2010 FC 1004 and to *Canada (Citizenship and Immigration) v Racz*, 2015 FC 218, both of which

demonstrate the level of persecution of the Roma that is significantly often in evidence, all of which requires a proper analysis as to the country of origin and developments in respect of certain Roma residing therein.

[7] Reference is made to the recent Supreme Court of Canada decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 35-36 and 40:

[35] The “best interests” principle is “highly contextual” because of the “multitude of factors that may impinge on the child’s best interest”: *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76, at para. 11; *Gordon v. Goertz*, [1996] 2 S.C.R. 27, at para. 20. It must therefore be applied in a manner responsive to each child’s particular age, capacity, needs and maturity: see *A.C. v. Manitoba (Director of Child and Family Services)*, [2009] 2 S.C.R. 181, at para. 89. The child’s level of development will guide its precise application in the context of a particular case.

[36] Protecting children through the “best interests of the child” principle is widely understood and accepted in Canada’s legal system: *A.B. v. Bragg Communications Inc.*, [2012] 2 S.C.R. 567, at para. 17. It means “[d]eciding what . . . appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention”: *MacGyver v. Richards* (1995), 22 O.R. (3d) 481 (C.A.), at p. 489.

...

[40] Where, as here, the legislation specifically directs that the best interests of a child who is “directly affected” be considered, those interests are a singularly significant focus and perspective: *A.C.*, at paras. 80-81. The Minister’s Guidelines set out relevant considerations for this inquiry:

Generally, factors relating to a child’s emotional, social, cultural and physical welfare should be taken into account when raised. Some examples of factors that applicants may raise include but are not limited to:

- the age of the child;

- the level of dependency between the child and the [humanitarian and compassionate] applicant or the child and their sponsor;
- the degree of the child's establishment in Canada;
- the child's links to the country in relation to which the [humanitarian and compassionate] assessment is being considered;
- the conditions of that country and the potential impact on the child;
- medical issues or special needs the child may have;
- the impact to the child's education; and
- matters related to the child's gender.

(Inland Processing, s. 5.12)

[8] For all the above reasons, the conjunctive tri-partite *Toth* decision test is fully satisfied in all three criteria in favour of the Applicants.

[9] Therefore, a stay of removal is granted pending final disposition of the outstanding application for leave and judicial review.

**ORDER**

**THIS COURT ORDERS** that the Applicants' stay of removal be granted, pending final disposition of the outstanding application for judicial review.

**OBITER**

It is suggested, in an exceptional manner, that the H&C be assessed prior to removal, as the documentary evidence demonstrates a high level of persecution in respect of certain Roma in the country of origin concerned in the circumstances described by the Applicants.

It is fully recognized by this Court that it is not within the jurisdiction or discretion of the Court to decide the time and the substantial issues of the H&C; that is for the appropriate government designated authority to assess.

"Michel M.J. Shore"

---

Judge

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

**DOCKET:** IMM-2696-16

**STYLE OF CAUSE:** ZOLTAN DANYI, VERONIKA MATYAS, ALEX  
DANYI v THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**MOTION HELD VIA TELECONFERENCE ON JUNE 27, 2016 FROM OTTAWA,  
ONTARIO AND TORONTO, ONTARIO**

**ORDER AND REASONS:** SHORE J.

**DATED:** JUNE 28, 2016

**ORAL AND WRITTEN REPRESENTATIONS BY:**

Amedeo Clivio FOR THE APPLICANTS

Judy Michaely FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Amedeo Clivio, J.D. FOR THE APPLICANTS  
Barrister and Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Toronto, Ontario