

Federal Court



Cour fédérale

**Date: 20240305**

**Docket: IMM-13228-22**

**Citation: 2024 FC 360**

**Ottawa, Ontario, March 5, 2024**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**KATERYNA ROMANYSHYNA  
ANNA ROMANYSHYNA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mrs. Kateryna Romanyshyna (the “Principal Applicant”) and her daughter Anna Romanyshyna (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), dismissing their claim for refugee protection.

[2] The Applicants are citizens of Ukraine. They arrived in Canada in October 2018, via the United States of America. Their claim is based upon the claim made by Mr. Sergii Romanyshyn, the husband of the Principal Applicant and father of the daughter.

[3] Mr. Romanyshyn arrived in Canada in May 2018 and claimed protection on the basis of his identity as a bisexual man. The Applicants claimed to be at risk from members of the Principal Applicant's family, on account of the alleged bisexual identity of Mr. Romanyshyn. The RPD accepted that there was a nexus between the claims of Mr. Romanyshyn and those of the Applicants, and the claims were joined.

[4] The Minister of Citizenship and Immigration (the "Respondent") intervened in the proceedings before the RPD, raising issues of credibility arising from the immigration history of Mr. Romanyshyn. The material presented by the Respondent included information gathered from the Global Case Management System, showing a number of applications by Mr. Romanyshyn for visitor visas, work permits and permanent residence for himself, his wife and their daughter.

[5] The RPD dismissed the claim of Mr. Romanyshyn on credibility grounds, finding that he had not established his identity as a bisexual man or his relationship with a man identified as "M". Therefore, he would not be at risk. Since the claims of the Applicants depended upon that of Mr. Romanyshyn, those claims were dismissed as well.

[6] The Applicants now argue that the RPD made unreasonable credibility and implausibility findings. They submit that the RPD took a microscopic view of the evidence and erred in failing

to properly apply the *Chairperson’s Guidelines 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics* (the “Guidelines”) in hearing the evidence of Mr. Romanyshyn who presented as a vulnerable person. They also contend that the RPD failed to account for country conditions.

[7] The Respondent argues that the RPD reasonably considered the evidence presented, that Mr. Romanyshyn did not ask for consideration as a vulnerable person and that in any event, the Guidelines cannot repair credibility concerns.

[8] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the decision is reviewable on the standard of reasonableness.

[9] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra*, at paragraph 99.

[10] I agree substantially with the submissions put forth by the Respondent.

[11] The RPD assessed the evidence submitted by Mr. Romanyshyn and the evidence of the Principal Applicant. The RPD, not the Court, is mandated to weigh the evidence.

[12] Any applicant seeking relief under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, bears the burden of establishing the case with credible evidence. The evidence submitted by the Respondent raised doubts about the claim of Mr. Romanyshyn for refugee protection.

[13] Nonetheless, the RPD considered the evidence of Mr. Romanyshyn and of the Principal Applicant, advanced to support their claim of fear of persecution on the basis of sexual identity. It determined that the evidence was not credible.

[14] I am not persuaded that the RPD's conclusion fails to meet the applicable standard of reasonableness. The decision meets the requirements of "justification, transparency and intelligibility".

[15] The RPD reviewed the evidence, including the country condition evidence. Evidence of discrimination against bisexual persons is insufficient, on its own, to establish Mr. Romanyshyn's identity as such a person.

[16] In the result, the application for judicial review will be dismissed. There is no question for certification.

**JUDGMENT IN IMM-13228-22**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

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Judge

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

**DOCKET:** IMM-13228-22

**STYLE OF CAUSE:** KATERYNA ROMANYSHYNA ET AL. v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 29, 2024

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** MARCH 5, 2024

**APPEARANCES:**

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