

Federal Court



Cour fédérale

**Date: 20111205**

**Docket: IMM-2131-11**

**Citation: 2011 FC 1408**

**Toronto, Ontario, December 5, 2011**

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

**BETWEEN:**

**KRISZTOFER BOSNYAK  
(A.K.A. KRISZTOFER GYOG BOSNYAK)  
PATRIK BOSNYAK**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] For the reasons that follow, this application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board determining that the applicants were neither Convention refugees nor persons in need of protection is allowed.

[2] The applicants, Krisztofer (age 6) and Patrik Bosnyak (age 2), are citizens of Hungary. Their refugee claims were based on the persecution of them and their mother, Szabina Szabo, by her former common-law spouse, Istvan Sandor. Ms. Szabo was appointed designated representative for the applicants, and gave evidence on their behalf at the hearing.

[3] There is no need to outline the evidence that was provided in support of the refugee claim except to state that Ms. Szabo testified that she had been abused and assaulted by her common-law spouse while in Canada to the extent that he was sentenced to 18 months in prison for assault.

[4] Ms. Szabo returned to Hungary after her common-law spouse was incarcerated. He too returned to Hungary after his sentence was served. She testified that he eventually found her again and continued to physically and sexually abuse her, and forced her into prostitution.

[5] Ms. Szabo states that in 2004 she was able to flee from this abusive man with the help of Gyorgy Bosnyak, who became her common-law spouse. They had their first child, Krisztofer, in 2005 and their second child, Patrik, in 2008.

[6] Ms. Szabo alleges that her former common-law spouse found her again and tried to run down Krisztofer and her with a car. Later she and Krisztofer were abducted by three men on Mr. Sandor's behalf, and driven to Budapest. She was raped in Krisztofer's presence, and let go some time later. She says that she reported this incident to the police, but they questioned why they should believe her, since she slept with a man while pregnant with another man's child.

[7] Mr. Sandor continued to threaten her, Krisztofer, and her then unborn child. Soon after Patrik was born she convinced her brother to help to bring her to Canada. She sent Krisztofer to Canada with her brother on August 13, 2009 and she travelled to Canada with Patrik on October 27, 2009.

[8] Ms. Szabo fears Mr. Sandor and states that because she is recognizable as Romani in her appearance and her speech patterns, there is no possibility of receiving protection as an abused woman in Hungary.

[9] The applicants submit that the Board made numerous unreasonable findings regarding her credibility, that the Member failed to follow the Chairperson's Gender Guidelines, and that the Board misinterpreted the definition of state protection by concluding that "serious efforts" aimed at protection are tantamount to state protection.

[10] I have reviewed the transcript and am not satisfied that the Member erred in the application of the Guidelines. The hearing appears to have been somewhat heated at times. I fault Ms. Szabo's representative as much as the Member in that regard. However, the Member is entitled to closely question a witness, even given the abusive history alleged in this case to have been suffered, in order to get at the truth. The Member did nothing improper in my view.

[11] The Member had serious questions regarding the credibility of Ms. Szabo. In many instances the contradictions noted were done so appropriately; however, the Minister admits that

the Member erred in one respect and relied on that error, among others, in concluding that Ms. Szabo was not credible. At paragraphs 17 to 19 of the Decision, the Member references a police report relating to the alleged kidnapping and rape. He writes:

[17] The DR was asked if she had reported this incident to the police and she said that she had gone to the police. She was asked if she had a copy of the police report and she stated that she had the report back in Hungary but had no one to get it for her.

[18] I reject this explanation. The DR had a copy of the hospital report with respect to the March 2009 incident. She had made a refugee claim in 2000 and was aware of the importance of providing documentation to the Board. Furthermore, after the hearing, counsel for the minor claimants was given time to provide the Board written submissions. Even with this extra time available to counsel and the DR, no police report was provided to the Board.

[19] The Panel finds that the DR has failed to substantiate her testimony with pertinent documents and did not corroborate the refugee claims of the minors with credible and trustworthy evidence.

[12] The applicants correctly note that Ms. Szabo did obtain the report as requested and filed it with the Board prior to the decision being reached. It appears at page 242 of the Certified Tribunal Record. I am unable to state with any assurance that the same adverse credibility finding would have been made were it not for this error.

[13] The respondent submits, in any event, that state protection was the determinative issue and submits that if there is state protection for the applicants, the decision, in spite of this error, should not be upset.

[14] In my view, the failure of the Board to consider the result of Ms. Szabo's attempt to seek police protection following the kidnapping and rape is fatal to the respondent's position. It is not clear to me that armed with this knowledge the Board's finding on state protection would be the same.

[15] For these reasons this matter, despite the inconsistencies and unanswered questions in the evidence supporting the claim, must be re-determined by another Member. No question was proposed for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is allowed, the application is referred to a differently constituted Board for determination, and no question is certified.

“Russel W. Zinn”

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Judge

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

**DOCKET:** IMM-2131-11

**STYLE OF CAUSE:** KRISZTOFER BOSNYAK  
(a.k.a.) KRISZTOFER GYOG BOSNYAK) ET AL  
v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 23, 2011

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

**DATED:** December 5, 2011

**APPEARANCES:**

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