

Federal Court



Cour fédérale

**Date: 20120525**

**Docket: IMM-8475-11**

**Citation: 2012 FC 643**

**Toronto, Ontario, May 25, 2012**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**SZABRINA GOMAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Ms. Szabrina Goman (the “Applicant”) seeks judicial review of the decision made by the Immigration and Refugee Board, Refugee Protection Division (the “Board”) on October 27, 2011. The Board found that the Applicant was not a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

[2] The Applicant is a citizen of Hungary and is of Roma ethnicity. She claims to fear persecution at the hands of racist criminals, specifically the neo-Nazi organization known as the Hungarian Guards.

[3] The Applicant testified about an incident that occurred in February 2009 where her boyfriend, a member of the Hungarian Guards, tried to induce her to take drugs. When she refused, he beat her senseless.

[4] The Applicant also testified about an incident that occurred in May 2009 when she was kidnapped by her ex-boyfriend and his friends, and kept captive for some weeks while they pressured her to engage in prostitution for them. On an occasion when the group had her in a public area she managed to escape and run to a group of men who protected her until the police arrived. Although the police drove her home, the Applicant did not submit a report to the police because she believed they would not help her.

[5] The Applicant left Hungary on July 9, 2009, arriving in Canada on the same day. She submitted her claim for refugee protection on July 14, 2009.

[6] The Board made negative credibility findings and dismissed the totality of the Applicant's evidence. It proceeded to address the issue of state protection and concluded that the Applicant, having failed to file a police report, had not rebutted the presumption that state protection was available to her.

[7] The Board's credibility findings are reviewable on the standard of reasonableness; see the decision in *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4. The finding as to state protection, involving a question of mixed fact and law, is also reviewable on the standard of reasonableness; see the decision in *Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1114 at paras 9-10.

[8] The Applicant argues that the Board's credibility findings are unreasonable and demonstrate a microscopic evaluation of her evidence. She also submits that the Board misapplied the test for state protection, as set out in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, by requiring her to risk her life seeking the ineffective protection of a state, in order to show that the protection is ineffective. She also argues that the Board improperly ignored documentary evidence that demonstrates the inability of the state to protect members of the Roma population, in particular evidence as to the way Roma and Roma women are treated by the police.

[9] For his part, the Minister of Citizenship and Immigration (the "Respondent") submits that the credibility findings are reasonable in light of the evidence, and that the state protection finding is likewise reasonable and based on the proper legal test.

[10] It is not necessary for me to deal with the arguments respecting the Board's credibility findings since I am not satisfied that the conclusion on state protection is reasonable.

[11] The Board's reasons are long but in my opinion, its treatment of the state protection issue is largely "boilerplate". The Board does not address the specific circumstances of the Applicant, rather it made general statements, as illustrated by paragraph 25 of the reasons:

I found the claimant's responses regarding the effectiveness of state protection were not persuasive, since they were not credible and were largely unsubstantiated and were not consistent with the documentary evidence. I prefer the documentary evidence over the claimant's testimony since they are drawn from a wide range of publically [sic] accessible documents, from reliable nongovernment and government organizations.

[12] In my opinion, the Board erred in saying that the Applicant's evidence as to the "effectiveness" of state protection did not correspond with the documentary evidence. The record shows documentary evidence that supports the Applicant's evidence; for example see United States, Department of State, "Country Reports on Human Rights Practices, 2010 - Hungary" (April 8, 2011) at page 26. The Board gave no reasonable explanation as to why it rejected the documentary evidence relied on by the Applicant.

[13] It is well-known and accepted that a decision-maker does not have to refer to all evidence upon which it relies but at the same time, when there is relevant contradictory evidence that is unacknowledged by the decision-maker, a reviewing Court may conclude that the Board ignored or misapprehended key facts and came to an erroneous decision; see the decision in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17.

[14] In the result, the Application for judicial review is allowed, the decision of the Board is quashed and the matter remitted to a differently constituted Panel of the Board for re-determination. There is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the Application for judicial review is allowed, the decision of the Board is quashed and the matter remitted to a differently constituted Panel of the Board for re-determination. There is no question for certification arising.

“E. Heneghan”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-8475-11

**STYLE OF CAUSE:** SZABRINA GOMAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 23, 2012

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

**DATED:** May 25 2012

**APPEARANCES:**

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