Federal Court Cour fédérale

Date: 20150615

Docket: IMM-4847-14

Citation: 2015 FC 750

Ottawa, Ontario, June 15, 2015

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

AGNES MAGYAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review under subsection 72(1) of *the Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD], dated May 13, 2014, wherein the RPD found that the Applicant was not a Convention refugee or a person in need of protection.

[2] Because the Applicant was removed from Canada, a stay having been refused by this Court, the Respondent brought a motion to dismiss on the basis of mootness, which motion is also determined in these reasons. In my view this application is not moot and therefore the Respondent's motion is dismissed.

[3] The application is granted and the matter is remitted for re-determination by a differently constituted RPD.

II. Facts

[4] The Applicant is a 38 year old citizen of Hungary. She claims that she fears her former common-law spouse [Spouse] due to the physical abuse he began to inflict on her after she revealed to him that she was of Roma descent.

[5] She further claims that her Spouse is a police officer, and that she has therefore been unsuccessful in her efforts to obtain assistance from the police in Hungary.

[6] She claims that in May 2012, shortly after she told her Spouse that she was pregnant and refused to have an abortion, he kicked her until she fell unconscious, after which she went to the hospital and had a miscarriage. She told the hospital that she had fallen from a ladder.

[7] When she found out that she was pregnant again 3 months later, she left her Spouse and went to live with her parents, after which he shot her dog in front of her house. In addition, his police colleagues picked up each of her parents on the street in police cars, releasing them

shortly thereafter. Later that year, the Applicant's Spouse pulled up in a police car when she was walking on the street in her home town and slapped her. She made a complaint to the police. The police report pertaining to that complaint was not submitted to the RPD.

[8] A few months later, her Spouse pulled up in a police car when she was out on the street and kicked her such that she fell down a set of six stairs. She was admitted to the hospital for one night, but returned again in early January as she wasn't well. She had a second miscarriage. She submitted a medical report to the RPD pertaining to the second hospital visit, which indicates that she had a miscarriage and was in hospital for a week.

[9] She claims that at this second visit, she told the doctor what had happened and he called the police. The police came and took down the Applicant's information but before they left, one of the members, whom the Applicant recognized as a friend of her Spouse, told her that she should not make up lies about her Spouse. Shortly after her second miscarriage, the Applicant became depressed and attempted suicide.

[10] In February 2013, the police closed the investigation pertaining to the complaint she had made in late 2012. The stated reason for closing the investigation was that her Spouse had an alibi and two witnesses. This document was in evidence before the RPD [Police Decision].

[11] That same month, the Applicant moved to Budapest, stayed in a women's shelter, found a job in an orphanage, and began seeing a psychiatrist. However, her Spouse found her in Budapest six months later and beat her up to the point that she ended up in hospital once again.

She was unable to speak to the police when they attended at the hospital, but went to the police station afterwards and made a report [Budapest Police Report]. This report and a medical report pertaining to this incident were in evidence before the RPD.

[12] It was at this time that her parents arranged for her to come to Canada. Since arriving in Canada, she has received three threatening emails from her Spouse, which she submitted to the RPD.

III. Decision under Review

[13] The RPD found that the Applicant was not a Convention refugee or a person in need of protection, and that the determinative issues were credibility and state protection.

[14] The reasons given by the RPD for its negative credibility finding were as follows:

a) it is not plausible that the Applicant's Spouse did not know that the Applicant was of Roma origin until she told him, nor that his anti-Roma colleagues did not know;

b) it is not possible that the Applicant remained in a women's shelter for 8 months, as it is common knowledge that the demand in such shelters is high;

c) the Police Decision was given no weight on the basis that it was more than likely fabricated as (i) it is not probable that a Lieutenant-colonel would refer to an accused as an "offender"; and (ii) the logical absurdity in the dates (from later to earlier, rather than earlier to later) was suspicious. The RPD noted that the

country condition documents show a prevalence of fraudulent documents in Hungary;

d) the Applicant did not provide the following evidence:

i. evidence that her Spouse existed or that he was her common-law partner, except her own testimony, a letter from her father, and the Police Decision, each of which the RPD found to have problems;

ii. evidence that her Spouse was a police officer, except the letter from her father, the threatening emails, the Budapest Police Report, and the Police Decision. However, one cannot give very much weight to a letter from a loving father; it is not possible to tell who sent the threatening emails; nothing arose from the Budapest Police Report as the Applicant did not follow up on it; and the Police Decision referred to her Spouse only as a public official and only in the allegations section. In further support of its finding that the Applicant's Spouse was not a police officer, the RPD noted that: the medical reports do not refer to the alleged perpetrator; the Applicant did not know her Spouse's rank or what he did on the job; she did not submit a copy of the police complaint that led to the Police Decision; and it was not probable that it would have taken her Spouse six months to find her in Budapest if he were a police officer. The RPD stated that the Applicant's failure to establish that he was a ranking police officer effectively undermined her claim of well-founded fear;

iii. the psychiatric report from Hungary; and

iv. medical documents evidencing her first miscarriage;

e) the documents were not originals and were not necessarily current to the event or incident they allegedly corroborated;

f) the Applicant testified that she met her Spouse in May 2011 whereas the psychiatrist report states that she met him in 2008;

g) she amended her narrative with respect to her first visit to the hospital after the attack in late 2012 from "I told" the doctor what happened, to "I did not tell" the doctor what happened; and

h) she did not leave Budapest for another month after the attack that took place there. The RPD did not accept her explanation that she needed to source funds.

IV. Mootness

[15] The Respondent argues that the application should be dismissed because it is moot by reason of the fact that the Applicant has been removed to her country of nationality. I disagree for the following reasons.

[16] With respect to the first part of the general test for mootness set out in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, I find that this application is not moot in that there remains a live controversy between the parties.

[17] Unlike the cases relied on by the Respondent, in which the Court found that the judicial review of a Pre-Removal Risk Assessment [PRRA] was moot because a positive decision at that

stage would have no tangible, concrete or practical effect given that the purpose of a PRRA is to assess the risk of "removal" itself, including the Court of Appeal's decision in *Solis Perez v Canada (Citizenship and Immigration)*, 2009 FCA 171, the present case deals with judicial review of a claim for protection under section 96 of IRPA. The determination of an application under section 96 could still lead to the conferral of rights regardless of whether an applicant has been removed *(Molnar v Canada (Citizenship and Immigration)*, 2015 FC 345 at para 24 [*Molnar*]; *Magusic et al v Canada (Minister of Citizenship and Immigration)* (22 July 2014) Ottawa, IMM-7124-13 (FC) [*Magusic*]). As Chief Justice Crampton wrote in *Escobar Rosa v Canada (Citizenship and Immigration)*, 2014 FC 1234 [*Rosa*]:

> 35 In a judicial review of a negative PPRA decision, there would be little point in sending the matter back for redetermination by a different PRRA officer, because the applicant would no longer be "in Canada", as required by those provisions. In that context, it is readily apparent that the judicial review would be without object (*Solis Perez*, above).
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> 36 The same cannot be said with respect to a judicial review of a negative decision by the RPD under section 96. There is no specific requirement in section 96 that the refugee claimant still be in Canada at the time of the redetermination. In the absence of clear wording in the IRPA to the contrary, I reject the Respondent's position that the RPD does not have the jurisdiction to reconsider an application under section 96 once the applicant has properly been removed from Canada, even if this Court determines that the RPD committed a reviewable error in denying the application. Indeed, there is jurisprudence of this Court to the contrary (*Freitas v Canada (Minister of Citizenship and Immigration)*, [1999], 2 FC 432 at para 29; *Magusic*, above, at paras 10-11; see also *Thamotharampillai, v Canada (Solicitor General)*, 2005 FC 756, at para 16).

[18] Chief Justice Crampton further held that to preclude refugee claimants from accessing a remedy following a negative and unreasonable RPD decision would be inconsistent with the objectives of the IRPA and the intention of Parliament:

> 38 The position adopted by the Respondent would preclude any possibility of a remedy for legitimate refugee claimants who have been removed from Canada following a negative decision by the RPD that was unreasonable or otherwise fatally flawed. In my view, such an outcome would be inconsistent with a number of the objectives set forth in subsection 3(2) of the IRPA, including the following:
>
> > -- granting fair consideration to those who come to Canada claiming persecution (paragraph 3(2)(c));
> >
> > -- offering a safe haven to persons who are able to demonstrate that they are a Convention refugee, as defined in section 96 (paragraph 3(2)(d)); and
> >
> > -- establishing fair and efficient procedures that maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings (paragraph 3(2)(e)).
>
> 39 The fact that a removal order comes into force following a negative decision by the RPD and upon the expiry of the time limit referred to in subsection 110(2.1) if an appeal to the RAD is not made or is unavailable, does not necessarily imply that Parliament intended to preclude the RPD from being able to hear an application that is remitted to it for redetermination after a person has been removed from Canada. The same is true with respect to the fact that, pursuant to subsection 48(2), persons who are subject to enforceable removal orders are required to leave Canada immediately and such orders must be enforced as soon as possible. Among other things, these provisions implicitly assume that the RPD did not commit a reviewable error in reaching the decision that led to the conditional removal order becoming enforceable.

[19] The Applicant in the present case was denied refugee status by the RPD. While IRPA does not give her a right to an automatic stay of removal when she applies for leave for judicial review since she is from a designated country of origin, neither does it remove her right to pursue judicial review of the RPD’s decision either before or after removal. She sought leave in accordance with that right and leave was granted. Despite her removal prior to the determination

of her application for judicial review, the result of the application is not purely academic because, if she is successful on her application for judicial review, she could have her decision re-determined by the RPD, and the RPD may allow her claim for refugee protection.

[20] I agree with and adopt the findings of Justice Fothergill in *Molnar*, currently under appeal. In doing so, I echo his reluctance to conclude that the effect of the Chief Justice's ruling in *Rosa* is that a failed refugee claimant loses the right to challenge the RPD's determination if they are involuntarily removed and seek judicial review from their country of nationality. The applicant in *Rosa* was outside his country of nationality and so the matter was resolved without the need to consider the question further.

[21] I also note that when introducing Bill C-31 to the Standing Committee on Citizenship and Immigration, the Minister stated that claimants from designated countries of origin, though they would not benefit from an automatic stay of removal, "would continue to be able to ask the Federal Court to review a negative decision" (House of Commons, *Standing Committee on Citizenship and Immigration*, 41st Parl, 1st Sess, CIMM-31 (26 April 2012) at 2 (Chair: David Tilson)). To the extent legislation lacks clarity, resort to Parliamentary debates is permitted (*Canada 3000 Inc, Re; Inter-Canadian (1991) Inc (Trustee of)*, 2006 SCC 24 at para 57). In my view, the Minister's statement, unqualified as it was, implies continued access to this Court notwithstanding removal. This may afford the Applicant rights under section 96 and also rights under section 97 of the IRPA.

[22] Justice Manson confirmed in *Magusic* that *Freitas v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 432 (TD) [*Freitas*], in which Justice Gibson held that a disputed RPD determination is not moot following an applicant's removal from Canada, is still good law. I agree with their conclusions.

[23] I also note that if being in Canada is a requirement, this Court in *Freitas* ordered the claimant returned to Canada.

[24] I further note that in refusing the Applicant's motion for a stay, Justice LeBlanc assumed for the purposes of the stay that there was a serious issue and decided the matter on the basis that there would be no irreparable harm in allowing the removal to proceed. In my view, it is inconsistent for this Court to find there is no irreparable harm in removing an individual, and then to find that her right to a review of the RPD's decision has been lost because of that removal. The Court's finding that she would not be irreparably harmed by being removed impels me to find at the very least that her application for judicial review is still active and should be considered.

[25] However, even if I am wrong and the matter has become moot by the removal of the Applicant, I agree with Justice Gibson in *Freitas* and Justice Fothergill in *Molnar* in holding that this is nevertheless an appropriate case in which to exercise the Court's discretion to deal with this matter on the merits, and rely on their reasons for so doing.

V. Issues

[26] The issues raised by this matter are:

A. whether the RPD's credibility findings were reasonable; and

B. whether the RPD erred by failing to assess the adequacy of state protection in Hungary.

VI. Standard of Review

[27] The RPD's conclusions on credibility and state protection are reviewable on a standard of reasonableness (*Rusznyak v Canada (Citizenship and Immigration)*, 2014 FC 255 at para 23). The Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, which states:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

VII. Applicant's Submissions

[28] The Applicant submits that the credibility concerns raised by the RPD rendered its decision unreasonable, and that the RPD failed to assess state protection. The Applicant had submitted numerous personal corroborative documents, yet it seemed that nothing short of a pre-set list of necessary documents would satisfy the RPD about the veracity of the claim.

[29] Further, the RPD unreasonably discounted the corroborating documents submitted by the Applicant, which included a letter from her parents, the Police Decision, Budapest Police Report, medical reports, a letter from the women's shelter in Budapest, threatening emails from her Spouse, a psychiatric report, and a letter from the Sexual Assault & Domestic Violence Centre at the Women's College Hospital.

VIII. Respondent's Submissions

[30] The Respondent submits that while the Applicant disagrees with the RPD's conclusions and has offered explanations and alternative findings that it could have reached, she has not shown that any of the RPD's findings are perverse, capricious, or made without regard to the evidence.

[31] The RPD, as the primary finder of fact, is entitled to reject even uncontradicted evidence if it is not consistent with the probabilities affecting the case as a whole, and to make adverse credibility findings based on the implausibility of a story, common sense, and rationality.

[32] The Applicant could not establish her alleged persecutor's identity, either as her common-law partner or as a police officer. It was open to the RPD to require corroborative evidence (*Ortiz-Juarez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 288 at para 7) and to note that the Applicant had failed to provide original documentation (*Refugee Protection Division Rules*, SOR/2012-256, Rule 42(1) [*RPD Rules*]).

IX. Analysis

A. *Was the RPD's credibility finding reasonable?*

[33] The RPD's reasons raise the issue of whether the RPD was entitled to find that the Applicant was not credible on the basis of the absence of certain pieces of corroborative evidence.

[34] It is well established that a refugee claimant's testimony benefits from a presumption of truth unless there is a reason to doubt its truthfulness (*Maldonado v Canada (Minister of Employment and Immigration*), [1980] 2 FC 302 (CA) at para 5 [*Maldonado*]). Accordingly, there is no general requirement for corroboration. It is therefore an error to make a credibility finding based on the absence of corroborative evidence alone (*Ndjavera v Canada (Citizenship and Immigration*), 2013 FC 452 at para 6).

[35] However, it is also well established, and I agree that the onus is on a refugee claimant to establish the elements of his or her claim for protection (*RPD Rules*, Rule 11; *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 32-34 [*Ismaili*]).

[36] The case law states that although the RPD may not draw negative inferences solely from the fact that a refugee claimant failed to provide extrinsic documents that corroborate his or her claim, where there are valid reasons to doubt a claimant's credibility, the RPD may validly consider the failure to provide such documentation in making its credibility determination if it does not accept the claimant's explanation for that failure (*Ismaili* at paras 36-56). Justice

Tremblay-Lamer expressed the principle clearly in *Dundar v Canada (Citizenship and Immigration)*, 2013 FC 452 [*Dundar*] as follows:

> 21 In *Amarapala v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 12, [2004] F.C.J. No. 62 (QL), at para. 10, Kelen J. addressed this issue when he asserted that:
>
> > It is well established that a panel cannot make negative inferences solely from the fact that a refugee claimant failed to produce any extrinsic documents to corroborate a claim. But where there are valid reasons to doubt a claimant's credibility, a failure to provide corroborating documentation is a proper consideration for a panel if the Board does not accept the applicant's explanation for failing to produce that evidence.
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> 22 I concur with Kelen J.'s approach to corroborative evidence. Where valid reasons to doubt a claimant's credibility exist, the Board may draw negative credibility inferences from a failure to provide supporting evidence. However, in my opinion, these inferences may only be drawn where the applicant has also been unable to provide a reasonable explanation for his or her lack of corroborating material.

[37] Therefore the first question that arises is whether a valid reason for doubting the Applicant's credibility existed. If it did, the door was open for the RPD to draw a negative inference from the Applicant's failure to produce certain corroborative evidence. However, while the RPD gave two reasons for doubting the Applicant's credibility prior to turning to the lack of certain corroborating evidence, I find neither was sufficient to permit the RPD to draw negative inferences from the absence of certain corroborative evidence.

[38] The first finding, that it was not plausible that the Applicant's Spouse and his anti-Roma colleagues were previously unaware of the Applicant's Roma ethnicity, failed to take account of the Applicant's evidence that she and her parents were light skinned and that she had not been

targeted by racists in society. It also failed to take account of the information in the psychiatric report that the Applicant told him she had been taught when she was young not to speak about her ethnicity. This plausibility finding is not based on the evidence nor is it based on special expertise of the RPD, nor in my view is it a finding made in the clearest of cases, as set out in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. Further, when making a negative credibility finding based on an implausibility finding, the RPD must clearly articulate why the evidence is outside the realm of what could reasonably be expected in the specific circumstances of an applicant's case (*Isakova v Canada (Citizenship and Immigration)*, 2008 FC 149 at para 11). I find that this particular finding was made without addressing the specific circumstances of the Applicant and that it was made contrary to the evidence before the RPD. It was therefore unreasonable.

[39] The second finding, that it was not possible that the Applicant had remained in a women's shelter in Budapest for 8 months, was speculative and was also made contrary to the documentary evidence. This finding ignored both the letter from the women's shelter corroborating that the Applicant had indeed resided there for 8 months. It also ignored the objective country condition evidence, namely the Government's own Response to Information Request HUN103981.E [RIR] which stated that people such as the Applicant may stay in a general shelter space for up to 18 months in some cases. While the Respondent correctly points out that the documentary evidence shows that space is limited in crisis centres nationwide, and that people may stay at "county-run" family shelters for only a couple of months, this evidence does not support the RPD's finding that it was not "possible" that the Applicant could have stayed in a women's shelter for 8 months. The RIR is directly to the contrary as was the letter

from the shelter and the testimony of the Applicant. In making this finding, the RPD did not consider whether or not the shelter in question was a county-run shelter. Further, it found that an abused woman can usually only find shelter for “weeks”, which does not reflect even the evidence on county-run shelters. This is not a matter within the expertise of the RPD, it is not evidence-based and this finding was made contrary to the evidence. Nor is this the clearest of cases, or based on common sense or rationality. Therefore it is unreasonable.

[40] Given the problems with these two findings, I conclude that the RPD did not have valid reasons to doubt the Applicant’s credibility prior to faulting her for the lack of corroborative evidence. Therefore the RPD acted unreasonably by drawing negative inferences from the Applicant’s failure to produce certain corroborative evidence, contrary to *Maldonado* and *Dundar*.

[41] Even if the RPD had valid reasons to doubt the Applicant’s credibility, the second question that would arise is whether the RPD assessed the Applicant’s explanations for failing to produce corroborating evidence for certain elements of her claim. As stated above, the RPD may draw a negative inference from a claimant’s failure to produce corroborating evidence where it does not accept his or her explanations for failing to do so (*Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10). This requires the RPD to consider the explanations provided. Here, the Applicant explained why she had been unable to obtain and provide a report from her psychiatrist in Hungary. She explained why she had been unable to provide the originals of her documents. She said that, while the letter from her father explained that he had been unable to gather the psychiatric evaluation and some of the medical documents

as he was often refused due to privacy concerns. However, the RPD neither mentioned nor evaluated her explanations. The RPD's reasons make it clear that the absence of corroborative evidence led directly to its negative credibility finding, such that I am unable to conclude that this is simply an issue of the adequacy of the reasons, curable by *Newfoundland Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[42] In the circumstances, the RPD erred by basing its credibility finding on the lack of certain corroborative evidence. This error is sufficient to set aside the general credibility finding because it is not possible to say whether, without this error, the RPD would have reached the same conclusion on general credibility.

[43] Without reliance on the lack of corroborative evidence, the RPD had very little to rely on because its other credibility concerns were minor ones. In any event, I find that there were a number of problems with these findings also.

[44] For example, the RPD unreasonably discounted much of the corroborating evidence that the Applicant provided to establish that her Spouse was a police officer, as well as other elements of her claim. It gave little weight to the letter from her father on the sole basis that he is a "loving" father, when the law is well established that it is an error to give evidence little weight simply because it comes from a relative (*Cruz Ugalde v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 458 at paras 26-28). The RPD found that the Police Decision was more than likely fabricated as it referred to an accused as an "offender" and contained a logical absurdity in that the dates said December 2012 to September 2012. In my view, this constitutes

an unfair and microscopic analysis. The use of the word "offender" versus "accused" in a foreign police document coming through translation is not sufficient to impugn the Applicant's credibility. The date issue could easily be and most likely is an error on the part of the police member writing the decision. As such, that error should not be used to assail the victim's credibility. The RPD discounted the Budapest Police Report on the basis that it was merely the Applicant's statement without a police finding, and that she didn't follow up on it. However, regardless of the outcome of the complaint, this document provides proof that the Applicant made a complaint to the police. By discounting evidence in the record on the basis that other evidence was missing or would have been preferred, the RPD put an unrealistic evidentiary requirement on the Applicant. The RPD misdirected its focus. It should have considered the Budapest Police Report in the context of whether the assault happened, and not rejected it simply because other reports which the RPD may have preferred were not filed (*Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 244 at para 9).

[45] Further, the RPD based its credibility finding on very minor inconsistencies in the Applicant's evidence. No doubt the RPD may look at credibility from the ground up, but these errors are trivial and easily explained. They were taken too far by the RPD.

[46] First, the RPD noted that although the Applicant testified that she met her Spouse in May 2011, the psychiatrist report stated that she met him in 2008. The RPD failed to give the Applicant an opportunity to explain this inconsistency, which could easily have been and most likely was just a simple error on the part of the psychiatrist writing the report (*Portillo Romero v Canada (Citizenship and Immigration)*, 2011 FC 1452 at paras 102-103; *Awolaja v Canada*

(Citizenship and Immigration), 2010 FC 1240 at paras 45-55). As such, the RPD erred in considering this to be a "significant" matter in terms of the Applicant's credibility.

[47] Second, the RPD drew a negative inference from the fact that the Applicant amended her narrative in respect of the first visit to the hospital after the incident in late 2012 from "I told" the doctor what happened, to "I did not tell" the doctor what happened. There is nothing to suggest that the RPD assessed – as it was required to do – the Applicant's explanation that she had not noticed the error when reviewing the original narrative with the translator, and that perhaps she had not paid enough attention given the effect of her medication on her ability to concentrate. It was open to the RPD to reject this explanation, but not to ignore it (*Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 442 (CA)).

[48] The RPD criticized the Applicant for not knowing her Spouse's rank and what he did on the job. In doing so, the RPD misapprehended the evidence. The Applicant stated both in her complaint to the police as recorded in the Budapest Police Report, and in her testimony before the RPD itself, that her Spouse was a "major". As such, the finding that she did not know his rank was contrary to the evidence. She knew and testified that he was a "major", that he worked in an office, and that there were persons working beneath him. While the RPD clearly expected that the Applicant's Spouse would have confided more details about his police work to her, the RPD cannot criticize the Applicant for his failure to do so without a basis in evidence as it cannot be said that his not doing so is clearly implausible. Given the confidentiality that usually envelops police work, of which I take judicial notice, such a plausibility finding cannot be sustained. On this point, I also note that in the hearing, the RPD actually told the Applicant and

counsel that the issue of the Spouse's rank was "not critical". There is an unfairness in the RPD telling a claimant that a matter is "not critical" and then subsequently relying on that same matter to impugn the claimant's credibility.

[49] The RPD further doubted the Applicant on the basis that it was not probable that her Spouse would have taken 6 months to find her in Budapest if he was a police officer. I note this finding was explicitly made through the lens of the RPD's other credibility findings such as those flawed findings reported above. The RPD erred and should have assessed this matter separately because it was a new and different ground of attack on the Applicant's credibility. In any event, this finding was not grounded in the evidence, nor in rationality or common sense. The Applicant had testified that she took precautions to escape detection such as using public phones. Her explanations, once again, were ignored, all of which renders the finding unreasonable.

[50] Finally, the RPD drew a negative inference from the fact that the Applicant did not leave Budapest for a month after being attacked there. In rejecting her explanation that she needed to source travel money before she could leave, the RPD ignored her father's letter which corroborated her explanation by stating that they are poor people and that it was very difficult to gather half the money for the trip, with the other half being covered by a relative in Canada whom they contacted to help them. The RPD rejected her explanation without considering the evidence on the record that contradicted its conclusion, all of which made this finding unreasonable.

[51] Given the errors I have found with the majority of the RPD's findings, I find its general credibility finding to be unsafe and unreasonable. However, this finding is not determinative because the RPD also found that the Applicant's claim failed on the issue of state protection.

B. *Did the RPD err by failing to assess state protection?*

[52] The RPD wrote at the beginning of its decision that state protection was a determinative issue, and stated at the end of the decision that its cumulative reasons above related both to the issues of credibility and state protection. However, I am unable to find any analysis of state protection in the RPD's decision. Perhaps the RPD's comments that the Applicant had failed to establish that her Spouse was a police officer were intended to address the issue of state protection. This is far from clear. Further, following the RPD's finding that the Applicant had not established that her Spouse was a police officer, the RPD did not assess whether the Applicant could obtain state protection as a Roma woman, independently of her claim that her husband was a police officer. There is no discussion of the adequacy or effectiveness of state protection in Hungary, no discussion of the applicable test, and no discussion of where on the scale Hungary falls. Because I am unable to ascertain how the RPD reached its conclusion on state protection, I find that its state protection finding was not justified, transparent, and intelligible (*Canada (Citizenship and Immigration) v Balogh*, 2014 FC 932; *Canada (Citizenship and Immigration) v Bari*, 2015 FC 656).

X. Conclusion

[53] The application for judicial review should be allowed, and the matter sent back to be re-determined by a differently constituted panel of the RPD.

[54] Neither party proposed a question for certification, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the matter is to be sent back to the Refugee Protection Division for re-determination by a differently constituted panel, no question is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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