

Federal Court



Cour fédérale

Date: 20170515

Docket: IMM-4926-16

Citation: 2017 FC 502

Toronto, Ontario, May 15, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**AKOS HORVATH
EVA HORVATH
AKOS HORVATH
ROLAND HORVATH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns a negative PRRA determination in which a primary finding is made that the claim cannot succeed because of the existence of a lack of subjective fear.

[2] The basic facts underlying the claim are that the Applicants came to Canada on December 10, 2010, withdrew their refugee claim on March 28, 2012, and returned to Hungary on June 13, 2012. The Applicants then returned to Canada on December 11, 2015 and made a claim for protection based on their experience of persecution and risk between 2012 and 2015. However, the Applicants were found to be ineligible to make a refugee claim, but were eligible to for a PRRA.

[3] An important issue in the present challenge to the negative PRRA decision is: what did the Officer mean in the following two paragraphs from the decision:

While not determinative I find the Applicants' return to Hungary in June 2012 demonstrates a lack of subjective fear. Counsel states that the family had to return to Hungary as the [sic] Eva Horvath's mother became seriously ill and there was no one to look after her. While the health of a close family member is relevant, the applicants' [sic] chose to remain in Hungary for three years. I note Ms. Horvath has a sister who [sic] also resides in Hungary and insufficient evidence was provided with respect to why the applicant could not return to Canada sooner, in particular given the incidents of discriminatory behavior they faced before the [sic] left Hungary in 2010. Despite the applicant's [sic] description of acts of discrimination toward both Mr. and Mrs. Horvath, there is insufficient evidence as to why the entire family felt it necessary to return to Hungary.

I find the applicants' return and then residence in Hungary for three years demonstrates a lack of subjective fear.

(Decision, p. 3)

[4] Counsel for the Applicant argues as follows:

It appears that the Officer conflated the issue of reavailment, and its implication on the Applicant's subjective fear in returning to Hungary in 2012, which may be a valid issue, with the fact that they did not return to Canada "sooner". The Officer concluded that both undermine the subjective fear component of the application.

The latter ignores the implications of the PRRA Bar, and the need for an [Authorization to Return to Canada] in any event.

[...]

Given the weight assigned to his issue, namely that it may have been determinative, if made in an erroneous manner, on its own should entitle the Applicant's to a redetermination of their PRRA application.

[5] Counsel for the Minister's response to this argument is that the words "while not determinative" at the beginning of the paragraphs in question govern the meaning of the two paragraphs when read together which is: lack of subjective fear in the present claim is not determinative of the Applicants' claim.

[6] I find that it is not possible to answer the question because, since the Applicants' credibility is at the heart of the reavilment issue, and the reavilment issue is at the heart of the Applicants' claim, the statements made with respect to the Applicants' credibility must be made in clear and unmistakable terms (*Hilo v. Canada (Minister of Employment & Immigration)* (1991), 15 Imm. L.R. (2d) 199 (Fed. C.A.) at paragraph 6). Given the debate between Counsel for the Applicants and the Minister as to meaning, I find that the statements read together are, most certainly, not clear. As a result, I find the decision under review is unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4926-16

STYLE OF CAUSE: AKOS HORVATH, EVA HORVATH, AKOS
HORVATH, ROLAND HORVATH v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 15, 2017

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