

Federal Court



Cour fédérale

**Date: 20180206**

**Docket: IMM-2873-17**

**Citation: 2018 FC 135**

**Toronto, Ontario, February 6, 2018**

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

**BETWEEN:**

**BERTALAN ALADAR GALAMB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant claims refugee protection against return to Hungary as a person of Romani ethnicity pursuant to s. 96 of the *Immigration and Refugee Protection Act (IRPA)*.

[2] By a decision dated November 20, 2016, the Refugee Protection Division (RPD) rejected the Applicant's claim. On appeal to the Refugee Appeal Division (RAD), by a decision dated June 7, 2017, but for a finding at paragraph 41 of the decision that "the RPD did not conduct a

proper state protection analysis”, pursuant to s. 111(1)(a) of the *Immigration and Refugee Protection Act*, at paragraph 2 the RAD confirmed the RPD’s decision.

[3] On the present review of the RAD’s decision, Counsel for the Applicant argues that three key findings are made in reviewable error: the requirement for corroborative evidence of the Applicant’s experience in Hungary in support of his claim; the failure to conduct a cumulative assessment of persecutorial risk on the evidence of in-country conditions in Hungary; and the determination that state protection exists for risk of more than a mere possibility of persecution faced by the Applicant should he return to Hungary.

[4] As stated below, I find that only the RAD’s findings, with respect to corroborative evidence, is required to be addressed.

[5] In support of his subjective fear, the Applicant provided evidence of his experience in Hungary with persecutorial violence, and difficulty in accessing medical care, employment, and housing.

[6] The RPD appears to have accepted that the Applicant had been attacked on the streets by three young blond men but came to the conclusion that the police did not deliberately fail to help the Applicant “against the criminals because he is a Roma” (Decision, para. 8). On the issue of the Applicant’s efforts to seek state protection against violence, the RAD makes the following findings:

[9] The Appellant was asked if he sought help from state agencies other than the police after he was dissatisfied with police response.

He responded that he had been to seek help from the Minority Ombudsman who also did not provide any help to address police misconduct. Given that this information was not contained in the Appellant's Basis of Claim (BOC), the Appellant was asked to explain, to which he responded that he forgot. The RPD rejected this response since attempts to obtain state protection are central to the claim, which led the RPD to raise a serious disbelief that the Appellant had, in fact, sought help from the Minority Ombudsman as alleged.

[10] The RAD finds that this omission is material to this claim. Clear instructions are provided in the BOC with respect to efforts made by the Appellants with respect to seeking state protection. Upon review of the audio recording, the RAD finds that this was a random act committed against the Appellant. He received the necessary medical care and the appropriate response from the medical personnel with respect to a report provided for the police. The RAD further finds that although the police allegedly were unable to locate the perpetrators, in the absence of witnesses and names of the perpetrators, the state cannot be faulted for the lack of apprehension on behalf of the Appellant.

[Emphasis added]

[7] Following the confirmation of the RPD's finding of "serious disbelief", the RAD confirmed the RPD's rejection of the Applicant's evidence with respect to difficulty in accessing medical services, employment, and housing because the Applicant failed to supply corroborative evidence.

[8] For the following reasons I find that the RAD's decision was rendered in reviewable error.

[9] A foundational principle with respect to the making of a credibility finding is stated by Justice Heald in *Maldonado v Canada (Minister of Employment & Immigration)*, ([1980] 2 F.C. 302) (FCA) at paragraph 5:

When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness.

[Emphasis added]

[10] As to the requirement of supplying corroborating evidence, the Immigration and Refugee Board's on-line publication *Assessment of Credibility in Claims for Refugee Protection, Legal Services, January 31, 2004*, provides the following statement of the state of the law:

2.4.3. Corroborative Evidence

Unless there are valid reasons to question a claimant's credibility, it is an error for the RPD to require documentary evidence corroborating the claimant's allegations. In other words, the RPD cannot disbelieve a claimant merely because the claimant presents no documentary or other evidence to confirm his or her testimony. Thus, generally, a failure to offer documentation cannot be linked to the claimant's credibility where there is no evidence to contradict the claimant's allegations. In [*Kaur v. Canada (Minister of Employment and Immigration)*] (1993), 21 Imm. L.R. (2d) 301 (F.C.T.D.) the Federal Court held that if a panel dispenses with the need to call a witness to corroborate the claimant's testimony, it cannot then make an adverse finding of credibility because of a lack of corroboration of that testimony.

(<http://www.irbcisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credeb.asp#n243>)

[Footnotes omitted] [Emphasis added]

[11] Thus, the quality of the reason the RAD supplied for doubting the truthfulness of the Applicant's statement that he forgot is a central feature of the present Application.

[12] The statement on corroboration speaks to "valid reasons". That is, not any reason will do. With respect to the test in *Maldonado* this is certainly also true. The validity of a reason for making a negative credibility finding is always in issue. In the course of the hearing of the

present Application, Counsel for the Applicant defined “valid” as meaning “supportable”.

Generally, this is an accurate definition, but more specifically the word “valid” in the present context is an adjective with respect to an argument or a point “having a sound basis in logic or fact” (see: <https://en.oxforddictionaries.com/definition/valid>). Thus, to establish that a reason is “valid” requires logical application of evidence.

[13] In the present case, the RAD did not believe the Applicant only for the reason that in completing the BOC form the Applicant did not provide information as expected. Apparently the RAD’s logic goes something like this: since the Applicant did not report that he sought help from the Minority Ombudsman means that, by that very fact, he did not seek help from the Minority Ombudsman. On this basis, the RAD found that the Applicant was lying when he testified that he did go to the Ombudsman but forgot to state this fact in his BOC. In my opinion, this conclusion has no sound basis in logic or fact. Therefore, the RAD’s negative credibility finding of a “serious disbelief” is not valid.

[14] In any event, as argued by Counsel for the Applicant, important evidence on the record with respect to the making of the negative credibility finding was not addressed. The BOC is dated October 12, 2016, and the hearing before the RPD took place on November 14, 2016. In paragraph 6 of the BOC, the Applicant confirms that the incident of violence that he experienced occurred five years before his BOC was prepared (Applicant’s Application Record, p. 352). I agree with the argument that this evidence is capable of supporting the Applicant’s response that he forgot, and has the effect of rebutting any conclusion to the contrary. On this basis as well, I find the RAD’s reason for disbelieving the Applicant was not valid.

[15] Because no valid reason was provided by the RAD to question the claimant's credibility, I find that the RAD acted in reviewable error in confirming the RPD's rejection of the Applicant's "difficulty in accessing" evidence on the basis of lack of corroboration. As a result, the RAD's decision must be set aside as unreasonable. Given this result, I see no purpose in addressing Counsel for the Applicant's additional arguments.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the decision under review is set aside, and the matter is referred back for redetermination by a differently constituted panel. There is no question to certify.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-2873-17

**STYLE OF CAUSE:** BERTALAN ALADAR GALAMB v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 1, 2018

**JUDGMENT AND REASONS:** CAMPBELL J.

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