Federal Court  Cour fédérale

**Date: 20180607**

**Docket: IMM-4738-17**

**Citation: 2018 FC 589**

**Toronto, Ontario, June 7, 2018**

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

**Docket: IMM-4738-17**

**BETWEEN:**

**DEAN HEGOL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] Mr. Hegol was 21 years of age when he left a small town in Croatia to come to Canada in 2012. He came not as an immigrant, but rather as a hopeful refugee. He fears persecution should he be returned to Croatia because he is gay.

[2] His application was only heard by the Refugee Protection Division of the Immigration and Refugee Board of Canada last year, five years after his arrival. The board held that he was

neither a refugee within the meaning of the United Nations Convention nor otherwise in need of Canada's protection because there was an internal flight alternative available to him in Croatia, particularly in Zagreb. In any event, there was adequate state protection. This is the judicial review of that decision.

[3] It is common ground that the decision is to be reviewed on the standard of reasonableness. Counsel for Mr. Hegol submits that the decision is unreasonable both with respect to the internal flight alternative and with respect to state protection. Counsel for the Minister submits that the decision is more than reasonable and falls within the margin of appreciation of acceptable and rational solutions. The decision justifiable, transparent and intelligible in accordance with the Supreme Court's decision in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The applicant is simply asking the Court to re-weigh the evidence.

## I. Analysis

[4] The Board found that Mr. Hegol had lived in two small towns in Croatia in an area apparently hostile to sexual minorities. The Board accepted that he had been harassed, bullied, and that he and a partner had been attacked. His dealings with the police were somewhat sparse. The panel was of the view that the determinative issue was an internal flight alternative. It is well accepted in refugee law that one cannot claim refugee status unless at risk in all parts of his or her homeland. Relying on the Court of Appeal's decision in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, the Board acknowledged that the IFA test has two prongs. There must, on a balance of probabilities, be no serious possibility of being

persecuted or in danger of torture or subjected to a risk to life or cruel or unusual treatment or punishment. Secondly, conditions in the part of the country set up as an alternative would be such that it would not be unreasonable for the applicant to relocate there.

[5] Refugee law is forward-looking. The Board noted that general country conditions in Croatia have improved over the past several years, although admittedly there are still some problems. However, with respect to Zagreb, the Board was of the view that attitudes there were such that Mr. Hegol could safely live his life openly as a gay person should he so desire.

[6] Counsel for Mr. Hegol submits that although there may have been some improvements since 2012 when he left Croatia; more recently there has been a reversal. However, I think the review by the Board of the country conditions was well-balanced and did not constitute “cherry-picking”.

[7] Reference was made to the Zagreb Pride Festival, that Zagreb has an LGBT Centre, with gay clubs and bars and that last year Rainbow Europe gave Croatia a score of sixty percent, in a similar zone of protection as countries such as Austria, the Netherlands and Sweden.

[8] Horrific incidences still occur in Croatia, as they do just about anywhere. However, there has been prompt and adequate police response.

[9] Mr. Hegol submits that it would be unreasonable to send him to Zagreb. He is an unlicensed general labourer, knows no one in Zagreb, fears he would be unemployed and may

find the housing market not open to him. These concerns are highly speculative. The burden is upon him, and he has not made out a case. While it is understandable that he would prefer to remain in Canada where he has lived comfortably for the past six years, and while removal may well bring heartbreak, this is not an application for permanent residence based on humanitarian and compassionate considerations.

[10] The decision that he was not a Convention refugee or otherwise in need of Canada's protection was reasonable.

**JUDGMENT in IMM-4738-17**

For reasons given, the application for judicial review is dismissed. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4738-17 |
| **STYLE OF CAUSE:** | DEAN HEGOL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JUNE 5, 2017 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | HARRINGTON J. |
| **DATED:** | JUNE 7, 2018 |

**APPEARANCES:**

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|---|---|
| Allison Williams | FOR THE APPLICANT |
| David Joseph | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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