

Federal Court



Cour fédérale

**Date: 20190218**

**Docket: IMM-3084-18**

**Citation: 2019 FC 198**

**Toronto, Ontario, February 18, 2019**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**BARNA HORVATH  
BARNA HORVATH  
MONIKA HORVATH  
ALEX HORVATH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2012, the applicants, a Roma family from Hungary, applied for refugee protection in Canada based on their fear of ethnic persecution. The principal claimant, Mr Barna Horvath, described numerous assaults, threats, and discriminatory acts against him in Hungary.

[2] In 2018, a panel of the Immigration and Refugee Board reviewed the evidence and found that Hungary could provide the applicants with state protection and, in any case, that the applicants would face discrimination, but not persecution, on their return to Hungary.

[3] The applicants contend that both of the Board's findings were unreasonable. They ask me to quash the Board's decision and order another panel of the Board to reconsider their claims.

[4] I agree with the applicants that the Board's decision should be set aside. The Board unreasonably concluded that the applicants no longer feared extremist groups in Hungary. That finding affected the Board's analysis of both substantive issues before it. Therefore, I will allow this application for judicial review.

## II. The Board's Decision

[5] The Board accepted that Mr Horvath had experienced physical and verbal attacks from extremists before fleeing Hungary in 2012. In addition, the Board found that the response of the Hungarian police was limited to making reports and closing the complaints for lack of evidence.

[6] However, the Board went on to find that, in 2018, the applicants no longer feared extremist groups. It noted that Mr Horvath mentioned his fear of "Guardists" when he arrived at the port of entry in 2012, but he did not refer to them at the hearing before the Board.

[7] Further, the Board found that the state apparatus in Hungary offers protection to Roma citizens, and that Hungary is making concerted efforts to integrate Roma into Hungarian society as a whole.

[8] In addition, the Board concluded that the discrimination that the applicants might face in respect of housing, employment, and education did not rise to the level required to make out a claim of persecution. According to the Board, the documentary evidence did not show that all Roma in Hungary are persecuted; nor does the jurisprudence of this Court support that contention.

III. Was the Board's decision unreasonable?

[9] The Minister argues that the Board reasonably concluded that the applicants' fear of extremists had dissipated between their arrival in Canada in 2012 and their hearing in 2018. Accordingly, its findings on state protection and non-persecution were also reasonable.

[10] I disagree. The Board's key conclusion that the applicants no longer feared extremist violence was not supported by the evidence. That conclusion infected the Board's analysis of both substantive issues before it.

[11] At the port of entry, Mr Horvath stated that he feared "Guardists". Before the Board, when asked why he filed a refugee claim, Mr Horvath said "It's the humiliation". The interpreter added that "He listed a few things". Mr Horvath went on to say "Humiliation, abuses, the children's situation in school, so education and healthcare".

[12] The Board then asked Mr Horvath why he had mentioned Guardists in 2012 but not at the hearing. Mr Horvath said he left out the Guardists because of the “fractured nature of going through the interpreter”. However, he made clear that he was still afraid of returning to Hungary because of extremist groups who are “Roma haters”. He explained that he was very stressed by the hearing, which is why he forgot to mention the Guardists specifically. He added that he had heard from family and friends in Hungary that things are worse there now than they were in 2012. Guardists and other extremist groups are actively campaigning against and threatening the Roma people.

[13] The Board pointed out in its decision that Mr Horvath had mentioned Guardists at the port of entry but not at the hearing. This omission, according to the Board, showed that he no longer feared that group or other extremist elements in Hungarian society. The refugee claim, therefore, was limited to concerns about access to social programs and health care in Hungary.

[14] Mr Horvath made clear in his testimony that he continued to fear extremist, anti-Roma groups in Hungary, including the Guardists. There was no basis for the Board’s finding that this fear no longer formed any part of the applicants’ claim.

[15] After making that erroneous factual finding, the Board went on to conclude that the applicants could access state protection and that their claim was based on allegations of discrimination, not persecution. As I see it, the Board’s original error about the source of the applicants’ fear resulted in a limited analysis of both the issue of state protection and the applicants’ claim. The Board’s decision was, therefore, unreasonable.

IV. Conclusion and Disposition

[16] The Board's conclusion that the applicants did not fear persecution by extremist groups in Hungary was not supported by the evidence and was, therefore, unreasonable. Accordingly, I must allow this application for judicial review and order another panel of the Board to reconsider the applicants' claim. There is no question of general importance to certify.

**JUDGMENT IN IMM-3084-18**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The matter is referred back to a different panel of the Board for reconsideration.
3. No question of general importance is stated.

“James W. O’Reilly”

Judge

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

**DOCKET:** IMM-3084-18

**STYLE OF CAUSE:** BARNA HORVATH, BARNA HORVATH, MONIKA HORVATH, ALEX HORVATH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 5, 2018

**JUDGMENT AND REASONS:** O'REILLY J.

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