

Federal Court



Cour fédérale

**Date: 20200326**

**Docket: IMM-1260-19**

**Citation: 2020 FC 431**

**Ottawa, Ontario, March 26, 2020**

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

**BETWEEN:**

**LAJOS TOTH  
LAJOSNE TOTH  
LAJOSJR TOTH  
SZABOLCS TOTH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This case concerns the decision of the Refugee Appeal Division (“RAD”) dated January 29, 2019, wherein the RAD confirmed the decision of the Refugee Protection Division (“RPD”)

dated January 10, 2018, that determined the Applicants were neither Convention refugees nor persons in need of protection, and rejected their refugee claim.

[2] The Applicants, a family of four, are citizens of Hungary and of Roma ethnicity. They sought refugee protection in Canada for fear of persecution on the basis of their ethnicity. In particular, the Applicants alleged details of abuse suffered in housing, education, and employment. The Applicants faced violence, racial profiling, and police harassment and abuse.

[3] At the initial refugee hearing, the RPD found that the Applicants lacked credibility. The RPD found the Applicants failed to provide credible evidence of their eviction. Adverse credibility findings were also made based on the RPD's view that significant details relating to the claim were not mentioned in the initial port of entry ("POE") interview notes, and that there was a lack of corroborative documentary evidence. The RPD concluded that the Applicants failed to rebut the presumption of state protection.

[4] On appeal to the RAD, the RPD's decision was upheld. The RAD performed its own assessment of the evidence and confirmed the conclusions of the RPD.

[5] On application for judicial review to this Court, the Applicants submit that the RAD erred in the assessment of credibility and failed to properly analyze the documentary evidence. The Applicants also submit that the RAD erred in the assessment of state protection.

[6] For the reasons that follow, I find the RAD decision is unreasonable. This application for judicial review is granted.

## II. **Facts**

### A. *The Applicants*

[7] Mr. Lajos Toth (the “Principal Applicant”), Mrs. Lajosne Toth (the “Associate Applicant”), and their two sons, Szabolcs Toth (the “Second Associate Applicant”) and Lajosjr Toth (also known as Lajos Toth Jr., the “Minor Applicant”) (collectively, the “Applicants”) are a Roma family from Hungary. They are respectively 41, 44, 23, and 16 years of age.

[8] In September 2016, the Applicants arrived in Canada, and sought refugee protection for fear of persecution in Hungary on the basis of their Roma ethnicity. As part of their claim, they alleged details of abuse and discrimination in education, employment, housing, as well as police harassment and violence. The Applicants outlined the details of their claim in an affidavit of the Principal Applicant attached to his Basis of Claim (“BOC”) form. The other family members relied on the Principal Applicant’s affidavit.

[9] Prior to their departure to Canada, the Applicants resided in Forro, Borsod County, Hungary, a small village with a population of approximately 3,000 people. The village is located in the greater Encs area, and is approximately 35 km from Miskolc. The Principal Applicant and the Associate Applicant grew up in Borsod County. They only attended elementary school because they did not have a high school. The Principal Applicant grew up living with his parents

and grandparents. His parents had paid rent to the local council, and their tenancy agreement was transferred to the Principal Applicant when they passed away.

[10] The Second Associate Applicant and the Minor Applicant were placed in a Roma class in elementary school. The Principal Applicant noted that the older child, Szabolcs, was only able to receive a Grade 8 education and that he was unemployed.

[11] From 2006 to 2015, the Applicants claimed that far-right extremist groups targeted their area very often with threats of death; the groups were armed with torches, and baseball bats, and threw stones through the Applicants' windows. The Applicants stated that there were no police in Forro to protect them from the attacks, and when they called the emergency line, the police refused to come. The Principal Applicant recalled that he and his older son, Szabolcs, had been stopped and checked by police on multiple occasions, called "gypsy thieves", subjected to a full body search in the middle of the street, and detained for 12 hours with no charges.

[12] In the BOC affidavit, the Principal Applicant attested that his younger son, Lajos Jr. had been stopped by the police on the street on numerous occasions on baseless accusations, and that his son was in danger of being arrested and detained. Worried for his safety, the family decided to move to Miskolc in or around June or July 2015. The Applicants rented a house in the Numbered Streets Ghetto from a friend.

[13] In August 2015, the Principal Applicant was attacked by paramilitary members on his way home from a labour job. Five people in black uniforms kicked and beat him; one or two

also slashed his arm and ankle with knives. The Principal Applicant also sustained injuries of a broken nose and a knocked-out tooth. He went to the hospital, and paid for the treatment and medical report. During the RPD hearing, the Principal Applicant stated that he did not file a complaint with the police because he feared that submitting a complaint would expose his family to even more attacks and fail to offer protection, based on his past experience of relentless and continuous police harassment.

[14] In August 2016, the Applicants were evicted from their home by the police and paramilitary group, who had discovered that the Applicants did not have a tenancy agreement. The Applicants were dragged out to the streets and their belongings were destroyed. Two police officers handcuffed the Associate Applicant and the older son, Szabolcs, and took them to a police van. The Applicants were told that they would be jailed for homelessness.

[15] The police wanted to detain their then-13-year-old son, Lajos Jr., and take him away to Children's Aid. When Lajos Jr. tried to escape from the police's hold, the police physically assaulted the child and repeatedly kicked him on his side while he lay on the ground. The Children's Aid worker watched idly and did not try to stop the assaults. Eventually Roma rights activists arrived and provided temporary shelter for the family so that they would not be arrested for homelessness.

[16] From this police assault, Lajos Jr. was bruised all over his body, and he was taken to the nearest clinic. The Principal Applicant claimed that the family did not take Lajos Jr. to the hospital because they knew that the hospital doctors would call Children's Aid and their young

son would be taken away under false reports of child abuse by the parents. Subsequently, the Applicants went to the Roma Minority Council, who advised them to leave Hungary for their safety. In September 2016, the Applicants fled Hungary and made a refugee claim in Canada upon their arrival at the POE.

B. *RPD Hearing*

[17] On January 8, 2018, the RPD hearing was held. By decision dated January 10, 2018, the RPD rejected the Applicants' refugee claim, and found that the Applicants were neither Convention refugees nor persons in need of protection. The determinative issues were whether the Applicants were evicted in August 2016, and whether the Applicants would be able to receive adequate state protection in Hungary when assessed in a forward-looking manner.

[18] At the RPD hearing, the Applicants alleged details of the abuses they had suffered—in particular of the acts of discrimination and police harassment. The Applicants were questioned on the circumstances surrounding their eviction from their Miskolc home, especially on whether the Applicants could produce documentary evidence to prove their eviction.

[19] The Principal Applicant testified that: he had not received a letter of eviction before being evicted by the police; the Applicants did not have a lease because they were renting the apartment from a friend and were unsure whether the friend had a lease himself; the Principal Applicant did not know for certain whether the friend had received a letter of eviction, but guessed that he had not, based on his assumption that his friend would have informed the family;

and the Principal Applicant had not asked whether the friend had in fact received an eviction letter.

[20] The RPD found that the Applicants were not credible or reliable with respect to the eviction. The Applicants had provided a letter from the Roma Self-Government indicating the Applicants had been evicted from their home in Miskolc, but the RPD took issue with the fact that the letter was undated. The Applicants explained that the Roma Self-Government had been aware that the families had been evicted, but the RPD did not find this credible, and found the letter to likely have been drafted based on the Applicants' self-identification. The RPD noted that the documents did not indicate how the signatory confirmed the Applicants' ethnicity, and although the Applicants claimed that the signatory knew their mothers, the certificates were silent on this.

[21] Also, because the Principal Applicant did not attend the Roma Self-Government very often, and approached the Roma Self-Government for the first time in Miskolc after the eviction, the RPD found it could not accept the letters and identity certificates at face value.

[22] The RPD found the Applicants to not be credible for the following reasons:

- A. The Principal Applicant could not provide an address card or evidence that his family moved to Miskolc as of June 2015; he testified that he was not allowed to register with the Mayor's office and that the office did not want to provide him with a residence card for the address in Miskolc;
- B. The Applicants did not have a lease or a letter from the friend as proof that they were living at the address in Miskolc;

- C. The Applicants did not have proof of payment because the rent was paid in cash to the friend;
- D. The Principal Applicant lacked any knowledge of his friend's agreement with the city, i.e. whether the friend had a lease with the city. Initially, the Principal Applicant testified that he did not know whether his friend had received a letter from the city regarding the eviction; then he later stated that he didn't receive any eviction notifications and neither did his friend on the assumption that his friend "would probably let [the family] know that [they] have to leave the house." The RPD construed this as the Principal Applicant having "changed his response" and rejected the explanation as "it was evident he had changed the response";
- E. The Principal Applicant lacked knowledge on whether his friend was in arrears in rent or any other information as it related to the eviction. The Principal Applicant made no efforts to contact his friend to get information after allegedly being violently evicted;
- F. Although aware that letters of evictions were sent to the Roma population in Miskolc, the Principal Applicant did not seek information from his friend about the evictions prior to moving to the address in Miskolc;
- G. The Associate Applicant did not mention the eviction incident, where a police officer beat her son. When asked about the omission at the RPD hearing, the Associate Applicant stated that she did not remember, and stated that she was frightened. The RPD rejected this explanation because it was not credible to have omitted the fact that her son was assaulted by police when the intention to come to Canada was to seek protection;
- H. The Associate Applicant stated that "only her spouse was attacked", which conflicted with the Principal Applicant's narrative that their younger son had also been mistreated in June 2015 and August 2016. The RPD did not find it credible that the Associate Applicant did not provide details when asked about the omission, even though the alleged reason for leaving Hungary was out of fear for their children's safety;
- I. The Principal Applicant could not produce evidence of medical treatment for Lajos Jr.'s injuries that were sustained during the eviction. Although they testified to having paid for treatment at the medical centre, they could not produce a receipt. The RPD noted that the Principal Applicant could provide a letter from the Roma Self-Government and a medical note for his assault in 2015, but no evidence for his son's assault. The RPD referred to country condition evidence stating that patients are automatically given a medical document after treatment in Hungary.



[23] Ultimately, the RPD concluded that there was “insufficient credible evidence” to establish that the Applicants had rented a home in June 2015, that they were evicted, or that Lajos Jr. was assaulted by police during the eviction. The RPD found that none of these events occurred.

[24] The RPD found that there was a delay in the Applicants’ departure from Hungary because the Associate Applicant’s mother had previously sought refugee protection in Canada in 2011, and the assault on the Principal Applicant occurred in 2015, but the Applicants did not leave Hungary until 2017 (I note that the Applicants actually left for Canada in September 2016).

[25] The RPD disbelieved the Applicants’ testimonies that they had never approached police to seek protection because of their experiences of discrimination and harassment. The RPD took issue with the fact that the Principal Applicant alleged that both he and his sons were victims of police harassment, while the Associate Applicant—during her POE examination—only identified her husband as being abused. Furthermore, the RPD did not find it credible that the Second Associate Applicant did not mention any incidents of police abuse at the POE, and that he had only mentioned fearing skinheads when asked about what he feared. When asked whether he had dealt with police in any country at the POE, the Second Associate Applicant stated “no”. The Second Associate Applicant later explained that he believed the question to be about criminality, and that he was fearful of persons in uniforms (i.e. POE officers), but the RPD found this explanation to lack credibility because “this was one of the main reasons [he] was coming to Canada”.

[26] The RPD found that the Principal Applicant lacked credibility because while he obtained a medical certificate in 2015, in case he had to prove what happened, the Principal Applicant also stated that he feared the police would not help him and that they had harassed him for years. The RPD concluded that the police were not the agents of persecution because the Applicants lacked credibility, and because the Associate Applicant and Second Associate Applicant did not mention police abuse in their initial POE notes.

[27] The RPD found that Hungary was not a failed state, and that the Principal Applicant's failure to seek protection from the police undermined his overall credibility.

C. *RAD Decision*

[28] As a preliminary aside, I note that the RAD Member makes several errors in the decision that exhibit a lack of attention to detail and make it rather challenging to follow the reasoning at times:

- A. The RAD in its introduction states, "The Principal Appellant, Lajos Toth, the First Co-Appellant, Lajosne Toth, the The [sic] Second Co-Appellant, Lajosr Toth, and the Minor Appellant, Szabolcs Toth..."
  - i. First, I note that Szabolcs should not be listed as the Minor Appellant, as he is the older child, and in fact, not a minor as he was 19 years old at the time of making the refugee claim. Lajos Jr. is the younger child and he should have been listed as the Minor Appellant.
  - ii. Second, Lajos Jr.'s name is spelled incorrectly—it should state either Lajosjr or Lajos Jr.
- B. At paragraph 14, the RAD refers to "the omission of Janos from the POE." It is unclear who or what "Janos" is. This is suspicious of a copy-and-paste exercise undertaken by the RAD.

- C. At paragraphs 15-16, the RAD refers to the “First Co-Appellant”, but on a reading of the factual circumstances, appears actually to be referring to the Principal Appellant, Mr. Lajos Toth.

[29] The RAD concluded that there were credibility concerns pertaining to the Applicants.

The RAD noted that the Applicants were aware of the information in the POE prior to the RPD hearing and that the Associate Applicant had not mentioned the eviction at the POE interview.

On this point, the RAD found that the Applicants had adequate time before the RPD hearing to produce evidence that would have explained the omission from the POE.

[30] Regarding the issue of the Principal Applicant’s knowledge (or lack thereof) of whether his friend had received an eviction letter, the RAD agreed with the RPD that the Principal Applicant had in fact “changed his response” during his testimony. The RAD further stated that, “It is reasonable to expect that the First Co-Appellant word [sic] have been consistent in his oral testimony with respect to his knowledge of whether the landlord received an eviction notice from the city.” As I noted above, it can be gleaned from the context that the RAD is referring to Lajos Toth, the Principal Applicant, not his wife.

[31] The RAD did not find it credible that the Applicants’ identity documents from the Roma Self-Government were dated prior to the alleged eviction, although the Applicants testified to having first attended the Roma Self-Government after the eviction. The RAD also took issue with the letter from the Roma Self-Government because it was undated and lacked details with respect to the alleged eviction. The RAD states, “[The letter] does not mention when the eviction took place, what legal recourse was given to the appellants with respect to the eviction. Given all of these credibility concerns, I therefore give the letter no evidentiary weight”.

[32] Ultimately, the RAD concluded that there were credibility concerns, and agreed with the RPD's findings that the Applicants were not evicted from their property and that the Minor Applicant was not assaulted by the police during the eviction.

[33] On the issue of state protection, the RAD found that the Principal Applicant failed to report incidents of the assaults to the authorities, and that he provided "no sound rationale for his failure to report these incidents". The RAD also found that the Principal Applicant "never made mention of the fact that he and his son had been harassed by the Police," and therefore concluded that the Principal Applicant and his son were not harassed by the police.

[34] Additionally, the RAD considered the personal experiences of the Applicants and agreed with the RPD that "these experiences in the field of education, housing, and employment do not rise to the level of persecution". Furthermore, the RAD found that "The RPD conducted a thorough and lengthy analysis of the documentary evidence" of the Roma community in Hungary, and found that "the RPD reached its conclusion on state protection after a lengthy and fair analysis of all of the documentary evidence". The RAD agreed with the RPD's conclusion on state protection.

### III. **Issue and Standard of Review**

[35] The issue on this application for judicial review is whether the RAD decision was reasonable, and in particular:

- A. Whether the RAD failed to properly assess credibility and weigh evidence; and
- B. Whether the RAD failed to properly assess state protection.

[36] In my view, the RAD's credibility assessment is the key issue.

[37] Prior to the Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [Vavilov], the reasonableness standard generally applied to the review of RAD decisions and the RAD's credibility findings, as in the case at bar: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 (CanLII) at paras 30, 34-35; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 44, 59; *Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 (CanLII) at para 30; *Walite v Canada (Minister of Citizenship and Immigration)*, 2017 FC 49 (CanLII) at para 30; *Deng v Canada (Minister of Citizenship and Immigration)*, 2016 FC 887 (CanLII) at paras 6-7. There is no need to depart from the standard of review followed in previous jurisprudence, as the application of the Vavilov framework results in the same standard of review: reasonableness.

[38] As noted by the majority in Vavilov, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker," (Vavilov at para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency," (Vavilov at para 100).

IV. **Preliminary Issue: Oral Hearing**

[39] Since the lack of credibility was at the core of the RPD's findings regarding the Applicant's claim of persecution, the Applicants submit that the RAD should have held an oral hearing to address the serious issues of credibility that were central to the RPD decision.

[40] The Respondent submits that there is no merit to the suggestion that the RAD should have held an oral hearing. Certain circumstances must be met for the RAD to proceed on an oral hearing, for example, the admission of new evidence. In this case, the circumstances were not met.

[41] I agree with the Respondent. There was no new evidence submitted by the Applicants and the circumstances did not precipitate the need for an oral hearing. In fact, the Applicants themselves submitted a statement for the RAD appeal stating: "Given that the Appellants do not have new evidence at this time, the Appellants do not request that an oral hearing be held."

V. **Analysis**

A. *Credibility and Weighing of the Evidence*

[42] The Applicants submit that the RAD erred in the assessment of credibility and failed to properly consider the documentary evidence. The Applicants argue that the RAD engaged in a microscopic assessment of the evidence, as had the RPD before it. The Applicants take the

position that their testimonies did not give rise to contradictions at the RPD hearing, and that the RAD focused on minor inconsistencies.

[43] The Applicants also submit that the RAD improperly put an over-reliance on the POE notes, which was clearly central to the credibility findings. The Applicants state that the case at bar is distinguished from other cases in which the Board dealt with a combination of factors that led to negative credibility findings, and not simply from an omission from the POE notes (*Kroka v Canada (Citizenship and Immigration)*, 2012 FC 728 (CanLII) at para 13; *Drevenak v Canada (Citizenship and Immigration)*, 2012 FC 1320 (CanLII) at para 15).

[44] The Applicants rely on *Cao v Canada (Citizenship and Immigration)*, 2012 FC 694 (CanLII) at paras 4-7, citing *Dehghani v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 587 (FCA) at para 33 for the proposition that contradictions or inconsistencies between POE notes and an applicant's oral testimony can lead to adverse credibility findings where the POE notes are extensive and contain major differences from an applicant's later evidence. The Applicants claim that is not the case here.

[45] The Applicants also submit that the RAD failed to properly consider the country condition documentary evidence regarding the lack of lease and eviction, despite the Applicants' explanations on why they could not produce the lease document or the letter of eviction. The Applicants argue that due to improper credibility assessments, the RPD and RAD erred in concluding that the Applicants were not evicted, and that their son, Lajos Jr., was not harassed by the police—thus, the most serious incidents of persecution were removed from consideration.

[46] The Respondent submits that the RAD came to a reasonable conclusion after reviewing all of the evidence that the Applicants failed to establish their eviction with sufficient, credible evidence. The RAD found that the RPD's determination should be confirmed, which was reasonably based on the RAD's findings and own assessment of the evidence.

[47] The Respondent further argues that the RAD did not err in its credibility assessment with respect to the POE notes and the absence of corroborating evidence of the eviction. The Respondent submits that the RAD made reasonable credibility findings based on "significant omissions at the POE interview, a lack of a reasonable explanation for those omissions, inconsistent testimony and a lack of reliable, corroborating evidence". The Respondent relies on *Seenivasan v Canada (Citizenship and Immigration)*, 2015 FC 1410 (CanLII) [*Seenivasan*] at paras 17-26 and *Gaprindashvili v Canada (Citizenship and Immigration)*, 2019 FC 583 (CanLII) [*Gaprindashvili*] at paras 24-27 for the proposition that the RAD was justified in finding that the omissions of a significant event from the POE interview was a sound basis to doubt the Applicants' credibility.

[48] In my view, the credibility findings by the RAD and RPD are unreasonable for the reasons below.

[49] Before discussing the issues in detail, I note that the RAD Member in its decision writes, "I have had an opportunity to listen to the recording..." However, having read through the entirety of the RPD transcript, I am not certain which recording the RAD availed itself of the opportunity to listen to. Although it is understandable that we are all prone to mistakes—such as



the inadvertent slippage of inserting names from another file—in the case at bar, all the way from the POE notes to the RAD appeal, the errors truly give the word “unreasonable” a new definition.

(1) **Omission from Port of Entry Notes**

[50] The heart of the issue for the RPD and the RAD appears to be the POE notes. The Respondent incorrectly notes that the RAD found “the adult Applicants did not mention the central allegation in their refugee claim—their eviction from their home—when they were at the Port of Entry”. The RAD did not find that all the adult Applicants failed to mention the eviction from their home: the RAD only noted that the RPD pointed out the Associate Applicant had not mentioned the eviction. In fact, the Second Associate Applicant did state during his POE interview that he and his family were evicted. During the hearing, the Court brought this to the attention of the Respondent. However, the Respondent failed to recognize the inaccuracies in its own written submissions.

[51] In any case, the RAD relied on this Court’s decision in Seenivasan for the proposition that the Board may draw a negative inference from omissions in the POE that are central to the allegation of the applicant (Seenivasan at para 24), and stated that the Associate Applicant “neglected to mention that they had been evicted,” which was “the main reason” for their refugee claim. The RAD then drew an adverse credibility finding from the Applicants’ apparent failure to produce evidence at the RPD hearing to explain this omission from the POE.

[52] In my view, the RAD employed a misleading and unjustified reasoning, and the case at bar can easily be distinguished from Seenivasan on the facts. In Seenivasan, the applicant left out significant portions of his story from both his POE interview and his PIF, which is equivalent to what is now referred to as the basis of claim (“BOC”) form. Also, the applicant provided contradictory responses and contradicted specific answers he had provided at his POE interview. Furthermore, the Board member in Seenivasan provided the applicant with an opportunity for clarification and explanation.

[53] In contrast in the case at bar, after the POE interview, the Applicants submitted a BOC with the Principal Applicant’s affidavit attesting to the details of their claim, including the eviction and police assault on the Minor Applicant. Unlike the RAD’s claims that the Applicants had failed to “explain the omission”, the Applicants had no need to produce evidence at the RPD hearing explaining the omission because the fuller details of the claim had already come to light in the BOC. This is certainly not a case where major events were omitted from both the POE interview and the BOC.

[54] Furthermore, the Applicants did not provide contradictory responses at the RPD hearing from what they had provided at their POE interview. In fact, the only question from the RPD Member to the Associate Applicant about the eviction and police assault of the Minor Applicant was an inquiry into why she had not mentioned this at the POE. The transcript reads as follows:

P (Panel Member): ...do you remember being questioned at the port of entry?

L (Lajosne): Yes.

P: In this you talk about how your husband is, had trouble with men in black uniforms, you go on to describe them as dressed in black and you didn't know who they were and their heads were shaved and you state your husband was attacked a few time and one of the attacks he, they broke his teeth. And then, you go on to the next page, next page, top, thank-you, and you, you state only your husband was attacked and, and the attacks started in 2015 when they lived in Miskolc. So, how come you didn't make any mention that your son had been physically assaulted by the police officer and that you and your family had been evicted?

L: I don't remember.

P: Okay, those Counsel are all my questions.

[55] From a reading of the transcript, it is clear that the question posed by the RPD asked for the reason why the eviction and police assault were not mentioned. The Associate Applicant replied that she did not remember (why she had not mentioned the event). Then, rather than providing an opportunity for the Associate Applicant to elaborate on the details of the eviction, the RPD simply concluded the questioning, and made a negative credibility finding for "not providing any details when asked". The RAD agreed with the RPD's findings. However, in my view, it was unreasonable for the RAD, and the RPD before it, to draw this negative credibility inference.

[56] The present case can also be distinguished from *Gaprindashvili*. In *Gaprindashvili*, the applicant based his section 96 claim on religious persecution at the hands of his in-laws, but failed to give any indication that his Christianity and refusal to convert to Islam factored into the claim (*Gaprindashvili* at para 25). This omitted information was essential to his claim and was the genesis of his difficulties in facing subsequent religious pressure, kidnappings, and beatings. Furthermore, the applicant stated that he did not refer to religious persecution in his POE

interview because he believed he would be able to elaborate on the details of his claim at his RPD hearing.

[57] However, in the case at bar, a reading of the POE notes reveals a very short two-page interview record that is factually sparse. Little information can be gleaned from this POE interview that appears to have been very brief. Also, unlike the applicant in *Gaprindashvili* who waited until the RPD hearing to elaborate on the details on his claim, the Applicants in the case at bar later submitted a BOC with an affidavit with details and the grounds forming their refugee protection claim.

[58] Furthermore, the RAD decision fails to provide a clear rationale as to its rejection of the Associate Applicant's explanation for the lack of details at the POE. During the RPD hearing, the Associate Applicant attested to having been frightened by the CBSA officer at the border, who inevitably resembled police officers—the perpetrators of relentless discrimination and persecution. As such, the Associate Applicant's statement would have provided a reasonable explanation for why she may not have disclosed the details of the police assaults during the eviction.

[59] However, the RPD flatly rejected this explanation (as did the RAD) because the Associate Applicant had “mentioned [that] the only person injured ever in Hungary was her spouse” and because “this conflicted with her husband's narrative that stated the minor claimant had been mistreated in June 2015 and August 2016”. I note that the Associate Applicant's statement that her spouse was the only one injured occurred during the initial POE interview.

However, the Principal Applicant's narrative contained fuller details of the claim in the later submitted BOC, which the whole family relied on. The RPD even made note of the fact that "The other claimants rely upon the affidavit of the claimant". Nevertheless, without noting that the Principal Applicant's narrative is from the BOC, the RPD made it seem as if the two statements were given contemporaneously—a completely misleading approach, since all the Applicants were relying on the Principal Applicant's affidavit to provide a fuller factual basis of their claim. The RAD erred by failing to properly consider the evidence and accepting the RPD's flawed reasoning and justification for its findings.

(2) **Eviction Letter**

[60] The RAD impugned the Principal Applicant's credibility on the assertion that the Principal Applicant "changed" his response at the RPD hearing as to whether his friend had received an eviction letter from the city. Initially, when asked if his friend received an eviction letter, the Principal Applicant stated, "I don't know". Then, further along the transcript, it reads as follows:

P (Panel Member): Yeah, I'm aware of that. I'm also aware that they were sending out letters of eviction to people who were in arrears with their rent or whose, whose lease had expired, okay...

T (Mr. Toth): I don't know about that, we didn't receive, we didn't receive any notification that said that we have to leave the house and neither did my friend.

P: But earlier you said you didn't know if you friend had received that notification.

T: What do you mean that my friend got a notification? He didn't get a notification.

P: I asked you earlier and you said I did not know. So, did he receive a notification or not?

T: I don't think that he got one because he would probably let us know that we have to leave the house.

[61] It was unreasonable for the RAD to draw adverse credibility findings from this exchange regarding the eviction letter: in my view, it was a mischaracterization to state that the Principal Applicant “changed” his response. It is evident that the Principal Applicant was uncertain that his friend had received the eviction letter. However, it was reasonable for the Principal Applicant to state—although he was uncertain—that his friend did not get an eviction letter because he would have probably informed the Applicants on the matter, had he received a notification.

### **(3) Police Harassment and Assaults**

[62] The RAD's findings at paragraphs 43 and 44 are erroneous, and highlight the oversight of the RAD Member on the facts of the case and the RPD's findings. I have reproduced the two paragraphs below:

[43] The Principal Appellant also stated that he and the Second Co-Appellant had been harassed by the police on several occasions. The RPD pointed out to him that he had not mentioned that the police had abused him or his son at the Port of Entry Notes. At first he replied that he thought that he only had to mention incidents of criminality, but, when questioned by his counsel on this point, he changed his story and said that he had been frightened during the interview. The RPD did not accept this explanation.

[44] The allegation of being harassed by the police is not a minor allegation, but a very serious one. It is reasonable to expect that the

Principal Appellant, when specifically asked during his interview if he had ever had any dealing with the police in his home country, he did not state that he and his son had been harassed by them. As I stated earlier, this is not a question of the Principal Appellant failing to provide details with respect to this particular allegation in his Port of Entry Notes. This is a question that he never made mention of the fact that he and his son had been harassed by the Police. I rely on my analyses provided above with respect to omissions in the Port of Entry Notes.

[63] Although it is true that the Principal Applicant stated that he and his sons were abused by the police on several occasions, the rest of what the RAD recounted as “the RPD’s findings” is inaccurate. The RAD mistakenly construed that the “male claimant” referred to in the RPD decision was a reference to the Principal Applicant. However, it is not. The RPD was referring to the Second Associate Applicant, Szabolcs, who is the Principal Applicant’s older son. The RPD even referred to the “port of entry notes Szabolcs” in a footnote.

[64] On this factual misunderstanding, the RAD then proceeded to infer that it was reasonable to expect that the Principal Applicant would have mentioned the police harassment when specifically asked during the POE interview. The RAD stated that the Principal Applicant “never made mention of the fact that he and his son had been harassed by the Police,” and drew an adverse credibility finding on the Principal Applicant to conclude that the Principal Applicant and his son were not harassed by the police.

[65] Given that this situation and questioning did not involve the Principal Applicant, the RAD’s reasoning can only fall apart. The RAD’s faulty analysis forms a reviewable error, and is unreasonable.

[66] With respect to the corroborative evidence sought out by the RAD and RPD, I note that while the Applicants could not produce a police report for the Principal Applicant's 2015 assault or a medical report for the Minor Applicant's assaults in 2016, there were other corroborative evidence to support the Applicants' claims of the harassment and abuse they had suffered. These included a medical report detailing the Principal Applicant's injuries in 2015, photos of the Principal Applicant's injuries, and other photos of bruising to his 13-year-old son's back and side from the police's kicks and beatings. Thus, the RAD and RPD failed to properly consider the existing corroborative evidence.

B. *State Protection*

[67] In the decision, the RAD Member found that the Principal Applicant provided no sound rationale for the failure to report to the police of the 2015 assault perpetrated by the members of the paramilitary. Having reviewed the oral and documentary evidence on which the RPD decision was made, the RAD agreed that the Applicants failed to rebut state protection.

[68] However, the RAD's findings are unreasonable and unjustified. First, the Principal Applicant stated in his BOC that he had been previously harassed and abused by the police on multiple occasions. Second, the Principal Applicant also testified during the RPD hearing that he did not file a complaint because: he could not file a complaint with the police who were the agents of persecution; the Roma Self-Government was intimidated by the police and would be "too scared to move forward" with the claim; the Roma Self-Government had told the Principal Applicant that they "just cannot do anything because they would get into trouble as well"; and



the Ombudsman would be of no tangible help because they write an annual evaluation report stating that “everything is all right”.

[69] Although the Principal Applicant provided the reasons why he did not file a complaint, since the RAD (and RPD) had already narrowed their minds to find that the Principal Applicant was not credible, the RAD appears to have given little or no weight to the Principal Applicant’s explanations. As mentioned above, the RAD erroneously concluded that the Principal Applicant and the Second Associate Applicant were not harassed by the police based on adverse credibility findings.

[70] Thus, given that the RAD’s analysis of state protection was closely linked to its adverse credibility determinations of the Applicants, the analysis was tainted by the credibility assessments. Thus, the RAD’s state protection analysis is wholly unreasonable.

#### VI. **Certified Question**

[71] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

#### VII. **Conclusion**

[72] The RAD Member failed to properly assess the credibility of the Applicants especially with regard to the POE Notes, the letter of eviction, and the police assault. Furthermore, the

RAD failed to properly assess state protection because the analysis was tainted by the credibility findings.

[73] For the foregoing reasons I find that the RAD decision is unreasonable. This application for judicial review is granted.

**JUDGMENT IN IMM-1260-19**

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

1. The decision is set aside and the matter is to be returned for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

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Judge

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

**DOCKET:** IMM-1260-19

**STYLE OF CAUSE:** LAJOS TOTH, LAJOSNE TOTH,  
LAJOSJR TOTH, AND SZABOLCS  
TOTH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 27, 2019

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** MARCH 26, 2020

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