Federal Court  Cour fédérale

Date: 20201127

Docket: IMM-3311-19

Citation: 2020 FC 1094

Ottawa, Ontario, November 27, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

ANIKO PAZMANDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Aniko Pazmandi asks the Court to quash the decision of the Refugee Appeal Division (RAD) dismissing her claim for refugee protection. Ms. Pazmandi's claim was based on a fear of persecution based on her Roma ethnicity, and fears of harm at the hands of her father, who raped her when she was a teenager. The RAD concluded that Ms. Pazmandi had not adequately proven her Roma ethnicity, that there were credibility concerns regarding incidents she put forward as

experiences with anti-Roma discrimination, that Hungary had provided state protection in response to the sexual assault, and that there was insufficient evidence her father would continue to seek her out to harm her should she return. It therefore found Ms. Pazmandi was neither a Convention refugee nor a person in need of protection.

[2] Ms. Pazmandi argues that each of these findings was unreasonable. She also argues the RAD failed to conduct a "compelling reasons" assessment under section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and failed to give adequate consideration to the Immigration and Refugee Board's Chairperson's Guidelines 4: *Women Refugee Claimants Fearing Gender-Related Persecution* [*Gender Guidelines*] in making its credibility assessments.

[3] I conclude that the RAD's determinations with respect to the evidence of her Roma ethnicity and the risk of future harm from her father were reasonable, and that these issues are determinative of Ms. Pazmandi's claim for refugee protection under both sections 96 and 97 of the *IRPA*, and thus of the application for judicial review. I also conclude that the RAD was not required to undertake an assessment under section 108 of the *IRPA* in these circumstances.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] Ms. Pazmandi raised seven grounds to challenge the RAD's decision. These grounds related to the RAD's (i) credibility findings; (ii) findings regarding her ethnicity and risk upon returning to Hungary; (iii) consideration of the lack of corroborating documents; (iv) state

protection analysis; (v) failure to consider cumulative discrimination amounting to persecution; (vi) failure to adequately assess whether she was a person in need of protection under section 97 of the *IRPA*; and (vii) failure to conduct a compelling reasons assessment under section 108 of the *IRPA*. Some of these grounds are interrelated. In my view, the determinative issues on this application can be stated as follows:

A. Did the RAD err in concluding that Ms. Pazmandi had not established her Roma ethnicity on a balance of probabilities?

B. Did the RAD err in concluding that Ms. Pazmandi had not established her father would seek her out to harm her should she return to Hungary?

C. Was the RAD required to conduct a compelling reasons assessment under section 108 of the *IRPA*?

[6] There is no dispute that the RAD's decision on these issues is reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. Applying that standard requires the Court to "consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified": *Vavilov* at para 15. A reasonable decision is one "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 paras 85, 90, 99, 105–107.

[7] In making this assessment, the Court should refrain from reweighing or reassessing evidence, and should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Nevertheless, *Vavilov* also underscores that a decision must be reasonable in

light of the evidentiary record, the general factual matrix that bears on the decision, and the submissions of the parties: *Vavilov* at paras 126–128.

III. Analysis

A. *The RAD Reasonably Found that Roma Ethnicity was not Established*

(1) Ms. Pazmandi's evidence of her Roma ethnicity

[8] The first ground of Ms. Pazmandi's claim for refugee protection was that her Roma ethnicity put her at serious risk of discrimination rising to the level of persecution. Fundamental to this ground was her claim that she was of Roma ethnicity because her mother was Roma.

[9] I note as an aside that Ms. Pazmandi's submissions refer to her as "half-Roma" because her father was not Roma. However, she asserted that she is "considered to be Roma" and referred to evidence of discrimination directed at people of Roma ethnicity. Nothing in the RPD or RAD's decisions turned on whether Ms. Pazmandi was "Roma" or "half-Roma." I will therefore simply refer to her assertion of Roma ethnicity.

[10] Ms. Pazmandi's evidence that she was Roma was based primarily on her own testimony. She also pointed to two other pieces of evidence: two photographs tendered at her refugee hearing that she said came from her mother's Facebook page; and her mother's last name, Varga, which Ms. Pazmandi asserted would be known as a Roma name.

[11] In response to questions from the RPD, Ms. Pazmandi gave evidence that she would be perceived as Roma because of her appearance, her speech, and the way she dressed. However, when asked what she meant about her speech and the way she looked, she responded that it was mainly the way she dressed. Asked by the RPD about obtaining identification from the Roma self-government in her home city, she said that she forgot to ask. Ms. Pazmandi's testimony also included her account of past instances of discrimination and persecutory events in Hungary related to her ethnicity.

(2) The RAD's conclusion that Ms. Pazmandi had not established her ethnicity

[12] The RAD noted that Ms. Pazmandi was represented by counsel, and had provided documents regarding her national identity and other events, showing her awareness of the need for corroborating documents. The RAD referred to potential corroborative evidence regarding her Roma ethnicity that might have been provided, such as statements from friends or family, including her common-law partner, or documents from organizations in Hungary.

[13] The RAD considered the Facebook photographs and agreed with the RPD that no weight could be put on them, since (a) they were not accompanied by any identification or information from the Facebook page they ostensibly came from, and (b) it was impossible to tell from them "who the person is or whether this person is of Roma ethnicity." The RAD also agreed with the RPD that the assertion that Varga was an identifiably Roma name was inconsistent with the country condition evidence that it was not easy to distinguish between Roma and non-Roma Hungarian names, and that Varga was not on a list of names associated with the Roma population.

[14] As to Ms. Pazmandi's testimony, the RAD identified concerns with her credibility, given her failure to recall a significant persecutory incident without prompting, her failure to include in her Basis of Claim (BOC) narrative an incident she recounted involving the Hungarian Guards, and the fact that she did not refer to either the Hungarian Guards or any fears based on her Roma ethnicity during her Port of Entry (POE) interview.

[15] In summarizing the issue, the RAD noted that Ms. Pazmandi filed no probative corroborative evidence before the RPD or the RAD, and that her own testimony lacked credibility. The RAD therefore found that Ms. Pazmandi had not established her identity as Roma on a balance of probabilities.

(3) The RAD's conclusion was reasonable

(a) *The findings regarding the photographs and the family name*

[16] I find no basis to interfere with the RAD's factual finding that the photographs provided no evidence of who was in them or whether they were of Roma ethnicity. Ms. Pazmandi argues there was no reason to doubt her evidence that the photographs were of her mother. However, in addition to ignoring the issue of whether the photographs showed that the individual was Roma, regardless of who was in them, Ms. Pazmandi's argument confuses the purpose of corroborative evidence. The photographs were filed to corroborate Ms. Pazmandi's own statements, that is, to support the credibility of her statement that her mother was Roma. However, since the photographs themselves bore no identification, they only "corroborated" Ms. Pazmandi's

evidence to the extent that her evidence was believed, which is circular. The RAD's conclusion that they had no independent corroborative value was not unreasonable.

[17] The same is true of Ms. Varga's name, which the objective evidence did not show to be associated with Roma people in Hungary. Again, the only evidence that Ms. Pazmandi was, or would be recognized as, Roma based on her mother's name was her own testimony, which was what the reference to the name was intended to corroborate.

(b) *The absence of corroborative evidence*

[18] Ms. Pazmandi argues it was unreasonable for the RAD to rely on the absence of corroborating evidence as a basis to doubt her testimony. She points to the oft-cited case of *Maldonado* for the principle that "[w]hen 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": *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA).

[19] Drawing on the *Maldonado* presumption, a line of cases flowing from the decision of Justice Teitelbaum in *Ahortor* has concluded that the absence of corroborative evidence is not, in and of itself, a basis to disbelieve a claimant's allegations: *Ahortor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 705 at paras 35–37, 45, 50; see, *e.g.*, *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10; *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1034 at para 7; *Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026 at paras 19–22; *Ndjavera v Canada (Citizenship*

and Immigration), 2013 FC 452 at paras 6–7; *Nur v Canada (Citizenship and Immigration)*, 2019 FC 951 at paras 9–10.

[20] These principles, however, exist alongside section 106 of the *IRPA* and Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*], which were introduced subsequent to the decisions in *Maldonado* and *Ahortor*: *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 31–35; *Amarapala* at paras 8–10; *Dundar* at paras 19–20; *Dirie v Canada (Citizenship and Immigration)*, 2015 FC 1052 at paras 28–31.

[21] Section 106 states that the RPD must take into account a claimant's documentation of their identity and/or their explanation for lacking such documents, as a matter of credibility:

Credibility	**Crédibilité**
106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	**106** La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.
[Emphasis added.]	[Je souligne.]

[22] Given the express statutory requirement in section 106, it is difficult to see how the principles derived from *Maldonado* and *Ahortor* can apply, unaltered, to questions of identity:

see, *e.g.*, *Katsiashvili v Canada (Citizenship and Immigration)*, 2016 FC 622 at paras 18–20; *Najam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 425 at paras 14–16, 25.

[23] However, while the RAD and the parties each referred to Ms. Pazmandi's "ethnic identity" and her "identity as Roma," these are not in my view aspects of "identity" as that term is used in section 106. Ms. Pazmandi's "identity," in the sense of her personal and/or national identity, was proven through documentation including her passport. While ethnicity, like religion, sexuality, or other fundamental personal characteristics, may be considered part of one's identity, I do not consider these characteristics to fall within the scope of "identity" in section 106. Rather, section 106 appears to refer to identity in the sense of personal/national identity, the "cornerstone of the Canadian immigration regime": *Bah v Canada (Citizenship and Immigration)*, 2016 FC 373; *Kosta v Canada (Minister of Citizenship and Immigration)*, 2005 FC 994 at para 26; *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at paras 4, 22; *Najam* at para 16.

[24] Rule 11 of the *RPD Rules* goes beyond identity, stating that a claimant must provide documents "establishing their identity and other elements of the claim", or explain why they have not:

Documents	**Documents**
11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and	**11** Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a

what steps they took to obtain them.	prises pour se procurer de tels documents.

[25] Rule 11 does not specify, as section 106 does, that the possession of acceptable documentation must be taken into account in assessing credibility. Yet it remains relevant to the need for a claimant to prove their claim. Justice Strickland of this Court thoughtfully considered the interplay between the *Maldonado* principle and Rule 11 at paragraphs 31 to 55 of her decision in *Ismaili*. Drawing on this discussion, Justice Strickland considered the issue further in *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at paras 18–22. There, she distilled the following principles from the jurisprudence:

- a refugee claimant's sworn evidence is presumed to be true unless there are reasons to doubt its truthfulness;

- it is an error to make an adverse credibility finding solely on the basis of the absence of corroborative evidence;

- however, where there is a valid reason to doubt the claimant's credibility, the lack of corroborative evidence without reasonable explanation can be a valid consideration in assessing credibility; and

- despite the principle of truthfulness, an adverse credibility inference may be drawn if a claimant fails to produce evidence that the decision-maker reasonably expects should be available in the claimant's circumstances, and no reasonable explanation for failing to provide it is given.

[26] Justice Strickland summarized the latter two points above in the following terms: “a failure to provide corroborating documentation is only a proper consideration for the decision-maker […] [1] where there are valid reasons to doubt a claimant’s credibility, or, [2] where the decision-maker does not accept the claimant’s explanation for failing to produce documentary evidence when it would be reasonably expected to be available” [my added numbering]: *Luo* at para 21. I note that for the second of these situations to apply, two conditions must be met: first, the decision-maker must reasonably conclude that they would expect the documentary evidence to be available; and second, the decision-maker must reasonably reject the claimant’s explanation for why they failed to provide the documents. These limitations prevent the exception from unduly undermining the general rule that it is an error to make an adverse credibility finding solely on the basis of the absence of corroborative evidence.

[27] In the present case, each of the two situations described by Justice Strickland pertained. The RAD referred to concerns about Ms. Pazmandi’s credibility arising from her evidence regarding asserted incidents of persecution. It also explained why it expected corroborative evidence to be available and why it did not accept Ms. Pazmandi’s explanation for not obtaining such evidence. Ms. Pazmandi argues that each of these assessments was itself unreasonable. I do not agree.

[28] I cannot accept Ms. Pazmandi’s argument that the RAD treated her evidence as a “memory test,” contrary to the principle in *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 at para 28. Rather, the RAD’s finding of non-credibility followed from inconsistencies between Ms. Pazmandi’s testimony during her RPD hearing and

her prior accounts relating to her personal experiences of ethnic persecution. These included Ms. Pazmandi's failure to refer to the only incident in which she claimed to have been physically attacked for her Roma ethnicity until she was prompted by the RPD's questions, the fact that she did not refer to having a fear of ethnic persecution in her POE interview, and the fact that her BOC narrative did not refer to an incident involving the Hungarian Guards that she raised at the hearing. While each of these may not alone have been a reasonable basis to reject Ms. Pazmandi's evidence in its entirety, I am satisfied that cumulatively they are sufficient to constitute a "valid reason to doubt" her evidence, justifying consideration of the absence of corroboration.

[29] I also do not accept Ms. Pazmandi's argument that the RAD failed to appropriately consider the *Gender Guidelines* in assessing her credibility. The RAD gave thorough consideration to the *Gender Guidelines*, to Ms. Pazmandi's personal history as a survivor of sexual assault, and to the context of the RPD hearing. The RAD noted that this Court has recognized that the *Gender Guidelines* "cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth": *Newton v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15385 at para 18. While Ms. Pazmandi points to the recognition in the *Gender Guidelines* that age, nervousness caused by testifying, and psychological conditions associated with trauma, among other factors, may affect a claimant's ability to observe and recall events during a hearing, this does not mean that credibility findings cannot be reasonably based on omissions in testimony, or comparisons between testimony, the BOC narrative, and the POE interview. Again, while it may have been unreasonable to rely exclusively on, for example, the fact that Ms. Pazmandi needed prompting

before giving evidence regarding the physical attack, the RAD's decision was based on a cumulative assessment of credibility of which this was a reasonable part.

[30] With respect to the RAD's assessment that corroborative documents were reasonably expected to be available, Ms. Pazmandi argues that it was unreasonable for the RAD to assume Ms. Pazmandi could obtain a confirmation from the Roma self-government in Hungary, given that she left as an 18-year-old living in a group home. This argument glosses over Ms. Pazmandi's evidence that the reason she did not get such documentation was that she "forgot," not that she would have been unable to do so. Ms. Pazmandi similarly argues that it was unreasonable for the RAD to expect her to obtain evidence from her family, since she was not in contact with family members in Hungary. To the extent that the RAD's reasons can be taken as suggesting this, it would be consistent with Ms. Pazmandi's evidence that she has two brothers and a sister-in-law in Hungary, and gave no evidence that she could not contact them, only that she had not.

[31] More fundamentally, while the RAD identified a variety of possible sources of corroborating evidence that Ms. Pazmandi could have relied on, their concern was with the lack of *any* corroborative evidence, rather than the lack of specific pieces of corroborative evidence. The RAD noted that "[i]t is reasonable to expect that she would have been able to acquire documents such as letters, emails or affidavits from family, friends, or organizations in Hungary who would be able to corroborate her ethnic identity" and that Ms. Pazmandi "[h]ad access to identity witnesses in the form of her common-law spouse and his family." This is not an unreasonable assessment in the circumstances. Ms. Pazmandi's arguments identifying specific

concerns about "family […] in Hungary" or documentation from the Roma self-government do not undermine the broader point that Ms. Pazmandi put forward no corroborative evidence in circumstances where the availability of such evidence could be reasonably expected, and provided no explanation for her inability to do so.

[32] I therefore conclude that it was reasonably open to the RAD to rely on the absence of corroborative evidence, together with its concerns about the credibility of Ms. Pazmandi's testimony, as part of its overall assessment that she had not adequately established her Roma ethnicity.

[33] Establishment of her Roma ethnicity was fundamental to Ms. Pazmandi's claim for refugee protection based on that ethnicity, including her arguments that she would face discrimination amounting to persecution if required to return to Hungary, or that she was a person in need of protection because of that ethnicity. It also renders immaterial Ms. Pazmandi's arguments about the adequacy of state protection provided to members of the Roma population in Hungary against persecution based on their ethnicity.

B. *The RAD Reasonably Found that a Likelihood of Harm from the Father Was Not Established*

[34] Ms. Pazmandi lived with her father, a non-Roma Hungarian, after her parents separated when she was a child. When she was 15, her father raped her. (Ms. Pazmandi's evidence was that she was 14, but her date of birth shows that at the time of the assault in March 2014 she was 15 years old. Nothing turns on this difference.) The consequences of this attack on

Ms. Pazmandi's life were severe. She left school, moved out of her father's house to live with her sister-in-law, and later lived on the street and in a state shelter until her departure to Canada.

[35] Ms. Pazmandi reported the sexual assault to the police the day after. She was not sent to see a doctor until the following day, and was not referred to a psychologist until months later. Mr. Pazmandi was charged for the assault and tried, but was not convicted. This, plus the treatment she received from authorities who she felt did not believe her account, left Ms. Pazmandi with a feeling that the state had not adequately protected her, and a distrust of Hungarian police. Further, while the state suspended Mr. Pazmandi's guardianship and rearing rights and arranged for placement in a shelter, it neither arranged for nor advised Ms. Pazmandi of the ability to obtain a restraining order against her father.

[36] Ms. Pazmandi's claim for refugee protection cited her fear that if she returned to Hungary, her father would harm her and take her new child, who was born in Canada. She gave evidence that since the sexual assault, her father would not leave her alone. In particular, her father had tried to approach and speak to Ms. Pazmandi on a number of occasions, but she had run away. The last time she had spoken with him was in 2015, at which time he grabbed her arm, but she was again able to get away. The last time she saw him was on the street two months prior to her departure for Canada, but he did not approach her on that occasion.

[37] The RAD accepted Ms. Pazmandi's evidence with respect to the sexual assault, as had the RPD. However, the RAD concluded that Ms. Pazmandi had been provided with state protection after the assault despite her father's acquittal, and that there was insufficient evidence

to establish that Mr. Pazmandi had continued to seek her out to harm her in any way. Ms. Pazmandi challenges each of these conclusions.

[38] I note as a preliminary matter that an assessment of a claim for refugee protection under either section 96 or 97 of the *IRPA* is forward-looking. "The question raised by a claim to refugee status is not whether the claimant had reason to fear persecution in the past, but rather whether he now, at the time his claim is being decided, has good grounds to fear persecution in the future": *Mileva v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 398 (CA) at para 8; *AB v Canada (Citizenship and Immigration)*, 2015 FC 450 at para 29. This is equally true of the assessment of adequate state protection: *Moran Gudiel v Canada (Citizenship and Immigration)*, 2015 FC 902 at para 30. The RAD's assessment of whether Ms. Pazmandi received adequate state protection in response to the specific past incident of sexual assault by her father is thus only relevant to the extent that it is evidence of the likely availability of future protection from her father by state authorities in Hungary. The RAD made no determination in this regard, since it determined that Ms. Pazmandi had not established that her father was a threat, stating "[t]he RAD finds therefore that it is not necessary to assess whether the state is capable of protecting her in her present circumstances."

[39] Ms. Pazmandi's arguments regarding the RAD's analysis of the state protection she received after she was raped by her father are therefore ultimately not directed toward a determinative finding by the RAD. While Ms. Pazmandi argues that the RAD erred in not assessing country condition evidence of the adequacy of state protection in respect of victims of sexual and domestic violence, the state protection analysis is only relevant if there is a

determination that a claimant is at risk of persecution or otherwise in need of protection: *Lasab v Canada (Citizenship and Immigration)*, 2015 FC 413 at paras 12, 14; *Sman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 891 at para 22.

[40] The RAD's determination that Ms. Pazmandi had not established her father continued to seek to harm her was determinative of this aspect of her claim. Again, I cannot conclude that Ms. Pazmandi's arguments show the RAD's conclusion to be unreasonable.

[41] Ms. Pazmandi's primary argument on this issue is that the RAD unreasonably diminished the importance of the incidences of contact with her father after the sexual assault. Ms. Pazmandi submits that her father was "stalking" her and that the RAD failed to consider the psychological harm on a victim of sexual assault of simply seeing or being approached by one's perpetrator. While the Court recognizes that this may be a material aspect of a refugee claim from someone fleeing sexual violence, Ms. Pazmandi neither filed evidence of such harm, nor made arguments with respect to such harm.

[42] Before the RPD, Ms. Pazmandi filed over 30 pages of written submissions, all focused on the claim that Ms. Pazmandi would be persecuted as a woman of Roma ethnicity. Ms. Pazmandi presented no personal or professional evidence regarding psychological harm arising from simply seeing her father, and her counsel's submissions did not refer to a fear of such harm. Nor did Ms. Pazmandi's submissions to the RAD raise the issue, either as a ground of appeal or as a basis for her claim for refugee protection, arguing simply that her father "would be looking for her and would be able to find her, harass her, and cause her harm." Having not presented her

refugee claim on this basis, Ms. Pazmandi cannot now argue before this Court that the RAD failed to adequately consider the risk of psychological harm as a separate matter: *Vavilov* at paras 127–128.

[43] Nonetheless, the RAD did give some consideration to the question, noting that Ms. Pazmandi had not provided a current psychological report to explain her present psychological situation as it related to her father. Ms. Pazmandi argues that this alone is unreasonable, and that psychological harm can be inferred from the existence of a sexual assault. I agree with the Minister that absent either professional or personal evidence showing that contact with her father would cause Ms. Pazmandi psychological harm that would meet the requirements of either section 96 or 97, it is not enough to simply rely on general inferences about the psychological impacts of sexual assault as a basis for a refugee claim.

[44] I therefore conclude that the RAD's conclusion that Ms. Pazmandi had not established that her father would seek her out to harm her should she return to Hungary was reasonable.

[45] As Ms. Pazmandi's claim for refugee protection under both sections 96 and 97 of the *IRPA* was based on her asserted Roma ethnicity, and the risk of harm at the hands of her father, neither of which she established, I conclude that the RAD's refusal of her appeal and her claim for refugee protection was reasonable.

C. *The RAD was not Required to Undertake a Section 108 Analysis*

[46] Ms. Pazmandi argues that the RAD was required to undertake a "compelling reasons" assessment pursuant to subsection 108(4) of the *IRPA*. Section 108 of the *IRPA*, which appears under the heading "Cessation of Refugee Protection," pertains to the cessation or loss of refugee status: *Canada (Minister of Employment and Immigration) v Obstoj*, [1992] 2 FC 739 (CA) at para 13. Paragraph 108(1)(*e*) creates a general rule that a claim for refugee protection shall be rejected if the reasons for which the person sought refugee protection have ceased to exist, while subsection 108(4) provides for an exception to that rule where there are compelling reasons for the refugee not to avail themselves of the protection of their country despite these changed circumstances:

Rejection	**Rejet**
108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
[…]	[…]
(e) the reasons for which the person sought refugee protection have ceased to exist.	**e)** les raisons qui lui ont fait demander l'asile n'existent plus.
[…]	[…]
Exception	**Exception**
(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out	**(4)** L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses,

of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.	tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[47] Ms. Pazmandi argues that the RAD's determination with respect to her father was effectively a conclusion that the reasons for which she sought refugee protection (her violent persecution at the hands of her father) have ceased to exist. She therefore argues that the RAD ought to have considered whether the exception in subsection 108(4) applied, namely whether there are "compelling reasons" arising out of the previous persecution at the hands of her father for her to refuse to avail herself of the protection of Hungary. She cites decisions of this Court discussing the obligation to conduct a compelling reasons assessment, including *Mir v Canada (Citizenship and Immigration)*, 2005 FC 205 at paras 13–15; *Moya v Canada (Citizenship and Immigration)*, 2016 FC 315 at paras 118–119; and *Suleiman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1125 at paras 16–22.

[48] In my view, the circumstances in which a compelling reasons assessment must be conducted are not present in this case. The Federal Court of Appeal in *Yamba* concluded that there is an obligation to consider whether there are compelling reasons "in every case in which the Refugee Division concludes that a claimant has suffered past persecution, but [there] has been a change of country conditions": *Yamba v Canada (Minister of Citizenship and*

Immigration), 2000 CanLII 15191 (FCA) at para 6; *Alfaka Alharazim v Canada (Citizenship and Immigration)*, 2010 FC 1044 at para 36.

[49] In the present case, neither of these two conditions for applying subsection 108(4) were met. There was no finding of past persecution. Nor was there a finding that there had been any change in conditions in Hungary that resulted in a claim for refugee protection no longer being available. I cannot agree with Ms. Pazmandi's submission that the RAD's finding that she was a victim of sexual assault itself triggered a need for a "compelling reasons" assessment. As Justice Noël of this Court noted at paragraph 21 of his decision in *Contreras Martinez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 343:

> It is clear from the wording of subsection 108(4) that it is not aimed at creating a broad obligation for the RPD to assess the existence of "compelling reasons" in every refugee claim. If a refugee claimant is neither a refugee nor a person in need of protection because the conditions of the general definition of section 96 and 97 of the IRPA are not met, then no "compelling reasons" assessment need be performed by the RPD. It is only necessary where the rejection of the claim is based on 108(1)(e).

[50] Further, this Court has confirmed that it is a condition precedent for the application of subsection 108(4) that the "claimant would have once qualified as either a Convention refugee or person in need of protection": *Castillo Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 648 at paras 27–28; *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203 at paras 76–77. Of note in Ms. Pazmandi's circumstances, to be eligible for refugee protection, a claimant must be outside their country of nationality (section 96) or in Canada (section 97). The RAD found that Ms. Pazmandi had not established that her father attempted to harm her "after 2014." This finding is contrary to any conclusion that Ms. Pazmandi was a Convention refugee

or person in need of protection at any point after she left Hungary in February 2017. Even leaving aside that no such finding was made by the RPD or the RAD, there is no basis to conclude that Ms. Pazmandi met the requirements for refugee protection at any point, but that such status subsequently ceased owing to a change in conditions.

[51] I therefore conclude that the RAD was not obliged to undertake a "compelling reasons" assessment under subsection 108(4), and it was reasonable for the RAD not to have done so.

IV. Conclusion

[52] As the foregoing issues are determinative of Ms. Pazmandi's claim for refugee protection, the application for judicial review is dismissed.

[53] Neither party proposed a question for certification. I agree that none arises in the matter.

JUDGMENT IN IMM-3311-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3311-19
STYLE OF CAUSE:	ANIKO PAZMANDI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 18, 2020
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	NOVEMBER 27, 2020

APPEARANCES:

Cemone Morlese	FOR THE APPLICANT
Hillary Adams	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT