

Federal Court



Cour fédérale

**Date: 20110614**

**Docket: IMM-75-11**

**Citation: 2011 FC 686**

**Ottawa, Ontario, June 14, 2011**

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

**BETWEEN:**

**LASZLO ISTVAN BURANDIK AND  
IREN BURANDIK**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The basis of Mr. and Mrs Burandik's claim for refugee status is that he was persecuted in Hungary because of his Jewish faith. He submits that this persecution would continue were he returned there. The member of the Refugee Division of the Immigration and Refugee Protection Board who dismissed their claim was somewhat ambiguous as to whether she accepted that Mr.

Burandik is Jewish. She found that he would not be perceived to be Jewish and that, in any event, Budapest was both a viable internal flight alternative and a place which offered state protection.

## **ISSUES**

[2] The issues which arise in this judicial review of that decision are:

- a. Was the finding that Mr. Burandik would not be perceived to be Jewish reasonable?
- b. Was the finding that Budapest was an internal flight alternative predicated on the assumption that Mr. Burandik would not be perceived to be Jewish?
- c. Was the finding that Budapest was an internal flight alternative reasonable should he be perceived to be Jewish?
- d. Was the finding that state protection was available in Budapest predicated on the assumption that Mr. Burandik would not be perceived to be Jewish?
- e. Was the finding that state protection would be available in Budapest reasonable should he be perceived to be Jewish?

## **STANDARD OF REVIEW**

[3] It is common ground that the decision is to be reviewed against the standard of reasonableness. The issue is not whether I agree with the decision, but rather whether it meets the standard summarized in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, where it was said at paragraph 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the

range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

### **CREDIBILITY**

[4] Questions posed by the member during the board hearing reflect a concern as to whether Mr. Burandik is in fact Jewish. He provided no corroboration whatsoever from any synagogue or Jewish organization in Hungary. His faith, or Jewish state of mind, developed from his grandparents, who raised him until he was 12. They were not born Jewish, but converted. He does not know whether their conversion was official. When he was 12, he returned to live with his parents who were not Jewish. He never joined any Jewish organization because of a fear of persecution.

[5] Even in Canada, he has never set foot in a synagogue. For the two months leading up to his hearing, he attended services at the Crown of Messiah, a messianic congregation based in Prince Albert. According to documents Mr. Burandik provided, the congregation describes itself as:

Shalom! We're a messianic congregation of Jews and gentiles who are disciples of the Messiah Yeshua and lovers of God's Torah.

[6] There is nothing in the record from religious authorities as to where this congregation fits in the religious spectrum, but I note that "Yeshua" is the Aramaic name for Jesus.

[7] In his Personal Information Form, Mr. Burandik set forth why he fears the Hungarian Guard, skinheads, and indeed Hungarians at large. He described a number of incidents which took place over many years in various places in Hungary, not only in Komaron where he primarily lived, but also in Budapest.

[8] He testified that his name would not be perceived in Hungary as an indicator of his Jewish faith. He suggested that anonymous people attacked him because he had told some of these so-called friends he was Jewish. It turns out, however, that his so-called friends were from a far-right faction and passed the word on to others. The member had difficulty accepting this explanation.

[9] The member found that anti-Semitism is present in Hungary and growing. Anti-Semitic rhetoric flows from the Jobbik political party and from many individuals. However, violence is extremely rare. There is some risk in public Jewish settings.

[10] The crucial credibility finding is at paragraph 29 of the decision:

The principal claimant, Mr. Laslo Burandik, claims many incidents of violence in Komarom. This may be the case, but it is evidence that is completely at odds with the country documentation as to anti-Semitic acts toward individuals. So I find that there may be other reasons for why the claimant was attacked. But be that as it may, I find, based on the objective evidence in this case, the claimants would not be at serious risk of persecution or harm in Budapest, for the following reasons.

[11] There is a rebuttable presumption that Mr. Burandik was telling the truth (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, 31 NR 34 (FCA)).

[12] In the end-result, the member did not disbelieve Mr. Burandik's claim that he is Jewish, but attributed the violent attacks and job discrimination to some other unknown cause. Graffiti was plastered on walls but this in and of itself does not constitute persecution.

[13] In the circumstances, I am left to deal with the findings that Mr. Burandik is Jewish and that he was subjected to violence and discrimination, but that, for the most part, those who acted against him were not aware that he was Jewish. These findings were not unreasonable.

#### **INTERNAL FLIGHT ALTERNATIVE AND STATE PROTECTION**

[14] The decision maker found "but be that as it may..." the claimants would not be at serious risk of persecution or harm in Budapest. I take this to mean that they would not be at serious risk even if perceived to be Jewish.

[15] The applicants rely most strongly on the advanced unedited version of the United Nations Human Rights Committee Report of 25 October 2010 in which the Committee expressed concern at virulent and widespread anti-Roma statements, and indications of rising anti-Semitism. It recommended that more specific measures should be taken, including prosecution of members of the Magyar Garda, which by that point had already been disbanded by government order.

[16] It was submitted that this report, which was referred to by the member, trumps all the other reports to which she also referred. In my view, I am being asked to reweigh the evidence. The member referred to a number of reports, including the United States Department of State Country

Report dated March 2010. She found that, in the main, police investigated the incidents and made arrests. Incidents of attacks on individuals in Budapest were being fully investigated by the police.

[17] She concluded therefore that Budapest was both a viable internal flight alternative and a place where state protection was available. Budapest was a viable place for the Burandiks to live as he had worked there before, and he has not, with clear and convincing evidence, established that adequate state protection would not be available (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1). Again, these findings were not unreasonable.

[18] It was submitted that the plight of Jews is getting worse in Hungary. Evidence to that effect is not and should not be before me as a judicial review is based on the material before the decision maker, with a few exceptions which have no bearing here. If the situation has worsened, the Burandiks will have an opportunity to make their case at the pre-removal risk assessment stage.

**ORDER**

**FOR REASONS GIVEN:**

**THIS COURT ORDERS that**

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

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Judge

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

**DOCKET:** IMM-75-11

**STYLE OF CAUSE:** BURANDIK v MCI

**PLACE OF HEARING:** SASKATOON, SASKATCHEWAN

**DATE OF HEARING:** JUNE 8, 2011

**REASONS FOR ORDER  
AND ORDER:** HARRINGTON J.

**DATED:** JUNE 14, 2011

**APPEARANCES:**

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