



**Date: 20120619**

**Docket: IMM-7052-11**

**Citation: 2012 FC 779**

**Toronto, Ontario, June 19, 2012**

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

**BETWEEN:**

**BOGUZINSKAITE, IRMA  
PASZTYERIK, JOZSEF  
PASZTYERIK, SOFIJA (MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants seek to set aside a decision of the Immigration and Refugee Board dismissing their application to reopen their refugee claims. For the reasons that follow, this application is dismissed.

[2] Mr. Jozsef Pasztyerik is Hungarian. His wife, Ms. Irma Boguzinskaite, and their four-year old daughter, Sofija Pasztyerik, are Lithuanian citizens.

[3] Mr. Pasztyerik's claim for refugee protection was based on his political views and activities in Hungary. Ms. Boguzinskaite's claim for refugee protection was based on her political views and activities in Lithuania and her persecution in Hungary as a Russian. Ms. Boguzinskaite was the designated representative of their daughter. They filed their claims for protection shortly after arriving in Canada in May 2009, but in late 2010, just prior to their hearing, they withdrew their claims.

[4] On December 15, 2010, the respondent, still unaware of the withdrawal, filed a Notice of Intent to Intervene when made aware that on April 16, 2006, Mr. Pasztyerik had been arrested and charged in Northern Ireland with rape of a young person. Although this charge was later dismissed, Mr. Pasztyerik failed to indicate it, as required, in his Personal Information Form. When the respondent was informed that the applicants' claims were withdrawn, it took no further steps.

[5] On September 1, 2011, the adult applicants applied to reopen their claims; Mr. Pasztyerik claiming that "I was misguided by my counsel that he provided me with a form to sign it, and I was not aware of the consequences." He further asserts in the letter that he has proof of persecution against him and his family because of his political views and "in particular my views ... ran counter to the conservative right wing that dominate Lithuania." He asserts that he will "face persecution, discrimination and might be killed" because of his political views.

[6] On November 8, 2011 the Board dismissed their application. The decision is five paragraphs in length and is reproduced below:

[1] There is no credible evidence the claimants were misguided by counsel. Counsel of record is a member of the Bar in Ontario.

[2] The claimant's individually signed their applications to withdraw their claims with each claimant indicating the form had been interpreted and they were freely withdrawing their claim and that they may be asked to leave Canada.

[3] Further, on December 10, 2010, Counsel Peter Ivanyi's, law clerk, faxed to the Board, the withdrawal for the dependent child signed by her designated representative, which further supports that the claimants' counsel was involved in the process of withdrawal. As a result, I am satisfied there was no breach of natural justice in the Board's accepting the request to withdraw the claims.

[4] The claimant submits he has proof of persecution in Lithuania and hence he is at risk of being murdered if returned. This is the basis of the claim he withdrew. I am not satisfied this fear supports there are issues that support the reopening of the claims in the interest of justice.

[5] Hence, the Refugee Protection Division dismisses the application to reopen [emphasis in the original].

[7] Mr. Pasztyerik filed an affidavit in support of this application in which he explains that he and his wife were feeling stressed at having to appear before the Board for their hearing in December 2010, that he explained this to their lawyer, and that the lawyer told him that they did not have to go to a hearing but could go the "easier way" which was to seek an exemption to permit an inland application on humanitarian and compassionate grounds and file an application for a Pre-Removal Risk Assessment (PRRA). Apparently both were filed. Mr. Pasztyerik attests that he received a negative PRRA determination on August 30, 2011, and with the help of a friend applied to reopen the refugee claims within days.

[8] The only issue in this application is whether the Board's decision not to reopen the refugee claims was reasonable. The standard of review is reasonableness: *Castillo v Canada*

*(Minister of Citizenship and Immigration)*, 2010 FC 1185 and *Nguyen v Canada (Minister of Citizenship and Immigration)*, 2010 FC 133.

[9] The reinstatement of withdrawn refugee claims is dealt with in subsection 53(3) of the *Refugee Protection Division Rules*, SOR/2002-228, which provides that the reinstatement must be allowed “if it is established that there was a failure to observe a principle of natural justice or if it is otherwise in the interests of justice to allow the application.”

[10] First, the applicants submit that the decision is not reasonable as it was made in a perverse and capricious manner and without regard to the material before it. They point to paragraph 4 of the decision wherein the Board writes that “the claimant writes that he has proof of persecution in Lithuania and hence is at risk of being murdered if returned” when in fact, Mr. Pasztyerik is a citizen of Hungary.

[11] I accept the submission of the respondent. While it is true that Mr. Pasztyerik is a citizen of Hungary and not Lithuania, the Board can hardly be faulted when in his letter requesting that his claim be reopened, Mr. Pasztyerik writes that his political views are contrary to those of the “conservative right wing that dominate Lithuania.”

[12] Second, the applicants submit that the Board erred in failing to properly consider the documents before it. The Board noted at paragraph 2 of its decision that the adult claimants had signed the withdrawal forms with “each claimant indicating the form had been interpreted and they were freely withdrawing their claim and that they may be asked to leave Canada.” They

point to the forms at pages 177 and 178 of the certified tribunal record. Mr. Pasztyerik's form was signed on "November 2010" and contains an Interpreter's Declaration of Elizabeth Lazslo that the form was interpreted to Hungarian for him. Ms. Boguzinskaite's form was signed on "Nov 29, 2010" and contains an Interpreter's Declaration of Mr. Pasztyerik that the form was interpreted to Russian for her on November 28, 2010. The dating of these events, it is suggested, questions their accuracy or validity; however, the form was later submitted in an amended form adding the child's name and was resigned by both of the adult applicants on November 29, 2010.

[13] Although it may be technically correct that Mr. Pasztyerik could not "translate" the form from English to Russian as he does not read or speak much, if any English, I do not find that it was unreasonable for the Board to rely on these documents. The form was translated to him in Hungarian and he explained it to his wife in Russian. They have been together for some time – long enough to have a four-year old child – it can hardly be said to be unreasonable to conclude that they are able to communicate with each other.

[14] Third, the applicants submit that the Board failed to properly consider the best interest of the minor child whose claim for protection had also been withdrawn. I reject that submission. The Board did reference her claim in paragraph 3 and it notes that counsel was involved which satisfied the Board that there was no breach of natural justice in accepting the withdrawal of her claim. In the absence of a specific allegation of the child's interests, and there was none, it cannot be said that more was required of the Board.

[15] Fourth, the applicants submit that the Board failed to weigh the circumstances from their vantage point because there is no reference made to their inability to speak English, the circumstances of the child, or the irregularities of the forms. Given the reference to the translation, the Board was aware of the language issues. The Board, as already noted, was also aware of the child and her interests. The irregularity of the forms is a minor matter, in my view, and as explained above it was open to the Board to accept them as evidence of the applicants' intentions and understanding.

[16] Fifth, they submit that the Board finds no evidence that they were misguided by counsel but at the same time notes his involvement in the withdrawal process. It is submitted that counsel's involvement cannot be used to support a finding that there was no misguidance. I find no error here. Although there is an allegation of conduct by counsel, there was nothing done by the applicants in that regard. As has been noted by this Court on previous occasions, allegations of incompetence by a member of a law society are unlikely to be given any weight absent proof that a complaint has been made to the governing body: *Sathasivam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 438. The allegation of these applicants requires more than their mere statement that they were misled. We have no evidence from their counsel who, for reasons of solicitor client privilege, is unable to respond without his clients' permission or a complaint to his society. In any event, the involvement of counsel was not used by the Board as proof that they were not misguided but as proof, in the absence of any reliable evidence to the contrary, of which there was none, that there was no breach of natural justice in accepting the withdraw notices.

[17] Sixth, the applicants submit that the Board failed to properly assess whether the reopening of the claims was in the interests of justice. It is submitted that in paragraph 4 of the decision, the Board says that it has looked at the refugee claim made and found it unlikely to succeed. I do not agree. The Board is saying that the reasons advanced in the letter as to why the reopening would be in the interests of justice are the very same reasons advanced for the original claim – but more is required. It is the reopening that must be in the interest of justice; not the initial refugee claim.

[18] For all these reasons, the application is dismissed. Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge



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

**DOCKET:** IMM-7052-11

**STYLE OF CAUSE:** IRMA BOGUZINSKAITE ET AL v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 4, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN J.

**DATED:** June 19, 2012

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