

Federal Court



Cour fédérale

**Date: 20120925**

**Docket: IMM-4785-11**

**Citation: 2012 FC 1119**

**Toronto, Ontario, September 25, 2012**

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

**BETWEEN:**

**TIBOR PINTER  
(A.K.A. GYULA TIBOR PINTER) and  
REBEKA PINTER**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The decision of the Refugee Protection Division of the Immigration and Refugee Board, rejecting the claims for protection filed by Tibor Pinter and his minor daughter Rebeka Pinter, is set aside. The decision does not demonstrate the justification, transparency, and intelligibility that is required for the Court to find that it is reasonable.

[2] The applicants launched a full-out attack on the decision, focusing principally on the Board's analysis of state protection. It is not necessary to address their submissions on the lack of state protection for Roma in Hungary in this case, as there are other, more obvious reasons why the decision must be overturned.

[3] The basic facts necessary to understand the Court's decision are these.

[4] Tibor Pinter, his wife Eva and his daughter Rebeka are Roma and citizens of Hungary. Tibor arrived in Canada on March 13, 2010, and made a refugee claim the same day. His wife and daughter arrived on April 4, 2010, and made their claims a few days later. Eva was found to be ineligible to file a refugee claim as she and her parents were deemed to have abandoned previous refugee claims on March 19, 1998.

[5] While Tibor and Rebeka's refugee claims proceeded, Eva filed an application for a Pre-Removal Risk Assessment (PRRA). The refugee claims and the PRRA application were based largely on a shared history of abuse, harassment, and discrimination. These include the following:

- a. Tibor and Eva were discriminated and humiliated by teachers in school and both were refused entry to high school along with all of the other Roma children in their area.
- b. Tibor and Eva had extreme difficulty securing and retaining employment because of the discrimination they faced. They relied on social assistance, but the amount of assistance was not enough to live on.

c. Eva was attacked on January 24, 2004, while she worked distributing leaflets. Three men yelled discriminating remarks (“Go back to your stinky, whore gypsy mother” and “Don’t contaminate the air around here”), grabbed her hair and pushed her to the ground. She was fired from that job for leaving the job site to escape the attackers. She made a police report but they would not investigate as she could not identify the attackers by more than a physical description.

d. Rebeka was attacked repeatedly at her school and on December 8, 2008, was pushed down a flight of stairs by other students, for which she received medical attention. Her parents complained to the school administrators, who refused to intervene, so Rebeka was forced to enrol in another school where she was again shunned by the students.

e. On March 4, 2010, Tibor and Eva were physically attacked and required medical attention. On the following day they made a police report, after overcoming the reluctance of the police to take one. No investigation was made by the police as they could not identify their attackers.

[6] The Board rejected the applicants’ claim for protection. The Board recognized that Roma face discrimination in Hungary but held that the treatment they suffered did not amount to persecution and that state protection was available to protect them.

[7] On the other hand, the PRRA officer, on almost the same evidence, found that Eva would face more than a mere possibility of persecution if she were to return to Hungary. The officer’s finding was as follows:

With respect to the particular circumstances of this case, the applicant has provided sufficient subjective evidence to show that she has been a victim of continuous discrimination with respect to employment and has also suffered from beatings resulting in persecution. Moreover, the evidence shows that the applicants [*sic*] have suffered from persecution throughout the country, wherever she has relocated. Taking into consideration the subjective evidence coupled with the objective evidence which shows that conditions for Roma are worsening and avenues for state protection are not met positively often throughout the country, I am satisfied that the applicant would face more than a mere possibility of persecution. In addition, I am satisfied that sufficient evidence has been presented to show that she is likely to face a danger of torture, or a risk to life, or a risk of cruel and unusual treatment or punishment. [emphasis added]

[8] The two significant discrepancies in these decisions are that the Board found discrimination but no persecution, while the officer found persecution; and the Board found state protection was available while the officer found that adequate state protection was not available.

[9] Reasonable people may reach different conclusions and the Board was not bound to follow the officer's decision or reach the same conclusion. However, the PRRA decision was part of the record before the Board and it was required, in my view, to reference the PRRA decision and state in some detail why it reached a different conclusion on the same facts. The Board made no mention of the PRRA decision in its reasons. As has been stated many times by this Court and others, a decision-maker is presumed to have considered everything that was before him or her and is not required to refer to every item and explain how it was dealt with; however, a failure to specifically address something that is relevant and contradictory may lead to an inference that the decision-maker ignored or misapprehended the evidence and reached an erroneous conclusion. In this case, given the similarity of the events relied upon, the same

country reports and other documentation regarding the treatment of Roma in Hungary and the adequacy or lack thereof of police protection, the PRRA decision had to be addressed by the Board. Its failure to do so constitutes a reviewable error.

[10] Aside from that serious flaw, there are other aspects of the decision that are problematic and independently warrant it being set aside. There are statements and observations made by the Board in the course of its decision which appear contradictory and inconsistent. A decision-maker must provide reasons that make it clear to a reader why the decision reached, was reached. A failure to do so results in a lack of transparency and intelligibility that may result in the decision being set aside.

[11] In the decision under review, the Board found that the treatment of Roma in Hungary does not constitute persecution. However, it also stated the following, which strongly suggests the opposite:

Cumulatively, the effect has been to marginalize Roma people, including the claimant. Roma are generally under-employed, under-educated, frequently live in subsistence housing, and are subject to violence from racially motivated radical groups.

...

...[S]ome problems have worsened, such as extremist violence and public rhetoric against ethnic and religious minorities. Extremists increasingly have targeted Roma, resulting in injuries and even death, and the police sometimes use excessive force, particularly against the Roma. There has been a sharp rise in racism in public discourse and anti-Roma extremists have become increasingly virulent and wide spread.

Nowhere in the decision does the Board come to grips with the fundamental question it ought to have addressed: What constitutes persecution?

[12] Also problematic is the Board's conclusion that the applicants did not face persecution in education as they "were able to attend school, although they faced incidents of discrimination." I am reminded of recent Canadian reports of students who are bullied at school by taunts and assaults. Would anyone reasonably say that they are not being persecuted because they are able to attend school? Persecution in education is not just a systemic prohibition on attending school. It may also be found when to attend school one must face harassment, vulgar and racially offensive comments, and physical abuse. Evidence of all this sort of conduct was before the Board in this case for both applicants. Furthermore, there was evidence that at some level authorities had effectively prohibited attendance by Roma at high school and that would appear to meet even this Board's restrictive definition of persecution in education.

[13] Similarly, the Board appears to find that there was no persecution in employment, despite the evidence that the male applicant could only rarely find work and that it was not meaningful or long-lasting, because he was able to access state financial support when unemployed or underemployed. The fact that a social support system is in place does not address the question of whether there is persecution in employment; social support merely ameliorates the effect of such persecution.

[14] Lastly, the Board's analysis of the response of the police to the reports filed is troubling. The Board correctly notes that it is unreasonable to expect that "all violent acts reported to the police would result in immediate prosecutions or convictions." The male applicant testified that although the police took their reports they did not investigate their complaints. The Board

Member states “I do not accept the police did not even try to investigate as testified by the claimant” but provides absolutely no explanation as to why this evidence is rejected. There is nothing in the record that points to there having been any police investigation. Further, I note that accepting a report of criminal conduct does not establish adequate police protection when no steps are taken to investigate the complaint. If police had no obligation to investigate a complaint where the assailant was unknown, their job would be remarkably easier.

[15] The applicants proposed the following questions for certification in this case:

1. Are criminal acts of violence, directed at person(s), based on race or ethnicity always “persecution” and subject to a state protection analysis?
2. Or, put another way, can criminal acts of violence, based upon race or ethnicity ever constitute mere “discrimination”?

[16] It was submitted that these questions ought to be certified if the Court decided the application on the basis of the Board’s classification of criminal acts of violence suffered by the applicants, because they are Roma, as discrimination rather than persecution. The application was not decided on that basis and accordingly, the questions posed are not properly certified questions in this application.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed, the applicants' claims for protection are remitted to be determined by a differently constituted panel, and no question is certified.

"Russel W. Zinn"

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Judge



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

**DOCKET:** IMM-4785-11

**STYLE OF CAUSE:** TIBOR PINTER ET AL v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 7, 2012

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

**DATED:** September 25, 2012

**APPEARANCES:**

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