Date: 20051031

Docket: IMM-8183-04

Citation: 2005 FC 1473

Ottawa, Ontario, October 31, 2005

PRESENT: THE HONOURABLE MADAM JUSTICE SNIDER

BETWEEN:

MIKLOSNE KOVACS

ANETT NAGY

GERGO MIKLOS KOVACS

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Principal Applicant, a citizen of Hungary, is a woman who arrived in Canada on March 29, 2001 and claimed protection in Canada for herself and her two minor children - a daughter (who has since returned to Hungary) and a son. The Applicants base their claim for protection on a well-founded fear of persecution by reason of their membership in a particular ethnic and social class, namely that they are Roma and victims of abuse at the hands of the Principal Applicant's second husband.

[2] In a decision dated August 19, 2004, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the "Board) determined that the Applicants were neither Convention refuges nor persons in need of protection. The Board had serious credibility concerns with the evidence and testimony of the Principal Applicant. In light of a lack of corroborating, independent evidence, the Board was not convinced of the truth of her story. The Board also determined that the Principal Applicant was excluded from refugee protection, pursuant to Article 1(F)(b) of the *United Nations Convention Relating to the Status of Refugees* (the "*Refugee Convention*"), on the basis that there were serious reasons for considering that she may have committed a serious non-political crime outside of Canada, namely the abduction of her son.

[3] The Applicants seek judicial review of this decision.

Issues

[4] The issues raised in this application are as follows:

1. Did the Board err in finding that the Principal Applicant was excluded from refugee protection under Article 1(F)(b) of the *Refugee Convention*?

2. Did the Board err in drawing a negative credibility inference against the Applicants?

3. Did the Board err in determining that the son was not a person in need of protection on the basis that the Board was bound by the findings of the Ontario Superior Court in *Kovacs v. Kovacs*, [2002] O.J. No. 3074?

4. Did the Board err in finding it implausible that the Applicants would have suffered persecution due to their Roma ethnicity?

[5] Overarching the determination of these issues is the question of the extent to which the Board was bound by or can rely on the decision of the Ontario Superior Court in *Kovacs*, *supra*, a decision that involved the Applicants and the Principal Applicants' husband.

Analysis

***What is the effect of the decision in Kovacs on the Board*?**

[6] Since many of the issues raised by this application are intertwined with the decision of the Ontario Superior Court in *Kovacs*, it would be helpful to describe that decision and consider the extent to which the Board is bound by or may rely on findings of the Court. The facts giving rise to that decision and its key elements are the following.

[7] Subsequent to the Applicants' arrival in Canada, and prior to the refugee determination hearing, the Main Applicant's husband brought an application in the Ontario Superior Court of Justice ("OSC"), pursuant to the *Hague Convention on the Civil Aspects of Child Abduction* (October 25, 1980; the "Hague Convention"), for the removal of his son, in accordance with a Hungarian custody order. In the decision delivered on April 23, 2002, Justice Ferrier dismissed the application. Of particular relevance to this application, are the following findings:

- there were serious credibility issues on behalf of both parties (that is, the Principal Applicant and the husband)

- the son had been removed from Hungary in breach of his father's custody rights.

- the son should not be returned because he was at grave risk of psychological harm, in light of the findings of the OSC that his father was a wanted fugitive with a history of criminal behaviour.

[8] In reaching his decision, Justice Ferrier carefully considered and weighed the evidence before him. With one important exception, the evidence before the OSC was

essentially the same as was before the Board in its hearing on the application for protection. The exception is that extensive documentation on country conditions formed part of the record before the Board.

[9] In *Pacificador v. Canada* (*Minister of Citizenship and Immigration*), [2003] F.C.J. No. 1864, at paragraph 83, Justice Heneghan provided guidance as to the use to be made of jurisprudence from another court in the context of a refugee claim:

Further, the Ontario Court of Appeal's decision is now part of a body of jurisprudence. I expect that on the redetermination of this matter, the newly constituted Board will consider it carefully. The lower court decision was tendered as evidence before the Board, therefore the Ontario Court of Appeal's decision, overturning this decision, must form part of the record before the newly constituted Board who will rehear this matter. The Board does not decide in a vacuum. While the OntarioCourt of Appeal decision will not be binding on the Board, it is relevant and important evidence that places the Applicant's situation in context. [Emphasis added.]

[10] Similarly, in this case, I would say that the decision of the OSC is not binding on the Board. Nevertheless, it is relevant and important evidence that places the Applicants' claim in context. The Board is entitled to and, in fact, should take into account the findings of the OSC where they are directly relevant to the facts before the Board. However, the Board must carry out its own analysis and reach its own conclusions on the matters before it; it cannot be bound by the actions of the OSC, particularly where the issues and questions are different.

***Issue #2*: *Did the Board err in determining that the Principal Applicant was excluded*?**

[11] At the refugee hearing, the Minister of Citizenship and Immigration (the "Minister") intervened pursuant to s. 98 of the *Immigration and Refugee Protection Act*, 2001, c. 27 ("*IRPA*"), which incorporates Article 1(F)(b) of the *Refugee Convention*. The Minister submitted that the Main Applicant should be excluded from refugee protection because there were serious reasons for considering that she may have committed a serious non-political crime outside of Canada, namely the abduction of her son.

[12] Article 1(F)(b) of the *Refugee Convention* provides that:

The provisions of [the RefugeeConvention] shall not apply to any personwith respect to whom there are seriousreasons for considering that:	Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
(b) he has committed a serious political crime outside the country ofrefuge prior to his admission to that country as a refugee.	*b*) Qu'elles ont commis un crime grave de non-droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés.

[13] Section 98 of the *IRPA* states that a person referred to in section F of the *Refugee Convention* is not a Convention refugee or a person in need of protection.

[14] In this case, after reviewing the facts related to the removal of the son from Hungary, the Board concluded that the Principal Applicant:

. . . did abduct the minor claimants from Hungary without the consent of a parent with joint custody. The panel also accepts that, in accordance with the equivalency principle, if the abduction of [the son] had occurred in Canada, it would be an offence under subsection 283(1) of the Criminal Code of Canada. Furthermore the panel finds that the principle claimant is not saved by section 285 of the Criminal Code of Canada.

[15] The Board continued by addressing whether the crime committed by the Principal Applicant meets the criteria of a "serious non-political crime as envisioned in Article 1(F)(b) of the *Refugee Convention*". The Board adopted the presumption set out in *Chan v. Canada* (*Minister of Citizenship and Immigration*), [2000] 4 F.C. 390 (F.C.A.), at paragraph 9, that "a serious non-political crime is to be equated with one in which a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada." The Board concluded that:

In this case, the equivalent offence under subsection 283(1) of the *Criminal Code of Canada* is an indictable offence for which a sentence of imprisonment for a term of ten years may be imposed. Furthermore the fact that international child abduction is the object of an international convention and international law is indicative of the seriousness of the matter from the point of view of criminal and civil law.

[16] Stated simply, the Board's analysis consisted of three steps:

a) Does the evidence demonstrate that the son was abducted by the Principal Applicant, in that he was removed from Hungary without the consent of the joint custody parent?

b) If yes, would this abduction, if it had taken place in Canada, constitute a crime under the *Criminal Code of Canada*; specifically, subsection 283(1)?

c) If yes, is this a serious non-political crime within the meaning of Article 1(F)(b) of the *Refugee Convention*?

[17] Overall, the Board must assess and weigh the evidence that it has accepted as credible or trustworthy in the circumstances and determine whether or not the threshold test of "serious reasons for considering" has been met with regard to the serious non-political crimes alleged (see *Moreno v. Canada* (*Minister of Employment and Immigration*), [1994] 1 F.C. 298 at 309, 311 (C.A.)). The standard of evidence to be applied to this threshold test is higher than a mere suspicion but lower than proof on the civil balance of probabilities standard (see *Zrig v. Canada* (*Minister of Citizenship and Immigration*), [2003] 3 F.C. 761, 2003 FCA 178 at paragraph 174).

[18] The standard of review to be applied to the decision of the Board concerning Article 1(F)(b) was dealt with by Justice Décary J.A. in *Harb v. Canada*(*Minister of Citizenship and Immigration*) (2003), 27 Imm. L.R. (3d) 1 (F.C.A.), where he stated at paragraph 14:

In so far as these are findings of fact they can only be reviewed if they are erroneous and made in a perverse or capricious manner or without regard for the material before the Refugee Division (this standard of review is laid down in s. 18.1(4)(d) of the Federal Court Act, and is defined in other jurisdictions by the phrase "patently unreasonable"). These findings, in so far as they apply the law to the facts of the case, can only be reviewed if they are unreasonable. In so far as they interpret the meaning of the exclusion clause, the findings can be reviewed if they are erroneous. (On the standard of review, see Shrestha v. The Minister of Citizenship and Immigration, 2002 FCT 886 [sic], Lemieux J. at paras. 10, 11 and 12.)

[19] I will examine each of the three questions addressed by the Board and the errors alleged in respect of each by the Applicants.

(a) Abduction

[20] With respect to the Board's finding that the Principal Applicant abducted the son from Hungary without the consent of a parent with joint custody, the Applicants argue that the Board erred in relying on *Kovacs* to find that the Main Applicant had abducted the son, contrary to his father's custody rights. In particular, they point out that Justice Ferrier never made a specific finding that the son had been abducted. In my view, there was no error.

[21] As discussed above, the Board was entitled to have regard to the findings of the Court in *Kovaks*. However, the task undertaken by the Board differed significantly from that carried out by Justice Ferrier. While the Court in *Kovaks* was determining the rights of the parties under the Hague Convention, the Board was determining whether or not the threshold test of "serious reasons for considering" has been met with regard to the serious non-political crimes alleged. In this context, Justice Ferrier was not required to address the issue of whether an abduction, as that term is used in criminal law, took place; in contrast, that was precisely what the Board was required to do. Thus, the fact that the Court in *Kovaks* did not specifically state that the son had been abducted by his mother is irrelevant.

[22] On the Board's finding that the son had been abducted, I am satisfied that the Board's decision is not patently unreasonable.

(b) Crime in Canada

[23] The Applicants assert that the Board erred in concluding that s. 285 of the *Criminal Code* did not apply as a defence to the allegation of abduction set out in ss. 283(1) of the *Code*. Section 285 allows the defence of "imminent danger of harm" and provides that no one shall be found guilty of abduction under s. 283 if the court is satisfied that the abduction was "necessary to protect the young person from the danger of imminent harm". The Applicants argue that the Board should have had regard to the finding of Justice Ferrier in *Kovaks* that the son would be at "grave risk" or would be placed in an "intolerable position" if returned to Hungary. This, they argue, is sufficient to satisfy the defence provided for in s. 285 of the *Code*.

[24] Once again, the Applicants are ignoring the difference in the tasks of the OSC and the Board. Justice Ferrier was assessing whether, in spite of the abduction, the son

should be returned to Hungary. The test he applied was that set out in the Hague Convention. In contrast, the Board was determining whether there were serious reasons to believe that the elements of an offence set out in the *Criminal Code* had been established. In the Board's view, the s. 285 defence was not applicable because the Board did not believe that the Principal Applicant or the children had been the victims of abuse by the husband. Stated in other words, the Board did not believe that the son was in danger of imminent harm when he was removed from Hungary. I see nothing unreasonable or illogical in the Board's conclusion that the s. 285 defence would not have been available to the Principal Applicant.

(c) Serious non-political crime

[25] The Applicants assert that the Board erred in its determination that abduction is a serious non-political crime.

[26] First, the Applicants submit that there is no evidence to show that the Main Applicant will be prosecuted for her actions in Hungary, and if that were the case, the police would not have permitted her departure. Article 1(F)(b) of the *Refugee Convention* contains no requirement that the person in question must have been charged with or convicted of the crime in question. Certainly, charges and convictions in a foreign jurisdiction may constitute convincing evidence that a crime has been committed. However, it does not follow that the absence of a criminal conviction means that there has been no "serious non-political crime". Even without the evidence of a charge or conviction, sufficient evidence may be before the Board to establish that a there are serious reasons for considering that a person he has committed a serious non-political crime. That was the case before the Board.

[27] The Applicants also submit that the Board erred in relying on *Chan, supra* for guidance in defining a serious non-political crime. In their submission, *Chan* only states that exclusion does not apply to crimes committed outside Canada where a sentence has already been served, unless the refugee claimant has been declared a danger to the public. In my view, the Applicants have misunderstood the use made by the Board of the *Chan* decision. In the part of the decision dealing with this question, the Board was assessing whether kidnapping of a child is a "serious non-political crime". In its analysis, the Board referred to the *Chan* decision as describing a sentence of ten or more years as one that is indicative of such a crime. The Board also considered the existence of the Hague Convention as a demonstration of the international community's view of international kidnapping as a serious matter. I see no error in the Board's use of the *Chan* decision or its analysis of whether international kidnapping of a child constitutes a serious non-political crime.

[28] The issue of exclusion is determinative of the claim of the Principal Applicant. Once she has been found to be excluded pursuant to Article 1(F)(b), the Principal Applicant cannot be found to be a Convention refugee or a person in need of protection. However, in the event that I am wrong on this issue, I will continue to address the other matters raised by the Applicants in respect of their decision. Further, the exclusion of the Principal Applicant does not impact the son; the issues related to him must be examined.

***Issue #2*: *Did the Board err in drawing a negative credibility inference against the Applicants*?**

[29] In its decision, the Board found the Principal Applicant's "allegations of abuse at the hand of her husband unreliable and untrustworthy". Of critical concern to the Board was the lack of corroborating evidence of the allegations of abuse. The Board noted that, over two years earlier, Justice Ferrier in *Kovacs* had commented negatively on the complete absence of any evidence of abuse and stated that:

[A]t the time of the hearing, approximately two years after Justice Ferrier's decision, still there is not one neutral, independent piece of evidence to support the claimant's allegations. There is not one medical or police report from Hungary or a report from any counsellor or doctor or any account by persons who witnessed or to whom she spoke about the alleged abuse by her husband . . .

[30] In its reasons, the Board explained why it rejected the explanations for the lack of corroborative evidence.

[31] Credibility assessment is within the expertise and exclusive jurisdiction of the Board. Hence, this Court should refrain from interfering with that assessment unless the Board's assessments are capricious or perverse, or patently unreasonable (*Aguebor v. Canada*(*Minister of Employment and Immigration*), [1993] F.C.J. No. 732 (F.C.A.) (QL)).

[32] The Applicants submit that a claimant's testimony should be presumed to be true unless there is a valid reason to rebut that presumption and that the claimant's testimony ought to be given the benefit of the doubt, unless there are good reasons to do otherwise (*Maldonado v. Minister of Employment and Immigration*), [1980] 2 F.C. 302 (F.C.A.) at para. 5; *Chan v. Canada* (*Minister of Employment and Immigration*), [1995] 3 S.C.R. 593 at para. 129). The Applicants also submit that, in the absence of valid reasons to question credibility, documentary corroboration is unnecessary (*Toth v. Canada*(*Minister of Citizenship and Immigration*), [2001] F.C.J. No. 305 at para. 16). The problem with the application of these principles to the application before me is that the Board explained that its reasons for doubting the Main Applicant's veracity did not depend solely on a lack of corroborating evidence. The Board cited inconsistencies and implausibilities in clear and unmistakable terms by supplying examples of these problems. In other words, there were valid reasons - aside from the lack of corroborating evidence - to doubt the Principal Applicant's story.

[33] In the refugee claim, the onus was on the Applicants to supply evidence that supports their claim (*Rahmatizadeh v. Canada* (*Minister of Employment and Immigration*), [1994] F.C.J. No. 578 (T.D.) (QL) at paras. 9-10; *Kante v. Canada* (*Minister of Employment and Immigration*), [1994] F.C.J. No. 525 (T.D.) (QL) at para. 8). In this case, in spite of ample time to procure such evidence, the Applicants failed to do so. Further, as the Board explained, given that they should have been on notice from the findings in *Kovacs* that their corroborating evidence was insufficient, the failure to do so is even more troubling. The Board further noted that the Principal Applicant's explanation for a lack of police and medical documents from Hungary was not believable (her credibility already being impugned), and that her explanation was insufficient to justify why she had not acquired corroborating statements from

relatives and other individuals who allegedly had first-hand knowledge of her domestic troubles.

[34] A further argument of the Applicants is that the Board relied in part on the findings in *Kovacs*, but misapprehended those findings. In particular, they point out that Justice Ferrier made no overall finding that the Principal Applicant lacked credibility. They assert that the comments of Justice Ferrier referred to by the Board are not findings of fact, but recitations of the husband's evidence (who was the applicant in that case), which Justice Ferrier ultimately found unconvincing. In my view, the Board accurately assessed both the evidence before it and the findings of the OSC in *Kovaks*. Although Justice Ferrier made no overall finding of a lack of credibility with respect to the Principal Applicant, the decision is littered with references to difficulties with her testimony. The passages referred to by the Applicants do not, as submitted, consist only of a recitation of the allegations of the husband. Within each paragraph dealing with the husband's assertions, Justice Ferrier includes an ongoing analysis where he points explicitly to difficulties with the Principal Applicant's story.

[35] Finally, the Applicant submits that the Board was incorrect when it stated that there was no document supporting the Principal Applicant's allegations. They refer to a medical report that their counsel tried to submit at the end of the hearing. In my view, the Board was under no obligation to admit or consider these late-filed documents. They were not translated and had, apparently, been in the possession of the Applicants for some time.

[36] In conclusion on this issue, I am not persuaded that the Board erred in finding the Applicants' story of abuse to be not credible.

***Issue #3*: *Did the Board err in failing to find that the son was a person in need of protection*?**

(a) Res judicata or the doctrine of issue estoppel

[37] In rejecting the claim of the Applicants, the Board concluded that the evidence failed to establish that the Applicants were victims of abuse at the hands of the husband or because of their ethnicity. In addition, the Board found that the evidence was insufficient to rebut the presumption of state protection.

[38] The Applicants point to the conclusions Justice Ferrier that the son, if returned to his father's care in Hungary, would be in an environment which would present a risk of psychological harm. If placed in the hands of a guardian, the learned judge also stated that he had "no confidence that the husband would not commit a further crime - abduction - in Hungary, by removing [the son] from whomever should be his guardian in Hungary". His conclusion was that the son's return to Hungary "would place him in an intolerable situation, whether he was there in his mother's care or in the care of a third party". The Applicants argue that the Board should have applied the doctrine of *res judicata* to the issue of the son's status as a person in need of protection, and should have considered itself estopped from making any finding in regard to the subjective elements of the refugee claim (*Toronto* (*City*) *v. C.U.P.E., Local 79*, 2003 SCC 63).

[39] In *Toronto*, *supra*, the Supreme Court of Canada examined the concept of "issue estoppel", a branch of res judicata. In order for issue estoppel to apply, three requirements must be satisfied: (1) the issue must be the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same, or their privies (*Toronto*, *supra*, at para. 23). It is plain to see that the parties are not the same, being the Applicants and Minister before the Board, and the Applicants and the husband before the Superior Court.

[40] Additionally, the issues are not the same. In refusing a removal order under the Hague Convention in *Kovacs*, Justice Ferrier was exercising the *parens patrie* jurisdiction of his Court (*Kovaks*,at para. 116), which is exclusively concerned with the "best interests of the child" (at para. 140) and whether the child is at "grave risk" of "imminent harm". The bulk of the *Kovacs* decision is concerned with the determination of whether a family law application under the Hague Convention can supersede a forthcoming refugee claim, and it is apparent from the lengthy analysis of Justice Ferrier that these two types of determinations are very different in nature. At paragraph 238, Justice Ferrier does not presume that his ruling would have any impact on the refugee determination process.

[41] Most importantly, I am mindful of the contrast between the "defense" provision found in Article 13(b) of *Hague Convention* and the wording of s. 97 of the *IRPA*.

Hague Convention

Article 13	Article 13
Despite the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return established that:	Nonobstant les dispositions de l'article précédent, l'autorité judiciaire ou administrative de l'Etat requis n'est pas tenue d'ordonner le retour de l'enfant, lorsque la personne, l'institution ou l'organisme qui s'oppose à son retour établit:
(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.	b) qu'il existe un risque grave que le retour de l'enfant ne l'expose à un danger physique ou psychique, ou de toute autre manière ne le place dans une situation intolérable.

Immigration and Refugee Protection Act

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality... would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle,

	exposée :
...	...
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country[.]	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

[42] The considerations to be made under a Hague Convention application and a refugee determination are clearly different. The former requires a finding of "grave risk" of harm, the type of which is unspecified; while the latter involves finding a risk, not necessarily "grave", of "cruel or unusual treatment or punishment" and also an absence of state protection. While the findings of Justice Ferrier may be relevant to whether the son is subject to the kind of risk outlined in s. 97, they do not determine whether he is a person in need of protection under the *IRPA*.

[43] Issue estoppel and, therefore, *res judicata*, do not apply.

(b) Reasonableness of the finding

[44] As noted, the Board determined that the presumption of state protection had not been rebutted. The Board did not explicitly refer to the dangers of a further abduction by the husband if the Applicants return to Hungary. This was a possible danger pointed to by Justice Ferrier. It could be that the Board simply rejected this possibility on the basis that the underlying claim of abuse was not credible. It would have been preferable for the Board to deal directly with this aspect of the OSC decision. In other words, the Board should have addressed the question of whether the son faced a possibility of a further abduction by the husband upon the family' return to Hungary. However, even if this is an error, it becomes immaterial on the basis of the Board's analysis of state protection. Justice Ferrier was not required to analyze the effectiveness of the state of Hungary in protecting its citizens from domestic abuse. It does not appear that any evidence was before him on the matter of the ability of Hungary to prevent a further abduction or to protect the son. But, for the Board, that is an essential step of its analysis.

[45] I cannot agree with the Applicant's proposition that the Board's analysis of state protection was superficial. To begin with, the Board is entitled to rely on the presumption of state protection (*Canada* (*Attorney General*) *v. Ward*, [1993] 2 S.C.R. 689). In light of the credibility problems with the Main Applicant's testimony, there was no evidence to rebut that presumption. Further, the Board cited ample documentary evidence that indicated Hungary had adequate provisions in place to protect individuals from domestic abuse and ethnic persecution.

[46] I am not persuaded that the Board erred.

***Issue #4*:*Did the Board err in finding it implausible that the Applicants would have suffered persecution due to their Roma ethnicity*?**

[47] In spite of serious reservations that the Principal Claimant is Romani, the Board considered, for purposes of the claim, that the Principal Applicant was Romani. However, the Board concluded that the Applicants would not be perceived as Romani (or Roma, as the term may be used).

[48] The Applicants submit that, by concluding that they would not be perceived as Roma, the Board applied a narrow analysis of stereotypical physical characteristics. The Board ignored documentary evidence which indicate that Roma have been assimilated into Hungarian culture but may still be distinguishable based on non-physical characteristics, and that even lighter skinned Roma may be subject to discrimination. The Applicants cite *Tubacos v. Canada* (*Minister of Citizenship and Immigration*), [2002] F.C.J. No. 290 (T.D.) at paras. 12-13.

[49] *Tubacos*, *supra*, does not apply to the case at bar. In *Tubacos*, the issue was whether the Board properly rejected the claimant's assertion that they were of Roma ethnicity solely on the basis of the claimant's appearance. In the present case, the Board accepted the Applicants' ethnicity, albeit hesitantly, and based its findings of a lack of persecution on more than physical appearance.

[50] I am not persuaded that the Board erred. The Board does not base its conclusion solely on the Applicants' appearance. The Board found that the Applicants did not appear to possess the "distinguishing traits that are commonly attributed to person of Romani heritage." Importantly, the Board also based its implausibility finding on the evidence that neither of the Principal Applicants' two husbands knew she was a Roma, although they had lived intimately with her for several years. On this basis, it was reasonable for the Board to conclude that strangers would be unlikely to perceive the Applicants as Roma and persecute them.

[51] There is no reviewable error.

Conclusion

[52] For these reasons, the application for judicial review will be dismissed. Neither party proposed a question for certification; none will be certified,

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Judith A. Snider"

_____

Judge

FEDERAL COURT

Names of Counsel and Solicitors of Record

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APPEARANCES:

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