Federal Court  Cour fédérale

Date: 20200207

Docket: IMM-6279-18

Citation: 2020 FC 218

Ottawa, Ontario, February 7, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

MILAN FODOR
(AKA GREGO ZSOLT MOLNAR)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] A person seeking protection as a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] must show that they have a well-founded fear of persecution in their country of nationality. Where they rely on evidence regarding the treatment of similarly situated persons in that country, they must show why that evidence is

relevant to them and their particular situation and profile. However, they need not show that their fear of persecution is "personalized" in the sense that it is not also felt by other members of a group with which they are associated.

[2] The officer assessing Milan Fodor's Pre-Removal Risk Assessment (PRRA) effectively discounted evidence regarding the treatment of Romani people in Hungary on the basis that it related to conditions faced by the "general Roma population," and that the PRRA process required the risks faced to be "personalized." Mr. Fodor contends that in doing so, the PRRA officer improperly conflated the test for Convention refugee status under section 96 with the test for a person in need of protection under section 97 of the *IRPA*.

[3] The use of the word "personal," "personalized," or "individualized" does not in itself signify that the section 97 test has been improperly imported into a section 96 analysis. What matters is the actual analysis conducted by the officer and whether it properly assesses the claim under section 96. This includes properly considering evidence of those similarly situated, recognizing the potential relevance of that evidence and its application to the claimant, and not requiring the claimant to demonstrate a heightened, peculiar or different risk compared to other members of the group.

[4] In the present case, I find that the officer's analysis improperly imported a requirement for individualization of risk that is more suited to a section 97 claim, and discounted general evidence of the treatment of Roma in Hungary on this basis without an adequate consideration of whether that evidence was relevant to Mr. Fodor. I also find that the officer's treatment of an

attack that Mr. Fodor experienced in Hungary was unreasonable as it failed to adequately consider material evidence from Mr. Fodor regarding the motivation for the attack.

[5] The rejection of Mr. Fodor's PRRA application is therefore quashed and the application remitted for redetermination.

II. Mr. Fodor's Pre-Removal Risk Assessment Application

[6] Mr. Fodor is a Hungarian of Roma ethnicity. He first came to Canada in 2009, at the age of 12, with his parents, who filed a claim for refugee protection. That claim was withdrawn in 2010 when his parents returned to Hungary to be with a dying relative. Three years later, Mr. Fodor met his common law partner in Hungary. The young couple had a daughter in late 2015. The family came to Canada in 2016, together with Mr. Fodor's parents and his sister.

[7] Upon arrival, Mr. Fodor's wife and daughter made refugee claims under sections 96 and 97 of the *IRPA*. Mr. Fodor was ineligible to make such a claim, since he was the subject of a previously withdrawn refugee claim: *IRPA*, s 101(1)(*c*). However, in response to a deportation notice, Mr. Fodor requested a PRRA. A PRRA is an application for protection made by a person in Canada named in a removal order or security certificate, and may result in refugee protection being conferred on the applicant in accordance with the principle of *non-refoulement*: *IRPA*, ss 112-114; *Valencia Martinez v Canada (Citizenship and Immigration)*, 2019 FC 1 at para 1; *Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 at para 17.

[8] Mr. Fodor's PRRA application asserted that he met the requirements for protection under section 96 of the *IRPA* as a Convention refugee. He pointed to country condition evidence describing the treatment of Roma in Hungary, and to his own experiences of serious discrimination in housing, employment, education, health care and social assistance. This included his family's eviction and resulting homelessness in 2014 as part of a government "slum elimination program," and his wife being subjected to verbal and physical assault by medical staff when at the hospital in labour with their daughter.

[9] He also recounted an incident in 2015 in which he and his spouse were attacked by three men dressed in black and wearing combat boots, who punched and kicked him, and shouted "Shut up, stinky gypsy." This attack was followed by visits to the hospital and to the police, who stated that they would not do anything because he and his spouse could not identify the attackers.

[10] Mr. Fodor's father, mother, and sister similarly applied for a PRRA. Those applications were approved in December 2016, as an officer determined that the three were persons who would be at risk if removed to their country of nationality or former residence. In his own application, Mr. Fodor pointed to his parents' and sister's successful PRRA application, noting that the risks identified and found to be serious and well-founded for them were the same as those he identified. He also pointed to a June 2017 decision by the Refugee Appeal Division (RAD), which allowed an appeal from the dismissal of his spouse and daughter's refugee applications, and returned those applications to the Refugee Protection Division (RPD) for redetermination. At the time Mr. Fodor's PRRA application was decided, those refugee applications had not been redetermined.

[11] The PRRA officer rejected Mr. Fodor's application after analyzing three aspects of it: the 2015 attack; the refugee determinations regarding his family members; and the country condition evidence. Mr. Fodor challenges the PRRA officer's treatment of each of these issues, and the resulting conclusion that Mr. Fodor was not a Convention refugee under section 96 of the *IRPA*.

III. Issues

[12] Two issues are determinative of Mr. Fodor's application: (1) whether the PRRA officer applied the appropriate section 96 analysis in assessing the country condition evidence; and (2) the PRRA officer's findings regarding the 2015 attack. I will also address (3) the officer's decision to give no weight to the family members' refugee determinations.

[13] Each of these issues is to be reviewed on the standard of reasonableness. While this matter was argued before the Supreme Court of Canada's recent decision in *Vavilov*, that decision confirms that the reasonableness standard applies, as there is no appeal right or other basis to rebut the presumption of deferential review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17. *Vavilov* also confirms that a decision will be unreasonable if it fails to use the established legal test for applying a statutory provision, particularly one importing international law; or if it fails to account for the evidentiary record, although the Court should not itself reweigh or reassess that evidence: *Vavilov* at paras 108, 111-112, 114, 125-126. As these principles reflect the prior law and are consistent with the parties' submissions, the Court considered it unnecessary to receive further submissions on the standard of review post-*Vavilov*.

IV. Analysis

A. *Issue 1: Did the PRRA Officer Reasonably Apply the Section 96 Analysis?*

(1) The PRRA officer's reasons for decision

[14] Mr. Fodor referred to a number of reports and documents that described the situation of Roma in Hungary. After describing these reports, the PRRA officer made the following statements:

> It is accepted that instances of discrimination and human rights violations continue to occur in Hungary, including to the Roma population. However, the PRRA process requires that the risks faced by the applicant be personalized. The applicant has not linked the contents of these reports to his personal, forward-looking risk in Hungary. I find that the documents relate to conditions faced by the general Roma population or are specific to persons not similarly situated to the applicant. It is a well-recognized principle that it is insufficient simply to refer to country conditions in general without linking such conditions to the personalized situation of an applicant. The assessment of the applicant's potential risk of being persecuted or harmed if he were sent back to his country must be individualized. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean there is a risk to a given individual. I find that these documents are indicative of a generalized nature of the human rights issues in Hungary, particularly as they relate to the Roma population. The applicant has not provided corroborating evidence to support that his brother in Hungary, who is a 23 year-old Roma male and arguably more similarly situated to the applicant than his other family members, is being targeted because of his Roma ethnicity. While the applicant may have been the target of discrimination in Hungary because of his Roma ethnicity, he has provided insufficient evidence to demonstrate that such discrimination rises to the level of persecution or harm in his particular case. The evidence provided by the applicant does not support that he faces a personalized, forward-looking risk in his home country for the reason cited.
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> [Emphasis added.]

[15] Mr. Fodor contends that this analysis inappropriately required him to demonstrate a "personalized" risk not otherwise experienced by Roma in Hungary, inappropriately conflated the assessments under sections 96 and 97 of the *IRPA*, and effectively required him to demonstrate—through the proxy of his brother and/or his own experiences—personal targeting and prior incidents of persecution.

[16] To assess these contentions, I will review the relevant sections of the *IRPA*, and the decisions of this Court that have addressed the question of the need for "personal," "personalized," or "individualized" evidence, before analyzing the PRRA officer's decision in this context.

(2) Sections 96 and 97 of the *IRPA*

[17] Refugee protection may be conferred on a PRRA applicant where they meet the requirements of either section 96 or section 97 of the *IRPA*. These two sections provide for refugee protection for Convention refugees, and persons in need of protection, respectively:

Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

Personne à protéger

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 :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
[Emphasis added.]	[Je souligne.]

[18] As is clear from this language, recognition as a Convention refugee under section 96 is based on a fear of persecution based on a Convention ground: race, religion, nationality, social group or political opinion. This fear must be both subjectively held and objectively reasonable to be "well-founded." The latter element requires the claimant to establish, on a balance of probabilities, that there is a "reasonable chance," a "reasonable possibility," or a "serious possibility" of persecution based on a Convention ground should they return: *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 4; *Adjei v Canada (Minister of Employment & Immigration)*, [1989] 2 FC 680 at para 8.

[19] The Federal Court of Appeal has long held that a claimant to Convention refugee status (a) need not show that they have themselves been persecuted in the past; (b) may show a fear of

persecution through evidence of the treatment afforded similarly situated persons in the country of origin; and (c) need not show that they are more at risk than others in their country or other members of their group: *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250, 1990 CanLII 7978 (FCA) at paras 17-19. These principles have been reiterated in cases such as *Pacificador v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1462 at paragraphs 73-75; *Somasundaram v Canada (Citizenship and Immigration)*, 2014 FC 1166 at paragraphs 20-23; and *Bozik v Canada (Citizenship and Immigration)*, 2017 FC 920 [*Bozik I*] at paragraphs 3-7.

[20] Section 97, on the other hand, speaks to the claimant being personally subject to risk of life or cruel and unusual treatment or punishment, and expressly excepts risks faced generally by other individuals in the country: *IRPA*, s 97(1)(*b*)(ii). An important distinction between the provisions is thus that while section 97 requires a risk that is individual to the claimant, in the sense that it is not faced generally by others in the country, section 96 protection may be based on the existence of a more generalized risk based on a Convention ground that is applicable to the claimant: *Salibian* at paras 18-19; *Somasundaram* at para 24; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808 at paras 21-22. Section 97 also requires the claimant to establish, on a balance of probabilities, that removal would “more likely than not” subject them to the described risks, rather than the “serious possibility” standard applicable to section 96: *Tapambwa* at para 3.

(3) General evidence and “personalized” or “individualized” risk

[21] Given the difference in framework between sections 96 and 97, this Court has often had to consider whether an officer making a refugee determination—either on a section 96 application or on a PRRA application—has improperly conflated the tests by importing into section 96 a requirement for a “personalized” or “individualized” risk: see, *e.g.*, *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at paras 4-5, 11-17; *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at paras 25-32; *Pillai v Canada (Citizenship and Immigration)*, 2008 FC 1312 at paras 36-44; *Somasundaram* at paras 20-30; *Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 at paras 11-20; *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at paras 64-73.

[22] The Minister refers to a line of cases culminating in this Court’s recent decision in *Sallai* for the proposition that an applicant must show a “link” between generalized evidence of conditions facing the relevant Convention group and the “personal situation of the refugee claimant”: *Sallai* at paras 68-73. Mr. Fodor, relying on *Somasundaram* and *Bozik I*, contends that generalized country condition evidence of persecution of Roma in Hungary shows the treatment of others “similarly situated” and that the evidence is “linked” to Mr. Fodor by the fact that he is a member of the persecuted group: a Hungarian of Roma ethnicity.

[23] In my view, the line of cases relied on by the Minister requires further consideration, beginning with this Court’s 2004 decision in *Ahmad*.

[24] In *Ahmad*, the claimant was found by the Immigration and Refugee Board to be not credible, and his claims under both sections 96 and 97 were dismissed. The claimant argued, relying on the earlier decision in *Bouaouni*, that the credibility finding might affect his subjective fear, but it should not have determined his section 97 claim given the "systematic violations of human rights committed in Pakistan": *Ahmad* at paras 13-15, citing *Bouaouni v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211 at para 41.

[25] At paragraphs 21-22 of his decision dismissing this argument, Justice Rouleau described the distinction between sections 96 and 97 of the *IRPA*:

> **First of all, I wish to point out that the relevant test under section 96 is in fact quite distinct from the test under section 97**. **A claim based on section 97 requires the Board to apply a different criterion** pertaining to the issue of whether the applicant's removal may or may not expose him personally to the risks and dangers referred to in paragraphs 97(1)(*a*) and (*b*) of the Act. **However, this criterion must be assessed in light of the personal characteristics of the applicant**. Indeed, as Blanchard J. noted in *Bouaouni*, *supra*:
>
> > ¶ 41 [T]he wording of paragraph 97(1)(*a*) of the Act... refers to persons, "...whose removal ... would subject them personally...". There may well be instances where a refugee claimant, whose identity is not disputed, is found to be not credible with respect to his subjective fear of persecution, but the country conditions are such that the claimant's particular circumstances, make him/her a person in need of protection.
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> **Thus the assessment of the applicant's fear must be made *in concreto*, and not from an abstract and general perspective**. The fact that the documentary evidence illustrates unequivocally the systematic and generalized violation of human rights in Pakistan is simply not sufficient to establish the specific and individualized fear of persecution of the applicant in particular. **Absent the least proof that might link the general documentary evidence to the applicant's specific circumstances, I conclude**

> **that the Board did not err in the way it analyzed the applicant's claim under section 97**.
>
> [Underline added by Rouleau J; bold added.]

[26] The context of the discussion and the claimant's arguments in *Ahmad* make clear that Justice Rouleau's conclusions in this paragraph—that evidence of "generalized violation of human rights" was not sufficient, and that proof was required to "link the general documentary evidence to the applicant's specific circumstances"—were made with respect to section 97 of the *IRPA*, and in contrast to section 96: *Ngankoy Isomi v Canada (Citizenship and Immigration)*, 2006 FC 1394 at para 20; *Prophète v Canada (Citizenship and Immigration)*, 2008 FC 331 at paras 16-17.

[27] Nonetheless, in *Sahiti*, the Court referred to the above passage in *Ahmad* suggesting that it pertained to, and described, the subjective/objective test under section 96 of the *IRPA*: *Sahiti v Canada (Minister of Citizenship and Immigration)*, 2005 FC 364 at paras 18-19. The Court made the following statements:

> Claimants must successfully establish that they have a reasonable subjective and objective fear of persecution:
>
> > More generally, what exactly must a claimant do to establish fear of persecution? As has been alluded to above, the test is bipartite: (1) the claimant must subjectively fear persecution; and (2) this fear must be well-founded in an objective sense. . . .
>
> **The application of these two criteria is well explained by the comments of Rouleau J. in *Ahmad* at paragraph 22**:
>
> > Thus the assessment of the applicant's fear must be made *in concreto*, and not from an abstract and general perspective. <u>The fact that the documentary evidence illustrates unequivocally the systematic</u>

> and generalized violation of human rights in Pakistan is simply not sufficient to establish the specific and individualized fear of persecution of the applicant in particular. Absent the least proof that might link the general documentary evidence to the applicant's specific circumstances, I conclude that the Board did not err in the way it analyzed the applicant's claim under section 97.
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> [Underline in original; bold added; citations omitted.]

[28] As noted above, on my review of *Ahmad*, Justice Rouleau's comments did not explain the two criteria of section 96, but described the requirements of section 97, in contrast to section 96.

[29] In *Csonka*, the Court then relied on paragraph 22 of *Ahmad* as well as paragraphs 18 and 19 of *Sahiti*, again suggesting, without discussion, that they pertained to section 96 of the *IRPA* and in particular the assessment of objective fear: *Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056 at paras 3, 70. In that case, which also dealt with a Roma claimant from Hungary, the Court stated at paragraph 3:

> Both subjective fear and objective fear are components in respect of a valid claim for refugee status. Objective fear should not be assessed in the abstract. In deciding if it exists, "objective evidence must be linked to the applicants' specific circumstances" (*Sahiti* at para 20). Evidence of systemic or generalized human rights violations is insufficient to show "the specific and individualized fear of persecution of [a particular] applicant" (*Ahmad* at para 22).
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> [Emphasis added; citations omitted.]

[30] The decision in *Csonka* spawned a line of cases in this Court dealing with refugee claims by Roma in Hungary. In these cases, the passage from *Ahmad* regarding the insufficiency of evidence of generalized human rights violations, and the need to link the general documentary

evidence to the applicant's "specific circumstances" for a section 97 claim, was treated as applicable to section 96. In *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426, relying on *Csonka* and *Ahmad*, the Court made the following statements at paragraph 19, which have been repeated by this Court and are relied upon by the Minister in this case:

> Moreover, while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return (*Csonka* at paras 67-70; *Ahmad* at para 22). Both subjective fear and objective fear are components in respect of a valid claim for refugee status (*Csonka*, at para 3). The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Prophète* at para 17; *Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, at para 28; *Ahmad*, at para 22).
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> [Emphasis added; some citations omitted.]

[31] I note that the paragraphs relied on in this passage for the proposition that the applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (from *Prophète*, *Jarada*, and *Ahmad*) each set out the Court's analysis of section 97 of the *IRPA* rather than section 96.

[32] The foregoing passage from *Balogh* was discussed in *Olah*, in which Justice Southcott thoughtfully considered *Balogh* in light of the recognition in *Salibian* that a section 96 claim could be established by examining the situation of similarly situated individuals, and that personal targeting and past persecution were not required: *Olah* at paras 14-17. Justice Southcott concluded that *Balogh* was not inconsistent with *Salibian*, seeing it simply as a recognition that the general country condition evidence did not demonstrate that all Roma in Hungary face

discrimination amounting to persecution. Rather, it was necessary to consider the claimant's particular circumstances in combination with the general documentary evidence to conclude whether the claimant faces risk of persecution: *Olah* at para 15; see also *Gaspar v Canada (Citizenship and Immigration)*, 2018 FC 320 at paras 20-22; *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 1061 at paras 29-31.

[33] In *Sallai*, the Court relied on the above passage from *Balogh* and the discussion in *Olah*, concluding that "it is insufficient to refer to country conditions in general without linking the conditions to the personal situation of an applicant": *Sallai* at paras 68-73. Thus *Sallai* forms part of the line of cases including *Balogh* and *Csonka*, which ultimately rely on the passage from paragraph 22 of *Ahmad*, which addressed section 97 of the *IRPA*.

[34] Against these cases, Mr. Fodor juxtaposes the analysis in *Pacificador*, *Somasundaram* and *Bozik I*. In *Somasundaram*, Justice Strickland underscored the principles in *Salibian* and *Fi*, noting that an applicant must establish a link between themselves and persecution on a Convention ground; that they must be targeted for persecution either "personally" *or* "collectively"; and that the persecution can be established by examining the treatment of similarly situated individuals: *Somasundaram* at paras 21-24, 27; *Fi* at para 13, adopting the language of *Rizkallah v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 412 (QL) (CA).

[35] In *Bozik I* (a case coincidentally decided the day before *Olah*), Justice Campbell at paragraph 5 adopted the following submissions of the applicant:

> Under section 96, the individual must, as a starting point establish on a balance of probabilities that they fall within a group intended to be protected under the Convention. **Once that link has been established, then it is submitted that general country condition documentation reporting on the treatment of members of that group is no longer general; it is now personal to the claimant**.
> …
>
> […]
>
> It is submitted that section 96 is intended to protect individuals who are within potentially large groups of people who all potentially face persecutory measures due to their innate characteristics recognized in the Convention as a basis for protection. Therefore, evidence that relates to that specific group is not general country condition documentation, it is evidence of the general treatment of a specific group to which a claimant belongs. That is not to say that every member of a group that generally faces measures or risks amounting to persecution is automatically deemed to be a Convention refugee. However, the fact that an individual has established that they are within that general group, have not distinguished themselves from being susceptible to the treatment typically afforded the group, and who have established that they have the requisite subjective fear and do not have access to adequate state protection should be determined to be Convention refugees if the general country condition documents support that finding. Importing concepts of generalized risk and personalized risk from section 97 into determining what documentary evidence is relevant to an assessment of the merit of the claims under section 96 potentially will result in unreasonable decisions in the context of PRRA decision making.
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> [Underline added by Campbell J.; bold added]

[36] In adopting this argument, Justice Campbell described *Somasundaram* as a "particularly important precedent": *Bozik I* at para 6. It is worth noting that on redetermination of the PRRA that was the subject of *Bozik I*, the new PRRA officer again refused the application, and that finding was upheld in *Bozik v Canada (Citizenship and Immigration)*, 2019 FC 1469 [*Bozik III*], a case decided after the hearing of this matter.

[37] On the strength of *Bozik I*, *Salibian* and *Somasundaram*, Mr. Fodor argues that the necessary "link" or "nexus" to be drawn is to the Convention ground, and that once the link to the Convention ground is established, the general evidence regarding members of the group becomes personal. This is consistent with the recognition in *Kanthasamy* (in the context of a humanitarian and compassionate application) that discrimination may be inferred where an applicant shows that they are a member of a group that is discriminated against: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 53.

[38] A claimant under section 96 has a burden to demonstrate that they, themselves, have a well-founded fear of persecution. To the extent that the claimant relies on generalized evidence of those similarly situated, the claimant must show that that evidence is relevant to them, *i.e.*, that they are sufficiently similarly situated to those described in the evidence. In this way, as noted in *Bozik I* and *Somasundaram*, the "generalized" evidence becomes "personal" to the claimant by showing that the evidence is relevant to them: *Bozik I* at para 5; *Somasundaram* at paras 24-25. I therefore agree with the Minister that mere use of the term "personally" (or "personalized" or "individualized") does not alone indicate that the tests under section 96 and 97 have been conflated: *Somasundaram* at para 25; *Pillai* at paras 42, 44; *Raza* at para 29.

[39] At the same time, I consider that there is a risk that relying on the line of cases that stem from *Ahmad*, a section 97 case, may result in applying a section 97 framework to section 96.

[40] What is ultimately important is the nature of the analysis being undertaken by the PRRA officer. If what is being assessed is whether some or all of the general evidence applies to the

claimant—that those described in the general evidence are sufficiently similarly situated to the claimant that the evidence is relevant to their section 96 claim—then this would be consistent with the Court of Appeal's decisions in *Salibian* and *Rizkallah*. I believe this is the interpretation of *Balogh* that Justice Southcott suggests: *Olah* at para 15.

[41] However, requiring an applicant to show that their risk of persecution is "personalized" or "individualized," in the sense that it is not also faced by other similarly situated persons or other members in a group, is inconsistent with *Salibian* and imports into section 96 elements of the section 97 analysis.

[42] In this regard, the "link" or "nexus" to the general evidence will depend on the nature of the generalized evidence. To the extent that the evidence demonstrates that members of a Convention-ground class are persecuted in a particular country—regardless of personal circumstances such as wealth, social position, geographic location or other circumstances—then membership in that class may be sufficient to show that the evidence of persecution applies to the claimant personally. If, on the other hand, the evidence shows that discrimination and persecution in the country is variable depending on other factors, then there will be a greater need for the claimant to demonstrate how or why some or all of the evidence is relevant to them.

[43] Mr. Fodor's position that the link to a Convention ground makes the general evidence regarding members of the group personal to the applicant is therefore true only to the extent that the evidence pertains either to all members of the group or to members of the group in a similar situation to the applicant. Simply by way of example, evidence pertaining to treatment of poor

and uneducated members of a group may not be relevant, or may be less relevant, if an applicant is a wealthy, educated member of that group. At the same time, requiring evidence to be "personalized," either by requiring it to pertain directly to the applicant, or by viewing those "similarly situated" too narrowly, risks ignoring evidence that is relevant to the treatment of the applicant based on a Convention ground, contrary to the principles described in *Salibian*.

[44] It is also worth recognizing that evidence of treatment of a group in a particular country may change over time, and the evidence before the decision-maker may be different in different cases, notwithstanding common elements in the National Documentation Packages.

[45] Against this framework, I turn to the analysis conducted by the PRRA officer in this case, as reflected in the reasons set out at paragraph [14] above.

(4) The PRRA officer unreasonably disregarded general evidence in requiring the risks facing Mr. Fodor to be "personalized"

[46] In assessing Mr. Fodor's application, the PRRA officer:

- accepted that instances of discrimination and human rights violations occur in Hungary, "including to the Roma population";

- considered that the PRRA process required the risks faced by the applicant to be "personalized," that it is insufficient simply to refer to country conditions in general without linking such conditions to the personalized situation of an applicant, and that the assessment of risk must be "individualized";

- found that the applicant had not linked the reports to his "personal, forward-looking risk," noting that the documents related to "the general Roma population" or are "specific to persons not similarly situated to the applicant";

- found that the documents were of a generalized nature regarding human rights issues in Hungary, "particularly as they relate to the Roma population";

- noted that there was no "corroborating" evidence to show that Mr. Fodor's brother, "arguably more similarly situated to the applicant than his other family members" is being targeted because of his Roma ethnicity; and

- concluded that while Mr. Fodor may have been the target of discrimination, he had provided insufficient evidence that the discrimination "rises to the level of persecution or harm in his particular case."

[47] I find the PRRA officer's decision to be unreasonable, for the following reasons.

[48] While recognizing the evidence of discrimination against Roma in Hungary, the PRRA officer apparently discounted this country condition evidence since it related to the "general Roma population." The fact that the country condition evidence relates to a population of which the claimant is a member is not alone a basis for discounting it. Rather, as the Court of Appeal recognized in *Salibian*, the treatment afforded similarly situated persons in the country of origin may be the best evidence that an individual faces a serious chance of persecution: *Salibian* at para 18; see also, by analogy, *Kanthasamy* at para 53. As noted above, membership in a group recognized by the Convention makes evidence that relates to the treatment of that group in a

country relevant, if there is no basis to distinguish the claimant from being susceptible to the treatment typically afforded that group: *Bozik I* at para 5. The PRRA officer appears to have required Mr. Fodor to show specific instances or a higher level of persecution than faced by the "general Roma population," an analysis that is inconsistent with the section 96 analysis as described in *Salibian*.

[49] The PRRA officer dismissed the connection between Mr. Fodor and the country condition evidence with the conclusory statement that it was "specific to persons not similarly situated," without providing any basis for that statement. The PRRA officer did not explain why those described in the evidence were considered not to be "similarly situated" to Mr. Fodor—whether it was due to geographic location, gender, age, social or employment status, or some other reason. While portions of the country condition evidence related to discrimination against Roma women, Roma asylum seekers, and/or Roma living in the countryside, might not apply to Mr. Fodor, there was extensive evidence relating to the treatment of Roma above and beyond these specific circumstances. The PRRA officer did not meaningfully engage with this evidence: *Bozik v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 69 at para 13 [*Bozik II*] (not related to *Bozik I* and *III*).

[50] Nor did the PRRA officer assess how Mr. Fodor's own profile as an unemployed, evicted and homeless young father, with limited education owing to his own experiences with discrimination, related to the country condition evidence provided. Mr. Fodor's application drew these connections to the evidence by noting how his own experiences in education, employment, housing, health care, and violence were reflected in and supported by the evidence. Given this, it

was insufficient for the PRRA officer to simply and broadly state that Mr. Fodor had not linked the evidence to his personalized situation.

[51] Instead, the PRRA officer appears to have used Mr. Fodor's brother as a proxy for someone "more similarly situated" to Mr. Fodor, noting that there was no "corroborating" evidence of him being targeted. As there is no obligation for a claimant to demonstrate that they have themselves been persecuted in the past, it would be incongruous to effectively require evidence that a claimant's sibling has faced persecution in their stead: *Salibian* at para 19. The PRRA officer gives no reason, other than mere kinship, to suggest why Mr. Fodor's brother would be "more similarly situated" than others described in the country condition evidence, nor why the brother would be more similarly situated than other members of his family such as his spouse, sister and parents, who also fled Hungary. The term "similarly situated" cannot be construed so narrowly as to require evidence of persecution of family members, or to eliminate consideration of evidence describing the situation of others.

[52] These analytical flaws indicate that the PRRA officer was seeking evidence that Mr. Fodor had previously experienced persecution, or that he risked discrimination of a different or greater nature than other members of the Roma population. Neither is a requirement to show that a claimant is a Convention refugee under section 96. Rather, the PRRA officer appears to have imported from section 97 a requirement for a "personalization" of the evidence in the sense that it not also be applicable to others.

[53] As the decision does not comport with the relevant statutory scheme, and the principles and analytical framework prescribed for the application thereof, the error is sufficient to render the decision unreasonable: *Vavilov* at paras 108, 111-112.

B. *Issue 2: Was the PRRA Officer's Treatment of the Evidence of the Attack Unreasonable?*

[54] The PRRA officer accepted that the applicant was attacked in 2015. However, as the hospital report showed an X-ray, examination, and a recommendation for follow-up care, the PRRA officer did not accept that hospital staff discriminated against Mr. Fodor or that he was "barely examined," as he had alleged. The PRRA officer also rejected the contention that the attack was motivated by Mr. Fodor's ethnicity, since (a) he did not know who his attackers were; (b) the medical evidence did not demonstrate that he was attacked because of his Roma ethnicity; (c) Mr. Fodor did not provide an "objective basis" for his belief that the attack was provoked because he is Roma; and (d) he did not provide corroborating evidence, such as a sworn declaration from his partner to support that this was why he was attacked. The PRRA officer therefore found the assertion that he was attacked because of his Roma ethnicity to be "vague, speculative and not supported by objective evidence."

[55] Given the nature of the attack described, it is certainly not surprising that Mr. Fodor would not know his assailants. Nor would medical evidence necessarily include reference to the motivation for the attack—which would in any event simply have repeated Mr. Fodor's statements—since it is not a medical issue.

[56] It is unclear from the decision what the PRRA officer intended to mean by an "objective basis" or "objective evidence" of the motivation for the attack. Mr. Fodor's statement that the attackers shouted "Shut up, stinky gypsy" itself provides an objective basis for the belief, in the sense that it is not simply the subjective impression of Mr. Fodor. However, the PRRA officer makes no reference to this statement, either in reciting the evidence of the attack or in analyzing whether it was motivated by Mr. Fodor's ethnicity. To the extent that the PRRA officer was looking for evidence from a disinterested party, this would put an impossible burden on Mr. Fodor given that only he and his family were present.

[57] As for "corroborating evidence" from his spouse, while Mr. Fodor's application did not include a statement from his spouse, it did include a copy of the RAD decision in her case. That decision noted that she alleged as part of her own refugee claim, also based on her Roma ethnicity, that she was assaulted in October of 2015. In any event, given that no credibility finding was made and the Minister does not contend that the PRRA officer disbelieved Mr. Fodor, it is unclear why a corroborative statement from Mr. Fodor's spouse was needed.

[58] Mr. Fodor's evidence that his attackers shouted an ethnic slur during the attack was neither vague nor speculative, and is itself objective evidence of the motivation for the attack. Given the absence of discussion of this evidence, it appears to have simply been overlooked. As that evidence was highly material, the PRRA officer's finding regarding the motivation for the attack was unreasonable.

[59] While there is no requirement that a claimant show that they have been persecuted in the past, the attack was a significant part of Mr. Fodor's narrative of ongoing discriminatory treatment in Hungary owing to his Roma ethnicity. The unreasonable assessment of the evidence of this event, by overlooking or failing to address material evidence of motivation, was of sufficient importance to affect the reasonableness of the overall conclusion regarding Mr. Fodor's refugee claim.

C. *Issue 3: Did the PRRA Officer Unreasonably Refuse to Consider the PRRA Applications of Mr. Fodor's Family?*

[60] Mr. Fodor's application included copies of the decision granting the PRRA application of his parents and his sister, and the RAD decision requiring his spouse and daughter's refugee applications to be reconsidered by the RPD. However, it did not include the full evidence and submissions filed in support of those applications.

[61] The PRRA officer noted that the submissions and evidence filed with the other applications had not been provided, and then gave the following reasons for disregarding them:

> Regardless, recent jurisprudence has determined that the decision [*sic*] of other judges arising from similar cases and outcomes of related refugee cases are to be given no weight as those decisions are entirely dependent on the quantity and quality of the evidence put to the earlier decision-maker. Another decision-maker may interpret the evidence differently or be presented with an entirely different record of evidence (*Federal Court of Canada*, IMM-6508-14). For these reasons, I afford this evidence no weight in support of the applicant's cited risk in Hungary.
>
> [Emphasis added.]

[62] Mr. Fodor argues that the PRRA officer acted unreasonably in failing to consider the decisions with respect to his other family members given the similarity of their circumstances.

[63] With respect to Mr. Fodor's spouse and daughter, the RAD decision before the PRRA officer was simply a decision requiring the RPD to reconsider whether the cumulative evidence of discrimination rose to the level of persecution. As there was no determination of the application, the RAD decision can have no probative value regarding whether Mr. Fodor is or is not a Convention refugee. It was therefore not unreasonable for the PRRA officer to give it no weight. The approval of the parents' and sister's PRRA application, however, was a substantive determination, and its rejection requires greater consideration.

[64] The PRRA officer's reference to this Court's decision in IMM-6508-14 is to an unreported judgment of Justice Barnes in *Koppalapillai v Canada (Citizenship and Immigration)* (July 7, 2015), IMM-6508-14 (FC). In that case, a PRRA officer assessing the risks facing Tamils returning to Sri Lanka had adopted and relied on a decision of the Court of Appeal for the United Kingdom, and the underlying decision from the Upper Tribunal of the Immigration and Asylum Chamber. Justice Barnes held as follows at paragraphs 9 to 13 of his decision:

> Given the limited scope of the Court of Appeal's review, its decision carries little, if any, relevance to the analysis required of the Officer. The Officer was obliged to assess the relevant country-condition evidence independently of the views of other decision-makers.
>
> As a general rule, the evidence-based findings made in the context of adjudicative proceedings are afforded no probative weight in later proceedings involving different parties. That is so because the earlier findings are wholly dependent on the quantity and quality of the evidence put to the earlier decision-maker. It goes without saying that the later decision-maker may well interpret the evidence differently or be faced with an entirely different

> evidentiary record. That is why this Court pays no attention to the evidentiary assessments of other judges arising from similar cases and why the outcomes of related refugee cases are given no weight in later cases.
>
> In my view it was an error for the Officer to have essentially turned over his responsibility to consider the country-condition evidence in favour of the United Kingdom Upper Tribunal and Court of Appeal findings. This concern was previously raised by Justice Michael Kelen in *Pathmanathan v Canada (Citizenship and Immigration)*, 2009 FC 885 at para 43:
>
> > [43] The Court also considers that jurisprudence should not be used as evidence of country conditions. An administrative tribunal's decision is not evidence. It is a judicial or quasi-judicial consideration of evidence produced by witnesses, which witnesses may not be the most authoritative or expert on a particular subject. This in fact turned out to be the case because the High Court of Justice in England subsequently found that the administrative tribunal was not an authoritative statement of the current risk.
>
> It is also noteworthy that Justice Kelen found the undisclosed reliance on jurisprudential authorities to be procedurally unfair.
>
> I am of the view that the Officer placed undue weight on the decisions of the English Courts and, in so doing, he neglected to carry out a reasonable independent assessment of the country-condition evidence concerning the risk faced by returning Tamil males.
>
> [Emphasis added.]

[65] The question being addressed in *Koppalapillai* was the officer's over-reliance on an analysis of country-condition evidence that had been made by another tribunal in an unrelated decision involving different parties. While Justice Barnes' observations are undoubtedly true, I do not take him to have intended to set out an absolute rule that refugee protection decisions

related to family members must always be given no weight, as the PRRA officer in this case appears to have concluded.

[66] As Justice Barnes noted, each decision regarding refugee protection will depend on the evidence before the decision-maker and that decision-maker's assessment of that evidence. Prior decisions therefore cannot bind another officer: *Galamb v Canada (Citizenship and Immigration)*, 2019 FC 580 at para 21.

[67] Nonetheless, this Court has recognized that it is incumbent on an officer to explain why a different result is being reached from earlier decisions based on the same or very similar circumstances, typically with respect to another family member: *Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2007 FC 6 at paras 13-15, 17-19; *Mengesha v Canada (Citizenship and Immigration)*, 2009 FC 431 at para 5; *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at paras 24-27; *Rusznyak v Canada (Citizenship and Immigration)*, 2014 FC 255 at paras 51-57; *Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at paras 11-18.

[68] This obligation implies a requirement to at least consider determinations granting protection to other family members, where those claims are based on the same or similar narratives, submissions and evidence. To the extent that the PRRA officer in the present case concluded that a refugee protection determination related to a family member can never be given any weight, this does not correctly state the law.

[69] In the present case, the PRRA officer noted that they did not have the submissions and evidence filed in support of the parents' and sister's PRRA application. However, the PRRA decision itself sets out elements of the evidence and submissions in sufficient detail to be able to assess that there are both similarities and potential differences in the narratives and evidence, including a statement made by Mr. Fodor's father that was not part of Mr. Fodor's application.

[70] The PRRA officer appears to have decided that he was precluded by jurisprudence of this Court from giving any weight to the parents' and sister's positive PRRA determination. I therefore cannot conclude that their assessment regarding the impact of the decision would have been the same had they reviewed it as potentially probative, even in the absence of the complete submissions and evidence. While the PRRA officer observed that the submissions and evidence in support of the parents' and sister's PRRA application were not before them, this was neither provided as an explanation nor substantiated with reference to the substance of the PRRA determination. I therefore find the observation insufficient to meet the obligation to explain the difference in conclusion.

[71] Given my conclusion that the other issues are determinative of this application, I need not decide whether the PRRA officer's errors on this issue were sufficient to render the decision as a whole unreasonable.

V. Conclusion

[72] The PRRA officer's assessment of whether Mr. Fodor was a Convention refugee was based on a flawed approach to the general evidence regarding the treatment of Roma in Hungary

and the need for personalized evidence of persecution. It was also based on an analysis of the attack suffered by Mr. Fodor and his family that failed to address material evidence regarding the motivation for the attack. The decision was therefore unreasonable. The decision is quashed and Mr. Fodor's PRRA application returned for redetermination by another officer.

[73] Neither party suggested that a question be certified. I agree that no certifiable question arises in the matter. Finally, in the interests of consistency and in accordance with section 4(1) of the *IRPA* and section 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-6279-18

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.
2. The application for judicial review is allowed and Mr. Fodor's Pre-Removal Risk Assessment application is sent back for redetermination by another officer.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6279-18
STYLE OF CAUSE:	MILAN FODOR (AKA GREGO ZSOLT MOLNAR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Cemone Morlese	FOR THE APPLICANT
Jocelyn Espejo-Clarke	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Grice & Associates Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT