

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Judicial review of Canada Border Services Agency (CBSA) officer decision finding applicants ineligible for referral to Immigration and Refugee Board of Canada, Refugee Protection Division (RPD) — Applicants, citizens of Iran, fleeing to Hungary — Hungarian government refusing applicants' claim for recognition as Convention refugees — Recognizing them as persons enjoying "subsidiary protection" — Applicants fleeing to Canada from anti-migrant rhetoric, discrimination — Initiating claim for refugee protection, indicating fear of return to both Iran, Hungary — Claim initially found eligible for referral to RPD under *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), s. 100(1) — However, CBSA officer subsequently finding applicants ineligible pursuant to Act, s. 101(1)(d) as applicants recognized as Convention refugees in Hungary — Applicants seeking reconsideration of that decision, submitting new documentation — Officer concluding applicants ineligible as they were "persons who have been granted protection" — Issue whether officer erring in determining that applicants' subsidiary protection in Hungary rendering them ineligible under Act, s. 101(1)(d) — Officer's conclusion that applicants Convention refugees unreasonable, incorrect — Subsidiary protection not equivalent to being recognized as Convention refugee — Labels adopted, used in foreign domestic law to describe protection cannot be determinative of assessment under s. 101(1)(d) — Whether protections extended by country other than Canada arising as result of state having recognized individual as Convention refugee determinative for purposes of s. 101(1)(d) — S. 101(1)(d) intending to capture whether country's international obligations triggered — Principles of Act neither consistent with, nor advanced through, interpretation of s. 101(1)(d) resulting in excluding from consideration claims by persons who have been refused Convention refugee status in another country but have been granted some other form of protection — To render claim ineligible on basis that some other form of protection granted inconsistent with stated objectives of Act — Parliament adopting language capturing broader class of individuals than "Convention refugees" in other parts of Act — Not doing so in s. 101(1)(d) — Expecting screening officer to engage in detailed consideration of individual's status in country other than Canada inconsistent with straightforward administrative role of screening claims pursuant to s. 101 — This opening door to front-line officers engaging in very analysis that Act mandating RPD to perform — Court unable to conclude herein that term "Convention refugees" can be interpreted as including persons refused Convention refugee status but granted some other form of protection by country other than Canada — This conclusion not contrary to binding case law interpreting s. 101(1)(d) — Application allowed.

AGHAZADEH V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (IMM-1343-18, 2019 FC 99, Gleeson, J., judgment dated January 23, 2019, 21 pp.)