

Federal Court



Cour fédérale

Date: 20191030

Docket: IMM-806-19

Citation: 2019 FC 1358

Ottawa, Ontario, October 30, 2019

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ANGELA FEJJEL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Angela Fejjel, asks the Court to set aside the decision of the Refugee Protection Division [RPD] rejecting her claim for refugee protection. The RPD identified the determinative issues to be Ms. Fejjel's identity as a Roma and her credibility. It found that she was not credible and that she had failed to establish on the balance of probabilities that she is of Roma ethnicity. For the following reasons, I find that the decision of the RPD on these determinative issues to be

reasonable and justified based on the record before it. Accordingly, this application must be dismissed.

[2] Ms. Fejfel is a 25-year-old Hungarian citizen. She alleges that she grew up in a Roma community and experienced discrimination from a young age because of her ethnicity. She says that she had a difficult home life. Her father physically and psychologically abused her, her mother, and her brother. Her parents divorced when she was eight or nine years old. Her mother later met another man, who also became abusive.

[3] She says that to avoid the abuse she received at home, Ms. Fejfel spent much of her time on the street with her Roma friends. The group of friends often faced discrimination such as being refused entry to movies, arcades, and the disco. Ms. Fejfel began to skip school and was eventually expelled. She claims that she had not missed enough class to justify her expulsion, and that she believes she was expelled for being Roma. Her expulsion placed further strain on her home life.

[4] In 2011, Ms. Fejfel met a Roma man named Richard. They soon formed a relationship and Ms. Fejfel moved in with Richard to avoid her troubled home life. They later moved to Budapest where they struggled to find work.

[5] Richard began to complain about the lack of work in Budapest and decided that Ms. Fejfel should become a prostitute. When she resisted, he became violent and abusive. Shortly thereafter, Richard and a group of men took Ms. Fejfel and three other girls to Vienna to become

prostitutes. Richard threatened that he would hurt Ms. Fejjel's family if she did not comply with his demands.

[6] Ms. Fejjel says that in December 2011, she began working as a prostitute under Richard's control. He and two other men, Roland and Norbert, held her captive when she was not working. Ms. Fejjel attempted to escape on several occasions but was unsuccessful. On each occasion, Richard caught her and physically abused her.

[7] Ms. Fejjel eventually met Szilvia, another prostitute, who offered to help her escape. In the weeks after they met, Szilvia renewed Ms. Fejjel's passport and arranged for her to travel to Canada. Ms. Fejjel escaped out of a window one night while Richard was distracted. She arrived in Canada in November 2012.

[8] With the help of a lawyer, she submitted a claim for refugee protection which was received by the Immigration and Refugee Board on December 3, 2012. It included the Personal Information Form [PIF] and a 38-paragraph narrative under the heading "Basis of Fear." Her counsel's covering letter states: "We are filing the PIF with a draft narrative at this time." At the end of the narrative, Ms. Fejjel signed her name under a passage that reads:

This narrative has been read to me in Hungarian and I agree with its content. I hope I have not omitted anything. If I have, because it is hard to recall everything in such a short time, and I will advise the board.

[9] Neither the PIF nor the narrative mentioned that Ms. Fejjel is Roma.

[10] On July 16, 2018, 10 days prior to the RPD hearing and with the help of new counsel, Ms. Fejfel submitted an amended and updated narrative in which she notified the RPD of her Roma status. Specifically in the new narrative, she writes:

I lived in the Numbered Streets Roma ghetto of Miskolc. My mother is Hungarian and my father is half Roma. This was enough for us to be identified as Roma by white Hungarians, and to live the Roma Experience in Hungary.

[11] The RPD found that due to concerns about Ms. Fejfel's credibility, she had not established that she was Roma or that she had been forced into prostitution.

[12] With respect to Ms. Fejfel's claim that she is Roma, the RPD first noted that she never raised her Roma ethnicity in her initial PIF, even though the PIF prompted her to indicate her nationality, ethnicity, or tribe. Ms. Fejfel had also signed the PIF to confirm that it was complete, true, and correct. The RPD found that if Ms. Fejfel had suffered due to her Roma ethnicity, she would have included that information in her initial PIF. Consequently, the RPD afforded the updated narrative little weight.

[13] Second, the RPD found that Ms. Fejfel could not verbalize how others would identify her as Roma. The RPD noted that her friends were Roma and that she would sometimes wear jewellery and do her hair like them, but also that she is also light-skinned, does not have a Roma name, and her family does not follow Roma traditions.

[14] Third, the RPD found that there was no evidence that Ms. Fejfel lived in a Roma ghetto. The RPD noted that Ms. Fejfel's mother lived in housing not meant for Roma. The RPD also

noted that Ms. Fejjel was given an opportunity to submit a letter from her mother indicating that her brother was evicted for being Roma, but was unable to provide the letter and she failed to explain why.

[15] Fourth, the RPD found that Ms. Fejjel did not submit any documentary evidence of her Roma identity or that she went to a Roma school.

[16] With respect to Ms. Fejjel's claim that she was forced into prostitution, the RPD noted several inconsistencies in her evidence. The RPD noted that in her original and updated narratives, Ms. Fejjel provided two different last names - Nemeth and Horvath - for Richard, the man she says forced her into prostitution. The RPD did not accept her explanation that Richard's middle name is Nemeth because it would be unusual to include someone's middle name as an identifier and not their last name.

[17] The RPD also found contradictions between Ms. Fejjel's testimony at the hearing and her initial PIF. Ms. Fejjel testified that she did not know Szilvia's last name, but in her initial PIF she had indicated that Szilvia's last name was Horvath, the same family name she gave for Richard. The RPD noted that this was particularly striking, as Ms. Fejjel had identified other mistakes in the narrative in her updated version, but had not identified Szilvia's last name as a mistake.

[18] Additionally, the RPD noted that Ms. Fejjel incorrectly testified that one of her "captors" other than Richard was named Robert. She had indicated in her original PIF and narrative that

the man's name was Roland. When corrected, she stated that she remembered incorrectly. The RPD found that this mistake affected Ms. Fejjel's credibility as she had lived with Roland for months and would not likely forget his name.

[19] Taken cumulatively, the RPD drew a negative inference from these errors and found that Ms. Fejjel had not established that Richard, Roland, or Szilvia existed or that Richard had forced her into prostitution.

[20] The RPD further found that Ms. Fejjel gave evolving testimony that negatively affected her credibility. Ms. Fejjel testified that Szilvia helped her renew her passport, though never mentioned this in her original narrative. She also wrote on her refugee claim that Richard had taken her documentation, but later testified that she provided Szilvia with her old passport in order to get it renewed, explaining that Richard must have missed it when he took her documents.

[21] The RPD also found that Ms. Fejjel gave inconsistent information about her inability to find work in Budapest, first stating that it was due to a lack of education, but then later claiming in her updated narrative that it was due to discrimination. The RPD found that if she had suffered discrimination, she would have mentioned it in her first PIF.

[22] Finally, the RPD noted that Ms. Fejjel had provided a psychological report diagnosing her with PTSD and anxiety stemming from her experiences. The RPD afforded the report some weight but found that it could not cure the deficiencies in Ms. Fejjel's testimony. The RPD also

noted that the report appeared to have been made for the purpose of the hearing and that it should therefore be viewed cautiously without corroborating evidence. The RPD concluded that, though the diagnosis may be correct, the reasons behind it might be different from those alleged by Ms. Fejjel.

[23] Ms. Fejjel states that the RPD's decision gives rise to two issues:

1. Did the RPD err in its assessment of her identity as a Roma?
2. Did the RPD err in finding that she was not trafficked into prostitution?

[24] Ms. Fejjel makes several submissions regarding the finding that she was not Roma.

[25] She first says that the RPD unreasonably discounted her Roma identity because she did not raise it in her initial PIF. She submits that this was a plausibility finding, as the RPD found that if Ms. Fejjel were actually Roma, she would have raised it in her PIF. Citing *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, Ms. Fejjel submits that plausibility findings can only be made in the clearest of cases where "the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant."

[26] Ms. Fejjel submits that even though she was represented by counsel, noted by the RPD to be experienced, it was not outside the realm of possibility to omit her identity as a basis for her claim because counsel may not have been alive to the issue. She notes that her counsel missed several other mistakes in the claim forms, and that her narrative was only in "draft" form. She

also submits that her ordeal as a prostitute was more immediately on her mind when she submitted her claim; that she felt guilty about her past; and that a 19-year-old with no high school diploma would not likely be able to explain how her Roma past factored into her refugee claim.

[27] Ms. Fejjel further submits that the RPD had a duty to identify all the facts that form the basis of their conclusion when it bases non-credibility findings on a perceived implausibility in the claimant's testimony: *Leung v Canada (Minister of Employment and Immigration)*, (1994), 81 FTR 303, [1994] FCJ No 774 (QL). She states that the RPD did not question her in detail about how she drafted her narrative or her interactions with her previous counsel, so the Member based their decision on how her counsel would normally have behaved, not all of the relevant facts.

[28] Ms. Fejjel also submits that the RPD based its rejection of her identity on a finding that she "could not verbalize how she would be identified as Roma." She states that this finding is unsupported because she gave several examples, all of which the RPD dismissed without clear reasons. Ms. Fejjel argues that the RPD erred by seemingly finding that dark skin and a Roma surname are necessary for an individual to be Roma.

[29] Additionally, Ms. Fejjel submits that it was unreasonable for the RPD to focus on a lack of documentation proving her identity. She states that she could not have obtained documents while she was being held captive in Austria and that she only stated she might be able to get a

letter from her mother. She further states that she gave consistent testimony about her Roma background, to which the RPD gave no weight.

[30] I agree with the submissions of the Respondent that the finding of the RPD, on the record, was reasonable. The delay in raising her Roma status, the lack of corroborating evidence, and Ms. Fejjel's difficulty explaining how others would identify her as Roma provided the RPD with sufficient reason to find that Ms. Fejjel had not established her Roma status.

[31] While Ms. Fejjel's current counsel argues that the RPD's conclusion amounts to a plausibility finding that is unwarranted in the circumstances, I am not persuaded. As the RPD noted, Ms. Fejjel was represented by "very experienced immigration counsel" who should have been aware of how Roma status relates to a refugee claim. Additionally, I note that Ms. Fejjel submitted her initial PIF in 2012 and retained new counsel for her claim in 2015, but it was not until 2018, when she retained her third lawyer, that Ms. Fejjel raised her Roma status. It was reasonable for the RPD to expect that in the intervening six years, either she or one of her lawyers would raise her Roma status, especially when she indicated in her original narrative that she would advise the Board if she unintentionally omitted any information. Given the delay in raising her Roma identity, it was reasonable for the RPD to afford to the updated narrative little weight.

[32] The same reasoning applies to Ms. Fejjel's submission that her initial narrative was in "draft" form. That it may have been in draft form does not entail that the RPD cannot have any suspicions when a completely new ground is raised six years later.

[33] The RPD also did not err in finding that Ms. Fejjel could not verbalize how others would identify her as Roma. When the question was first put to her in the hearing, Ms. Fejjel responded “I do not know.” It was only after she was asked a second time that Ms. Fejjel responded with the following:

When I was still living there I kept some traditions, namely there [sic] in my hair in buns and with golden necklace and golden earrings so I looked like more. So, I looked more like a Roma person and also, I usually kept company with other Roma people and that is that is [sic] how other people identify us as Roma often, that we stay together.

[34] Given that none of the factors mentioned are immutable characteristics, it was reasonable for the RPD to conclude that she was not clearly identifiable as Roma.

[35] Finally, it was reasonable for the RPD to conclude that a lack of corroborating evidence weakened Ms. Fejjel’s assertion that she is Roma. Her counsel submits that Ms. Fejjel could not have provided corroborating evidence as she was being held captive in Austria and travelled directly to Canada. However, this argument ignores that Ms. Fejjel has had six years since arriving in Canada to obtain some form of document corroborating her Roma ethnicity. Additionally, the RPD gave her an opportunity to obtain a letter from her mother after the hearing, which she did not do.

[36] I also note that in her reply submissions, Ms. Fejjel refers to document HUN105180.E as evidence that her address in Miskolc was part of a Roma ghetto. This contradicts the RPD’s finding that there is no evidence she lived in a Roma ghetto. However, I do not find that overlooking this document makes the RPD’s decision unreasonable. The document indicates

that Ms. Fejjel's stated address was part of a Roma ghetto, but as noted above, the RPD had concerns about her credibility. Having identified several other concerns with Ms. Fejjel's assertion that she is Roma, it was reasonable for the RPD to require corroborating evidence and to draw a negative inference when that evidence was not provided.

[37] Ms. Fejjel also makes several submissions regarding the finding that she was not forced into prostitution.

[38] First, Ms. Fejjel submits that it was unreasonable for the RPD to reject reasonable explanations for minor inconsistencies as well as documentary evidence without justification. She submits that the Hungarian version of her narrative did not provide a last name for Szilvia, but the RPD would not accept that the English translation could have been an error. For example, she notes that the RPD member stated the following at the hearing: "well, obviously they wouldn't put something in, a last name that wasn't elsewhere."

[39] Ms. Fejjel further submits that when the RPD member asked her if the PIF had been read back to her, she was unaware that the RPD member was also referring to the updated narrative. She also states that while she found one error in the translation, it does not mean that she reviewed the entire narrative for errors, as the RPD suggests.

[40] Additionally, Ms. Fejjel explains that she combined "Roland" and "Norbert" into "Robert" at the hearing because she was nervous.

[41] Ms. Fejjel submits that the RPD was overzealous in placing weight on other inconsistencies as well. In her initial PIF, she stated that she had trouble finding work because of her lack of education, while on her updated PIF she stated it was due to discrimination. Ms. Fejjel submits this is not an inconsistency because her lack of education is a result of discrimination. She also submits that it was not an inconsistency when she failed on one occasion to mention that Szilvia had helped her renew her passport because she had already mentioned that previously in the hearing.

[42] Given what the RPD identified as discrepancies, Ms. Fejjel argues that it unreasonably expected her to include every detail in her application. She notes that the Federal Court has viewed such expectations negatively: *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paras 18-19.

[43] Ms. Fejjel says the RPD committed additional errors in its reasoning concerning her passport. The RPD found that she gave evolving testimony, but she submits that Richard's lack of knowledge of her passport was consistent with it being hidden in the lining of her purse where he could not find it. She adds that she indicated that Richard had taken any document she did not submit to the RPD, which is inconsistent with the RPD's finding that Richard took "all of her documents".

[44] Finally, Ms. Fejjel submits that the RPD erred in discounting Dr. Pitiakoudis's psychological assessment. She submits that the RPD did not provide adequate reasons for

rejecting it and that it was unreasonable for the RPD to conclude that the diagnosis may be correct but the reasons behind the diagnosis may not be what Ms. Fejfel asserts.

[45] In my view, it was reasonable for the RPD to conclude that Ms. Fejfel's allegations of being forced into prostitution were not credible. As Justice Noël stated in *Exantus v Canada (Minister of Citizenship and Immigration)*, 2015 FC 39 at para 26, the RPD properly "explained why it made an adverse finding against the applicant by pointing out omissions, contradictions and implausibilities that go to the heart of her refugee protection claim."

[46] First, the RPD's assessment of the inconsistencies among Richard, Szilvia, and Roland's names was reasonable. The RPD explained how it identified the inconsistencies, why it drew negative inferences from each inconsistency, and - where Ms. Fejfel provided an explanation for an inconsistency - the RPD explained why it did not accept that explanation.

[47] Ms. Fejfel takes issue with some of the RPD's findings, but I am not persuaded by her arguments. It was reasonable for the RPD to find that referring to Richard by his first and middle name as opposed to his first and last name was "unusual." It was also reasonable to expect Ms. Fejfel to identify Szilvia's last name in the original PIF when the evidence indicated that she had read the document. Finally, I agree with the Respondent that Ms. Fejfel's explanation for why she referred to Roland as Robert does not assist her as she did not provide this explanation to the RPD. In the hearing, she could not provide an explanation for this mistake other than that she likely remembered incorrectly.

[48] Second, it was reasonable for the RPD to draw a negative inference from the inconsistent reasons Ms. Fejjel provided for struggling to find work in Budapest. While Ms. Fejjel's counsel has suggested that Ms. Fejjel's lack of education is connected to her Roma status, I agree with the Respondent's submission that this connection was not provided in the updated narrative. In her PIF, she attributes her difficulty to her lack of education, while in her updated narrative, she refers only to discrimination. These are inconsistent and the RPD did not err by drawing a negative inference from that inconsistency.

[49] Third, the RPD's assessment of Dr. Pitiakoudis's psychological report was reasonable. Having found problems with the facts underlying the report, including the fact that the Applicant did not appear to receive any psychological treatment prior to the hearing, it was open to the RPD to discount it on the basis that "opinion evidence is only as valid as the truth of the facts on which it is based." Thus, I see no error in the RPD's conclusion that the report "cannot attest to the credibility of the risk to the claimant."

[50] Fourth, the RPD's assessment of the evidence concerning Ms. Fejjel's passport was reasonable. Ms. Fejjel contends that the RPD erred by expecting her to mention that Szilvia had renewed her passport when she had already mentioned it previously in her testimony. However, I note that in the portion of the testimony where Ms. Fejjel failed to mention the passport, the RPD was asking her to provide an exhaustive list of the ways Szilvia helped her.

[51] For example, the RPD asked Ms. Fejjel to state the various ways in which Szilvia helped her. Ms. Fejjel mentioned how Szilvia planned her escape, bought her plane ticket, and

organized her bus - but failed to mention the passport. The RPD immediately asked if Szilvia had done anything other than those three things, and Ms. Fejjel said no. At that point, the RPD brought up that Ms. Fejjel failed to mention the passport, to which she replied that she did not know she had to repeat what she had already said. While Ms. Fejjel should not necessarily have been expected to mention the passport when first asked how Szilvia helped her, it was reasonable to expect her to raise it when asked if Szilvia had done anything other than make a plan and buy the tickets. The failure to do so gave the RPD a valid reason to view Ms. Fejjel's statements with suspicion.

[52] The RPD had other valid reasons to doubt Ms. Fejjel's story about her passport. The RPD noted that Ms. Fejjel's initial PIF and narrative did not state that Szilvia renewed her passport. Ms. Fejjel explained that she was not asked about it at the time, but having mentioned several other ways in which Szilvia helped her, it was not unreasonable for the RPD to expect the passport to be mentioned.

[53] Ms. Fejjel makes the additional point that her explanation for how she hid her passport from Richard was not evolving testimony. I agree, but find that the RPD did not commit a significant error in viewing the testimony suspiciously, as it had identified other problems in her evidence about the passport and more generally about being forced into prostitution.

[54] In conclusion, The RPD reasonably identified numerous inconsistencies and omissions in Ms. Fejjel's evidence that provided good reason to make a negative credibility finding, both with respect to her ethnic identity and her claim to have been forced into prostitution. The decision

rendered exhibits justification, transparency and intelligibility and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. It is reasonable and cannot be upset.

No question was proposed for certification, and there is none.

JUDGMENT in IMM-806-19

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

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-806-19

STYLE OF CAUSE: ANGELA FEJJEL v THE MINISTER OF CITIZENSHIP
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