

Federal Court



Cour fédérale

Date: 20130620

Docket: IMM-8624-12

Citation: 2013 FC 694

Toronto, Ontario, June 20, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**RICHARD FAZEKAS
EVA FAZEKAS
RICHARD FAZEKAS (Junior)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application is allowed.

[2] The applicant family members are citizens of Hungary and are of Roma ethnicity. In their PIF and before the Board they recounted a life of discrimination and persecutory acts in their home country. They fled to Canada because they fear racist skinheads.

[3] The Board did not make any adverse credibility findings nor did it find that the applicants would not face persecution if returned to Hungary. The determinative issue was state protection.

[4] The only reference to credibility is the following: “The Panel found the claimant’s responses regarding the effectiveness of state protection were not persuasive, since they were not credible and were largely unsubstantiated and were not consistent with the documentary evidence.” In short, the Board accepted the applicants’ evidence, other than their evidence that state protection in Hungary was not effective.

[5] The Board’s finding was that “the claimant has not provided the requisite clear and convincing evidence that, on a balance of probabilities, state protection in Hungary is inadequate.”

The evidence on which the Board reached that conclusion is stated by it as follows:

The claimant testified that they went to the police to report one incident involving his wife which occurred on June 15, 2008. There were no other incidents reported to police.

...

The claimant only made the one report to the police, he made no other. He didn’t follow up if he wasn’t satisfied with the results of the investigation, nor did he follow up with the Minorities Ombudsman’s Office or the Independent Police complaints Board.

[6] Despite counsel’s admirable efforts to “thread the needle” and explain how this is consistent with the record, it is clear to me that the Board was quite simply in error in its characterization of the evidence.

[7] The evidence of the applicants was as follows. Ms. Fazekas was violently assaulted by three skinheads on June 15, 2008. The police were called but arrived after the thugs had left. The police

called an ambulance for Ms. Fazekas and the next day, June 16, 2008, Ms. Fazekas went to the police station to make a formal complaint. About one week after the report, Ms. Fazekas testified that she had tried to follow up by phone but was told that “they are not supposed to inform us about the stage of the investigation.” She further testified that “I asked them what if I go in person and he or she told me that he or she cannot help me regarding this problem but I can try.” Some time in late 2009, the applicants found a note in their mailbox that read “dirty Gypsies, all of your family are going to die.” They took this note to the police station to report it and at the same time they asked about the June 2008 complaint. In response to their attempt to report the death threat, Ms. Fazekas testified that “I was crying and Richard started to tell him what happened, he did not listen to us, he looked at that piece of paper, he did not even take it from us, he interrupted Richard while he was telling him about what happened and he told us to stay calm and go back home, probably someone was trying to make a joke and go back if something serious happens.”

[8] In short, they made two reports to the police, one of which was accepted and one of which was not, and they did follow up on the first complaint without success, although they did not go to the Minorities Ombudsman’s Office or the Independent Police Complaints Board. The Board noted their explanation for not doing so: “[H]e didn’t know what the Ombudsman’s office or Police Complaints were.” Can one be faulted for not following up in such circumstances?

[9] The applicants’ evidence on state protection that was found by the Board not to be credible was that as Roma there was no effective state protection from skinheads. The Board reviews the documentary evidence and notes that it reveals widespread discrimination against and persecution of Roma, including by the police. It further notes that “Hungary has launched a number of new

initiatives” and that “the documentary evidence does not indicate whether or not these measures are successful at the operational level” which is the real test. The Board’s conclusion after reviewing the documentary evidence is it “suggests that, although not perfect, there is adequate state protection in Hungary for Roma” [emphasis added]. The decision is replete with statements about the “serious efforts” Hungary is taking to protect its citizens and the “measures to implement the standards that are mandated as a member of the European Union” but there is little reference to the effectiveness of those measures.

[10] Frankly, the Board’s examination of the documentary evidence cannot be said to be “inconsistent” with the evidence of the applicants, rather it is consistent with their evidence. The failures they experienced may be local failures, as was submitted by the Minister, but the evidence clearly establishes that there are such local failures. As such, their evidence is substantiated by the documentary evidence.

[11] Given the Board’s errors regarding the reporting and the efforts made by these applicants to report and follow up with the police, and its view that the documentary evidence merely “suggests” that there is adequate state protection, the decision is unreasonable and must be set aside.

[12] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the decision of the Immigration and Refugee Protection Board of Canada, Refugee Protection Division dated August 3, 2012 is set aside, and the application for protection is to be re-determined by a differently constituted Panel.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8624-12

STYLE OF CAUSE: RICHARD FAZEKAS ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 18, 2013

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

DATED: June 20, 2013

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