Federal Court  Cour fédérale

Date: 20140326

Docket: IMM-10212-12

Citation: 2014 FC 292

Toronto, Ontario, March 26, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

DARIUSZ GLOWACKI
DANUTA ALDONA WALTER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

> "In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process:" *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

[1] The decision under review is not intelligible and must be set aside as unreasonable.

[2] Dariusz Glowacki, and his wife, Danuta Aldona Malter are citizens of Poland and are of Romani ethnicity. The Refugee Protection Division of the Immigration and Refugee Board of Canada denied their claims for refugee protection on the basis that they had not rebutted the presumption of state protection in Poland.

[3] The Board held that the Applicants had failed to show that they had taken all reasonable steps in the circumstances to seek protection because they only approached the police once, following the rape of Ms. Walter, but made no attempts to contact authorities in any other instances of mistreatment.

[4] However, Mr. Glowacki testified that he approached the police on one other occasion – when someone threw a stone through the window of his house – but although the police arrived when called, they refused to take his report. According to Mr. Glowacki, it was this incident that led him to not trust that the police would assist him. That was his explanation to the Board when questioned why, when his house was fire-bombed a month later, he did not call the police.

[5] With respect to these events, the Board states:

> I asked the Claimant whether he called the police and fire department to report the incident. He testified that he did not. I asked him why not, and he testified that he did not trust the police. I asked why he did not trust the police, and he said that he once called the police when someone threw a stone into his apartment; the police asked who the perpetrator was and when he could not tell them who threw the stone, they dropped his complaint. That might well be the case, but he did not mention this incidence in his PIF. Thus I am not satisfied by his explanation and reason for not reporting the potential fire-bombing incident to the police. (emphasis added)

[6] The Applicants submit that the Board, in apparently rejecting Mr. Glowacki's testimony about the stone throwing incident, made a veiled credibility finding in vague and general terms rather that in clear and unmistakable terms as required by *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (FCA) [*Hilo*]. The Respondent submits that the Board made a clear credibility finding: It did not believe that the stone throwing incident and reporting took place.

[7] Frankly, it is impossible to know what the Board found. On one hand, it states that the Applicants made only one attempt to seek police assistance and that was after the rape incident. This strongly suggests that the Board did not believe that the Applicants contacted the police after the stone throwing incident. On the other hand, and with respect to the testimony of Mr. Glowacki, the Board states it "might well be the case" that the police dropped the investigation when the Applicants could not provide any identifying information. This suggests that it accepts that the incident occurred. If it was accepted, then the Board erred in basing its finding of a failure to seek state protection merely on there being only one attempt to contact the police, as there were at least two. Alternatively, if the Board did not accept this evidence, what is one to make of its observation that "this might well be the case?"

[8] Additionally, it seems that the Board accepted the Applicants testimony about the fire-bombing incident, yet later it refers to it as "the potential fire-bombing incident." This makes it impossible to know whether the Board did or did not accept this evidence. As in *Hilo*, if a credibility finding was made by the Board, it had a duty to "give its reasons for casting doubt upon the [Applicants'] credibility in clear and unmistakeable terms." If the Board relied on a credibility

finding to conclude that the police had only been contacted once, it was an error—the credibility finding was not explicit enough. If it did not rely on a credibility finding, the conclusion that the police were only contacted once was an error of fact.

[9] It is clear that the Board member concluded that the Applicants only made one attempt to contact the police. What is not clear is how it arrived at that conclusion. It is not possible for the Court to know the basis for the result reached by the Board in light of these deficiencies and therefore the decision must be set aside.

[10] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the Applicants' claims for protection are to be determined by a differently constituted Board, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10212-12
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