

Federal Court



Cour fédérale

**Date: 20140604**

**Docket: IMM-2254-13**

**Citation: 2014 FC 542**

**Ottawa, Ontario, June 4, 2014**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**TAMAS FARKAS  
TAMASNE FARKAS  
TAMAS FARKAS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This judicial review is of a decision by the Refugee Protection Division [RPD] rejecting the Applicants' (Hungarian Romas) claim for refugee protection. The substantive issues are the right of the Applicants to file post-hearing evidence and the obligation of the RPD to confront the Applicants with credibility concerns arising from that evidence.

## II. Background

[2] The Applicants' case was heard on October 15, 2012. They submitted that, as Roma, they had faced discrimination and harassment in Hungary due to their Roma ethnicity. In particular, the husband and wife had been threatened and assaulted by the Hungarian Guards, a self-appointed right-wing vigilante group. The police responded to both specific incidents relied on by the Applicants to support their refugee claim.

[3] The RPD Member initially concluded that he had concerns about the Applicants' account that they had sought police assistance in the absence of any corroborating police reports. The concerns regarding the Applicants' narrative were put to them at the hearing.

[4] On November 14 the Applicants' then counsel applied to submit post-hearing evidence limited to "corroborative police and/or medical documents" in response to concerns expressed by the Member at the hearing regarding the Applicants' credibility in relation to key events.

[5] The *Refugee Protection Division Rules*, SOR/2012-256, permit such post-hearing evidence under Rule 43.

43. (1) A party who wants to provide a document as evidence after a hearing but before a decision takes effect must make an application to the Division.

(2) The party must attach a copy of the document to the application that must be made

43. (1) La partie qui souhaite transmettre à la Section après l'audience, mais avant qu'une décision prenne effet, un document à admettre en preuve, lui présente une demande à cet effet.

(2) La partie joint une copie du document à la demande, faite conformément à la règle 50,

in accordance with rule 50, but the party is not required to give evidence in an affidavit or statutory declaration.      mais elle n'est pas tenue d'y joindre un affidavit ou une déclaration solennelle.

(3) In deciding the application, the Division must consider any relevant factors, including      (3) Pour statuer sur la demande, la Section prend en considération tout élément pertinent, notamment :

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| <p>(a) the document's relevance and probative value;</p> <p>(b) any new evidence the document brings to the proceedings; and</p> <p>(c) whether the party, with reasonable effort, could have provided the document as required by rule 34.</p> | <p>a) la pertinence et la valeur probante du document;</p> <p>b) toute nouvelle preuve que le document apporte aux procédures;</p> <p>c) la possibilité qu'aurait eue la partie, en faisant des efforts raisonnables, de transmettre le document aux termes de la règle 34.</p> |
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[6] The RPD, having determined that such evidence was crucial to its decision, accepted the Applicants' request.

[7] The Applicants did not provide the type of documents for which post-hearing submission was allowed. The evidence provided was a second letter from the National Advocacy Association of the Ethnic Minorities [NAA] and a letter from a lawyer.

[8] Both pieces of post-hearing evidence raise more questions than they answer. Both are replete with and to some extent repeat inconsistencies already identified by the RPD.

[9] The RPD concluded that, due to credibility concerns, the Applicants had not established past persecution with credible and trustworthy evidence. Further, the RPD found that the Applicants had not shown that state protection was not available to them.

### III. Analysis

[10] The sole issue in this judicial review is whether the RPD erred in its assessment of the post-hearing evidence principally by failing to provide the Applicants with an opportunity to respond to any adverse inference drawn by the RPD from it.

[11] The issue is one of procedural fairness and is subject to the correctness standard of review.

[12] Firstly, as held in *Aguilera v Canada (Minister of Citizenship and Immigration)*, 2008 FC 507, 167 ACWS (3d) 967, the Immigration and Refugee Board has no duty to accept post-hearing evidence or to allow submissions thereon. The leave to file post-hearing evidence granted in this case was an exceptional circumstance which the Applicants squandered.

[13] Secondly, it is important to note that the post-hearing documents actually submitted do not fit within the type for which the RPD had given leave to file, that is to say “corroborative police and/or medical documents”. As the post-hearing evidence did not fall within the scope of the RPD’s grant of permission, the RPD would have been justified rejecting it. However, having accepted the evidence, the RPD had to deal with that evidence properly which it did. Having said

that, the Applicants' failure to respond to the RPD's concerns in their post-hearing evidence is good grounds upon which to draw an adverse inference.

[14] Thirdly, it is difficult to find any breach of procedural fairness where the Applicants were confronted with the RPD's credibility concerns at the hearing and given an opportunity post-hearing to address those concerns. The Applicants used this opportunity to submit non-responsive contradictory evidence for which they ask for yet another opportunity to address concerns about the post-hearing evidence.

[15] The Applicants were accorded more opportunity to address the weaknesses in their case than they had a right to claim. They can hardly complain once again when they failed to respond to the RPD's concerns.

[16] In any event, the post-hearing evidence did not assist the Applicants and the RPD's conclusions in this case were reasonable.

[17] Therefore, there is no breach of procedural fairness notwithstanding the efforts of the Applicants' new counsel to persuade the Court otherwise.

#### IV. Conclusion

[18] Therefore, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Michael L. Phelan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2254-13

**STYLE OF CAUSE:** TAMAS FARKAS, TAMASNE FARKAS, TAMAS FARKAS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 28, 2014

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** JUNE 4, 2014

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