

Federal Court



Cour fédérale

**Date: 20180313**

**Docket: IMM-2105-17**

**Citation: 2018 FC 289**

**Ottawa, Ontario, March 13, 2018**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**ISTVAN FAZEKAS, ISTVANNE FAZEKAS,  
ISTVAN FAZEKAS AND KRYSZTIAN  
FAZEKAS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants are a Roma family from Hungary who argue that the pre-removal risk assessment [PRRA] findings by the PRRA Officer [the Officer] of March 30, 2017 that they are not entitled to refugee protection under either ss. 96 or 97 of the *Immigration and Refugee Protection Act* [IRPA] are unreasonable. For the reasons that follow, this judicial review is allowed as the Officer failed to properly assess state protection.

I. Background

[2] The Applicants, Istvan Fazekas, Istvanne Fazekas, and two of their children, Istvan Fazekas Jr. (aged 20) and Krysztian Fazekas (aged 14) fled Hungary in 2011 and submitted a refugee claim upon arrival in Canada.

[3] In their hearing before the Refugee Protection Division [RPD] they were represented by a lawyer who has since been found guilty of professional misconduct for the handling of Roma cases. The RPD refused their claim and in 2013 they were returned to Hungary.

[4] Upon return to Hungary, the Applicants allege a number of incidents of violence.

[5] On New Year's Eve 2015 at a nightclub the adult Applicants' sons Istvan and Richard were shot at and Istvan was wounded. The Applicants claim that the nightclub security, the ambulance crew, and hospital staff all refused to call the police. When Istvan and Richard went to the police directly, the police refused to take their reports seriously and refused to open an investigation.

[6] In August 2016, the Applicants who were living in Miskolc claim that they were subject to forced eviction.

[7] In February 2017, the adult Applicants' son Richard and his cousin were attacked by a group of skinheads. The cousin's throat was slit and Richard was injured. An ambulance was called but refused to come.

[8] The Applicants claim that if they are forced to return to Hungary they are at risk of persecution because of their Roma ethnicity.

## II. PRRA Decision

[9] The Officer reviewed the Applicants' claims as determined by the RPD. The RPD concluded that the Applicants had not proven that state protection was denied to them in Hungary, and the RPD further noted that Hungary was taking steps to improve the situation. Leave to appeal to the Federal Court from the RPD decision was denied.

[10] The PRRA Officer concluded that the main incident which occurred since consideration of their claims by the RPD was the nightclub incident. The Officer found that the nightclub event did not provide a "nexus to the Convention or consolidated grounds" because it was an "act of random violence resulting in the injury." The Officer noted a lack of objective evidence to support a contention that the brothers were targeted because of their Roma ethnicity.

[11] On state protection, the Officer concluded that the nightclub event did not rebut the presumption of state protection because the police were involved in the aftermath of the event.

[12] The Officer noted the generalized evidence regarding the situation for Roma in Hungary, particularly regarding forced evictions. However, the Officer concluded that the generalized information did not reflect the circumstances raised by the Applicants regarding their eviction notice. The Officer noted that the eviction notice did not establish a nexus to the Convention grounds because there was no evidence that the Applicants were being evicted because of their Roma ethnicity.

[13] The Officer concluded that the Applicants were not Convention refugees under s.96 or persons in need of protection under s.97.

### III. Issue

[14] The Applicants raise a number of issues but the Officer's state protection analysis is dispositive of this judicial review.

### IV. Standard of Review

[15] Whether the Officer adopted the correct test for state protection is reviewed on a correctness standard (*Mata v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 1007 at para 10 [*Mata*]).

[16] The assessment of the adequacy of state protection is reviewed on a reasonableness standard (*G.S. v Canada (Citizenship and Immigration)*, 2017 FC 599 at para 12).

[17] The standard of review for the issue of nexus to s.96 grounds is reasonableness (*Sabogal Riveros v Canada (Citizenship and Immigration)*, 2012 FC 547 at para 27).

V. Analysis

A. *Preliminary Issue*

[18] After the hearing of this judicial review, the Applicant, Istvan Fazekas Jr., filed a Notice of Discontinuance dated February 6, 2017 with respect to his claim only. The claims of the other Applicants are not impacted by this Discontinuance.

[19] Although one of the incidents of alleged persecution relied upon by the Applicants specifically references Istvan Fazekas Jr., that incident is also relied upon to establish objective evidence regarding state protection for the other Applicants, who are “similarly situated” to Istvan Fazekas Jr. (*Mata*, at para 17).

[20] As such, the Notice of Discontinuance filed by Istvan Fazekas Jr. does not impact my decision on this application as it relates to the other Applicants.

B. *State Protection*

[21] The Applicants argue that the Officer failed to consider their personal evidence and the documentary evidence on their attempts to have the police launch an investigation into the attacks on their sons. They argue that although the Officer noted that “the police were involved”

in the nightclub event, the Officer failed to assess if the police involvement amounts to adequate state protection.

[22] Here, the Officer did not identify in the reasons that he was considering whether state protection was adequate in Hungary. The Officer comments that the police were “involved” after the nightclub incident, and therefore, that state protection was adequate. However, the test is not whether the state is “involved” after an incident. The test is whether the state’s protection is adequate. Here, there is no indication that the Officer made this inquiry.

[23] In *Boakye v Canada (Citizenship and Immigration)*, 2015 FC 1394, the Court reiterated that a failure to identify the proper test for state protection is an error:

[14] In this case the PRRA Officer did not explicitly state what test for state protection was being applied...

[15] In this case, there is nothing in the PRRA Officer’s decision to suggest that he understood that operational adequacy of state protection is the correct test for establishing state protection under ss 96 and 97 of the IRPA. Nor is there any suggestion that he applied the operational adequacy test to the evidence before him.

[...]

[19] Whether the Officer identified and adopted the proper test for state protection is reviewed on the correctness standard. The jurisprudence has established a clear test for state protection and it is not open to the Officer to apply a different test. In my view, the PRRA Officer failed to identify and adopt the operational adequacy test in his state protection analysis. On this ground alone I would grant the application (citations omitted).

[20] However, even if the Officer had intended to adopt the correct test, he erred in applying it by accepting evidence that demonstrated the abuses suffered in Ghana by persons with mental illness and disability, and failing to address evidence that suggested a lack of operational adequacy in the protection of the mentally ill in Ghana.

[24] This case is analogous. Here, the Officer did not identify the proper state protection test of operational adequacy (*Vidak v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 976 at para 8). Consequently, the Officer accepted evidence that did not demonstrate that state protection was adequate, which also impacted his consideration of the nexus issue.

[25] Regarding state protection, although police reports were completed on the nightclub incident, the Officer failed to address the Applicants' claims that no actual investigation was conducted. Mere involvement of the police, as demonstrated in the evidence accepted by the Officer, does not demonstrate adequate state protection.

[26] Further, based upon the conclusions reached by the Officer on the nightclub incident, the Officer doubted the veracity of the eviction notice offered by the Applicants. In light of the country condition evidence regarding evictions in Miskolc, this evidence needed to be assessed. However, because of the deficient state protection analysis, the Officer failed to properly assess this evidence which may have been important to the nexus claim.

[27] The Officer erred in the state protection analysis and this error impacted his consideration of the nexus issue. Accordingly the decision is unreasonable.

**JUDGMENT in IMM-2105-17**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted. The decision of the PRRA Officer as it relates to Istvan Fazekas Sr., Istvanne Fazekas, and Krysztian Fazekas is set aside and the matter is remitted for redetermination by a different officer;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Ann Marie McDonald"

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Judge



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

**DOCKET:** IMM-2105-17

**STYLE OF CAUSE:** ISTVAN FAZEKAS, ISTVANNE FAZEKAS, ISTVAN FAZEKAS AND KRYSZTIAN FAZEKAS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 25, 2018

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** MARCH 13, 2018

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