

Federal Court



Cour fédérale

Date: 20140304

Docket: IMM-597-13

Citation: 2014 FC 210

Ottawa, Ontario, March 4, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KALMAN LASZLO FARKAS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Ken Atkinson, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicant's claim for refugee protection, concluding that he was not a convention refugee or person in need of protection under sections 96 and 97 of the Act.

I. Issue

[2] The issue raised in the present application is as follows:

- a. Were the Board's decisions with respect to credibility and state protection unreasonable?

II. Background

[3] The Applicant is a 54-year-old Hungarian citizen of Roma ethnicity. He is divorced and has two adult daughters.

[4] The Applicant alleges that he was the victim of verbal and physical abuse on several occasions when he lived in Hungary. In October, 2000, he was attacked and verbally abused by four of his coworkers. His supervisor and the police would not assist him. In the summer of 2003, he was verbally and physically abused by a group of six skinheads while waiting for a bus. After a wait of several hours the police took his complaint, but later closed it on the grounds that there was insufficient evidence. In December, 2005, he and his wife were verbally abused while at a restaurant. In November, 2008, he required surgery after being left unconscious with a broken leg as a result of being attacked by a group of people. On December 24, 2010, he was chased by a group of about seven people. They uttered racial slurs and slapped him before he escaped.

[5] On January 23, 2011, the Applicant arrived in Canada and made a claim for refugee protection. The Applicant's daughter's husband was shot and killed a week later.

[6] The Board found that the Applicant would not have a well-founded fear of persecution should he be returned to Hungary. The Board found state protection to be adequate and identified concerns regarding the credibility of the Applicant.

[7] With regard to credibility, the Board notes several areas of concern. First, the Applicant testified that when he reported the October, 2000, incident to the police, they told him they could not assist him because the incident occurred at his workplace. However, in his Personal Information Form [PIF] narrative, the Applicant stated that the police refused to take his complaint. When confronted with this inconsistency, the Applicant stated that he worded the issue differently. The Board was not convinced by this explanation.

[8] With regard to the incident which occurred in the summer of 2003, the Applicant was unable to obtain a copy of the complaint because he did not retain the letter after moving residences in 2006. Likewise, the Applicant testified that the police refused his request for a report regarding the 2008 incident and the hospital department where he was treated had been terminated. Consequently, he was unable to obtain either a police or medical report documenting this attack. The Board rejected this explanation, as documentary evidence indicates that all Hungarians have a legal right to medical and police reports.

[9] The Board also notes that in his PIF narrative, the Applicant stated that his completed Port of Entry notes were never read back to him before he signed them, but that he later testified before the Board that they were. When asked to explain this inconsistency, he stated that he misunderstood

the question and had not slept well at the time and as a consequence, did not correct this error. The Board rejected this explanation.

[10] The Board also makes note of other incidences, but does not indicate how they relate to any assessment of credibility.

[11] With regard to state protection, the Board relies on documentary evidence which shows that a democratic Hungary is attempting to protect Roma people from persecution.

[12] The Board notes that while the Applicant approached the police on three occasions, the police fulfilled their duty with respect to the Applicant's complaints each time.

[13] The Board also notes that the Applicant complained of difficulty finding employment from September, 2009, until January, 2011. However, the Board did not find that the Applicant faced employment discrimination, as the economic situation in Hungary has been poor in recent years, and the Applicant was employed continuously between 1980 and 2009. Likewise, the Board found that there was no persuasive evidence that the Applicant had inadequate housing or medical care because of his ethnicity.

III. Standard of Review

[14] The standard of review is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 62; *Hippolyte v Canada (Minister of Citizenship and Immigration)*, 2011 FC 82, at paras 22-24).

IV. Analysis

[15] I find that the Board was unreasonable in its approach to the issues of both credibility and state protection.

[16] Notwithstanding the lack of corroborative evidence concerning the 2008 incident reported by the Applicant, and the inconsistency between the Applicant's PIF narrative and Port of Entry notes, the Board's overall findings on credibility lack intelligibility and are not justified.

[17] With respect to the 2008 incident, the Board states at paragraph 19 that "It is therefore difficult to determine exactly how these events occurred." This suggests that the Board does accept that the incidents described by the Applicant occurred, or at least that the 2008 incident occurred, but is uncertain as to the details. At paragraph 23, the Board states "As a result of these contradictions, I find it is not credible that the claimant had a subjective fear when he arrived in Canada." This suggests that the Board does not believe any or some of the incidents as described by the Applicant. However, at paragraph 34, during the state protection analysis, the Board discusses at length, and implicitly accepts, the incidences as described by the Applicant, which only a few paragraphs earlier may have been rejected on credibility grounds.

[18] The decision of Justice Robert Mainville in *Flores v Canada (Minister of Citizenship and Immigration)*, 2010 FC 503, at para 31 is apt:

In other words, save in exceptional cases, the analysis of the availability of state protection should not be carried out without first establishing the existence of a subjective fear of persecution. The panel responsible for questions of fact should therefore analyze the

issue of the subjective fear of persecution, or, in other words, should make a finding as to the refugee claimant's credibility and the plausibility of his or her account, before addressing the objective fear component which includes an analysis of the availability of state protection.

[19] I find the Board did not make a clear finding with respect to the Applicant's credibility.

[20] While the Board had some basis to find as it did with respect to the 2003 and 2008 incidents, I do not understand how the Board could have concluded that the Applicant was assisted by the police with respect to the 2000 incident. It is unreasonable for the Board to conclude that state protection is adequate when the police told the Applicant that being beaten at work is a workplace issue. The Board's unreasonable analysis of this incident is compounded by the Board's failure to clearly articulate its credibility findings.

[21] Further, the Board's analysis of the objective country condition information regarding the adequacy of state protection is insufficient. As the Applicant rightly describes, the Board either mis-cites or does not read substantial evidence in one case, cites out-dated evidence in another, and cites a large number of generic, large-scale initiatives of the Hungarian government that are wholly-unrelated to the problem of racialized violence faced by the Applicant. Indeed, one key body relied upon by the Board, at paragraph 35 of the Decision, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, ceased to exist in 2012.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is referred back to a differently constituted Board for reconsideration;
2. No question is to be certified.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-597-13

STYLE OF CAUSE: Farkas v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 3, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Justice Manson

DATED: March 4, 2014

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