Federal Court  Cour fédérale

Date: 20120321

Docket: IMM-1961-11

Citation: 2012 FC 334

Ottawa, Ontario, March 21, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JANOSNE REZMUVES
JANOS RESMUVES
HELENA KOVACS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants, a mother and her two minor children, are Roma and all citizens of Hungary. They ask the Court to set aside the decision of the Refugee Protection Division of the Immigration and Refugee Board that found that they were neither Convention refugees nor persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Board found that the determinative issues were credibility, discrimination versus persecution, and state protection. I find that there are a number of errors in the Board's analysis of each of these issues which lead to the conclusion that the decision is unreliable and thus unreasonable. The applicants' claims for protection must be re-examined.

[3] In its analysis of credibility, the applicants submit that the Board erroneously stated that the minor incidents occurring between 2001 and 2008 to which Ms. Rezmuves testified were not in her Personal Information Form (PIF), when, in fact, she did mention "small incidents" occurring in this period in her PIF. They are correct.

[4] It is impossible to determine whether the Board, in part, based its credibility finding on this discrepancy, or whether the Board accepted the evidence as credible but merely found that it did not amount to persecution. The Board's analysis of this testimony, as set out below, is not intelligible:

> The Board concludes that the incidents described by the [applicant] between 2001 and 2008 were an attempt to embellish her claim. These incidents are not described in the PIF and we believe that such a glaring space of time in which no specific harm is indicated, is indicative of the fact that for the most part the [applicant] living in Budapest was suffering harm which would not be considered persecution…

[5] The Board's credibility determination was partly based on its finding that Ms. Rezmuves' PIF omitted mention of a complaint being made to the Roma Foundation concerning the attack

on her grandmother's house in 1999 which she testified to at the hearing. In fact, the PIF does reference contacting the Roma Foundation.

[6] Another basis for the credibility finding was the discrepancy noted by the Board between the testimony of Ms. Rezmuves at the hearing and a statement contained in her Claim for Refugee Protection in Canada form completed one day after her arrival in Canada. At the hearing the Board asked Ms. Rezmuves if she had ever been beaten by the police and she responded that she had in 1996. She had previously testified to this incident in which her mother was seriously injured and said that she did not suffer major injuries, the police "just hit me on the head a few times." The Board then challenged her evidence as follows:

> MEMBER: Why does it say in your CIC notes that you were beaten in front of your children when in 96 your children were not born?
>
> CLAIMANT: I cannot remember that I said anything like that.
>
> MEMBER: I will read it to you.
>
> "I'm afraid for my life due to my ethnicity as a Roma. Because of my ethnicity I was beaten by the police at home, in public, and in front of my children".
>
> CLAIMANT: Well, I am assuming that was the interpretation mistake, or error, because in front of my children, never, I do not remember saying it.

[7] The Board describes this as an "important" discrepancy and says: "We find the claimant's explanation of poor translation to be lacking in credibility." As a consequence, the Board concludes that "it" - by which I presume is meant the statement in her application for protection - was an attempt by Ms. Rezmuves to embellish her claim.

[8] The Board provides no explanation or reason why it finds the allegation of poor translation not credible. This is the only reference to her having been assaulted by the police in the presence of her children. It is not referenced in her PIF or her testimony and she quite adamantly denies it ever having occurred when challenged at the hearing. She was beaten by persons who were not police officers in the presence of her children. On these facts, it is unreasonable for the Board to identify the inconsistency and reject her explanation without providing any reason for so doing. Further, the attempt to "embellish her claim," if there was one was not made in her sworn evidence before the Board which was consistent with her testimony that the statement in the claim was made in error.

[9] The principal applicant submits that the Board failed to properly assess whether the years of discrimination experienced by the applicants amounted to persecution. I agree that the Board's reasoning on this issue is not intelligible and its conclusion not reasonable. The Board reviewed the facts of the three incidents alleged to have occurred since 2001. While the Board stated that the incident on the trolley in January 2008 was not tantamount to persecution, the Board's comments regarding the other two incidents only related to the failure of the applicants to go to the police. This is not the same as finding that the incidents did not amount to persecution.

[10] Furthermore, two of the three incidents listed by the Board in this section, if believed, arguably amount to persecution and not mere discrimination: namely the beating of Ms.

Rezmuves's brother and other family members at the outdoor celebration in August 2008, and the brutal beating of her husband by police in December 2008.

[11] The Board's state protection analysis is also problematic. The Board reviews evidence related to arbitrary detention in Hungary, the structure of the Hungarian police forces, police corruption, the Roma Police Association and its protection of Roma members of the police and military, other related police associations in Hungary and Europe for Roma military and police officers, the Independent Expert, and the body responsible for the monitoring of the implementation of legislation dealing with anti-discrimination. However, the Board fails to focus on the relevant question: Is there adequate state protection available for Roma in Hungary?

[12] Further, I agree with the applicants that the Board failed to review or acknowledge the recent evidence which the applicants describe in their memorandum as follows: "there has been a severe upswing of extremism directed against Roma and further that there is extensive evidence of the government's shortcomings in actually preventing violence against Roma (for example the European Roma Rights Centre report and a recent Amnesty International report, both lengthy and detailed on this very point)."

[13] The failure to address the real issue and examine current evidence on that point must lead to the conclusion that the decision on state protection is unreasonable. It may be that a differently constituted Board, after reviewing all of the relevant evidence, will reach the same result as this Board Member; however, that is the role of the Board and not of this Court.

[14] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed; the decision of the Refugee Protection Division of the Immigration and Refugee Board that found that the applicants were neither Convention refugees nor persons in need of protection is set aside; the applicants' claims for protection are referred to a differently constituted Board for determination; and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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