

Federal Court



Cour fédérale

Date: 20131115

Docket: IMM-8835-12

Citation: 2013 FC 1163

Ottawa, Ontario, November 15, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ZSUZSA ZAGYVA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] I am not persuaded that the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] is unreasonable; accordingly, this application must be dismissed.

[2] The Applicant is an ethnic Hungarian. Her common law partner, Zsolt Buzas, is also Hungarian but he is of Roma ethnicity. Their claims for protection were heard together and a

single decision of the RPD issued dismissing both claims on the basis of credibility and state protection.

[3] Mr. Buzas had a parallel judicial review application of decision under review. His application was dismissed by Justice McVeigh in *Buzas v Canada (Citizenship and Immigration)*, IMM-8836-12 [*Buzas*]. Justice McVeigh found that it was reasonable for the RPD to conclude that Mr. Buzas was not credible, and that there was adequate state protection.

[4] With respect to Ms. Zagyva, the RPD determined that she was not credible for three reasons not explored by Justice McVeigh in *Buzas*.

[5] First, the Applicant testified that she was attacked by Roma men because she was a non-Roma woman in a relationship with a Roma man. She claimed that this was not an isolated incidence of racism but a result of a Roma custom that prohibited mixed race relationships. The RPD found that if this was indeed a Roma custom, it was reasonable to expect that there would be some documentary evidence concerning it. However, it noted that there was no documentary evidence submitted or found in the National Document Package that spoke of any such Roma custom. The RPD concluded, given the absence of any objective evidence in circumstances where it would be expected, that no such custom exists. Accordingly, it found the testimony of the Applicant not to be credible.

[6] Second, the Applicant testified that she received threatening emails from a person named Bela Kovacs, but this was not mentioned in her Personal Information Form [PIF] despite the fact

that her narrative was extremely detailed, and despite the fact that she had linked the swastika put on her door to the sender of the emails. The RPD found that the failure to include this in her PIF in the circumstances, lead to the conclusion that the Applicant's testimony regarding the emails was not credible.

[7] Third, given the lack of credibility in all of the other aspects of Ms. Zagyva and Mr. Buzas' claims, the RPD found that the picture submitted of Ms. Zagyva with the death threat, the picture of a swastika outside of a door, and emails from Bela Kovacs were concocted to bolster the claims.

[8] Credibility findings are subject to the highest degree of deference from a reviewing court and should be overturned only if they were made capriciously or without regard for the evidence: *Odetoyinbo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 501 at para 3.

[9] The RPD did not reach the credibility finding in a capricious manner. It correctly recited the evidence and provided the basis for its conclusion that the testimony was not credible. Its assessment falls fully within the scope set out by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9. There is no basis to say that its finding that the Applicant lacked credibility was not reasonable.

[10] Justice McVeigh in *Buzas* found that the RPD's assessment on state protection was reasonable. Despite the efforts of counsel to persuade me otherwise, I can see no reason to differ from the assessment in *Buzas*. In addition to there being no objective documentary evidence to

suggest that state protection would not be adequate for Ms. Zagya, she made no attempts to contact the police in relation to the threat she received, the hate-motivated vandalism to her house, or the attack. She made no attempt to avail herself of state protection.

[11] No question for certification was proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8835-12

STYLE OF CAUSE: ZSUZSA ZAGYVA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 13, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** ZINN, J.

DATED: November 15, 2013

APPEARANCES:

Georgina Murphy FOR THE APPLICANT

Alex C. Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

OTIS & KORMAN FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

WILLIAM F. PENTNEY FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario