

Federal Court



Cour fédérale

Date: 20141212

Docket: IMM-4111-13

Citation: 2014 FC 1197

Ottawa, Ontario, December 12, 2014

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

RUSLAN ISANGULOV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Refugee Protection Division of the Immigration and Refugee Board (the Board) rejected Mr. Isangulov's request for protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). He now applies for judicial review of that decision pursuant to subsection 72(1) of the *IRPA*. He also seeks costs.

I. Background

[2] The applicant is a citizen of Russia who came to Canada on March 15, 2013. He immediately sought refugee protection, claiming that a neo-fascist group called Russian National Unity (RNU) had been persecuting him because he is a member of the Tatar ethnic minority and his father is a human rights activist. Most particularly, he alleged before the Board that:

- a. Neo-fascists have twice tried to kill his father for his human rights work, and they have targeted his family. On August 12, 2011, men connected to a well-known neo-fascist leader tried to drug and abduct the applicant in order to put pressure on his father.
- b. On December 10, 2011, neo-fascists staked out his apartment. The applicant later witnessed two of those neo-fascists flee from the scene of a stabbing. While assisting the victim, he was struck from behind and required surgery for life-threatening wounds. His cousin, whom he lived with, was also assaulted for trying to help the victim. The investigating police officer persuaded the applicant to recant and called his assailants “patriots of the Russian Federation”.
- c. On December 18, 2012, neo-fascists murdered his cousin, mistakenly believing that they were killing the applicant. The police did not seriously investigate.

II. Decision under Review

[3] By reasons dated May 30, 2013, the Board rejected the applicant’s claim.

[4] The Board doubted that the applicant had the required subjective fear: The applicant vacationed in Europe for 9 days in September, 2012, but did not ask for refugee protection; and even after allegedly experiencing an attempted abduction and assault by men who knew where he lived, he stayed at the same address until December, 2012. Further, the applicant's oral account of the assault in December, 2011 differed from that in his narrative, and the Board did not accept his excuse that he was nervous. The Board therefore decided that the applicant was not credible.

[5] The Board also considered the documentary evidence insufficient to independently establish the applicant's claims. The applicant had filed a copy of a police report to prove that the police took no action in respect of his complaint, but the Board decided that it actually proved the opposite: it said that the complaint merited investigation. In any event, it was of limited value since it did not identify the complaint to which it referred. The applicant also submitted a copy of the complaint, but the Board did not consider it legitimate. In the complaint the applicant only gave a physical description of his assailants, whereas he said he knew two of them by name in his basis of claim narrative. The Board did not think it likely that the applicant would omit that information in his complaint and so gave the document little weight. An eviction order dated several months later was connected to the complaint only by the applicant's testimony. Since the applicant was not credible, it was irrelevant.

[6] The Board also gave little weight to medical documents indicating that the applicant suffered a "massive tram [*sic*] to the head", since they did not identify the cause of the injury.

For the same reason, the Board did not consider the death certificate of the applicant's cousin to be significant.

[7] The Board allowed the applicant to submit documents after the hearing about his father and the RNU. The applicant took that opportunity, but the Board rejected some of the documents for being improperly translated or outside the scope of the authorized late production. The Board did accept, however, that the applicant's father was an ombudsman in 2013 and that the RNU existed. This did not prove that the events described by the applicant actually happened though, so the Board rejected this aspect of his claim.

[8] Consequently, all that remained was the claim based on the applicant's Tatar ethnicity. The Board found that nothing in the National Documentation Package suggested that Tatar people were at risk of persecution, and according to the 2004 Response to Information Request about the RNU, that organization actually "promotes the position of Russians, Tatars and Kazakhs while being hostile towards immigrants and people from the Caucasus". Further, racist violence was declining in Russia. Although it still resulted in 19 murders and 177 people beaten or wounded in 2012, these statistics reflected violence directed to every minority group in a population of over 142 million. The RPD was therefore not convinced that there was more than a mere possibility that the applicant would be persecuted for his ethnicity in the future.

[9] The Board therefore rejected the applicant's claim as a Convention refugee under section 96 of the *IRPA*. As the burden to prove risk under section 97(1) would be heavier, the Board rejected that claim without further analysis.

III. Issues

[10] The applicant identified three issues in his memorandum of fact and law:

- a. The Board Member erred in law in the interpretation and application of the definition of a Convention Refugee;
- b. The Board Member erred in law in that he ignored, misconstrued, and/or misapplied the evidence; and
- c. The Board Member erred in law when he based his decision on erroneous findings of fact which he made in a perverse or capricious manner, or which he made without regard to the totality of the evidence before him.

IV. Analysis

A. *What is the Standard of Review?*

[11] The applicant primarily challenges the Board's findings of fact and treatment of the evidence, for which the standard of review is reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 46, [2009] 1 SCR 339; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190). It is also the standard of review of the Board's understanding of the grounds of the claim, as that is a question of mixed fact and law (*Dunsmuir* at para 53).

[12] Therefore, the Board's decision should not be disturbed if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine

whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

B. *Were the RPD’s Factual Findings Unreasonable?*

[13] The applicant challenges the Board’s credibility findings. With respect to these, Justice Mary Gleason observed that “the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanour and is alive to all the factual nuances and contradictions in the evidence” (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319, at para 42). Still, they are not immune from review, and intervention may be justified where the Board misapprehends the evidence (*Madelat v Canada (Minister of Employment and Immigration)* [1991] FCJ No 49 at para 1 (CA); *Owusu-Ansah v Canada (Minister of Employment and Immigration)* [1989] FCJ No 442 at paras 11-12 (CA)).

[14] There are, in this case, errors in respect of a critical piece of evidence which, in my view renders the decision unreasonable. The Board found the applicant not credible because he did not report the cause of his injuries upon admission to the hospital. The medical report, in fact, explains the cause of the injury. The report notes that the applicant was admitted to hospital “... after suffering bodily injuries and brain haematoma as a consequence of being hit by a hard object to the right part of the base of the skull during a fight”. The medical report was considered with the applicant’s testimony.

[15] As in this case the assessment of credibility is often based on multiple findings. In the usual course, an unreasonable finding in respect of one element of the evidence would not render a decision unreasonable. The Board rejected the claim on the basis that “these events did not occur”. Here, given the importance of the event in the applicant’s narrative, and the repercussions of the finding that this event did not occur on the Board’s assessment of the balance of his evidence, the decision cannot be sustained.

JUDGMENT

THIS COURT'S JUDGMENT is that:

- 1) The application for judicial review is granted;
- 2) There is no question for certification; and
- 3) No order as to costs. The requirements of Rule 22 have not been met.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4111-13

STYLE OF CAUSE: RUSLAN ISANGULOV v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS: RENNIE J.

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