

Federal Court



Cour fédérale

Date: 20190507

Docket: IMM-4893-18

Citation: 2019 FC 598

Toronto, Ontario, May 7, 2019

PRESENT: Mr. Justice Campbell

BETWEEN:

MUKHAILO DUCHKO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a 58-year old Jewish man from Sambor in western Ukraine, who claims protection pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) for fear of Ukrainian nationalists should he be required to return to the Ukraine. By a decision dated September 8, 2018 (Decision), the Refugee Protection Division (RPD) dismissed the Applicant's claim.

[2] The following passages from the Decision establish the approach that the RPD adopted in rejecting the Applicant's claim:

The main issue is the objective country conditions that the claimant would face today as an ethnic Jewish man who has not lived in the Ukraine since November 2008. Counsel submitted in oral and written submissions that there were high levels of anti-Jewish incidents in the country and that there was a dramatic rise in anti-Semitic events overall and no part of Ukraine was safe making a Kiev IFA untenable.

I considered the present and prospective risk for the claimant who has not lived in the Ukraine for almost a decade. There is conflicting information on country conditions when considering the more recent documentary evidence. Counsel submitted that his package on documentary evidence in Exhibit 3 demonstrates a surge in anti-Semitic violence. This is contradicted by Exhibit 7, the U.S. Department of State's Religious Freedom Report for 2017, which relies on information provided by the National Minority Rights Monitoring Group (NMRMG), an NGO supported by the Euro-Jewish Congress and the Association of Jewish Organizations and Communities.

[...]

The main source of counsel's contention that there is a surge of anti-Semitic violence in Ukraine is the Israeli government's Ministry for Diaspora Affairs, which reported that anti-Semitic violence doubled from 2016 to 2017 and surpassed the tally for all the incidents reported throughout the region combined. The Ministry estimates there were more than 130 incidents of anti-Semitism including violent assaults. The World Jewish Congress reports that the rate of anti-Semitic incidents appears to be escalating. Its figure of 130 incidents are based on those of the Israeli Ministry.

However, the totals by Israel's Ministry for Diaspora Affairs are disputed in a report by a researcher of anti-Semitism from the Ukraine that said the Israeli report was "flawed and amateurish." The researcher, Vyacheslav Likhachov, who is affiliated with the Va'ad Association of Jewish Communities and Organizations of Ukraine, suggested that the [Ministry] report authors merely summed up the incidents they found reported online, in a "blatant lack of professionalism and violation of all standards of hate crimes documentation, which are guided by professional monitoring groups, both in Ukraine and in the world," he said.

The panel prefers the evidence provided by local and regional Jewish minority rights monitoring groups cited by the U.S. Department of State Religious Freedom Report for 2017 including the NMRMG, an NGO supported by the Euro-Jewish Congress and the Association of Jewish Organizations and Communities and a researcher with the Va'ad Association of Jewish Communities and Organizations of Ukraine. I find the hate crimes documentation provided by these groups was more thorough and rigorous for the reasons outlined above by the Va'ad Association of Jewish Communities and Organizations. I conclude that there are isolated incidents of anti-Semitic violence in the Ukraine coupled with more documented occurrences of anti-Semitic vandalism.

[Emphasis added]

(Decision, paras 6, 7, 9, 10, 11)

[3] As a result, the RPD provided the following conclusion:

I conclude the evidence is sufficient to support my conclusion that although there are unfortunate incidents of hateful anti-Semitic incidents in the Ukraine it is not so pervasive that it would amount to persecution for the claimant before me.

I do not find the claimant's fear of persecution is objectively well-founded. [...]

(Decision, paras 12 and 13)

[4] A central feature of the decision under review is the RPD's selection and application of the evidence presented to determine the Applicant's claim for protection. Counsel for the Applicant argues that the RPD's failure to consider the totality of the evidence demonstrating the rise of anti-Semitism in Ukraine is a reviewable error (*Cepeda-Gutierrez v Canada (MCI)*, 1998 CarswellNat 1981 at para 17). Counsel for the Applicant further argues the process whereby the RPD concluded that one source is more rigorous than another is unknown and, therefore, does

not meet the decision-making standards of transparency and intelligibility. I agree with both arguments.

[5] The issue before the RPD was whether the Applicant produced sufficient credible evidence to establish that there is more than a mere possibility that he will suffer persecution if he returns to the Ukraine. In my view, the RPD's acceptance of the researcher's contested opinion without careful scrutiny and verification resulted in an unfounded limiting of the body of evidence to establish the Applicant's claim. I find this limiting renders the RPD's decision unreasonable.

JUDGMENT IN IMM-4893-18

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is reserved back for determination by a different decision maker.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4893-18

STYLE OF CAUSE: MUKHAILO DUCHKO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: CAMPBELL J.

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