

# [Gatso v. Canada \(Minister of Citizenship and Immigration\)](#)

Federal Court Judgments

Federal Court of Canada - Trial Division

Montréal, Québec

Teitelbaum J.

Heard: December 2, 1999.

Judgment: January 14, 2000.

Court File No. IMM-6043-98

[2000] F.C.J. No. 50 | [\[2000\] A.C.F. no 50](#) | [94 A.C.W.S. \(3d\) 545](#)

Between Vladimir [Gatso](#), applicant, and The Minister of Citizenship and Immigration, respondent

(58 paras.)

## Case Summary

---

**Aliens and immigration — Admission, refugees — Credible basis for claim — Grounds, well-founded fear of persecution — Appeals or judicial review, scope of review.**

Application by [Gatso](#) for judicial review of a decision that he was not a Convention refugee. [Gatso](#) was a Ukrainian citizen. His cousin's husband was killed under what [Gatso](#) felt were suspicious circumstances. He believed that the police were responsible for the killing. When he complained to the police, he claimed that he was beaten and warned not to meddle. He also claimed to have escaped from abduction and torture. He obtained a visa in July 1997 and departed in November. The Convention Refugee Determination Division of the Immigration and Refugee Board found [Gatso](#)'s story lacking in credibility, and concluded that he did not have subjective grounds for his alleged fear of persecution.

HELD: Application dismissed.

The Board determined after a thorough review of the evidence that [Gatso](#)'s evidence lacked credibility and referred to several specific implausibilities. For example, [Gatso](#) had little reason to believe that the individual was in fact assassinated, and the information which he apparently possessed was of little moment. Furthermore, the delay between the time [Gatso](#) obtained the visa and his eventual departure undermined any subjective fear. The Board's conclusions were reasonable and no basis for interference with its decision was shown.

## Statutes, Regulations and Rules Cited:

---

Immigration Act, R.S.C. 1985, c. I-2, ss. 69.1, 82.1(1).

## Counsel

---

Alain Joffe, for the applicant. Edith Savard, for the respondent.

---

## TEITELBAUM J. (Reasons for Order)

1 This is an application pursuant to section 82.1(1) of the Immigration Act, [R.S.C. 1985, c. I-2](#) (Act) for judicial

## Gatso v. Canada (Minister of Citizenship and Immigration)

review of a decision of a member of the Convention Refugee Determination Division of the Immigration and Refugee Board (Refugee Division) dated October 23, 1998, wherein the applicant was found not to be a Convention refugee.

2 The applicant seeks an order remitting the matter back for reconsideration before a newly constituted panel of the Refugee Division.

## FACTS

3 The applicant, a Ukrainian citizen, was born in Donetsk on June 3, 1951.

4 The applicant's grandfather arrived in Donetsk before the beginning of the revolution in 1917.

5 In 1931, the applicant's grandfather was shot for being a stranger by the People's Committee of Internal Affairs.

6 The applicant's father and his two sisters were placed in separate boarding schools and did not see each other. It was at this time that the name Gatso originated in the applicant's family.

7 The applicant studied in Kiev from 1968 to 1972 and, after having been an instructor, decided to open his own food business. He was successful with his business and lived comfortably.

8 The applicant's problems commenced after the assassination of his cousin's husband, Eugène Karmasin. Through his work as a customs officer, Mr. Karmasin discovered that fraud was being committed at the expense of the State by the acts of high level bureaucrats who owned firms which were plotting methods for precious goods to be transported out of the country.

9 Mr. Karmasin decided to report these activities to the police who then told him that he would be summoned.

10 On May 1, 1996, at approximately 10:50 p.m., the applicant received a telephone call from Mr. Karmasin, who sounded very nervous, requesting that he come and pick him up from the police station.

11 The applicant, sensing that something serious had occurred, drove to the police station as quickly as possible.

12 Upon arrival at the police station, the applicant was told by police officers, who were intoxicated, that Mr. Karmasin was not there. They stated that he had not been arrested and his name was not in the register.

13 For the next three days, the applicant searched unsuccessfully for Mr. Karmasin.

14 On May 4, 1996, the applicant was told by the parents of Mr. Karmasin that their son had been assassinated at approximately 11:00 p.m. on May 1, 1996.

15 Although he knew it would not be an easy task, the applicant vowed he would prove that it was the police who had shot Mr. Karmasin.

16 On September 15, 1996, the applicant went to the prosecutor in Donetsk, confided in him what he knew, and handed over all the documents which Mr. Karmasin had entrusted to him for safekeeping before he was assassinated.

17 These documents contained the evidence to prove that fraud was being committed by high level bureaucrats in the Ukraine.

18 That evening, as the applicant was entering his home, he was attacked by three strangers who beat him and left him unconscious under nearby shrubs. Upon regaining consciousness, the applicant returned to his home.

## Gatso v. Canada (Minister of Citizenship and Immigration)

**19** Two days later, the applicant went to complain about this incident at the regional police station. Again, he was beaten and accused of meddling in a "nasty" business.

**20** He was threatened that he would be killed if he continued his search into the circumstances surrounding the death of Mr. Karmasin.

**21** In October 1996, the applicant confided in a friend who suggested that he publicly denounce the criminal activities of the bureaucrats and the police. The applicant took this advice and spoke of the police as people who were tied to large organizations which were stealing from the country. In addition, he recounted his suspicions regarding the death of Mr. Karmasin.

**22** The following day, October 17, 1996, the applicant was driving home in his car when he was hit by a truck. The applicant quickly fled after the collision and was driven to the hospital where his life was saved.

**23** Upon his return home from the hospital, the applicant states he was scared for his life and therefore abstained from going out and unplugged his telephone.

**24** In the spring of 1997, the applicant went to Kiev to address his concerns to the authorities, and he was picked up in the downtown area and driven to a garage where he was tied up and beaten. He was urinated upon and tortured using an electric shock. He was then asked whether he had other compromising documents.

**25** During the last three days he was held, the applicant was ignored. On the eighth day, when it was thought he was near death, the applicant escaped.

**26** The applicant decided to leave his country as soon as possible. While waiting for a visa, he stayed with friends. On July 16, 1997, the applicant obtained an American visa.

**27** On November 30, 1997, the applicant left his country after having been hiding in the village of Borovenki in the Lougansk region.

**28** The applicant arrived in Canada on December 1, 1997 and immediately claimed refugee status.

## THE DECISION OF THE BOARD

**29** The essential paragraphs of the Board's decision are the following:

Après une évaluation détaillée de la preuve, nous concluons qu'elle n'est pas suffisante pour établir que le revendicateur a une crainte bien fondée de persécution en raison de sa nationalité ou de son appartenance à un groupe social. Il n'y a pas, selon notre appréciation de toute la preuve, une "possibilité raisonnable" que le revendicateur soit persécuté advenant son retour dans son pays de nationalité, et ce, pour les raisons suivantes:

Le tribunal ne croit pas en les allégations du revendicateur.

Le revendicateur aurait voulu découvrir les circonstances de la mort du mari d'une cousine qui lui aurait confié des documents compromettants par des gens liés à de grandes firmes et à la police.

Le revendicateur aurait reçu un appel téléphonique de ce dernier qui se disait être à un poste de police. C'est tout ce que le revendicateur sait. Il n'a aucune preuve pour confirmer ses allégations que plusieurs policiers nient; une parole contre plusieurs.

Si le revendicateur a eu entre les mains des documents compromettants, il les aurait remis au procureur.

Il est invraisemblable que le revendicateur parle publiquement de ses soupçons et accuse la police où on l'aurait déjà battu et torturé quand c'était sa parole contre celle de plusieurs policiers.

## Gatso v. Canada (Minister of Citizenship and Immigration)

Au printemps 1997, il serait allé à Kiev pour s'adresser aux autorités supérieures. On l'aurait arrêté en pleine rue, enlevé et torturé pour savoir s'il avait d'autres documents, ce qui est invraisemblable aux yeux du tribunal, pour lui qui aurait été se confier au procureur de Donetsk et lui remettre les documents. Il sait peu de choses pour mériter une telle attention.

[...] Le revendicateur a reçu son visa américain le 17 juillet 1997 et n'a quitté son pays que le 30 novembre 1997. Un délai qui mine sa crainte subjective et sa crédibilité.

L'histoire du revendicateur n'étant pas crédible, le tribunal conclut qu'il ne s'est pas déchargé du fardeau de prouver qu'il a une crainte bien fondée de persécution en Ukraine de fait de l'un ou l'autre des motifs de la définition de "réfugié au sens de la Convention".

## ISSUES

**30** The issues raised in this application are the following:

- (1) Did the Board err in concluding that the applicant lacked credibility?
- (2) Was it reasonable for the Board to conclude that the applicant had failed to discharge his burden of establishing a well-founded fear of persecution?

## SUBMISSIONS OF THE PARTIES

## Applicant's Submissions

**31** The applicant argues that the Board made an error of law in finding that the applicant lacked credibility on the basis that there is no evidence which contradicts his testimony. As authority for the proposition that in the absence of contrary evidence, the Board must accept the testimony of the applicant to be true, the applicant refers to the Federal Court of Appeal decision in *Maldonado v. M.E.I.*, [\[1980\] 2 F.C. 302](#) (F.C.A.).

**32** Secondly, the applicant submits that the Board's conclusion that the applicant's testimony was not believable was purely speculative and not supported by any concrete reasons.

**33** It is submitted that the Board applied a much stricter burden of proof than is required by this Court and referred to the decision in *Chichmanov Yordan Angeulov v. M.E.I.* [\[1992\] F.C.J. 832](#).

## Respondent's Submissions

**34** The respondent submits that the Board is in the best position to assess credibility and that there is no reviewable error in this case which would warrant the intervention of the Court.

**35** The respondent argues that the Board was well within its statutory authority in questioning the plausibility of the applicant's testimony on the grounds of common sense and rationality, and in then drawing conclusions based on these assessments.

**36** Secondly, the respondent argues that the Board makes reference to several specific contradictions in the evidence which led to its finding that the applicant lacked credibility. The onus is therefore on the applicant to refute the Board's conclusions in order to have this Court reverse the decision.

**37** Lastly, the respondent submits that the Board correctly applied the test set out in subsection 69.1 of the Act and found that there was insufficient evidence to establish a well-founded fear of persecution.

## ANALYSIS

## Burden Of Proof

## Gatso v. Canada (Minister of Citizenship and Immigration)

**38** At the outset, the applicant is arguing that the Board erred in law by applying too high a standard of proof on the applicant. In its reasons, the Board states at page 3 that the applicant failed to establish a reasonable possibility that he will be persecuted should he return to his country.

**39** The Board was correct in holding that the applicant must prove, on a balance of probabilities, more than a minimal or mere possibility that he will be persecuted. This requirement was clearly articulated by the Court in *Poniah v. Canada (Minister of Employment and Immigration)* (1993), 13 Imm. L.R. (2d) 241, 245 (F.C.A.).

**40** Therefore, I would disagree with the applicant's first submission that he was held to a stricter standard of proof than has been set in the jurisprudence of this Court. The Board stated, and applied, the correct standard - reasonable possibility.

#### Credibility

**41** Credibility is the core issue in this application. The Board determined, after a thorough review of the evidence, that the applicant's testimony lacked credibility and referred to several specific implausibilities before concluding that there was no credible basis for his claim.

**42** Firstly, the applicant alleges that the police assassinated his cousin's husband, Mr. Karmasin, on the basis that he received a telephone call from Mr. Karmasin who stated that he was at the police station and he sensed that something very serious had occurred.

**43** Apart from this, the applicant had no other reason to believe that Mr. Karmasin was killed by the police. The Board mentions in its reasons that several police officers have stated that the police were not responsible for Mr. Karmasin's death and therefore it was the applicant's word against the word of the police, although the word of the police is not relevant.

**44** Secondly, the Board states at page four of its reasons that it is implausible that the applicant would speak publicly against the police on the subject of his suspicions about the death of Mr. Karmasin after having already been beaten and tortured himself.

**45** Thirdly, the Board found it implausible that the applicant would go to Kiev in the spring of 1997 to present his concerns to the authorities, be arrested in the middle of the street and then tortured in order to determine if he had other compromising documents in his possession.

**46** The Board found it unlikely that the applicant, who confided in the prosecutor in Donetsk and gave him the documents which Mr. Karmasin had left with him, would be subjected to such an arrest and beating. The Board stated that the applicant did not have enough compromising knowledge to merit this much attention.

**47** The Board then turned to the issue of the applicant's voluntary return to Donetsk, where he alleges he was persecuted, and his statement in the answer to question 18 on his FRP that he ran his business in June of 1997.

**48** Finally, the Board refers to the fact that the applicant obtained his American visa on July 18, 1997 and did not leave his country until November 30, 1997. This delay raised doubt in regards to his subjective fear of persecution and caused the Board to further question his credibility.

**49** On this point, the applicant states that he could not leave the Ukraine immediately after he obtained his American visa because the persecution continued and this prevented him from fleeing until November 30, 1997. In the meantime, he states that he hid in the village of Borovenki at his distant parents' home.

**50** The question to be answered is whether the Board's decision is erroneous in law because it misconstrued the evidence or made perverse or capricious findings.

## Gatso v. Canada (Minister of Citizenship and Immigration)

**51** The applicant argues that several of the Board's findings are speculative and based on a lack of appreciation of the evidence. This issue was addressed by Richard J. in *Oduro v. Canada (Minister of Citizenship and Immigration)* [1995] F.C.J. 515 where he discusses the speculative nature of the Board's findings at paragraph 3 in the following terms:

While a careful examination of the evidence before the panel indicates that a number of the contradictions or implausibilities identified were speculative, I am of the opinion that it was reasonable for the panel to conclude as it did and that it did not commit a reviewable error justifying intervention. [...] While I might disagree with some of these reasons, I am not persuaded that they raise grounds justifying the Court's intervention.

**52** Applying this reasoning to the Board's decision and having thoroughly reviewed the evidence which was presented at the hearing, I am satisfied that the Board's conclusions were reasonable even if I myself might not have concluded as did the Board.

**53** There was sufficient evidence in law to support the Board's findings of fact which underlie its conclusion that there exists no credible basis for the applicant's claim. Moreover, the Board specifically discusses the portions of the applicant's evidence which it found were implausible.

**54** Given the well established principle that the Refugee Division is in the best position to evaluate the credibility of an applicant, and given its expertise in assessing whether an applicant has established a reasonable fear of persecution, I do not see any basis for interference by this Court.

**55** As was articulated by the Court of Appeal in *Aguebor v. M.E.I.* (1993), 160 N.R.315 (C.A.F.), intervention by the Court must be limited to instances when the decision of the Board is unreasonable, that is, perverse.

**56** This principle was most recently reaffirmed by Mr. Justice Evans in *Bains v. Canada (Minister of Citizenship and Immigration)* [1999] F.C.J. 317 where he stated at paragraph 22 of his reasons:

Judicial intervention is therefore justifiable only in the most egregious cases. In addition, a tribunal is not required to refer to every piece of evidence before it in order to discharge its statutory duty to give reasons for its decisions.

(Underlining is mine)

**57** There is no material error of law in the decision of the Refugee Division and therefore the application for judicial review is dismissed.

**58** Neither party submitted a question for certification.

TEITELBAUM J.