Date: 19971125

Docket: IMM-243-97

PRESENT: THE HONOURABLE MR. JUSTICE PINARD

BETWEEN:

VLADISLAV AGRANOVSKI,

Applicant,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

O R D E R

The application for judicial review of the decision rendered on December 12, 1996 by the Convention Refugee Determination Division, which found that the applicant is not a Convention refugee, is dismissed.

YVON PINARD

JUDGE

OTTAWA, ONTARIO
November 25, 1997

Certified true translation

Christiane Delon

Date: 19971125

Docket: IMM-243-97

BETWEEN:

VLADISLAV AGRANOVSKI,

Applicant,

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

PINARD J.:

[1] The application for judicial review concerns a decision rendered on December 12, 1996 by the Convention Refugee Determination Division, which found that the applicant is not a Convention refugee as defined in subsection 2(1) of the *Immigration Act*.

[2] The applicant's refugee claim was initially denied by the Refugee Division on September 12, 1995. Further to an application for judicial review of that decision, this Court referred the matter back to the same panel for rehearing, as requested by the applicant, essentially because the panel had failed to provide sufficient reasons for its decision to prefer the

documentary evidence filed by the refugee hearing officer to the applicant's testimony. At the second hearing before the same panel, counsel for the applicant agreed that the transcript of the first hearing would be filed in evidence, which explains the shortness of the second hearing, although the applicant and his mother did testify briefly at that hearing.

[3] As can be seen from the decision to which this application for judicial review relates, the Refugee Division concluded as follows after summarizing the facts:

> [TRANSLATION] After analysing both the documentary and the testimonial evidence, the panel has reached the conclusion that the claimant is not a "Convention refugee" for the following reasons:
>
> Some major implausibilities in the claimant's story lead us to believe that he made all of it up.
>
> 1. The panel finds it implausible that the claimant was dismissed in April 1992 because his employer had just realized he was Russian [goy]. It is not plausible that the employer did not realize this until nine months after hiring the claimant, when some people allegedly beat up the claimant on the street after recognizing from his accent that he was Russian. When asked about this, the claimant did not provide a satisfactory explanation. We therefore do not believe that he was dismissed because he was Russian.
>
> 2. The panel finds it implausible that the claimant does not have clearer knowledge of whether he belonged to a union, given that he also said he complained to the Histadrut union after being dismissed. These contradictory statements do not stand up to analysis.
>
> 3. The panel also finds it implausible that the soldiers gave him permission to leave the country to rest in Cyprus in September or October 1993 even though they had allegedly taken the trouble to imprison him for three days in August 1993 because he had not come when previously summoned. When asked about this, the claimant did not provide a satisfactory explanation. Nor did his mother's testimony shed any credible light on this. Her testimony was motivated by self-interest, and it cannot be sufficient given the claimant's total lack of credibility.
>
> For these reasons, the panel concludes that the claimant is not credible as far as his story as a whole is concerned.

[4] There is no merit in the applicant's main argument that there was a denial of natural justice in his case because the issue of his credibility was not expressly raised again at the second hearing. In my view, the Refugee Division could legitimately consider the transcript of the first hearing to assess the issue of credibility, since that transcript had been filed in evidence before it with the applicant's express consent and since a reading of the transcript shows that the panel did ask the applicant about each implausibility noted in its second decision. Moreover, counsel for the applicant was perfectly at liberty to question the applicant about those implausibilities at the second hearing. Finally, the applicant cannot claim to be surprised by the reasons the Refugee Division gave for its second decision, since what justified this Court in referring the matter back to the same panel was precisely the insufficiency of its reasons concerning his credibility in its first decision.

[5] Moreover, the applicant has not persuaded me that the panel could not reasonably conclude as it did, since its perception that he was not credible effectively amounted to a finding that there was no credible evidence that could justify the refugee claim in question. In this regard, it suffices to recall what MacGuigan J.A. stated in *Sheikh v. Canada*, [1990] 3 F.C. 238, at page 244:

> The concept of "credible evidence" is not , of course, the same as that of the credibility of the applicant, but it is obvious that where the only evidence before a tribunal linking the applicant to his claim is that of the applicant himself (in addition, perhaps, to "country reports" from which nothing about the applicant's claim can be directly deduced), a tribunal's perception that he is not a credible witness effectively amounts to a finding that there is no credible evidence on which the second-level tribunal could allow his claim.

[6] For these reasons, this application must be dismissed.

YVON PINARD
JUDGE

OTTAWA, ONTARIO
November 25, 1997

Certified true translation

Christiane Delon

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT NO.: IMM-243-97

STYLE OF CAUSE: Vladislav Agranovski v. MCI

PLACE OF HEARING:Montréal, Quebec

DATE OF HEARING:November 13, 1997

REASONS FOR ORDER BY:PINARD J.

DATED:NOVEMBER 13, 1997

APPEARANCES:

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