

Date: 20080306

Docket: IMM-2555-07

Citation: 2008 FC 312

Toronto, Ontario, March 6, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

MARIYA RAVLYUK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] In the Decision under review, the Refugee Protection Division (RPD) accepted the Applicant's evidence that she fled the Ukraine as a result of the horrific violence she suffered from her husband. The facts found by the RPD are as follows:

Her husband started physically assaulting her approximately five years into her marriage. One such assault in 1977 resulted in a miscarriage. She was assaulted many times but did not leave her husband due to a sense of shame. Her husband's behaviour worsened and in 1998 he raped her. She approached the head of the village council to ask him to talk to her husband who worked at a co-op owned by the village council. Even after a talk with the village council head, his behaviour remained abusive and in her words "he dragged me around... and smashed some of my teeth" during an assault. In 1999, police were informed for the first time about assault

by him, but police did not provide any protection to her and did not provide any protection to her and did not lay charges because they knew him and there were no witnesses or evidence. She left him to end the abusive relationship at the end of July 2000 after another assault for which she was hospitalized. She arrived in Toronto on October 4, 2001, and claimed refugee protection on April 25, 2006.

(Decision, p. 1)

[2] With respect to the issue of prospective fear of her husband should she return to the Ukraine, the Applicant produced two pieces of evidence. The first is in the form of a letter from her son, the translated version of which states:

I am well and sound. Ihor had flue [sic] some days ago. Situation at home is heated up to the limit. Lesya pesters me with various everyday problems and the dad went beyond all limits. [sic] I do not know how to tell you so you can get it easy but it's better not to know it at all.

He is drunk and irritated all the time. Recently he has had drinking parties at home. Smoke ordour in the bedroom does not go away. Dad is uncontrolled when he recalls you he starts shaking his fists and, on many occasions, he threatened and told about his plan how to do away with you. [sic] But I did not disclose the address and told family members not the third party do so.

Such his behaviour is not a secret to anyone, as well as his constant visits to bars and drink-joints. But this is not all. I found a stimulating device in a glove compartment of the car. And, sadly to say it, I know what it is for. It would be better for you to save your life in Canada, there is no sense to come back

Your son Volodya

(Tribunal Record, p. 108)

The second piece of evidence is the Applicant's testimony in her hearing before the RPD:

Q. And if you were able to get registration, do you think your husband would have any interest in finding you?

- A. Yes, and he is even interested in it right now because for example, last year in March, he came to see my mother. He was shouting to her. He was swearing at her and he wanted her to give him the address where I am now.

(Tribunal Record, p.185)

[3] In reaching its decision, the RPD did not refer to either of the pieces of evidence with respect to prospective fear tendered by the Applicant. Indeed, the RPD made the following statement:

On a balance of probabilities, I do not find that her ex-husband is still actively pursuing her and will locate her and harm her anywhere in Ukraine. I also find on a balance of probabilities, that it is unlikely that her sons would divulge her whereabouts to her ex-husband should she return to Ukraine.

(Decision, pp.4-5)

It is admitted that there is absolutely no evidence on the record to substantiate this finding.

[4] As a result of the obvious fundamental factual error with respect to the Applicant's prospective fear under s.96 and s.97 of the *IRPA*, I find the decision under review is patently unreasonable.

ORDER

Accordingly, I set aside the decision under review and refer the matter back to a differently constituted panel for re-determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2555-07

STYLE OF CAUSE: MARIYA RAVLYUK v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 5, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: March 6, 2008

APPEARANCES:

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JUDY MICHAELY FOR THE RESPONDENT

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