Date: 20080613

Docket: IMM-3520-07

Citation: 2008 FC 739

Ottawa, Ontario, June 13, 2008

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

VLADIMIR IELOVSKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division (the RPD) dated August 1, 2007, in which the applicant was denied the status of a refugee or a "person in need of protection". The applicant is an Israeli citizen who is alleging a fear of persecution based on his political opinions. He had apparently refused to participate in an armed conflict between his country and Lebanon in the summer of 2006 because he considered that war unfair and contrary to the principles of international law. For the following reasons, I am of the view that this application for judicial review must be dismissed.

I. Facts

[2] The applicant was born in Russia in 1983. He later immigrated to Israel and became an Israeli citizen in 1992. On February 11, 2003, he was called to do his military service. Having received training in mechanics, he was posted as a mechanic at an airbase hangar for three years. He was demobilized on February 28, 2006.

[3] In July 2006, a conflict erupted between Israel and Lebanon. As a result, the applicant was ordered to report for duty as a reservist. When he was informed that he would be deployed to Lebanon, he refused to comply. He explained that he disagreed with that war because Israel was targeting Lebanon's civilian infrastructure, resulting in many civilian casualties.

[4] Following his conviction by a military court, he was imprisoned for 28 days. Claiming to be outraged by the horrors committed by Israel and being constantly insulted in prison, he asked his mother to obtain a passport for him. Three days after he was released from prison, he left Israel to claim refugee protection in Canada.

II. Impugned decision

[5] In a short decision of under two pages, the RPD rejected the applicant's refugee claim on the grounds of lack of credibility. First, the panel noted that the applicant had never objected to performing his three years of military service and that he had also admitted at the hearing that he

was not a conscientious objector. The RPD also found that the applicant was not opposed to Israel's military vision since he had not tried to leave Israel at the end of his military service, even though he was well aware that he could be called back as a reservist until the age of 45. Furthermore, the RPD did not believe that the State of Israel was looking for the applicant so it could convict him a second time. Had he really been persecuted by his country's authorities for his refusal to fight in Lebanon, he would not have been issued a passport and allowed to leave the country. Finally, the RPD wrote that being a reservist after completing military service complies with a law of general application and that the applicant's refusal to serve in Lebanon was a breach of that law for which the applicant was convicted.

III. Issues and standard of review

[6] The applicant is questioning the RPD's findings that (1) he cannot be perceived as a conscientious objector; (2) he shares Israel's military vision because he did not try to leave his country at the end of his military service, and (3) he will not be convicted a second time for the same refusal to serve. The first of these issues is a question of mixed law and fact, while the other two are questions of fact. Since the Supreme Court of Canada decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, 64 C.C.E.L. (3d) 1, the standard of review applicable to all these issues is reasonableness. That is, the Court must inquire into the qualities that make the decision reasonable. Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision

falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law (*Dunsmuir*, para. 47).

[7] The applicant is also alleging that the RPD erred in law in finding that he could not have a fear of persecution based on his political opinions because he was not a conscientious objector. In doing so, the RPD allegedly omitted to consider that the applicant was opposing a conflict that violated international law standards and human rights. Although it is a question of law, in my opinion, it should be reviewed on the reasonableness standard, insofar as it does not involve a question of constitutionality or jurisdiction. Far from being a legal question of central importance to the legal system as a whole, it seems to fall instead within the RPD's area of expertise. Therefore, the Court must show the RPD some deference on that question.

[8] Finally, the applicant is claiming that the RPD breached procedural fairness by not allowing him to respond to the argument that the State of Israel could not be looking for him since he was able to leave the country using his passport. It is settled law that the review of such a question does not demand a pragmatic and functional approach. In such a case, the Court must instead ensure that the procedural fairness requirements were met: *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392.

IV. Analysis

[9] Although the RPD could have provided more reasons for its decision, and even though I am prepared to acknowledge that some findings of fact could be quite questionable, I do not believe that this is a case where it would be appropriate to set aside the decision and refer the matter back to the RPD for redetermination by a differently constituted panel. The reason for this is that the applicant did not satisfy me that his fear of persecution should he return to Israel is real and not speculative.

[10] As I have already mentioned in *Lebedev v. Canada (MCI)*, 2007 FC 728, 62 Imm. L.R. (3d) 161, a person who refuses to participate in an armed conflict or military action on grounds that it goes against international law or human rights could, in some cases, be granted refugee status based on his or her political opinions: see also *Zolfagharkhani v. Canada (MCI)*, [1993] 3 F.C. 540, 155 N.R. 311. Again, it must be established with supporting evidence that the international community or at the very least some credible human rights organizations have condemned the military operations in question. In this case, the applicant submitted very little evidence, which consisted of only a few newspaper and magazine articles. In addition, we know nothing of the role the applicant would have been called on to play in the military operation. Based on the duties he performed during his military service, we may assume that he would not have been posted to combat operations. It is therefore far from evident that the applicant would personally have been called on to directly or indirectly participate in international law violations.

[11] Moreover, Mr. Ielovski's fears are speculative to say the least. Not only did he fail to submit any evidence that he would be detained again for refusing to serve in Lebanon, but his claim that other conflicts requiring reservists may erupt is also hypothetical.

[12] Finally, I must add that I am bound by the Federal Court of Appeal decision in *Ates v. Canada (MCI)*, 2005 FCA 322, 343 N.R. 234, in which the Court ruled that instituting proceedings against and incarcerating a conscientious objector who refuses to do military service in a country where military service is obligatory and where no alternative to that obligation exists does not constitute persecution on grounds found in the Refugee Convention. On that subject, my colleague Mr. Justice Strayer wrote the following:

> [14] With respect to the claims by Berenika and Sofia to refugee status or status of persons needing protection because of their alleged conscientious objection to military service, I find no basis for setting aside the decision of the IRB. With respect to the finding of fact that these young women had not proven that they really held such views I believe this was a matter of fact and there was evidence before the Tribunal upon which it could have decided as it did. I do not find this conclusion patently unreasonable. With respect to their possible subjection to imprisonment for refusal to do military service on the grounds of conscience, I believe that the Tribunal reached a reasonable conclusion in finding that this would not entitle them to be regarded as persons potentially subject to cruel and unusual treatment or punishment. If indeed the matter is one purely of law I would still find the decision to be a correct one as being fully consistent with the decision of the Federal Court of Appeal in *Ates v. Canada (MCI) supra.*
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> *Loshkariev v. Canada (MCI)*, 2006 FC 670, 149 A.C.W.S. (3d) 298

[13] I am therefore of the view that the applicant failed to establish that he had a reasonable fear, based on objective and subjective considerations, of being persecuted if he returned to Israel. Not

only does the rather minimal documentary evidence adduced by the applicant not demonstrate that the military intervention in which he was supposed to participate was condemned by the international community and violated the basic principles of human rights, but also there is no evidence suggesting that he would be imprisoned again for his refusal to serve, when he has already served his sentence and was able to leave his country without a problem.

[14] As for the applicant's argument that the RPD infringed on his right to procedural fairness by apparently failing to give him an opportunity to answer to the allegation that he would have been unable to leave Israel if he was wanted by the authorities, it is unfounded. In fact, it is trite law that a tribunal does not have to inform an applicant of every doubt it may have in regard to his or her testimony or of every implausibility it notes at the hearing before rendering its decision: see, among others, *Danquah v. Canada (Secretary of State)*, [1994] F.C.J. No. 1704 (QL), 51 A.C.W.S. (3d) 915, and *Appau v. Canada (MCI)* (1995), 91 F.T.R. 225, 53 A.C.W.S. (3d) 1063.

[15] In any case, even if it was found that there has been a breach of natural justice, the decision should not be set aside for that reason. I am of the opinion that that reason for rejecting Mr. Ielovki's claim was not crucial to the RPD's reasoning. The decision would not have been different even if the RPD had not taken that reason into consideration: *Lahocsinszky v. Canada (MCI)*, 2004 FC 275, 129 A.C.W.S. (3d) 769; *Fontenelle v. Canada (MCI)*, 2006 FC 1432, 153 A.C.W.S. (3d) 681.

[16] For these reasons, this application for judicial review must be dismissed.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. The parties have proposed no question for certification. I am also of the view that this case does not raise a serious question of general importance.

"Yves de Montigny"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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