

Federal Court



Cour fédérale

Date: 20100430

Docket: IMM-4867-09

Citation: 2010 FC 483

Ottawa, Ontario, April 30, 2010

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

JAKIN GJURAJ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for the judicial review of the decision (the decision) of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated September 2, 2009. The Board determined that the Applicant is neither a convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S. 2001, c. 27.

[2] For the reasons set out below the application is dismissed.

I. Background

[3] The Applicant is a 30 year old Albanian citizen who claimed asylum based on an allegation that he was the target of a blood feud. The Applicant claims he was threatened and assaulted by the family of a 15 year old girl he had a relationship with while she was engaged to another man.

[4] The Board rejected the Applicant's claim based on credibility and plausibility concerns. The Board did not find the Applicant to be straightforward and noted that there were inconsistencies between his story when told at different interviews, that the Applicant was unaware of the contents of his own documentary evidence, that the Applicant's story was implausible, and that the Applicant was not able to provide any corroborating evidence of the existence of the girl he allegedly had the affair with. The Board was also concerned with the Applicant's failure to mention a blood feud at his first immigration interview and his admission that he wanted to work in Canada.

II. Issues and Standard of Review

[5] The Applicant raised several issues which can be summarized as follows:

- (a) Did the Board err by making plausibility findings based on assumptions and without supporting evidence and in concluding that statements were false based on the absence of other documentation alone?
- (b) Did the Board misapprehend the evidence before it and draw unwarranted conclusions from the evidence provided by the Applicant?

[6] The issues raised in this matter relate to the factual findings of the Board and will be assessed on a standard of reasonableness (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12; [2009] 1 S.C.R. 339). The Court is to demonstrate significant deference to Board decisions with regard to issues of credibility and the assessment of evidence (see *Camara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 362; [2008] F.C.J. No. 442 at paragraph 12).

III. Analysis

A. *Did the Board Err by Making Plausibility Findings Based on Assumptions and Without Supporting Evidence and in Concluding that Statements were False Based on the Absence of Other Documentation Alone?*

[7] The Board found it implausible that it took over five months for the blood feud to be declared after the girl's father threatened to kill the Applicant. The Applicant argues that the Board erred in finding this time period implausible and that the finding was made without any claim of specialized knowledge by the Board or supporting evidence. The Applicant cites *Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776; 208 F.T.R. 267 for the position that the Board should not apply Canadian paradigms or speculate on what would be reasonably expected in another country or culture.

[8] The Respondent argues that the Board is entitled to make reasonable findings based on implausibility, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole.

[9] The Board may consider an Applicant's story, and the manner in which it was told and tested in the course of the hearing, against the backdrop of other evidence and its own understanding of human behaviour (see *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 805; 88 A.C.W.S. (3d) 1062)). While the Board needs to be careful when rendering a decision based on a lack of plausibility as refugee claimants come from diverse cultures, determinations as to the plausibility of human conduct are within the jurisdiction of the Board. As set out in *Aguebor v. (Canada) Minister of Employment and Immigration* (1993), 160 N.R. 315; [1993] F.C.J. No. 732 (F.C.A.), as long as the inferences drawn by the tribunal are not so unreasonable to warrant the Court's intervention, its findings are not open to judicial review.

[10] In this case, it was the Applicant's testimony that the girl's father had a hatred for the Applicant, was going to kill him, and that he had to flee the country. It was open to the Board to find the claim that the father waited five months after the triggering event to act on this hatred to be implausible.

[11] The Applicant also argues that the Board erred by giving documents from an NGO little weight. The Board deemed the documents to be unreliable as there were different material dates used in the Applicant's testimony and the documents, and the fact that some of the documents were not known to the Applicant.

[12] The Board is entitled to assess and weigh the evidence presented to it and it is not the role of this Court to re-weigh the evidence and substitute its opinion if the decision is defensible in respect of the facts and law. The Applicant did not demonstrate that the decision lacked justification, transparency, and intelligibility and therefore the decision of the Board with regard to the documents was reasonable.

B. *Did the Board Misapprehend the Evidence Before it and Draw Unwarranted Conclusions from the Evidence Provided by the Applicant?*

[13] The Applicant claims that the Board misapprehended the evidence and did not accept his explanations for inconsistencies in the evidence. The Board made negative findings based on the Applicant not going to the police a second time, not having first hand knowledge of efforts made to end the blood feud or documents related to it, and his explanations for why he had told an immigration officer that he had come to Canada to work and why some of his testimony was inconsistent with the evidence.

[14] In this case, the Board's decision was open to it. The Board considered the totality of the evidence and did not find the Applicant to be credible. While the Applicant may offer explanations for inconsistencies, the Board does not have to accept them. In light of the Board's finding on the issue of credibility, it was open to them to give the documentary evidence little weight (see *Waheed v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 329; [2003] F.C.J. No. 466).

[15] The parties did not advance a question for certification and no such question arose.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. this application is dismissed; and
2. there is no order as to costs.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4867-09

STYLE OF CAUSE: GJURAJ v. MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: APRIL 22, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: APRIL 30, 2010

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