

Federal Court



Cour fédérale

Date: 20110712

Docket: IMM-7427-10

Citation: 2011 FC 870

Montéal, Quebec, July 12, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

DANUTA ZHURAVEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] So much of Ms. Zhuravel's story is so outlandish it beggars belief. Small wonder her claim for refugee status was dismissed by a member of the Refugee Protection Division of the Immigration and Refugee Protection Board. However, one may be a liar and a refugee both. After stripping away the lies, Ms. Zhuravel had still made out a strong case that she was the victim of domestic violence in the Ukraine. The member misconstrued a crucial piece of evidence, which

leads me to grant this judicial review and to refer the matter back to another member for re-determination.

[2] According to Ms. Zhuravel, her husband was indebted to Ukrainian gangsters, and escaped them by coming to Canada in 1998.

[3] Once her husband left, the gangsters turned their attention to her. She received insulting and threatening telephone calls and visits. In 2006, one of the gangsters moved into her house and forced her to become his sex slave. She came to Canada in November 2007 on a visitor's visa and ultimately claimed refugee protection. There were two bases for her claim: fear of the gangsters whom she termed "the mafia" and domestic violence. While here she reconnected with her husband, whose time ultimately ran out and who was deported back to the Ukraine in 2009.

[4] Perhaps she did not wish to admit that she voluntarily entered into a conjugal relationship with the gangster in Ukraine, but all of the evidence points that way.

[5] However the member also rejected the domestic violence portion of the claim. This is what she had to say:

The claimant claimed she was beaten by her co-habitant and required medical attention. She provided statements from her friends and daughter to corroborate her claims of abuse by the gangster who moved in. One statement dated 28 September 2010 from Roman Pokorzak referred to the claimant having bruises and a plaster on her face on 1 April 2006. The medical certificate dated 29 March 2006 lists her complaints as fatigue, headache and dizziness. It does not indicate facial bruises. The treatment included administration of a tablet 3 times a day but does not indicate a plaster on her face. I think it reasonable to expect the medical evidence to reflect the observations of the friend if the evidence is to be considered reliable. As a result of the inconsistency and because I do not believe the

claimant I give little to no weight to the statements from members of her family or close friends that could corroborate certain aspects of her account. I find this contradiction in documents further undermines her credibility and the credibility of her story.

[6] The member misread the medical report of 29 March 2006. It specifically said “objective findings: broken nose, injured eyebrow.”

[7] Although she had left the Ukraine after this incident for Poland and then returned, which might have put the subjective basis of her fear in doubt, there is a second medical report dated 16 October 2007. At that time she was diagnosed with a possible concussion. According to the patient “she sustained beatings from her common-law spouse.” The member makes no reference to this report. The applicant left for Canada shortly thereafter.

[8] As stated by Mr. Justice Evans in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* 157 FTR 35, 1998 FCJ No 1425, and so often repeated:

17 However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[9] In this case the medical evidence lends credence to Ms. Zhuravel's story and thus it was incumbent upon the member to set out reasons why those reports were not reliable.

[10] Had the member found Ms. Zhuravel credible on this point, or at least entertained the possibility that she was credible, she should then have considered state protection and the internal flight alternative.

JUDGMENT

THIS COURT’S JUDGMENT is that the judicial review is granted. The matter is referred back to another member of the Refugee Protection Division of the Immigration and Refugee Protection Board for re-determination. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7427-10

STYLE OF CAUSE: DANUTA ZHURAVEL v. MCI

PLACE OF HEARING: Toronto

DATE OF HEARING: July 6, 2011

REASONS FOR JUDGMENT: HARRINGTON J.

DATED: July 12, 2011

APPEARANCES:

Steven Beiles FOR THE APPLICANT

Neeta Logsetty FOR THE RESPONDENT

SOLICITORS OF RECORD:

Steven Beiles FOR THE APPLICANT
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario