

Federal Court



Cour fédérale

**Date: 20130729**

**Docket: IMM-12714-12**

**Citation: 2013 FC 826**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, July 29, 2013**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**ROLANDS GRINBERGS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Grinbergs is a Latvian citizen. Today he is 46 years old; his father is of Latvian origin and his mother, of Russian origin. He alleges having been assaulted on three occasions by Neo-Nazis for having spoken out publicly in front of individuals of Russian origin, in Riga, to denounce discrimination and tensions between members of different ethnic groups in Latvia. The incidents purportedly occurred on May 9, 2009, March 16, 2010, and May 9, 2010. Mr.

Grinbergs claims to have sought help from the police following each of these incidents, but that they refused to help him.

[2] He is seeking judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada, dated November 8, 2012, in RPD file: MB0-04031, in which his refugee protection claim was denied on the ground that he was neither a refugee within the meaning of the *United Nations' Convention relating to the status of Refugees*, nor a person in need of protection.

[3] The medical documentation in the Tribunal Record indicates that he was examined on March 16, 2010. The broad diagnosis in the excerpt from the patient's medical logbook indicates that Mr. Grinbergs suffered a head contusion, a nose fracture and facial bruising following an assault.

[4] He was also hospitalized from May 9 to May 12, 2010. The excerpt from the patient's medical logbook indicates that Mr. Grinbergs was diagnosed as having a head contusion, fractured 6th and 7th right ribs, as well as bruising to his face and body. The patient had been transported by ambulance after having been beaten up in Riga - this information was provided to police.

[5] Mr. Grinbergs also received threats by telephone and text message about once a month.

[6] Fearing for his life and wishing to flee persecution from nationalists and skinhead Neo-Nazis, Mr. Grinbergs left Latvia for Canada on June 15, 2010. He claimed refugee protection upon his arrival.

### **THE PANEL'S DECISION**

[7] The RPD concluded that the applicant was neither a Convention refugee, nor a person in need of protection. The determinative issue was the credibility of the applicant's allegations.

[8] The panel noted a number of discrepancies in the applicant's testimony. It found that the applicant had not demonstrated that the elements of his claim were credible on a balance of probabilities, and that he had therefore failed to discharge his burden of establishing that a return to Latvia would expose him to a serious possibility of persecution or that he was likely to face a risk to his life, a danger of torture, or a risk of cruel and unusual treatment or punishment.

[9] Among other things, the panel noted that the documentary evidence before it did not describe any instances of repeated physical assaults of persons who, like the applicant, could be perceived as being members of the Russian minority in Latvia. It did not give credence to the explanations offered by the applicant in this regard, namely, that assaults such as those he had suffered were simply not reported. In addition, the panel pointed out the democratic character of Latvia and the existence of human rights organizations.

[10] The panel also rejected that applicant's explanations as to the refusal of the police to register his complaint and their alleged threats of imprisoning him if he insisted on filing his complaint. According to the applicant, such behaviour is due to the fact that the police do not want to deal with arresting Neo-Nazis or nationalists in Latvia. The panel assigned greater probative value to the documentary evidence. The information contained therein contradicts the applicant's position that the picture painted of the situation in Latvia in these documents does not reflect reality. According to the panel, the fact that the applicant had no documents in support of his dealings with the police and that he had not challenged their refusal to investigate undermined his credibility.

[11] Lastly, the panel concluded that the annual parade held by Latvian members of the Waffen SS legion in Riga does not show that the Latvian government encourages discrimination against minorities. The panel found that the parade had in fact been banned by Riga's municipal government in 2010. However, that decision was later overturned by a court on the basis of freedom of assembly.

## **ISSUES**

[12] The applicant argues that the RPD erred in law by failing to explain why it assigned greater probative value to the documentary evidence. He is essentially asking the Court to establish (1) whether the panel based its decision on irrelevant and non-determinative factors, and (2) whether the panel's decision was adequately reasoned, including whether the reasons for

the decision allow for an understanding as to why it preferred the documentary evidence over the applicant's testimonial evidence.

[13] The respondent, for its part, argues that the applicant has not raised any serious grounds that would permit the Court to allow the application for judicial review.

### ANALYSIS

[14] In light of paragraph 47 of the Supreme Court of Canada's decision in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the issue before this Court is whether the decision is unreasonable:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, 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.

[15] There are circumstances under which the Court may prefer the description of the situation in a country to that of the appellant's testimony, even if the appellant's testimony is presumed to be true (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, [1979] FCJ No 248 (QL)). In *Zhou v Canada (Minister of Employment and Immigration)*, 49

ACWS (3d) 558, [1994] FCJ No 1087 (QL), Justice Linden, writing on behalf of the Federal Court of Appeal, noted that:

We are not persuaded that the Refugee Division made any error that would warrant our interference. The material relied on by the Board was properly adduced as evidence. The Board is entitled to rely on documentary evidence in preference to that of the claimant. There is no general obligation on the Board to point out specifically any and all items of documentary evidence on which it might rely. The other matters raised are also without merit. The appeal will be dismissed.

[16] The RPD concluded that, since Mr. Grinbergs' narrative was inconsistent with country conditions, it should not be accepted. However, this decision failed to address the cause of his injuries, which had been independently documented. It is clear that Mr. Grinbergs had been severely beaten on two different occasions. In light of these observations, it is incumbent on the RPD to provide a better explanation as to why it did not believe him. As Madam Justice Tremblay-Lamer wrote in *Agranovsky v Canada (Minister of Citizenship and Immigration)*, 68 ACWS (3d) 713, [1996] FCJ No 923 (QL), at paragraph 12:

Similarly, the law is clear that the Board must presume the truth of the applicant's testimony. When it chose to believe the documentary evidence instead of the oral testimony of the applicant, the Board was duty-bound to provide reasons for doing so. This principle is clear in *Okyere-Akosah v. M.E.I.* in which the Federal Court of Appeal held, at p. 389:

Since there is a presumption as to the truth of the appellant's testimony ..., the Board was bound to state in clear and unmistakable terms why it preferred the documentary evidence over the appellant's testimonial evidence.

Cullen J. restated this principle in *Sidhu v. M.E.I.*:

...where a refugee Board rejects a claim on the ground that the claimant is not credible, it must state the ground clearly, and it must give reasons for the credibility finding and why it prefers the

documentary evidence over the claimant's viva voce evidence.

[Footnotes omitted.]

[17] This passage may be considered too general, but it is certainly germane to this case when the medical reports are taken into consideration.

[18] One of the grounds of review under section 18.1(4) of the *Federal Courts Act* is based on the fact that a decision was rendered without regard for the evidence that was before the panel. There may very well be other explanations for the injuries to Mr. Grinbergs, but it was unreasonable to have disregarded those injuries, given the circumstances of this case.

**ORDER**

**FOR THESE REASONS;**

**THE COURT ORDERS that:**

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada, RPD file: MB0-04031, is set aside.
3. The matter is referred back to the RPD for redetermination before a differently constituted panel.
4. There is no question of general importance for certification in this case.

“Sean Harrington”

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Judge

Certified true translation  
Sebastian Desbarats, Translator



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-12714-12

**STYLE OF CAUSE:** ROLANDS GRINBERGS v MCI

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 24, 2013

**REASONS FOR ORDER AND ORDER:** HARRINGTON J

**DATED:** JULY 29, 2013

**APPEARANCES:**

Cécilia Ageorges FOR THE APPLICANT

Margarita Tzavelakos FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Sabine Venturelli FOR THE APPLICANT  
Counsel  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Montréal, Quebec