

Federal Court



Cour fédérale

Date: 20161130

Docket: IMM-2671-16

Citation: 2016 FC 1326

Ottawa, Ontario, November 30, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ARTUR MRYAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review by the Applicant pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, C 27 [IRPA], of a decision by a panel member of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dated May 27, 2016, which dismissed the appeal and confirmed the Refugee Protection Division

[RPD] decision that the Applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the IRPA.

II. Facts

[2] The Applicant, aged 41, is a citizen of Armenia and Russia. He was born in Armenia and lived several years in Russia. He was naturalized Russian in 1991. His wife and two children (aged 10 and 3) live in Armenia. His father lives in Russia.

[3] The Applicant had worked in Canada from November 2014 until May 2015, when he returned to Armenia. Still holding a valid visa, he came back to Canada on July 19, 2015, and claimed refugee protection upon arrival.

[4] The Applicant joined the Armenian political movement “Founding Parliament” [FP] in early 2014. After taking part in FP demonstrations in May and June 2015, he received anonymous threats and was intimidated by the Armenian police on several occasions.

[5] On July 4, 2015, the Applicant was arrested by the police and detained outside Yerevan for 12 hours. During his detention, he was beaten and threatened, and was denied calling a lawyer or his family. After his release, he decided to hide his wife and children, and to flee to Canada.

[6] In his Basis of Claim [BOC] form, the Applicant focused on his fear of persecution in Armenia, but did not detail any risk of persecution in Russia.

III. Decision

A. *Decision RPD, October 28, 2015*

[7] On October 28, 2015, the RPD rejected the Applicant's claim, determining that he was neither a Convention refugee nor a person in need of protection. The RPD focused on the Applicant's fear of returning to Russia, based on his Armenian nationality and ethnicity.

[8] In assessing his subjective fear, the RPD found that the Applicant's omission of any detail regarding Russia in the BOC form raised credibility concerns. Though the RPD accepted that most of the events described occurred and that his counsel did not tell the Applicant to include his fears in Russia to the BOC, this explanation was only accepted in part. The RPD concluded that the omission of any details in the BOC indicated that the fear of returning to Russia was not apparent to the Applicant when he completed the BOC. Further, the RPD considered that the Applicant lived and was employed for lengthy periods in Russia, and that his family owns property there. Finally, the RPD found that the discrimination and harassment faced in Russia did not rise to the level of persecution.

[9] Regarding the documentation provided, the RPD found there was insufficient personal evidence in respect of the Applicant and, yet, attributed greater weight to the objective national documentation package, which stated xenophobia, nationalism, racism, violence and attacks against ethnic minorities were serious problems in Russia. Nevertheless, the RPD found that the Applicant did not establish more than a mere possibility of persecution.

B. *Decision RAD, May 27, 2016*

[10] The Applicant appealed to the RAD, asserting that the RPD erred: i) in finding that the Applicant lacked subjective fear for omitting the discrimination incidents which occurred in Russia in the BOC; ii) in finding that the discrimination experienced by the Applicant in Russia did not rise to the level of persecution; and, iii) in finding that the Applicant does not face more than a mere possibility of persecution upon return to Russia.

[11] On May 27, 2016, applying the correctness standard of review, the RAD upheld the RPD's decision and the Applicant's appeal was dismissed.

[12] The RAD found that the core issue to the Applicant's appeal of the RPD decision was whether the RPD erred in its conclusion that the Applicant had not established a serious risk of persecution if he were to return and live in Russia.

[13] The RAD determined that the fact that the Applicant has Russian citizenship and chose to seek refuge in Canada rather than traveling to Russia was a clear issue. The RAD found that the absence of reference to risk in Russia in the original BOC exhibited a lack of subjective fear of return to Russia.

[14] Finally, the RAD also found that the Applicant's testimony was vague, lacked details, and necessitated prodding.

IV. Issues and Standard of Review

[15] This matter raises the following issue: Did the RAD err in confirming the decision of the RPD?

[16] The RAD decision should be reviewed on a standard of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

V. Relevant Provisions

[17] In reviewing the RAD decision, sections 96, 97 and 111 of the IRPA find application:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au

as being in need of protection is also a person in need of protection.

Decision

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

- (a) confirm the determination of the Refugee Protection Division;
- (b) set aside the determination and substitute a determination that, in its opinion, should have been made; or
- (c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Décision

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

VI. Submissions of the Parties

A. *Applicant's submissions*

[18] The Applicant claims that the RAD did not apply law principles, did not analyse the case appropriately, and did not consider or address the arguments and issues raised in the appeal.

According to the Applicant, the RAD erred in its findings regarding his subjective fear in Russia, because it did not provide a clear analysis or reasons. He further submits that he was found

generally credible in testifying on the incidents of persecution in Russia, which cannot lead to a finding of lack of subjective fear. He states that the cumulative harassment endured during the years spent in Russia equates to persecution.

B. *Respondent's submissions*

[19] The Respondent states that the RAD properly assessed the Applicant's appeal of the RPD decision. The RAD listened to the Applicant's testimony and examined the RPD decision, and found that the tribunal did not err in assessing his subjective fear in Russia.

VII. Analysis

[20] This Court finds that the RAD reached an unreasonable decision.

[21] The RAD did not offer clear reasons as to why the Applicant's omission of fears in the BOC would indicate a lack of subjective fear. The RAD did not assess the cumulative events of discrimination suffered as described by the Applicant, although the RPD concluded that most of the events did in fact occur. The Court finds that the discrimination and harassment faced by the Applicant and his family in Russia, cumulatively, did rise to the level of persecution. Finally, the RAD's conclusion, with regard to national documentation on Russia, that discrimination faced by the Applicant does not constitute persecution is unreasonable. This conclusion is not motivated by the RAD and does not take into consideration the documented situation of ethnic minorities in Russia.

The law prohibits discrimination based on nationality, but government officials increasingly subjected minorities to

discrimination. There was a significant rise in xenophobic societal violence and discrimination against minorities, particularly persons from the Caucasus and Central Asia, dark-skinned persons, Roma, and certain foreigners. According to SOVA, as of December racial violence resulted in the death of at least 20 persons, while 173 others were injured and nine received death threats. Incidents were reported in 32 regions. Violence was concentrated in Moscow and St. Petersburg. The number of reported hate crimes against minority religious groups increased during the year, and skinhead groups and other extreme nationalist organizations fomented racially motivated violence. Racist propaganda remained a problem, although courts continued to convict individuals of using propaganda to incite ethnic hatred.

The ZINC Center for the Study of Ethnic Conflicts, an independent think tank, released a report detailing ethnic tension from September 2013 to March 2014. The report noted that the regions with the highest level of ethnic tension were Dagestan, Moscow, St. Petersburg, Stavropol Krai, and Tatarstan. During the period covered by the report, the center noted 570 ethnically motivated hateful acts of varying intensity (from placing xenophobic content on the internet to violent clashes with weapons resulting in fatalities) throughout the country.

Skinhead violence continued to be a serious problem. Skinheads primarily targeted foreigners, particularly Asians and individuals from the Caucasus, as well as individuals they identified as being from Ukraine.

(National Documentation Package (NDP), Russia, July 17, 2015)

[22] In addition, the Applicant's activities in Armenia and how they would be viewed by Russia are of importance as specified below (reference is made to the Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status (under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees)*, at paragraphs 66 and 67 [UNHC Handbook]):

66. In order to be considered a refugee, a person must show well-founded fear of persecution for one of the reasons stated above. It is immaterial whether the persecution arises from any single one of these reasons or from a combination of two or more of them. Often

the applicant himself may not be aware of the reasons for the persecution feared. It is not, however, his duty to analyze his case to such an extent as to identify the reasons in detail.

67. It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, e.g. a political opponent who belongs to a religious or national group, or both, and the combination of such reasons in his person may be relevant in evaluating his well-founded fear.

(UNHC Handbook, as paragraphs have been cited by the Courts reviewing refugee decisions of the Immigration Refugee Board as to how the Refugee Convention is to be interpreted.)

VIII. Conclusion

[23] Consequently, as the decision of the RAD is unreasonable, the judicial review is granted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be granted.

The matter is to be returned to a differently constituted panel of the Refugee Appeal Division for consideration anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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