

Date: 20071206

Docket: IMM-6274-06

Citation: 2007 FC 1279

Ottawa, Ontario, December 6, 2007

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

KATERYNA VYBYRANA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] Discrepancies between the Personal Information Form (PIF) and oral testimony, in addition to inconsistencies in respect of the overall narrative of the Applicant, have led to a first-instance tribunal decision, which on the basis of the inherent logic of its findings, is not patently unreasonable.

JUDICIAL PROCEDURE

[2] This is an application for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (Board), on October 28, 2006, that the Applicant was not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

FACTS

[3] The Applicant, Ms. Kateryna Vybyrana, is a citizen of Ukraine.

[4] Ms. Vybyrana alleges that she is at risk because she is a lesbian. She knew that she was a lesbian from 1974 to 1979 while she was attending a technical school. She tried to express her interest in a lesbian relationship in 1979 but her advances were rejected. She married to hide her situation and did not attempt a lesbian relationship until after her husband died, in 1993, which was again rejected. In 2002, she met Svetlana and had a relationship with her which remained hidden for two years until Ms. Vybyrana's brother found them kissing. He, thereafter, extorted money from Ms. Vybyrana for drinking and threatening to expose her if she did not pay. The Applicant described beatings by her brother and some of his alcoholic friends.

[5] She claimed protection on the basis that she suffered abuse at the hands of her brother because he found out that she was a lesbian. The Refugee Protection Division (RPD) determined that the Applicant was not a Convention refugee and not a person in need of protection, as she was not credible.

ISSUE

[6] In view of its credibility findings, is the RPD's decision patently unreasonable?

ANALYSIS

[7] The RPD's decision is not patently unreasonable. The RPD is a specialized tribunal entitled to decide whether an Applicant is not credible on the basis of implausible testimony and contradictions and inconsistencies in an Applicant's evidence before the RPD. The RPD's credibility findings are entitled to high deference. (*R. v. Gagnon*, [2006] 1 S.C.R. 621, paras. 10, 20, 24; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, paras. 34, 38; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982.)

[8] The RPD provided examples of inconsistencies and contradictions in Ms. Vybyrana's evidence to support the conclusion that she was not a lesbian and did not suffer the harm alleged:

(a) Ms. Vybyrana alleged that she reported to the police that her brother beat her. She also told the police that her brother beat her because she was a lesbian, despite knowing that it would be dangerous for the police to know that she was a lesbian and despite stating that she tried to keep her sexual orientation a secret because Ukrainian society was very homophobic;

(b) In her oral testimony, Ms. Vybyrana explained that her girlfriend Galina turned down her advances because she had become frightened and wanted to preserve her marriage. On the other hand, in her PIF, Ms. Vybyrana stated that Galina rejected her because she did not expect the advances from her.

[9] Further, Ms. Vybyrana stated in oral testimony that she had to seek medial attention because of the beating she sustained; however, this is not mentioned in her PIF and she did not provide any medical reports in support of her claim. Ms. Vybyrana also did not provide any documentation to prove that she was involved with a woman in Canada except for photographs of her with a woman in a pool. This Court has held that a credibility finding may be made in respect of a document that under existing country condition circumstances would be provided. In such a situation, therefore, it was reasonable for the RPD to draw negative inferences from the lack of corroborating documents in support of Ms. Vybyrana's claim. (*Matarage v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 460 (F.C.T.D.) (QL), paras. 8-9; *Najam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 425, [2004] F.C.J. No. 516 (QL), para. 20; *De Barros Canada (Minister of Citizenship and Immigration)*, 2005 FC 283, [2005] F.C.J. No. 361 (QL), para. 12.)

[10] Ms. Vybyrana argues that the RPD erred when it stated that she was 23 years old and had a Master's degree; however, this is the evidence which is found in her PIF. There appears to be a discrepancy in Ms. Vybyrana's narrative wherein she states that she expressed her lesbian feelings during her Technical School education; however, even if she had been of a younger age when she had expressed her feelings to her friend, this would not necessarily make her conduct more plausible, given the RPD's other negative credibility findings.

[11] The RPD did not exhibit any bias nor did it raise a reasonable apprehension of bias.

Ms. Vybyrana has not rebutted the presumption of impartiality. She argues that the RPD was biased

because of the Member's conclusion that she could not have had three unsuccessful relationships with women, and, that, furthermore, it was implausible that her husband would have married her, knowing that she had a reputation of being a lesbian. The latter conclusion is reasonably based on Ms. Vybyrana's own evidence in regard to a time of intense homophobia in Ukraine; however, it is noted that, in any case, the assertion of the RPD was inappropriate. Nevertheless, the assertion is insufficient to override all of the other negative credibility findings and the decision as a whole. (*Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 91, para. 13.)

CONCLUSION

[12] In view of its credibility findings, the RPD's decision is not patently unreasonable; therefore, the application for judicial review is dismissed. (*Bains v. Canada (Minister of Employment and Immigration)* (1990), 109 N.R. 239 (F.C.A.), [1990] F.C.J. No. 457 (QL).)

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6274-06

STYLE OF CAUSE: KATERYNA VYBYRANA v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 28, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: December 6, 2007

APPEARANCES:

Mr. Aleksei Grachev FOR THE APPLICANT

Mr. David Joseph FOR THE RESPONDENT

SOLICITORS OF RECORD:

ALEKSEI GRACHEV FOR THE APPLICANT
Toronto, Ontario

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada