

**Date: 20080521**

**Docket: IMM-4469-07**

**Citation: 2008 FC 638**

**Toronto, Ontario, May 21, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**BAKHODIR KAMILOV**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant requests the judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated October 10, 2007, wherein he was found not to be “Convention refugee” nor a “person in need of protection” under sections 96 and 97 of the Act.

I. The facts

[2] The Applicant is a 32-year-old citizen of Uzbekistan. He worked at an automobile parts company as the chief of the warehouse where spare parts were kept.

[3] He alleges that the company was audited by the tax police in February 2005 because a significant number of spare parts were unaccounted for. The Applicant claimed that the owner of the company had been selling inventory for cash and without paperwork to avoid paying taxes. However, according to the Applicant, the owner blamed him and told the police that he had stolen the missing inventory.

[4] The Applicant claims that he was afraid that his former boss would kill him and that the police in Uzbekistan, believing that he had committed the theft, would torture him to extort a false confession. So he left Uzbekistan, using his own passport, and went to Ukraine in March 2005 where he lived and worked for a year as a butcher.

[5] He then paid to obtain a Turkish passport and a Canadian visitor visa and left Ukraine for Canada where he arrived on an Air France plane on 7 March 2006. Interviewed, with an interpreter, on 8 March 2006 by Canadian border officials, he submits his PIF on 21 March 2006 and the Board holds its hearing on 29 March 2007.

## II. The decision of the Board

[6] The Board identifies the subjective and objective elements of the well-founded fear of persecution and the credibility of the Applicant's testimony as the key issues in this case.

[7] With respect to the subjective elements of the fear of persecution, the Board notes that the Applicant did not make a claim for protection in Ukraine where he worked and lived for a year and neither in France despite having traveled through France on his trip to Canada. The Board acknowledges the Applicant's explanations for not claiming protection based on his assertion that Ukraine deported asylum seekers and the fact that he did not speak French while in transit. However, the Board reasons that, since he was allegedly fleeing for his life, the Applicant would have been expected to have made a claim at the first opportunity. The Board acknowledges that the delay in making a claim is not determinative, but still it was a relevant factor to consider. As a result, the Board draws a negative inference from the failure to claim protection and finds that the Applicant lacks subjective fear.

[8] On the objective element of the fear of persecution, the Board draws a negative inference from the fact that the Applicant left Uzbekistan without ever having spoken to his boss or to the police about the accusation or making any efforts to establish his innocence through the Uzbekistan justice system by retaining a lawyer. The Board also notes the absence of any evidence to support the Applicant's claim concerning the existence of a warrant for his arrest or of any charges laid against him, and relies in particular on a communication of 23 February 2003 from Interpol confirming a search in centralized criminal records with no reference found on the Applicant. The

Board found that the Applicant provided no reasonable explanation as to why there would be no record or documentary evidence if he were wanted by the authorities for a theft of \$U.S. 10 million.

[9] The Board concludes that the Applicant's evidence is totally untrustworthy and lacking in any credibility and that, on a balance of probabilities, the alleged incidents underlying his claim never occurred. The Board finds that the Applicant is not motivated by fear but is attempting to circumvent the immigration process in order to be able to seek a better life in Canada.

[10] In the end result, the Board does not accept the Applicant's evidence and concludes that he has failed to establish a reasonable chance or serious possibility of persecution or personal risk to his life if he were to return to Uzbekistan.

### III. Issues

[11] The Applicant raises the following issues in this proceeding:

- Did the Board err by failing to give sufficient reasons in support of its conclusions?
- Did the Board err by ignoring testimony and documentary evidence or by basing its decision on speculation?

### IV. Standard of review

[12] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 51, the Supreme Court of Canada states that "[...] questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues however,

attract the more deferential standard of reasonableness”. Since the issues here raise mixed questions of law and fact, the Court finds the standard of review to be that of reasonableness.

[13] This standard requires the Court to engage in a somewhat probing examination of the reasons for a decision while also recognizing that, where there is some level of expertise or familiarity with the subject matter on the part of the decision maker, some measure of deference is owed. The Court’s analysis of the Board’s decision will therefore be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] [...] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at paragraph 47).

#### V. Analysis

*Did the Board err by failing to give sufficient reasons in support of its conclusions?*

[14] The Applicant argues that the Board fails to provide a proper analysis or adequate reasons as to why it concludes that his evidence is totally untrustworthy and lacking any credibility. He asserts that he provided detailed, consistent evidence concerning his claim during his port-of-entry interview, in his PIF, and at the hearing, but the Board fails to identify a single omission, contradiction, inconsistency, or discrepancy in his evidence or make any comments about his demeanour during his testimony. Therefore, the Board would have erred by not expressing in clear and unmistakable terms its adverse findings concerning credibility (see *Hilo v. Canada (M.E.I.)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.)).

[15] But the Board's findings on credibility appear intimately connected to its conclusion on the absence of a well-founded fear of persecution. And while the credibility findings may not by themselves have been determinative of the claim, they still are a crucial part of the Board's decision.

[16] The Court cannot accept that the Board fails to provide adequate reasons in its decision for making negative credibility findings against the Applicant. A careful and thorough review of the Board's decision as a whole demonstrates that, throughout its reasons, the Board identifies the occasions in which it draws negative inferences from the Applicant's testimony and behaviour as well as highlights what it believes were the implausibilities in his claim. Therefore, it cannot be said that the Board does not express its credibility findings in clear and unmistakeable terms or does not give sufficient reasons for its conclusions in this respect.

*Did the Board err by ignoring testimony and documentary evidence or by basing its decision on speculation?*

[17] The Applicant contests the Board's conclusion that he failed to establish a well-founded fear of persecution by arguing that the Board ignores or speculates about evidence to decide as it does.

[18] The Board concludes that he lacks subjective fear because he did not make a claim in Ukraine. The Applicant argues that he explained to the Board his reasons for doing so: he knew that Ukraine had deported asylum seekers back to Uzbekistan and he submitted documentary evidence that allegedly indicated that persons similarly situated to him had indeed been denied refugee protection by Ukraine.

[19] The Applicant also argues that the Board erred in drawing a negative inference from the fact that he did not speak to his boss, who was the person who had made the false accusation, or the police, who routinely extracted false confessions by torture. He also argues that the Board failed to acknowledge these allegations of torture and ignored the corroborating documentary evidence.

[20] In addition, the Applicant argues that the inferences and conclusions drawn by the Board from the Interpol check were erroneous and based on pure speculation. The Applicant points out that the problems he alleged took place in 2005, whereas the Board referred to a communication from Interpol dated “February 23, 2003”, and that there was no evidence as to what information, if any, Uzbekistan shares with Interpol. Furthermore, the Board assumed that there would be an Interpol record of such a major crime, describing the theft as being worth \$10 million US, when the amount was really 10 million som (Uzbek currency) according to the Applicant.

[21] The Applicant is asking more or less this Court to analyse and appreciate his proof and conclude differently than the Board did. However this is not the role of this Court. The Board with the benefit of its expertise has heard the applicant and is therefore in a much better position than this Court to weight the evidence, its weaknesses and strength, and decide on its acceptability.

[22] This Court has only to verify if the Board’s inferences and conclusions about the lack of objective and subjective fear of the applicant are reasonable or not. Regarding the risk of torture, the applicant has produced no documentary evidence to support his testimony that criminal charges had been filed against him; and considering that he then left Uzbekistan using his own genuine passport

while allegedly the police was looking for him and would torture him, one can only doubt his claims of fear. Regarding the Applicant's explanation for not making a claim for protection in Ukraine, it appears that the Uzbeks who were denied asylum in the Ukraine were deported pursuant to an extradition request for their alleged involvement in a massacre in Uzbekistan, which was a very different situation from the Applicant's. As for the information from Interpol, the Respondent argues that, regardless of the Board's comments, this was not determinative of its finding that the Applicant had not provided evidence of any charges or warrants issued against him.

[23] The reasons given by administrative tribunals, such as the Board here, are not to be read hypercritically by a court nor are these tribunals required to refer to every piece of evidence that they received (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (T.D.)). Furthermore, as the Supreme Court expressed in *Dunsmuir*, above, at paragraph 47, a Court reviewing a decision on a standard of reasonableness will be "concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[24] The present affair turns on the Applicant's failure to establish with credible and trustworthy evidence the main subject of his claim – that is, the fact that he is allegedly suspected of or being investigated in Uzbekistan for committing theft against his employer.

[25] Despite the fact that the evidence which the Board allegedly ignored may establish an objective risk to persons in Uzbekistan being investigated by the police (or, with respect to the evidence relating to asylum claims in the Ukraine, that there were *particular* refugee claimants that



had been deported back to Uzbekistan), the Applicant nevertheless was required to present credible and trustworthy evidence about his own personal situation such that he would fit the same profile of risk as those other persons to which he is claiming a connection. [By analogy see *Sibanda v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1400].

[26] Here, the Board finds that the Applicant was totally untrustworthy and lacking any credibility about his own personal situation and it cannot be said that this finding of the Board is unreasonable. Moreover, neither in the materials before the Board nor in these proceedings has the Applicant been able to provide evidence to corroborate his claim that the alleged theft occurred, that it was or is being investigated, and that he was or is being sought in connection with such an investigation. In other words, the Applicant failed to provide credible and trustworthy evidence about his own personal situation that would fit him within the same risk profile as other persons being investigated by the police in Uzbekistan.

[27] Given that failure, the evidence that was allegedly ignored is ultimately immaterial to the Board's decision. It is not an error for the Board to not discuss the evidence relating to the risk of torture at the hands of the Uzbeki police when the Applicant fails to show any reason that he would fall into the hands of the Uzbeki police.

[28] As for the alleged errors with respect to the information from Interpol, this was not determinative of the Board's finding that the Applicant had not provided evidence of any charges or warrants issued against him.

[29] On the overall the Applicant has failed to show that the impugned decision is unreasonable and falls outside the range of acceptable outcomes which are defensible in respect of the facts and law. And therefore this application for judicial review will be dismissed.

[30] The Court agrees with the parties that there is no question of general interest to certify.

**JUDGMENT**

**FOR THE FOREGOING REASONS THIS COURT** dismisses the applications.

“Maurice E. Lagacé”

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Deputy Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-4469-07

**STYLE OF CAUSE:** BAKHODIR KAMILOV v. THE MINISTER OF  
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