Date: 20080630

Docket: IMM-4908-07

Citation: 2008 FC 818

Ottawa, Ontario, June 30, 2008

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

DMYTRO MATVISYK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] Dmytro Matvisyk is the applicant in this judicial review application. He is a citizen of the Ukraine whose claim for refugee protection was rejected by the Refugee Protection Division (the tribunal or the RPD) on October 30, 2007.

[2] The tribunal found "that with respect to the material elements of the story, the claimant's testimony was not credible". It further held that it "does not find his documents credible".

[3] The applicant's challenge to the tribunal's decision is based on two grounds:

- He was denied a fair hearing when the tribunal failed to pursue an acquisition to information request (AIF) to obtain copies of a Ukrainian court case and the tribunal's subsequent conclusion his documentation was not genuine;

- The tribunal's credibility findings were without regard to the evidence and/or based on irrelevant considerations.

Facts

[4] The applicant fled the Ukraine to arrive in Canada on September 23, 2004. He fears persecution by a gang of drug dealers and says he is without protection from the police who have links to the drug dealers. While studying at the university, he was asked by Ivan, the leader of the gang, to assist them in pushing drugs on the campus; he refused. He alleges he was attacked three times for his lack of cooperation:

- On October 10, 2003 for the first time; he was taken for treatment at a hospital and was released that same day. He says the doctor at the hospital called the police who took a report "but did not provide any help";

- On December 24, 2003, he was attacked a second time by gang members who "beat me up severely and left me bleeding on the ground". He was hospitalized for eight days and then

released. He writes in his personal information form (PIF) the doctor called the police who took a report and left and “like before, the police did nothing”;

- On April 16, 2004, he was attacked a third time; he asserts he was beaten to unconsciousness and awoke in the hospital. He was there for two weeks. He says: “The doctor called the police but they didn’t do anything”.

[5] In his PIF, he writes of another incident which happened on April 4, 2004 when he attended a party at the university. He writes he was approached by Ivan and three other persons who had participated in a previous beating. He was beaten again. He writes: “They left me a bag of pills and told me if I don’t sell these and show up with the money in a few days your life is over.” He took the pills to the police station. They took the drugs and took his report and said that they would contact him after they finished their investigation but “I never heard from them thereafter.”

The previous hearing

[6] The applicant’s refugee claim was heard by two tribunals. The first tribunal began its hearings on October 6, 2005. It received the following documentary evidence from the applicant:

- A certificate issued to the applicant by the Municipal Clinical Hospital for Emergency Aid in the city of Lviv confirming that on October 10, 2003 he was treated at the trauma department and referred to further treatment in out patient care (certified tribunal record (CTR), volume 1, page 153);

- An extract from the medical records of the Regional Clinical Hospital in Lviv stating the applicant had been admitted on April 16, 2004 suffering from "a brain concussion, bruises and scratches to the head, pierced wounds and haematomas of the bodily parts especially pronounced in the abdomen area" and was released on April 29, 2004 (CTR, volume 1, page 155);

- A letter dated October 17, 2003 from the District Police Office on Horodotska Street in the city of Lviv to the effect the police had reviewed his complaint with respect to the injuries on October 10, 2005 and since it was impossible to identify the perpetrators they were unable to open a criminal investigation into the matter (CTR, volume 1, page 161); and

- A letter from that same District Police Office dated March 2, 2004 in response to his complaint dated December 25, 2003 taken in the Emergency Clinical Hospital with respect to an assault by a group of individuals on December 24, 2003 resulting in heavy bodily injuries. The applicant was advised it had been impossible to open a criminal investigation into the matter due to inadequate information regarding the fact of the wrongdoing and its perpetrators. It was signed by an officer named G.D. Ponomarenko (CTR, volume 1, 159).

[7] At this hearing on October 6, 2005, an issue arose as to the authenticity of these documents. With the concurrence of counsel for the applicant and the Refugee Protection Officer (RPO), the tribunal made an acquisition of information request (AIF) to the Immigration and Refugee Board's Specific Information Research Unit (SIRU).

[8] The SIRU then asked by request dated November 21, 2005 the Canadian Embassy in Kiev (the Embassy) to make appropriate inquiries. The SIRU received three responses from the Embassy in January and February, 2006 which it communicated to the RPO who then transmitted a copy of the information to counsel for the applicant.

[9] The Embassy advised the hospitals, mentioned in the applicant's documentary evidence, had informed it the documents said to be from them were false as they had no record of the applicant having received medical assistance from their establishments.

[10] The Embassy also advised on the authenticity of the letters from the Police District Office on Horodotska Street in the city of Lviv which the applicant had tendered in evidence. It advised one of its officials had contacted the police station on a no names basis; the address of the police station was correct but the telephone number was not. Furthermore, with respect to the complaint of the December 24, 2003 attack, they was no police officer at that District Office named G.D. Ponomarenko. Moreover, the police indicated to the Embassy that: "It looks like the certificates are false [because] there were no special outgoing markings etc. present."

[11] The tribunal resumed its hearing of the applicant's claim on May 11, 2006. The applicant was confronted about the information received from the SIRU/Embassy. He testified the police had seen his father at his house on January 5, 2006 inquiring about the applicant; they (the police) seemed to be aware the hospital reports he had tendered to the tribunal as confirmation of his hospitalizations had been sent to the Ukraine for verification. He testified the police had pressured the hospitals to make false reports he had never received treatment from those establishments (CTR,

volume 2, page 203) and their motive for pressuring the hospitals give false information was because they were associated with the drug dealers (CTR, volume 2, pages 309 and 310).

[12] He was asked about the incorrect telephone number for the District Police Office. He answered he had searched the Internet, found the website for the Municipality and downloaded the telephone number of the District Police Office which revealed his document contained the correct telephone number for the police station.

[13] At the May 11, 2006 hearing, the applicant was also asked about the significance of another document he had tendered, namely, two extracts: one dated October 23, 2003 and the other dated April 16, 2004 from his medical book (CTR, volume 2, page 203). The applicant testified his medical book issued in 1982 at his birth contained all of the medical treatment he had ever received. He confirmed these extracts were filled in by his family doctor and not by the doctors who treated him in the two hospitals referred to in his documents.

[14] The applicant was then asked whether he had any information on the doctors who had treated him. At CTR, volume 2, page 314, he testified his father had contacted the doctor who had treated him in October 2003 and asked him why the hospital would write he had not treated his son. He testified the doctor told his father the information from the hospital was incorrect and that, in fact, he had treated his son. He testified the doctor had challenged the hospital about its false report and was fired for it and had sued the hospital for unjust dismissal. He testified he could obtain information about the court case within a month because the doctor had indicated to his father he

would be willing to provide those court documents. He also testified the doctor had later informed his father the Court had reached a decision in his favour.

[15] After discussion with the applicant and the RPO, the tribunal agreed the matter of access to the court documents should be pursued and adjourned its hearing on the applicant's claim to September 7, 2006.

[16] Prior to the resumption of the September 7, 2006 hearing, counsel for the applicant advised the RPO the applicant had told him the doctor concerned was afraid to send the recent court judgment fearing reprisals. Counsel suggested an attempt be made to obtain the court judgment through other means including directly through the Court in the Ukraine or through the applicant's father's further efforts or by means of a second AIF.

[17] The September hearing centered on the need to obtain the Ukrainian court decision. The tribunal expressed its scepticism the court order would include any information about the applicant's hospitalization to which counsel for the applicant responded it was likely to contain some reference to the applicant because the doctor had been fired when he had challenged the hospital's statement he had never treated the applicant. The tribunal remained sceptical whether obtaining the court order could assist the tribunal. Counsel for the applicant admitted he was speculating about what the court order might say. The RPO indicated credibility was the main issue in the case before the tribunal and while stating that nobody really knew what the court document might ultimately say he was of the view this was the claimant's opportunity to present evidence and added the issue of his credibility would be greatly affected by such document. He suggested,

recognizing there were no guarantees on what it would contain and might involve much more time to obtain it without guarantees, it might be in the claimant's best interest to be provided with this opportunity (certified tribunal record, pages 349 through 351).

[18] After considering the matter, the tribunal despite having reservations about what the court document might contain, stated at CTR, volume 2, page 353: "But given the seriousness of the issue that we are dealing with here, that is the issue of credibility, if it is possible, I think we should at least make one more attempt to get this information." The hearing was adjourned to December 4, 2006.

[19] The December 4, 2006 hearing was brief because the Ukrainian court document was still not available to the tribunal. Discussion took place why the applicant's father could not obtain that document. At CTR, volume 2, page 378, the RPO confirmed a process had been agreed to which was that the tribunal would first obtain an answer from counsel for the applicant whether the document could be obtained through efforts from his side and, in default, the second AIF would go out. On December 4, 2006, the presiding member signed the second AIF dated that day to the SIRU requesting it "to obtain the court order issued in August 2006 from the … court concerning Dr. … suing for wrongful dismissal against Lviv City Council Health Care Department …".

[20] At that hearing, the tribunal stressed it was important to obtain the results of the second AIF as quickly as possible because her appointment with the Immigration and Refugee Board would end on January 19, 2007. The hearing then adjourned to January 15, 2007; counsel and the RPO asked to advise on developments in the interim.

[21] The second AIF was sent to the Embassy in Kiev who advised, shortly thereafter, the request for the Ukrainian court order would needed to be made through the Ministry of Foreign Affairs of Ukraine because "Courts will not disclose information to third parties".

[22] The tribunal reconvened on January 15, 2007. At that hearing, the RPO raised the issue whether "it may not be a reasonable exercise to continue with this research" for three reasons: The Court judgment may not mention the applicant's circumstances; it appears the judgment has been appealed and it may take a long time to get a response. On the other hand, he suggested it also might be reasonable to keep going because new research had discovered the judge's name and the court file number which might speed up matters. The RPO, in this connection, stressed credibility was a major issue.

[23] Counsel for the applicant, at the January 15, 2007 hearing, agreed the matter should be pursued. He submitted the material from the SIRU was extremely prejudicial yet there were some indications that information may be tainted and that, in the circumstances, the applicant should have an opportunity to respond or obtain additional information (CTR, volume 2, pages 398 to 401).

[24] The tribunal agreed the next step should be to send the Ukrainian Court file number to the SIRU and, if there was a response "presumably this would provide enough information for another member then to determine at what point that enough effort had been given to acquire as much information as we can, and then to proceed with making a decision". [Emphasis mine.]

The second tribunal

[25] The new tribunal convened on August 1, 2007 as an administrative *de novo*. It proceeded first in a pre-hearing conference phase with a new RPO and counsel for the applicant present and, at its conclusion to convene in a hearing phase to hear the applicant's testimony.

[26] At the pre-hearing phase, the new tribunal verified the state of the documentary evidence and whether what it had in its possession was complete.

[27] At that point, counsel for the applicant inquired of the new tribunal whether a request had been made by the first tribunal to have a verification performed on the extracts from the applicant's medical book tendered into evidence. He indicated the previous tribunal had kept in her possession the applicant's medical book: "That's why the member kept it. Because we were certainly contemplating having the book verified." (CTR, volume 2, page 416) to which the presiding member stated: "The onus is on the claimant to present his case and its not, I don't think we are, the board is an investigation sort of a board to do that. I think the member had some concerns on some documents. They were sent. We have, we have a response for those documents already. And I think the claimant's answer came from that as to, this was done, so if, at many points in the hearing. So perhaps we can clarify as to what his position is at this moment. He has been in this country now for almost three years. And what fear he has at this point of returning to Ukraine." The tribunal asked whether counsel for the applicant had anything else they would like to address to which he stated the only concern he had is the status of the request for the court order to which the tribunal responded: "Well I don't intend to postpone to wait for that request to come in. So far I have not seen it come in." The RPO responded by stating she was not "too sure how material it is to this

claimant's case. I mean, if the doctor were here [*sic*] making a refugee claim it would be central, but it's pretty peripheral to the applicant, I think." to which counsel for the applicant stated: "I don't agree with that." (CTR, volume 2, page 417).

[28] The tribunal completed the pre-hearing conference by repeating: " … the board is not an investigative forum. The only thing I need to look at is, has the claimant established his claim, and what fear he has at this point of return, and that is, has he established all parts of his claim, and established his fear of return. Having said that, of course you can explore with you, with the claimant, these issues. But I think the matter has been on the books for quite a while. I think he probably would want a closure as well, to see what happens. So I think perhaps we can bring them in." (CTR, volume 2, page 418).

[29] The tribunal began its hearing phase by informing the applicant what happened at the pre-hearing conference. The tribunal mentioned the request for information and the specific request for the Court documents which the tribunal stated: "As far as I know, there is no response back. However, there were matters discussed of previous information and confirmation that was sent to Ukraine and which was discussed and you were asked questions about it in, by the previous member. I know that, because I have a transcript which I have read …" (CTR, volume 2, page 420).

[30] She stated at the same page of the transcript "we are going to proceed. And the question remains, or the issues remain, and the onus is on you to establish your claim as to what your circumstances were in relation to criminality, corruption, or being a victim of a crime in the Ukraine. And what fear you have at this point of time, or what harm will come to you if you return

to Ukraine. So in order to do that I have your testimonies from previous and you will be given the opportunity to give your explanation and answer more questions today and instead of waiting for any responses, it would be better to finalize this because you would want closure, you would want an answer on what's happening to your claim. So the determinative factor here is credibility, and whether or not you would be harmed if you go back, and the credibility of the documents that you presented. In order to do that we give an opportunity to answer questions."

[31] Two pages later into the transcript, the tribunal again stressed credibility, she identified the credibility of the applicant's document and speaking to the applicant said: "it is important that I believe you."

[32] The hearing then proceeded with the RPO asking several questions (CTR, volume 2, pages 423 to 454) covering such issues as his fear of harm if he returned to the Ukraine today; whether the medical reports identified the causes of his injuries; why there were certain omissions from his PIF, for example, why he did not say the police were behind Ivan; his expectations of the police since he did not know Ivan's last name; the impact of his name being disclosed to the authorities to which he answered he was not sure it was a leak by the Embassy; an apparent contradiction in his testimony on that point; his many trips outside the Ukraine; his seeing Ivan twice at his employer's premises, but his not warning his employer about Ivan being a drug dealer; the omission in his PIF he feared his employer; his father's second wife's sponsorship to Canada of his father and the applicant's brother; the plausibility why would the doctor fear reprisal and not be willing to send him the Court documents.

[33] At page 454, the presiding member asked a few questions specifically about his father's wife being in Canada and sponsored his father and brother.

[34] He was specifically asked by the presiding member: "Now, there were a lot of questions in regards to the extracts of the medical book in the last sitting. And the response that we received. Do you have anything else to add? I'm going to give you an opportunity at this moment to do that" to which the applicant stated. "No, everything I could I have added already" adding: "the only thing, I just hope that it would somehow be checked about the hearing of my doctor in Ukraine." I reproduce the presiding member's response to that comment at CTR, volume 2, page 459:

> "Sir, I just want to make you aware that our (inaudible) our organization which I believe was explained to you, how they make their inquiries in other countries. They're very confidential. And at this point, all, the onus is on you to present your claim and for me to see what fear you have at this point of returning. And given, give you the opportunity to explain, give your reasons. And the court document that you're referring to, sir, even if they are checked, how would one be able to say that they were, that these things transpired because of any investigation that was made earlier. And as is said that this Board is not an investigation unit. But I will take into consideration everything that you've said in the previous sittings, today. All the documents before me. But at this time I have to give counsel opportunity to give, to ask his re-direct questions. Okay?

[35] His counsel first exhibited to the applicant his medical book. He asked the applicant what information it contained to which he answered his entire medical history. He confirmed only two extracts had been translated; the October 23, 2003 entry and the April 16, 2004. He was asked how his family doctor would know what to write to which the applicant stated his family doctor would have called the hospital; he confirmed no request had been made to have the medical book independently verified.

[36] He was asked by his counsel if he could provide a physical description of Ivan; he said he was tall and then said he provided the police with his description, who his associates were.

[37] He told his counsel his father received anonymous calls recently; one time, they asked about him, the other times they phoned and then hung up. He thinks the callers are people looking for him because he is a carrier of information having seen cases being unloaded at his employer's premises suspecting the cases contained drugs.

[38] He said "no" to his counsel's question "Do you think you could protection [*sic*] from anyone in the Ukraine today, if you go back.

[39] In argument before the tribunal, at page 466 of CTR, Volume 2, counsel for the applicant commented on the credibility of the documents. He submitted the claimant had produced evidence which cast considerable doubt on the SIRU findings particularly on the wrong telephone number issue. He suggested this factor plus his testimony the police had gone to his father's house after the verification request had been made to the Embassy in Kiev influenced the first tribunal to seek information that the claimant received medical attention. He suggested the applicant had done everything he could to assist even to go as far as obtain the court docket no. and the litigants' names. He said the information about the Court action was important. He stressed the refugee test is forward looking and that his evidence established another element of his fear – the fear of the police which took place after the claimant had left the Ukraine and after his PIF was prepared.

[40] He submitted the claimant had a legitimate expectation the documents and the information he provided would be verified, as it was the panel itself that began the process. He submitted he had produced his medical book, a very reliable piece of evidence relied upon by other panels showing all his medical history independent of any refugee claim. There were notations for October 2003 and April 2004 and his counsel submitted he had met his onus that he sought medical attention on these occasions; further adding doubts to the SIRU findings.

[41] He argued Mr. Matvisyk had provided credible evidence he was injured; the injuries were consistent with someone who was beaten and the Canadian doctor's report gives credence to that testimony.

[42] He pointed to the country conditions in the Ukraine: police are often involved and paid off which is what the claimant alleged. He has an objective basis for his fear.

The tribunal's decision

[43] The tribunal stated the determinative issues were credibility and state protection.

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[44] It dismissed his claim for protection under section 96 of *IRPA* as a Convention Refugee. It found there was no nexus between the five Convention grounds and his fear from criminal gangs. The tribunal ruled it was assessing the applicant's claim under section 97 of *IRP*A. The tribunal's finding on the unavailability of section 96 was not challenged by the applicant's counsel.

[45] The tribunal began its credibility assessment by signalling on what basis it would ground its finding the applicant's documents and testimony were not credible. It stated as follows:

> The panel considered the claimant's testimony in its entirety and also took into consideration the claimant's age, education, cultural differences and the stress of the hearing room setting that might have impacted on how his testimony was given.
>
> The panel does not find his testimony credible and does not find his documents credible.
>
> **Documents**
>
> The first panel sent the medical extracts to be verified and the information received shows that the hospital letter is false. The claimant then provided an alleged medical book. In his testimony, the claimant also testified that the doctor was fired and that there were court documents, which the first panel wanted verified.
>
> The decision of the first panel to verify the alleged court documents is not binding on this panel. However, the onus is on the claimant to present all aspects of his claim.
>
> There were omissions and inconsistencies, which were not adequately explained.

[46] Under the heading "Harm in the Ukraine", the tribunal stated "The panel finds that the evidence presented in support of the claimant's allegations are not credible and does not establish that the claimant would be subject to harm if he returns to the Ukraine."

[47] To substantiate that finding, the tribunal canvassed the weaknesses in his evidence. I note the following in particular:

- He was sure that the police were supporting the criminal group in February 2004 yet did not mention this fact in his PIF to which the applicant answered he forgot but now he thinks it was important to have mentioned it;

- When asked if he mentioned Ivan's name to the police, he first said he could not remember; then testified he recalled telling the police the first name in October 2004 but when asked whether he was sure, he said he was not sure but it could have been in 2003;

- He said he provided the police with the doctor's report to substantiate his complaint; it was pointed out to the applicant the doctor's report did not say who was responsible for the injuries. The tribunal said the claimant did not answer the question and when asked to answer it, he replied it does not say so;

- When asked why he suspected the police, he said they had done nothing about his reports and had threatened his father when the police came to visit his father after the verification was launched;

- The tribunal noted in his answers he kept on expanding the list of persons he feared doing so not spontaneously but through probing questions by the RPO.

[48] The tribunal drew on other elements of his case to enable it to draw an adverse inference from the omissions in his PIF and inconsistency in his testimony "which negates his overall credibility".

[49] A few examples suffice:

- The confused answers he gave as to whether the police learned about him being in Canada due to the Embassy's verification;

- Omission from his PIF it was well known police and businesses cooperated with drug dealers;

- Omission from his PIF the director of the company he worked for may be involved with the drug dealers.

[50] The tribunal drew an implausibility his friends living in the city with him did not know Ivan was threatening him.

[51] Under the heading Medical Report, the tribunal wrote in part:

> The claimant testified that when he informed his father that the response of the medical report came back false, his father decided to find the doctor and ask him if he could provide some documents. The claimant testified that the doctor had been fired and there had been a court case and the court was already settled. His testimony was that his father had informed him after March 2006 and by August 2006, it was finalized.
>
> The last panel member had requested that the claimant present court documents, but counsel had written that the claimant's family was not able to get the court documents and had asked the Board to acquire them.

> The panel finds that the onus is on the claimant to present all aspects of his claim. The Board is not an investigative body to go and dig up aspects of the claim and the decision of the previous member is not binding on this panel.

[52] It then discussed the assessment from his doctor in Canada but did not give it any weight because it was based on the facts found not to be credible.

[53] The tribunal then discussed the fact the applicant had not listed his many trips to Poland and his return. Some trips were in March 2003, others in March 2004 and in September 2004. His explanation was that he could not remember as he was under stress. The tribunal found his explanations unsatisfactory and drew an adverse inference from all the omissions.

Analysis

(a) The Standard of Review

[54] It is settled law questions of procedural fairness are not subject to a pragmatic and functional analysis. Generally, they are questions of law and the standard of review is correctness. See *GRK Fasteners v. Leland Industries Inc.*, 2006 FCA 118.

[55] Counsel for the applicant's other argument is that the tribunal's credibility findings were unsupported by the evidence and/or based on irrelevant considerations. Once again it is settled law that the RPD's credibility findings are findings of fact which are reviewable under section 18.1(4)(d) of the *Federal Courts Act* which provides this Court "may grant relief … if it is satisfied that the federal board, commission or other tribunal based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

[56] The Supreme Court of Canada said the following about this provision in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, at paragraph 38:

> **38** On questions of fact, the reviewing court can intervene only if it considers that the IAD "based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it" (*Federal Court Act*, s. 18.1(4)(d)). The IAD is entitled to base its decision on evidence adduced in the proceedings which it considers credible and trustworthy in the circumstances: s. 69.4(3) of the *Immigration Act*. Its findings are entitled to great deference by the reviewing court. Indeed, the FCA itself has held that the standard of review as regards issues of credibility and relevance of evidence is patent unreasonableness: *Aguebor v. Minister of Employment & Immigration* (1993), 160 N.R. 315, at para. 4.

[57] Recently, the Supreme Court of Canada reformed the law surrounding the standards of review. In *Dunsmuir v. New Brunswick*, 2008 SCC 9, it collapsed the patently unreasonable standard into the reasonableness standard. *Dunsmuir* dealt with a provincially constituted administrative tribunal, not a federal tribunal which is the status of the RPD. The Supreme Court of Canada has yet to rule on what impact its reform will have, if any, on the statutory provision of section 18.1(4)(d) of the *Federal Courts Act*. I hold the view that a breach of this statutory provision renders a decision unreasonable.

(b) Discussion and conclusions

[58] Counsel for the applicant argued the tribunal breached natural justice when it “failed to pursue the second AIF to obtain copies of the Ukrainian court case.” He argues the tribunal erred in the reason it expressed for not doing so – that it was not an inquisitorial body. He relies on the Federal Court of Appeal’s recent judgment in the *Minister of Citizenship and Immigration v. Daniel Thamotharem*, 2007 FCA 198, at paragraphs 43 to 46.

[59] With respect, I do not read those paragraphs to sustain the view Justice Evans expressed on behalf of the Federal Court of Appeal, the RPD's process is inquisitorial. The view he expressed in those paragraphs is more nuanced than counsel states.

[60] In any event, that is not the nub of the tribunal's ruling. Examining the tribunal's ruling as a whole what the tribunal ruled is that it was not going to grant another adjournment to await the results of the second AIF. While not specifically referring to section 48 of the RPD's Rules of procedure, the substance of her ruling shows the tribunal considered relevant factors. I see no error in the tribunal's findings. The onus is on the applicant to provide credible evidence to support his claim; he cannot delay proceedings for two years to produce that evidence. In addition, the first tribunal specifically ruled it was the responsibility of the second tribunal to decide whether to carry on.

[61] The second point argued by the applicant's counsel also fails. As the Supreme Court of Canada has held the RPD is owed "great deference" on its findings of fact. The tribunal grounded its credibility findings on a great number of omissions and inconsistencies. It assessed the quality of the applicant's testimony and found it wanting. I grant that on one or two points the tribunal may have slipped but taken as a whole that decision could not be said to be clearly irrational or unsupported by the evidence.

[62] For these reasons, this application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this judicial review application is dismissed; no certified questions were proposed.

"François Lemieux"

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Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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