

Federal Court



Cour fédérale

**Date: 20110404**

**Docket: IMM-5075-10**

**Citation: 2011 FC 408**

**Ottawa, Ontario, April 4, 2011**

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

**BETWEEN:**

**VERA HUSEYNOVA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The Applicant seeks to overturn an adverse decision by the Immigration and Refugee Board (Board) which was based entirely on her lack of credibility.

## II. FACTUAL BACKGROUND

[2] Ms. Huseynova is a 67 year old woman who was born in Russia but moved to Azerbaijan and became a citizen when the Soviet Union disintegrated. Her husband died in 1998 and her son moved to Canada in 2005.

[3] The Applicant claimed that she had volunteered with a human rights organization which was engaged in collecting information about the abuse suffered by soldiers in the Azerbaijani army. She claims that she was subjected to threatening phone calls, police arrest and other acts of intimidation. She fled after she was assaulted by two women and told to cease her volunteer work.

[4] The Board rejected the Applicant's claim because of serious credibility concerns. There were three adverse credibility findings and one implausible conclusion. The Board commenced its reasons by committing an error in describing the Applicant as a Russian citizen with a Russian passport.

[5] The Board did not accept the Applicant's explanation for her not having a membership card in the human rights organization, found her explanation of joining the organization inconsistent, and concluded that her explanation for using different names for the organization as nonsensical. The Board concluded that the Applicant was "seriously lacking in credibility" and denied her refugee and protection claim.

### III. ANALYSIS

[6] It is well established law that credibility and plausibility determinations are factual in nature. The applicable standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9). It is equally well established that considerable deference is owed to the Board by virtue of its special position as a trier of fact combined with its area of expertise (*Hassan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1136; *Gatore v Canada (Minister of Citizenship and Immigration)*, 2009 FC 702).

[7] The Board's error that the Applicant is Russian is concerning to the Court but not fatal to the reasonableness of the decision. When one reads the decision as a whole, it is apparent that the Board understood the Applicant's nationality and assessed her situation based upon her Azerbaijan citizenship and her situation in that country. Therefore, the error is immaterial.

[8] There is no basis for the Applicant's allegation of bias or reasonable apprehension of bias. A review of the transcript establishes no basis for this contention.

[9] The Board's concern about the Applicant's seeming inability to keep the name of her organization straight is not microscopic. It is the very type of evidence which can and does go to credibility.

[10] The Applicant suggests that the confusion in this area of testimony resulted from problems with the translation of the nuances of language. If the Applicant wished to seriously make that claim, she ought to have produced evidence. If, for some reason, certain words are nuanced and may

lead to different choices of words by the translator or words and concepts not readily translatable into English, then the proper way to proceed is by way of expert or at least knowledgeable evidence of this linguistic/translation issue. There was no such evidence here.

[11] A fair reading of the transcript disclosed that there was an evidentiary basis for the Board's credibility/plausibility conclusion. While not everyone would necessarily reach the same conclusion, particularly those who do not have the opportunity to observe the witness (as the Board did), the very essence of deference is that the Court will not substitute its view of the evidence or apply its own weight to the testimony where there is a reasonably based Board's conclusion. That is the situation in this case.

[12] There is no basis for the Court's intervention.

#### IV. CONCLUSION

[13] This judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

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

**DOCKET:** IMM-5075-10

**STYLE OF CAUSE:** VERA HUSEYNOVA

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 31, 2011

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

**DATED:** April 4, 2011

**APPEARANCES:**

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FOR THE APPLICANT

Mr. Bradley Bechard

FOR THE RESPONDENT

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