

Federal Court



Cour fédérale

**Date: 20111122**

**Docket: IMM-1599-11**

**Citation: 2011 FC 1340**

**[UNREVISED CERTIFIED TRANSLATION]**

**Ottawa, Ontario, November 22, 2011**

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

**BETWEEN:**

**FLYURA GABDULLA ENIKEEVA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is a review of the legality of a decision issued February 23, 2011, by the Refugee Protection Division of the Immigration and Refugee Board (the panel) rejecting the applicant's claim for refugee status based on the lack of credibility of her story and the lack of subjective fear.

[2] The applicant, who was born in 1947, is a citizen of Uzbekistan. She fears persecution in her country because of her husband's past affiliations and political activities. He fled Uzbekistan in

2002 to go to the United States, where he claimed refugee status. After he left, the Uzbekistan authorities summoned the applicant (in particular, in 2004) under various pretexts to question her about her husband. In any event, in September 2006, the applicant succeeded in obtaining an exit permit from Uzbekistan. In October 2006, she left her country and applied for a visa in Moscow for Canada, where her daughter, who had sent her an invitation, resides. The applicant has been living in Canada since October 25, 2006.

[3] The panel did not believe the applicant's story.

[4] The panel found, *inter alia*, that the applicant could not have obtained a police clearance certificate from the Uzbekistan government if she were being watched because of her husband's political affiliations, and disregarded her explanation that a bribe had been paid to obtain this certificate. Although the applicant disagrees, the panel's implausibility finding is based on the evidence and does not appear unreasonable to me.

[5] That said, the applicant was found to be not credible with respect to the primary element of her refugee claim, i.e., her husband's political activities. Her testimony at the hearing was vague, and she brought no evidence of her husband's involvement in the Uzbekistan opposition other than to explain that his membership card and the letters from his party were in his refugee claim file in the United States, that she had always been against her husband's political activities and that she had very little information about his political party.

[6] It is incumbent on refugee claimants to establish, to the panel's satisfaction, the merits of their allegations and the serious nature of their fear of persecution. Since the primary ground of the refugee claim is based exclusively on the husband's political activities, the panel could reasonably draw an adverse inference from the fact that she produced no evidence to corroborate what she said, given the panel's serious concerns about the credibility of the applicant's story. It was therefore not unreasonable that the panel criticized the applicant for not taking any steps to obtain a copy of these documents.

[7] The applicant contends that in criticizing her as well for not making a refugee claim at the first opportunity, the panel did not take into account the fact that she feared reprisals would be taken against her. The applicant says that she did not know she could claim refugee status and that her daughter was supposed to deal with procedures that would enable her to stay in Canada. I simply note here that her husband had already sought asylum in the United States, and there is no explanation as to how she could have not have known about this option. That said, the panel noted however that refugee claims are confidential and thus cannot be disclosed to foreign governments. Moreover, the panel noted, the applicant had access to experienced counsel so if she really had been persecuted in her country, she would not have first applied for an extension of her visa, then for permanent residence based on humanitarian and compassionate considerations in 2007. In short, it was not until after her application for permanent residence was rejected in January 2008 that the applicant finally decided to claim refugee status. The panel could reasonably find that such behaviour was inconsistent with the alleged fear of prosecution, and accordingly this finding by the panel also appears reasonable to me.

[8] For these reasons, the application for judicial review must fail. Counsel raised no question of general importance.

**JUDGMENT**

**THE COURT RULES that** this application for judicial review is dismissed. No question will be certified.

“Luc Martineau”

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Judge

Certified true translation  
Mary Jo Egan, LLB

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

**DOCKET:** IMM-1599-11

**STYLE OF CAUSE:** **FLYURA GABDULLA ENIKEEVA v  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 15, 2011

**REASONS FOR JUDGMENT:** MARTINEAU J.

**DATED:** November 22, 2011

**APPEARANCES:**

Claude Whalen FOR THE APPLICANT

Margarita Tzavelakos FOR THE RESPONDENT

**SOLICITORS OF RECORD**

Claude Whalen FOR THE APPLICANT  
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec