Federal Court Cour fédérale

Date: 20111205

Docket: IMM-6398-10

Citation: 2011 FC 1405

Ottawa, Ontario, December 5, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

GLEB SUHATSKI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Gleb Suhatski was born in Ukraine, then moved with his parents to Israel in 1994. He claims that he was harassed and bullied at school in Israel because of his Russian ethnicity, and because he was neither Jewish nor circumcised. His experiences led him to adopt anti-Zionist views which, in turn, caused him to become a conscientious objector and to refuse service in the Israeli army.

[2] Mr. Suhatski claimed refugee protection in Canada based on his Russian ethnicity, his conscientious objector status, and the fact that he had not been circumcised. He also claimed, as a bisexual male, discrimination based on sexual orientation. His claim was based on both sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex).

[3] A panel of the Immigration and Refugee Board refused Mr. Suhatski's claim based on a lack of supporting evidence and the existence of state protection in Israel. Mr. Suhatski contests the Board's findings, arguing that it unfairly failed to consider documentary evidence he submitted after his hearing, and at the same time, unfairly relied on documentary evidence of which he was unaware. He also argues that it rendered an unreasonable decision. He asks me to quash the Board's decision and order a new hearing of his claim.

[4] In my view, the Board did not treat Mr. Suhatski unfairly or render an unreasonable decision. The documentary evidence he provided after the hearing was not material; nor was the extrinsic evidence the Board consulted. Further, the conclusions the Board reached were supported by the evidence and, therefore, were reasonable. Accordingly, I can find no grounds for overturning the Board's decision and must dismiss this application for judicial review.

[5] There are two issues:

1. Did the Board treat Mr. Suhatski unfairly?
2. Was the Board's decision unreasonable?

II. The Board's Decision

[6] The Board considered Mr. Suhatski's claim of mistreatment based on his ethnicity as a non-Jewish, ethnically Russian Israeli, his status as a conscientious objector, his sexual orientation, and his fear of circumcision. It then analyzed the availability of state protection in Israel for persons in Mr. Suhatski's circumstances.

(a) Mistreatment as a Russian Israeli

[7] The Board observed that to be considered persecution, harm must be inflicted with repetition or persistence, or in a systematic way, and the alleged mistreatment must threaten a claimant's basic human rights in a fundamental fashion. Harassment and discrimination might not amount to persecution.

[8] The Board found that there was no evidence, other than Mr. Suhatski's statements, to support his claims. Further, the alleged mistreatment occurred while Mr. Suhatski was in elementary or high school. The Board did not accept that those acts amounted to persecution.

[9] The Board did not find support for Mr. Suhatski's claim in the available documentary evidence. Of the one million or so immigrants from the former Soviet Union [FSU] living in Israel, roughly 300,000 were not Jewish. The Board noted that "[r]eports of discrimination against

immigrants from the FSU were scarce”. Further, Israel’s Ministry of Immigrant Absorption offers a variety of services to immigrants in the Russian language.

[10] The Board found that immigrant children sometimes have difficulty settling in Israel and are disproportionately involved in delinquency, truancy and substance abuse. However, there was no evidence of deliberate or systemic bullying or violence directed at immigrants from the FSU in Israeli schools. Further, they are not at risk of ill treatment or violence. A special Ombudsman unit provides services to children from the FSU.

[11] Accordingly, the Board found there was no documentary evidence to corroborate the alleged mistreatment Mr. Suhatski claimed to have endured as a result of his Russian ancestry.

(b) Persecution as a conscientious objector

[12] The Board acknowledged Mr. Suhatski’s “deep belief in human rights” and his contention that the Israeli army had been violating human rights by its military activities in Gaza. Accordingly, from his point of view, “serving in any capacity would make me complicit in their crimes, and politically, I disagree with Israel for keeping those occupied territories and seizing Gaza”. However, the Board found that Mr. Suhatski was not a member of any group opposed to Israel’s military actions either before or after leaving Israel, and had never publicly expressed his beliefs.

[13] At the hearing, Mr. Suhatski testified that he would have no problem serving in the military if it was not involved in war crimes. The Board found this inconsistent with his earlier testimony

that he would not serve at all. The Board concluded that, on a balance of probabilities, Mr. Suhatski did not have a deep-seated, sincerely-held opinion consistent with being a conscientious objector and had not provided persuasive objective evidence in this regard.

(c) Persecution based on sexual orientation

[14] Mr. Suhatski testified that he had never had a romantic relationship either with a male or a female in Israel or in Canada. He once kissed a girl in Canada two years earlier. The Board found it unreasonable that he had not mentioned any relationship in his written narrative to support his claim with respect to sexual orientation.

[15] The Board acknowledged that it was not easy to determine a person's sexuality, given that this is something "imbedded in his inner feelings". But it also noted there was nothing in the evidence from which it could infer that Mr. Suhatski was either homosexual or bisexual. While he had provided evidence of his participation in gay pride activities, the Board gave it little weight because anybody could participate in those events.

[16] Finally, the Board noted that Mr. Suhatski testified that he could live safely in Tel Aviv as a bisexual person. As such, sexual orientation was not a real issue.

(d) Circumcision-based claim

[17] The Board found there was no basis for Mr. Suhatski's allegations of mistreatment based on his refusal to be circumcised. It found that the evidence dealt only with the medical and anatomical implications of circumcision, not his status in Israel. The Board also found no supportive documentary evidence on this issue in its country condition documentation. It conducted outside research from the "Jewish Circumcision Resource Center" from which it concluded that circumcision is not necessarily the source of Jewish identity or of its strength, that not circumcising is a choice of a minority of Jews now, and that circumcision has lost its meaning as a sacred act.

(e) State Protection

[18] The Board found that Mr. Suhatski also failed to provide clear and convincing evidence of a lack of state protection. First, the Board noted various mechanisms and government agencies in place in Israel to address the discriminatory acts he claimed to have endured:

- The Association for Civil Rights deals with complaints from Israelis who believe their civil rights have been violated; and

- The Office of the Ombudsman examines complaints against government offices, state institutions, local governments and other bodies; anyone can file a complaint in any language, in person or via the internet.

[19] Second, with respect to his claim to be a conscientious objector, the Board found there were recourses available to Mr. Suhatski after he received his-call up notices in 2006. The policy in place at the time distinguished between "total" objections to service, stemming from pacifism, and "selective" objection, stemming from political objection to specific policies. Those in the former category were given an exemption from service, while those in the latter category could be tried and

jailed for refusing to enlist. Persons who claim to be conscientious objectors are entitled to a hearing before a special committee.

[20] In addition, the Public Appeals Commissioner serves as an intermediary between the military and civilians. It handles complaints from soldiers, as well as requests for deferrals and exemptions from service.

[21] The Board found that Mr. Suhatski did not avail himself of any of these recourses before leaving Israel. He explained that he was aware of the committee dealing with conscientious objectors, but he believed that it was highly flawed. He relied on information given to him by an individual named Dr. Sergey Sandler-Yogev. The Board noted that this person's credentials were not established and his affidavit was not unbiased. It gave this evidence little weight.

[22] The Board also cited the well-known presumption that a state is capable of protecting its citizens. Israel is a democracy with an independent judiciary and military forces under civilian control. The Board found that Mr. Suhatski had not discharged the burden of showing that the state was not willing or able to protect him.

[23] Further, the Board noted that compulsory military service, in itself, does not constitute persecution. In countries where service is compulsory, the prosecution and incarceration of conscientious objectors does not constitute persecution.

(f) Section 97

[24] In addition to his claim to be a Convention refugee, Mr. Suhatski claimed to be a person in need of protection under s 97 of IRPA because of a risk of cruel and unusual treatment or punishment in Israel. The Board found that any sanctions and penalties Mr. Suhatski faced for avoiding military service were pursuant to general laws enacted by a legitimate state. It found no evidence that the potential punishments were excessive or beyond international standards and, therefore, his claim under s 97 of IRPA also failed.

III. Did the Board treat Mr. Suhatski unfairly?

(a) Post-hearing documents

[25] Mr. Suhatski complains that documents he provided to the Board after the hearing were improperly refused. In addition, the Board failed to provide reasons for refusing to accept the additional evidence.

[26] This evidence related to:

- The situation generally in Israel and the Occupied Territories;
- The treatment of non-Jewish Russian Israelis; and
- The treatment of Palestinians under occupation.

[27] Mr. Suhatski says that this evidence was directly relevant to his claim.

[28] Having reviewed this evidence, I find that any breach of procedural fairness was inconsequential. The Board dismissed Mr. Suhatski's claim as a Russian Israeli because the mistreatment he alleged did not amount to persecution. The documentary evidence he provided after the hearing cites some difficulties that Russian Israelis sometimes have with settling in certain areas (e.g. Bethlehem) or renting accommodation (e.g. in Tel Aviv). This evidence did not further his claim of persecution.

[29] In addition, the Board dismissed Mr. Suhatski's claim as a conscientious objector not because of a lack of documentary evidence, but because his testimony was not credible, there was a lack of evidence showing that he refused to serve in the military for principled reasons, and there were recourses available to him within Israel where he could raise his concerns about military service.

[30] Therefore, the Board's refusal to accept this evidence had no material effect on its decision (as in *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202). Mr. Suhatski had already presented a large volume of documentary evidence on these issues. The additional documentation is largely repetitive of what was already before the Board.

(b) Evidence relating to the issue of circumcision

[31] Mr. Suhatski objects to the Board's reliance on extrinsic evidence to which he was not given an opportunity to respond. He asserts that the extrinsic evidence relied on by the Board was from American sources rather than Israeli ones, and was used to impugn his testimony.

[32] Mr. Suhatski also disputes the Board's label of "self-serving" to describe his evidence on this issue, and cites case law that cautions against the use of that term: *Kimbudi v Canada (Minister of Employment and Immigration)*, [1982] FCJ No 8 (CA); *Konadu v Canada (Minister of Citizenship and Immigration)*, 1996 CarswellNat 2032 (FCTD); *Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 729 (TD); *Vallejo v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 264 (CA).

[33] In my view, the Board would have been well-advised to have sought submissions from Mr. Suhatski on the extrinsic evidence on which it relied, and to have avoided the use of the term "self-serving". However, the evidence the Board consulted was not material to its conclusion that the discrimination of which Mr. Suhatski complained simply did not amount to persecution.

IV. Was the Board's decision unreasonable?

(a) The Board's treatment of the documentary evidence

[34] Mr. Suhatski contends that the Board overlooked hundreds of documents and articles without explanation. These documents included information about:

- Human rights abuses and illegal practices of the Israeli military;
- The widespread use of torture;
- The 2006 invasion of Lebanon;
- The 2008 attack on Gaza and the ongoing siege there;
- The illegal attack on the Gaza flotilla in international waters; and
- The destruction of villages "amounting to ethnic cleansing".

[35] Mr. Suhatski maintains that the Board's decision should be overturned because of its failure to explain why it rejected this evidence.

[36] Mr. Suhatski also says that the Board dismissed the sworn statement of Dr. Sandler-Yogev without a valid reason, and that the document should be presumed to be truthful.

[37] Clearly, the Board cannot be expected to have recited the reams of documents that were put into evidence. What is required, in order for the Board's decision to be reasonable, "is that the reasons, read in the context of the record and the submissions on the live issues in the case, show that the judge has seized the substance of the matter. Provided this is done, detailed recitations of evidence or the law are not required": *R v M (RE)*, 2008 SCC 51 at para 43; see also *Ralph v Canada (Attorney General)*, 2010 FCA 256.

[38] Mr. Suhatski has failed to show that the evidence the Board allegedly ignored was material or of probative value. Again, the main issues with respect to his claim to be a conscientious objector were credibility and the lack of evidence showing that he refused to serve in the military for

principled reasons. Further, the Board found that the discrimination that Mr. Suhatski claimed to have encountered in Israel did not amount to persecution.

[39] Mr. Suhatski has simply not shown how any of the allegedly ignored documentary evidence would have been relevant to the Board's findings. With respect to the Board's treatment of the sworn statement from Dr. Sandler-Yogev, the Board concluded that it should be given little weight because his qualifications were unproven. It is for the Board to decide the weight of evidence.

[40] Further, the affidavit confirms that Mr. Suhatski was distressed at the prospect of serving in the military, based partly on "an ideological subtext" that was "quite vague at the time". His views became clearer more recently, but Dr. Sandler-Yogev does not specify what those views are. In my view, this affidavit provided little support for Mr. Suhatski's claim to be a conscientious objector.

(b) The Board's analysis of the conscientious objector claim

[41] Mr. Suhatski notes that he objected to military service on moral and legal grounds related to Israeli policies and military actions. He contends that the Board ignored his evidence and, instead, determined that because he was not actively involved in any groups opposed to Israel's military policies he was not a genuine conscientious objector.

[42] Mr. Suhatski also relies on his involvement with the "New Profile List", an anti-occupation Israeli organization, whose leader, Dr. Sandler-Yogev, confirmed his contact with the group and provided information on military policies regarding conscientious objectors.

[43] Further, Mr. Suhatski says the Board was obliged to consider the documentary evidence to determine if the UNHCR Handbook applied to his case. In particular, Mr. Suhatski faults the Board for not giving more consideration to whether he was a "selective conscientious objector", relying on *Zolfagharkhani v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 584 (CA) at para 38; *Tewelde v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1103 at para 2; and *Lebedev v Canada (Minister of Citizenship and Immigration)*, 2007 FC 728 [*Lebedev*]. The starting point for this analysis is paragraph 171 of the UNHCR Handbook, which reads:

> Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.

[44] In *Lebedev*, Justice Yves de Montigny adopted the analysis set out by Justice Anne Mactavish in *Hinzman, Re*, 2006 FC 420 at paras 108-9, aff'd 2007 FCA 171. Justice Mactavish found that paragraph 171 of the UNHCR Handbook had to be read in conjunction with paragraph 170. This led her to conclude that paragraph 171 has both objective and subjective components:

> Paragraph 170 speaks to the nature and genuineness of the personal, subjective beliefs of the individual, whereas paragraph 171 refers to the objective status of the "military action" in issue. That is, to come within paragraph 170 of the Handbook, the claimant must object to serving in the military because of his or her political, religious or moral convictions, or for sincere reasons of conscience. In this case, the Board accepted that Mr. Hinzman's objections to the war in Iraq were indeed sincere and deeply-held, and no issue is taken with respect to that finding.
>
> Mr. Hinzman has therefore brought himself within the provisions of paragraph 170 of the Handbook. This is not enough, however, to entitle him to seek refugee protection, as paragraph 171 is clear that a genuine moral or political objection to serving will not necessarily provide a sufficient basis for claiming refugee status. Paragraph 171 requires that there also be objective evidence to demonstrate that "the

> type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to the basic rules of human conduct".

[45] In my view, the Board did not err by not assessing the objective branch of the test, because it found that Mr. Suhatski failed at the first stage of the test – he was not able to demonstrate that his objections were sincerely and deeply held. As Justice de Montigny explained in *Lebedev*, "People who resist the draft or evade the army on a principled basis are assumed to fear persecution on the basis of political or religious reasons. If their motives are more mundane…a claimant could not be considered a Convention refugee" (at para 60).

[46] Here, the Board acknowledged that Mr. Suhatski had asserted deep beliefs in human rights and political disagreement with Israel's policies toward the Occupied Territories, but it nonetheless found that his actions were inconsistent with his stated beliefs. It concluded that his "testimony does not lend credence at all to his allegation of being a conscientious objector". As Justice de Montigny observed in *Lebedev*, "I would have been prepared to defer to the PRRA officer had her conclusion been based on Mr. Lebedev's credibility and the lack of evidence showing he refused to serve…for principled reasons" (at para 61).

[47] Further, any error by the Board in this area would not have affected its independent finding that state protection was available to Mr. Suhatski.

(c) The Board's analysis of state protection

[48] Mr. Suhatski maintains that the Board's conclusion is not supported by the evidence. He relies on a recent decision of this Court that found the Board had erred in its determination that state protection was available for an Arab Israeli (*Zaatreh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 211).

[49] The *Zaatreh* decision is not relevant to this case. The allegations in *Zaatreh* were markedly different than those in this case – the claimant there based his claim on a fear of persecution by an extremist Muslim group. Whether the Board erred in finding that state protection was unavailable for that claimant has no relevance to the question of whether the Board's determination in this case was reasonable.

[50] Here, the Board set out a number of government agencies, programs, and safeguards that are in place in Israel both for persons who claim to experience discrimination as non-Jews in Israeli society, and for those who seek exemptions from military service as conscientious objectors. Mr. Suhatski does not challenge these findings directly and I can see no reason to disturb them.

(d) The Board's analysis of cumulative discrimination as persecution

[51] Mr. Suhatski contends that the Board ignored evidence supporting his claim based on cumulative discrimination, and discrimination against non-Jews in Israel.

[52] Mr. Suhatski has not presented any grounds to believe that the evidence on which he relies would have altered the Board's ultimate determination. On the issue of cumulative discrimination,

the Board found that the treatment of which Mr. Suhatski complained did not amount to persecution, that his fears were not objectively well-founded, and that there was adequate state protection available in Israel against that sort of treatment. Mr. Suhatski's submissions are not specifically directed toward any of these findings.

V. Conclusion and Disposition

[53] I find that the Board did not treat Mr. Suhatski unfairly. Nor did it render an unreasonable decision given the evidence before it. Its conclusion was transparent, intelligible, and defensible in light of the facts and the law. I must, therefore, dismiss this application for judicial review.

[54] The parties may make submissions regarding a question for certification within five days of the issuance of this judgment.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The Court will consider any submissions regarding a certified question that are filed within five (5) days of the issuance of these reasons.

"James W. O'Reilly"
Judge

Annex

Immigration and Refugee Protection Act, SC 2001 c 27

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

to lawful sanctions, unless imposed in disregard of accepted international standards, and
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection

FEDERAL COURT

SOLICITORS OF RECORD

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