

Federal Court



Cour fédérale

**Date: 20111130**

**Docket: IMM-2397-11**

**Citation: 2011 FC 1394**

**Montréal, Quebec, November 30, 2011**

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

**BETWEEN:**

**DAVID BURJANADZE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] The Applicant, Mr. David Burjanadze, is a 37 year old citizen from Georgia in the City of Tbilisi.

[2] To support his claim, Mr. Burjanadze alleges that he is targeted by criminals linked with the Georgian police who want to kill him because he was allegedly an important witness to a murder perpetrated by them in January 2005.

[3] Mr. Burjanadze allegedly left Georgia in January 2006 for Spain.

[4] On July 4, 2008, Mr. Burjanadze used a “false” Israeli passport (but according to Canada Border Services Agency Analysis, Exhibit M-1, it is “probably authentic”, however, altered in a “significant manner”; the passport bears the name of Vyacheslav Lvov, born in the USSR, 02/10/1977; date of issue 27/07-2006; date of expiry 26/07/2011; passport no. 11719795).

[5] Mr. Burjanadze then flew to Canada, where he claimed refugee status.

[6] The Board determined that it was implausible Mr. Burjanadze could not provide any official document establishing his residence in Georgia after 1995 (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA); *Singh v Canada (Minister of Citizenship and Immigration)*, 2007 FC 62 at para 21).

## II. Judicial Procedure

[7] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), rendered on May 9, 2011, wherein, the Applicant was found to be neither a “Convention refugee” nor “a person in need of protection” pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

## III. Decision under Review

[8] Mr. Burjanadze did not establish that he resided in Georgia when he allegedly overheard the criminals admitting to the killing of his friend.

[9] Mr. Burjanadze did not establish that he was targeted by those criminals nor that he would be so, six years later, if he were to return to his country.

[10] The Board found that Mr. Burjanadze's allegations regarding the incident in Georgia were fabricated and, thus, concluded that he had not established a serious possibility of persecution on a Convention ground.

#### IV. Issue

[11] Is the Board's decision reasonable?

[12] The decision of the Board is reasonable. The Court, therefore, is in accord with the position of the Respondent.

#### V. Standard of Review

[13] Findings of credibility are factual in nature and are clearly within the purview of the Board; therefore, the applicable standard of review is reasonableness and the Board's decision in this instance warrants a high degree of deference (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47, 51 and 53).

#### VI. Analysis

[14] The file record before the Court demonstrates that Mr. Burjanadze spent some time in prison as he had allegedly been involved, unwillingly, as a mule in a criminal operation.

[15] The Board found Mr. Burjanadze not to be credible and noted:

- a. when asked about his journey from Georgia to Spain, or from Spain to Canada, the Applicant was vague;
- b. when asked what happened in Georgia in 2005 and 2006, the Applicant was ambiguous;
- c. the Applicant could not explain what he did in Spain for two years;
- d. the Applicant could not respond as to whether he left Spain in 2005 or 2006;
- e. the Applicant hesitated in providing dates that followed the alleged murder of an alleged friend; and,
- f. the Applicant contradicted himself in respect of occupation; he stated he was a mechanic before his alleged problems, and then changing his initial declaration to having been unemployed and supported by his mother.

[16] The Board was entitled to draw negative inferences concerning the quality of Mr. Burjanadze's testimony (*Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409 at para 18).

[17] The Board was entitled to request independent documents, such as bank account statements or cellular phone bills, from 2005 or 2006, to corroborate Mr. Burjanadze's presence in Georgia during those years; notably, since the documents initially presented by Mr. Burjanadze were for the period 1994 and 1995 (*Sinnathamby v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 473 at para 24; *Encinas v Canada (Minister of Citizenship and Immigration)*, 2006 FC 61 at para 28).

[18] The Board determined that it was implausible Mr. Burjanadze could not provide any official document establishing his residence in Georgia after 1995 (*Aguebor*, above; *Singh*, above).

[19] In accordance with Rule 7 of the *Refugee Protection Division Rules*, SOR/2002-228, an applicant is to make the necessary efforts to provide the Board with any available evidence supporting his/her statements and give satisfactory explanations for any lack of evidence that could have reasonably been expected.

[20] It is in the Board's discretion to weigh the evidence before it as it sees fit (*Bunema v Canada (Minister of Citizenship and Immigration)*, 2007 FC 774 at para 16; *Singh*, above, at para 10).

[21] The Board was entitled to determine that the documents submitted had no weight:

- a. the original affidavits were from acquaintances;
- b. the water bill only confirmed that the Applicant's mother resided in Tbilisi, Georgia; and,
- c. the municipal order confirmed only that an apartment unit belonged to the Applicant's family.

[22] Contrary to his submissions, the Applicant simply disagrees with the Board's weighing of the evidence and this does not constitute a legal basis for this Court to review the Board's decision (*Brar v Canada (Minister of Employment and Immigration)*, [1986] FCJ No 348 (CA) (QL/Lexis)).

[23] The Board's reasoning was sound as to why no weight was given to the evidence submitted after the hearing, as explained above.

[24] The Board noted that the alleged criminals were connected with the authorities so they would benefit from impunity and, moreover, the police enquiry of the murder was closed in 2005, prior to Mr. Burjanadze's departure from Georgia.

[25] Mr. Burjanadze failed to establish that the criminals would be interested in him in 2006. The onus is on an applicant to establish an objective basis for the prospective fear of persecution (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 99 at para 15).

[26] Mr. Burjanadze failed to link the general country conditions of Georgia to his personalized risk.

[27] The documentary evidence submitted by Mr. Burjanadze does not establish how he would be at risk in regard to the "corruption and politically motivated violence by the Georgian state" or the "poor human rights conditions prevailing in Georgia".

[28] This Court must refrain itself from reweighing the evidence.

## VII. Conclusion

[29] For all of the above reasons, the Applicant's application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed.

No question of general importance for certification.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-2397-11

**STYLE OF CAUSE:** DAVID BURJANADZE v  
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**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** November 30, 2011

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

**DATED:** November 30, 2011

**APPEARANCES:**

Ethan A. Friedman

FOR THE APPLICANT

Margarita Tzavelakos

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ethan A. Friedman  
Barrister and Solicitor  
Montreal, Quebec

FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of  
Canada  
Montreal, Quebec

FOR THE RESPONDENT