

Federal Court



Cour fédérale

Date: 20130429

Docket: IMM-2894-12

Citation: 2013 FC 435

Ottawa, Ontario, April 29, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

EMIL GRAIDER

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2009, Mr Emil Graider fled Israel to avoid military service. He claims to be a conscientious objector. A panel of the Immigration and Refugee Board denied his refugee claim, disbelieving Mr Graider's contention that he was a genuine conscientious objector. Further, the Board found that he had failed to take advantage of the remedies available to him in Israel.

[2] Mr Graider submits that the Board's credibility assessment was unreasonable, as was its conclusion that he could find protection in Israel. He asks me to quash the Board's decision and order another panel to reconsider his claim.

[3] I can find no basis for overturning the Board's decision. The Board reached defensible conclusions based on the facts and the law. Therefore, I cannot conclude that its conclusions were unreasonable.

[4] The issues are:

1. Was the Board's assessment of Mr Graider's credibility unreasonable?
2. Was the Board's conclusion that state protection was available to Mr Graider unreasonable?

II. Factual Background

[5] Mr Graider performed mandatory military service beginning in 1998. He says he experienced psychological shock after witnessing Israeli soldiers shooting at unarmed Palestinians. He left duty on temporary leave, but then refused to report back for service. He was arrested about two weeks later. He says that he was then beaten and denied medical treatment. He was court-martialed and sentenced to 10 weeks detention. Further, he endured insults and harassment until his period of mandatory service ended in 2001.

[6] From 2001 until 2009, Mr Graider managed to avoid being called up for reserve duty because he was either in school or injured. However, he received a notice to appear in September 2009 and he had no further grounds to refuse. He decided to flee Israel and seek refugee protection in Canada.

III. The Board's Decision

[7] The Board noted that Mr Graider's written narrative made no reference to the fact that he was a conscientious objector. It did not accept Mr Graider's explanation that his previous lawyer told him that it was unnecessary to include that information in this narrative. The Board was also concerned that Mr Graider was unable to provide any corroborative documentary evidence of his court martial.

[8] The Board also doubted that Mr Graider had been able to avoid committing acts he found objectionable during the period of his military service after his court martial. It was likely, the Board found, that he continued to participate in regular military duties.

[9] The records that Mr Graider did produce showed that he was present in his military unit even after he had fled Israel. Accordingly, the Board gave these documents little weight.

[10] The Board also noted the remedies available to conscientious objectors in Israel. Various complaint mechanisms were available to Mr Graider, including an opportunity to request an

exemption from, or an alternative to, military service.

[11] In its conclusion, the Board pointed out that prosecution and punishment of a genuine conscientious objector may not actually amount to persecution. It found that Mr Graider was neither a refugee nor a person in need of protection.

IV. Issue One – Was the Board’s assessment of Mr Graider’s credibility unreasonable?

[12] Mr Graider argues that the Board unreasonably concluded that his claim to be a conscientious objector was not credible. While he did not use the precise term “conscientious objector” in his narrative, he made clear that he was opposed to serving in the military.

[13] Mr Graider also contends that the Board wrongly discounted his corroborative military records. They showed that he was considered “absent from service without authorization”.

[14] In my view, the Board’s findings were reasonable. Mr Graider did not describe himself as a conscientious objector. Rather, he simply stated that he found the events he witnessed while in military service to be deeply disturbing. He did not allude to any moral or political objections to service and, accordingly, the Board could reasonably conclude that he was not a genuine conscientious objector.

[15] As for Mr Graider’s military records, there were some entries that indicated that he was absent without authorization. However, there were others, made while Mr Graider was in Canada,

stating that he was “in unit”. Clearly, these documents did not accurately record Mr Graider’s attendance. The Board was entitled in the circumstances to give them little weight as evidence of his military service.

V. Issue Two – Was the Board’s conclusion that state protection was available to Mr Graider unreasonable?

[16] Mr Graider maintains that the remedies to which the Board referred are not adequate. In fact, Justice James Russell referred to the panel that reviews requests from conscientious objectors in Israel as “haphazard, secretive and difficult to access” (*Kirichenko v Canada (Minister of Citizenship and Immigration)*, 2011 FC 12, at para 50). Further, there is no alternative to military service for conscientious objectors.

[17] In my view, the Board’s conclusion was reasonable on the evidence. The Board relied on documentary evidence that post-dated the *Kirichenko* decision. That evidence referred to a “special military committee” that grants exemptions from military service to conscientious objectors, or recommends their assignment to non-combat roles.

[18] This committee was set up in response to a May 2009 judgment of the Israeli High Court of Justice that recognized the rights of conscientious objectors. Accordingly, the remedy of seeking an exemption or re-assignment was available to Mr Graider before he fled Israel.

VI. Conclusion and Disposition

[19] The Board reasonably concluded that Mr Graider's claim to be a conscientious objector lacked credibility. In addition, its further finding that remedies are available to conscientious objectors in Israel was reasonable. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2894-12

STYLE OF CAUSE: EMIL GRAIDER
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 24, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 29, 2013

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