

Federal Court



Cour fédérale

Date: 20130614

Docket: IMM-7952-12

Citation: 2013 FC 653

Toronto, Ontario, June 14, 2013

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**MAKSIMS VETCELS AND VLADIMIRS
VETECLS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are brothers of Russian ethnicity who resided in Latvia and possess Latvian “non-citizen” passports. They came to Canada, Maksims Vetcel [Maksims] first and a few months later, Vladimirs Vetecls [Vladimirs], upon whose arrival they both claimed for refugee protection in Canada. In a decision dated July 17, 2012 a Member of the Refugee Protection Division rejected their claims. This is a judicial review of that decision.

[2] For the reasons below I am dismissing this application.

[3] Counsel for the Applicants raised the following issues:

1. Were the Applicants denied a fair hearing having regard to a discussion at the outset of the hearing between the Member and Counsel for the Applicants?
2. Did the Member err in law in denying the Applicants' claims on the basis of state protection—was state protection relevant?
3. Was the Member's assessment that Maksims was not credible reasonable?
4. Was the Member's analysis of persecution unreasonable?

I will address Issues #1 and #3 first and then Issues #2 and #4 collectively.

Issue #1

[4] I have reviewed the relevant portion of the transcript in question which it found at pages 261 and 262 of the Certified Tribunal Record. I find that the Member heard preliminary submissions as to whether the Applicants were citizens or nationals of Latvia but, the Member left the matter open for later argument. There was no denial of a fair hearing.

Issue #3

[5] I have reviewed the transcript, the Certified Tribunal Record and the Member's decision. I find that the determination that Maksims' evidence was not credible was reasonable.

Issues #2 and #4

[6] These two Issues require an examination as to the status of persons such as the Applicants who hold “non-citizens” Latvian passports.

[7] Historically, in the 20th century Latvia was annexed into the Union of Soviet Socialist Republics [USSR] during which period a large number of ethnic Russians relocated in Latvia. Subsequently the USSR dissolved and Latvia became an independent country with two major ethnic groups, Latvian and Russians. Latvia created a class of persons who were described as “non-citizens”. Largely this class comprised those of Russian ethnicity. Non-citizens had some, but not all, of the rights of citizens. Non-citizens could become full citizens upon passing certain examinations. Non-citizens were restricted in travel abroad and in voting, among other matters. The Member described the status of non-citizens at paragraphs 5 and 6 of the Reasons under review:

[5] Political and organizational structuring at independence left many Russians in Latvia without citizenship after Latvian independence. Latvia corrected this, but due to what some see as a political reminder, the “non-citizen” class was created. Latvia recognizes the social and economic rights of the non-citizens, albeit with some discriminatory provisions. These rights include diplomatic protection and a special passport that permits visa-free entry to the Schengen region and to return to Latvia. Latvian non-citizens cannot be deported, despite the speculative fears of the claimants. Additionally, all residents of Latvia have equal access to social benefits, allowances and services. However, non-citizens are not granted political rights and are barred from practicing certain professions; there are restrictions on owning land. Mainly, the criticism is that since non-citizens cannot vote, they cannot be considered nationals. This is not the same level of discern that need be held for the purposes of determining nationality in a refugee hearing. Latvia recognizes these ‘non-citizens’, issues them passports and allows them the right to leave and return freely. It is furthermore within the power of the claimants to apply for and obtain citizenship in Latvia. In fact, Vladimirs had already done so and was awaiting an invitation for the written exam. Although the claimants believe the process is very hard and complicated, there is

no objective persuasive evidence to indicate Latvia is using testing to prevent Russians from obtaining citizenship in Latvia. In fact, tens of thousands of Russians have already become citizens of Latvia since 1995.⁵

[6] The claimants are nationals of Latvia for the purposes of assessment as noted above. However, even if this assessment is incorrect, and I do not believe it is, then Latvia would most certainly be their country of former habitual residence. The claimant continue to enjoy the ability to return to Latvia, resided entirely in Latvia, were educated there, worked there, had homes there, have family there and have the right to obtain citizenship there by merely applying and passing certain tests, according to the claimant which include history and language.

[8] The issues raised by Applicants' Counsel require a consideration of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

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 themselves 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.

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.

[9] Applicants' Counsel argues that the "non-citizens" of Latvia do not have a "country of nationality" as contemplated by section 96 thus only "persecution" is relevant and "state protection" is irrelevant in considering their claim for refugee protection.

[10] The position of a stateless person was considered by Justice Beaudry of this Court in *Popov v Canada (Citizenship and Immigration)*, 2009 FC 898. He wrote at paragraphs 42 to 45:

[42] Although it is true that in Thabet, the Federal Court of Appeal creates a distinction between stateless individuals and those who do have a state, one must read further. The Court answered the certified question before it as follows:

In order to be found to be a Convention refugee, a stateless person must show that, on a balance of probabilities he or she would suffer persecution in any country of former habitual residence, and that he or she cannot return to any of his or her countries of former habitual residence. (Thabet at paragraph 30) [emphasis added]

[43] Thabet clearly set outs that it is not sufficient to simply be unable to return to all countries of former habitual residence - the individual must prove that they will suffer persecution in one of those countries.

[44] In this case, Mr. Popov and Ms. Doubrovskaja, being stateless individuals, must establish that they would suffer persecution in either Russia or the United States – their countries of former habitual residence and that they cannot return to the other. Although it is clear they cannot return to Russia, they have made their claim against the United States and as such must prove that they would suffer persecution in that country.

[45] In order to do so, they must prove not only a subjective fear but also an objective fear. This requires that they rebut the presumption of state protection and are "required to prove that they exhausted all the domestic avenues available to them before without success before claiming refugee status in Canada" (Hinzman at paragraph 46).

[11] A similar situation was considered by Richard J. (as he then was) in *Falberg v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 594 (QL) where he wrote at paragraph 8:

8 The applicant also argued that while the Refugee Division was correct in finding that he could obtain permanent resident status in Estonia, such a finding is useless to him because he could not work unless he applied for citizenship. The applicant also argued that the Refugee Division erred when it determined he might be able to obtain citizenship upon his return to Estonia. In my view, the panel's conclusions on this issue were not unreasonable on the basis of the evidence before it. The central question before the Refugee Division was not whether the applicant would be granted citizenship upon his return to Estonia, but rather whether Estonia's somewhat harsh policies regarding the granting of citizenship and the limitations imposed upon non-citizen permanent residents might amount to persecution within the meaning of the definition. On this question, the applicant failed to demonstrate that he might be persecuted because of his status as a permanent resident and that the state would be unable to protect him.

[12] In the present circumstances the distinction between nationality or non-nationality is irrelevant as the Member considered the Applicants' situation both from the standpoint of state protection and persecution. State protection was found to be adequate. Maksims' evidence was not considered to be credible but Vladimirs' evidence as to persecution was considered both as to individual circumstances and cumulatively. I consider that the Member's conclusions as the state protection and persecution to be reasonable. It is for the Board to draw a line between persecution and discrimination or harassment. The Member's conclusions in that respect are reasonable.

[13] I find this case to be fact specific and no question will be certified. There are no special reasons to order costs.

JUDGMENT

FOR THE REASONS PROVIDED

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. No order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7952-12

STYLE OF CAUSE: MAKSIMS VETCELS AND VLADIMIRS VETECLS v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 13, 2013

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

DATED: June 14, 2013

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