

Federal Court



Cour fédérale

Date: 20140625

Docket: IMM-1406-13

Citation: 2014 FC 613

Ottawa, Ontario, June 25, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

OLGA ANANYEVA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Proceeding

[1] Olga Ananyeva [the Applicant] has brought an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board], dated February 1, 2013 denying her claim for refugee protection on the basis that she is neither a Convention refugee nor a person in need of protection. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

II. **Background**

[2] The Applicant's husband [the Husband] graduated with a gold medal from Military Aviation School. Thereafter, he and his family experienced many years of persecution (1992-2011) at the hands of the Federal Security Services [the FSS] because he refused to become an FSS member. His military career was blocked and death threats against him and their son were made by phone. A bullet was fired through their apartment door. When her Husband tried to set up his own company, his loan was blocked by the FSS. Further, the Husband was wrongly convicted of murder and jailed for several years based on the fabricated testimony of an FSS agent.

[3] The Applicant and her Husband applied for relief to the European Court of Human Rights. This angered the FSS. It threatened both the Applicant and her Husband with death unless the litigation was withdrawn.

[4] During this period, the Applicant travelled in and out of Russia several times. She explained that, in spite of the threats to herself and her Husband and child, she returned to Russia because she felt responsible for their care and for her parents care, since she is their only child [the Explanation].

[5] In 2011, the Applicant and her Husband decided to send their son to school in Canada and the Applicant planned to accompany him for two weeks to see him settled. Then she planned

to return to Russia. However, the incident described below changed this plan and caused her to claim refugee status.

[6] The incident [the Incident] began on October 24, 2011 the day before the Applicant left for Canada. Her personal cell phone rang and her Husband answered. The police asked for her and her Husband said she was out. On October 26, 2011, the day after her departure, the police called again and asked where she was and said they wanted to meet with her. This was the first time the police had shown a direct interest in her. For this reason, her Husband advised her to seek refugee protection in Canada.

III. The Decision

[7] The Decision is only eight paragraphs in length. It purports to set out the facts but makes no mention of the threats to the Husband, the Applicant and their son. The Board accepted that the alleged events and threats occurred.

[8] The Board concluded:

- That the Applicant's re-availments to Russia indicate a lack of subjective fear. The Explanation was not discussed.
- That the Husband was the sole victim of persecutory conduct. The death threats which included the Applicant and the threats against the son were ignored.
- That the Applicant is not a person of interest to the FSS even though the Incident involves the use of her cell phone and a police request to meet with her.

- That the Applicant is not at risk under section 97 of the Act. No reasons were given.

IV. **The Issue and Discussion**

[9] The Applicant raised several issues but, in my view, the failure to conduct a analysis of risk under section 97 of the Act is determinative.

[10] The Respondent suggested that the Federal Court of Appeal's decision in *Sellan v Canada (MCI)*, 2008 FCA381 applies and that a section 97 analysis was not required. However, in my view, *Sellan* turned on the fact that there was a general finding that the claimant lacked credibility. Since there was no such finding in the present case, it is my conclusion that *Sellan* does not apply and that the Board was obliged to set out the threats which involved the Applicant and her family members and consider the risk in that context.

V. **Certification**

[11] No question was posed for certification.

VI. **Addendum**

[12] Paragraph 6 of the Decision includes passages that are presented as evidence from the transcript. However, they are not quotations. The Board appears to have paraphrased and condensed evidence taken from pages 265 to 275 of the transcript. In my view, this is not a good practice.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed and the Applicant's refugee claim is to be reconsidered by another panel of the Board.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1406-13

STYLE OF CAUSE: OLGA ANANYEVA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 19, 2014

JUDGMENT AND REASONS: SIMPSON J.

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