

Federal Court



Cour fédérale

Date: 20150105

Docket: IMM-2853-14

Citation: 2015 FC 7

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 5, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

IRMA KURKHULISHVILI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is challenging the lawfulness of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated March 19, 2014, in which the RPD found that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, CC 2001, c 27.

[2] The applicant is a citizen of Georgia who left her country for Canada in May 2012. She is claiming refugee status on the basis of threats she alleges having received from her former employer. In February 2008, the applicant – who is also a lawyer – began working as a police captain in the fraud and crime department of the Ministry of Internal Affairs in Tbilisi, a position she retained until November 18, 2011. She claims that her superiors asked her to fabricate evidence in order to proceed with the arrest of members of the opposition political party, which the applicant refused to do. During this period, the applicant and her family were purportedly threatened with arrest and the applicant was harassed by colleagues and superiors, in addition to being threatened with rape by the chief of police. After having left her employment, the applicant opened a law office whose clients had been victims of police harassment. She was subsequently followed and received threats advising her not to speak to members of the opposition. In January 2012, the applicant went on a trip to England for a week, and then returned to Georgia. She left her country once again in May 2012 to come to Canada, where she claimed refugee status.

[3] The claim was rejected. In essence, the RPD determined that the applicant was not credible and did not have a subjective fear of persecution. She was unable to explain in a satisfactory manner why she had returned to Georgia following her trip to England, and there were several contradictions in her narrative, in particular regarding the circumstances surrounding the end of her employment with the police as well as those surrounding her leaving the country. Furthermore, the RPD also found that the applicant had an internal flight alternative [IFA] available to her in Kutaisi and in Zugdidi.

[4] The applicant challenges the reasonableness of various findings of fact made by the RPD. It is well established in the case law that this Court must afford considerable deference to the RPD's findings on issues of credibility and assessment of the evidence; the same applies to the internal flight alternative [IFA], which is essentially a question of fact: *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 35-38 [*Mugesera*]; *Trevino Zavala v Canada (Citizenship and Immigration)*, 2009 FC 370 at para 5; *Hernandez Cortes v Canada (Citizenship and Immigration)*, 2009 FC 583 at para 28. In this case, the RPD's decision appears reasonable to me, with the result that the application for judicial review must fail.

[5] The applicant basically criticizes the RPD for having erred by failing to distinguish between the period prior to November 18, 2011 – when she was working for the police – and the period after November 18, 2011 – when she worked in her own private law practice. When the applicant explained that she returned to Georgia after having travelled to England because she had only been threatened once, on December 20, 2011, she was referring to threats having been made after she had started working as a lawyer and that she was therefore not contradicting herself. According to the applicant, it was an isolated incident and thus could not constitute persecution; therefore the RPD could not criticize the applicant for not having fled after this isolated incident. Furthermore, even though the applicant's workbook indicates that it was she who resigned, and even if the applicant indicated in her *Personal Information Form* [PIF] that she had left her position, the RPD should have accepted the applicant's explanation that she had effectively been dismissed, or at least forced to resign from her position to prevent her from being able to sue her former employer.

[6] However, for the respondent the applicant's testimony was peppered with contradictions and implausibilities. It was also clear that her behaviour was not that of someone who truly feared for their life. Thus, she testified at the hearing that she had feared for her life since December 20, 2011, which contradicts her previous statement to the effect that she had feared the police since January 2011. Nevertheless, the applicant's failure to seek asylum in England in January 2012, when she had just been threatened by the police on December 20, 2011, seriously undermines her subjective fear. Furthermore, the evidence in the record contradicts the applicant's testimony regarding the circumstances surrounding the termination of her employment relationship with the police. Lastly, it is implausible that the applicant would have been able to leave the airport if she was truly sought by or under threat from powerful individuals within the Georgian police. In light of all these elements, it was reasonable for the RPD to conclude that the applicant was not credible. Accordingly, there is no need to examine the RPD's finding with respect to the IFA in a city located 200 kilometres from the capital where the applicant worked.

[7] In the present case, the lack of credibility seems determinative to me. I agree with the respondent that it was reasonable for the RPD to find the applicant not to be credible. Even though it is conceivable that another decision-maker may have arrived at a different conclusion, the fact remains that there are significant contradictions and inconsistencies in the applicant's testimony. In this case, the RPD based its reasoning on the available evidence and there is no glaring inconsistency between the RPD's decision and the evidence in the record (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 60). Initially, the applicant stated that the incident of December 20, 2011, should be considered as an isolated incident, yet she also

cited the threats she allegedly received on November 18, 2011, in support of her claim for refugee protection. It strikes me as reasonable to find that the applicant's return to Georgia following her trip to England in January 2012 significantly undermined her credibility.

Furthermore, if we accept that the police are powerful enough to be able to fabricate evidence so as to arrest innocent people, there was nothing preventing the police from arresting the applicant at the airport on trumped up charges.

[8] At the risk of repeating myself, it is not my role to reassess all of the evidence in order to arrive at a different finding of fact. This is not an appeal; it is a judicial review. Accordingly, great deference is owed to findings of fact made by the RPD, which is a specialized tribunal (*Aguebor v Canada (Minister of Employment and Immigration)*, 160 NR 315, [1993] FCJ No 732 (FCA) at para 4; *Mugesera*, above at paras 35-38; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 61 and 64; *Canada (Attorney General) v Almon Equipment Limited*, 2010 FCA 193 at para 62; *Nimer Obeid v Canada (Citizenship and Immigration)*, 2008 FC 503 at paras 9-11). Given that the RPD's lack of credibility finding is in itself sufficient to dispose of the refugee claim, there is therefore no need to examine the reasonableness of the RPD's IFA finding.

[9] The application for judicial review will be dismissed. No question of general importance has been proposed by counsel and none shall be certified by the Court.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed and no question is certified.

“Luc Martineau”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2853-14

STYLE OF CAUSE: IRMA KURKHULISHVILI v THE MINISTER OF
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