

Federal Court



Cour fédérale

**Date: 20161229**

**Docket: IMM-236-15**

**Citation: 2016 FC 1415**

**Ottawa, Ontario, December 29, 2016**

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

**BETWEEN:**

**EVGENIY CHECHKALIUK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review by Evgeniy Checkkaliuk [the Applicant] pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*], of a decision made by the Refugee Protection Division of the Immigration and Refugee Board [RPD], dated November 18, 2014, in which the RPD found that the Applicant was not a Convention refugee or a person in need of protection pursuant to sections 96 and 97(1) of the *IRPA* [the Decision].

[2] The Applicant is a self-represented litigant. He did not appear at the hearing of this judicial review, either personally or by counsel, although he was duly served and although his name was called both in Court and in the lobby both before and after a brief recess which was given to await his arrival.

[3] The Applicant is a 60-year-old refugee claimant from the Ukraine. He originally alleged a fear of persecution and harm by members of a rival political party led by Victor Yanukovich (PPVY) by reason of his own political activities and membership in the rival Nadony RUH Party (NRP), a pro-Western group. He also claims to be a person in need of protection under s. 97(1) of the *IRPA*.

[4] In the Applicant's oral testimony before the RPD, however, he only makes mention of persecution by a group of individuals known as the Seven Butsruniuk Brothers [the 7BBS], with whom it appears he had a dispute over money he owed them as a result of goods they supplied him. He did not mention the 7BBS on his Personal Information Form (PIF) and when asked about this omission, he explained he was suffering from a severe headache at the time as a result of being beaten and had forgotten to include this information. He also stated he was afraid to tell anyone about what had happened for fear that something would happen to his family in Ukraine. The Applicant alleges that the 7BBS that called his wife and told her they knew where he was and, although nothing had yet happened to his wife and children, someone had thrown a rock at his son's car. He states that he had thought of going to Poland or Germany, but the 7BBS have agents in Czechoslovakia and "might find you anywhere". It is not until later in his oral

testimony that the Applicant states that the 7BBS worked for an opposing party when Yanukovych came into power.

[5] The Applicant travelled to Turkey by bus in May 2012 by way of Bulgaria and Romania. While there, he bought a fraudulent Turkish passport. He travelled to Canada on this passport in June 2012 and claimed refugee status in August 2012.

[6] According to Counsel who represented the Applicant at the time of his RPD hearing, the Applicant's narrative had changed due to the constantly changing political situation in Ukraine; essentially, the political situation upon which the Applicant claimed refugee status in his PIF had become irrelevant by the time of his RPD hearing. Therefore, at the time of his hearing, his fear of persecution remained only in relation to the "criminal elements" – namely, the 7BBS.

[7] On November 18, 2014, the Applicant's refugee claim was heard and dismissed by the RPD. Credibility was the determinative issue. The RPD found the Applicant to not be a credible witness and dismissed his claim for protection on that basis.

[8] The RPD made its credibility findings on several grounds. First, the Applicant's story changed from a risk of political persecution to a commercial dispute with the 7BBS over money owed for supplies. Secondly, the RPD noted his three-year delay in leaving Ukraine, which of course went to the subjective risk of persecution; it found his allegations at odds with country condition documents and made a general credibility finding against him on the basis of his demeanour and the manner in which he answered questions among other grounds. Finally, the

RPD noted the Applicant did not claim protection in Bulgaria, Romania or Turkey as he could have.

[9] In conclusion, the RPD stated:

[14] In deciding this claim, I considered the claimant did not identify the 7BBS as his agents of persecution from the outset. Thus, I find his alleged well-founded fear of persecution based on political grounds not to be valid. He professes to have a well-founded fear of persecution, however, his behaviour and actions belie such a conviction. I find, in his effort to escape his alleged persecution and harm (by those after him, whomever they may be), the claimant travelled to Turkey through Bulgaria and Romania but did not seek refuge there. I find if the claimant truly feared persecution and harm, as claimed, that he could also left [*sic*] Ukraine sooner. Instead, he chose to misrepresent himself by purchasing a fraudulent passport in Turkey in order to come to Canada and made [*sic*] this claim. The Federal Court, in *Maldonado*,<sup>5</sup> held that: “when an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness.”

[15] Based on the evidence and testimony presented in the claim, I am drawing an adverse inference as to the credibility of the claimant as a witness, and the credibility of his story. I did not believe his story because he did not provide reasonable explanation to satisfy the omission, contradiction, inconsistency and discrepancy between his written and oral testimony. I find on a balance of probabilities that he was not persecuted or harmed for his political activities as alleged in his written testimony. Also, I did not find sufficient evidence that he was persecuted or harmed by the 7BBS as alleged. Accordingly, I find there is not a serious possibility the claimant would be persecuted or harmed by the PPVY or 7BBS if he returns to Ukraine.

[footnotes deleted]

[10] As to the standard of review, in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where “the jurisprudence has already determined in a satisfactory manner the degree of

deference to be accorded with regard to a particular category of question.” The issue of credibility is reviewable on the standard of reasonableness: *Rahal v Canada (MCI)*, 2012 FC 319 at para 22 [*Rahal*]. The Respondent submits that substantial deference is to be afforded to credibility findings of the RPD: *Rahal* at paras 22, 42; *Zaree v Canada (MCI)*, 2011 FC 889 at para 6.

[11] In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[12] In my respectful view, there is no merit in this application for judicial review. The Applicant’s request was rejected on the basis of credibility findings and country condition evidence. Credibility findings lie at the heartland of the RPD’s evidentiary and fact-finding jurisdiction. It is significant that the Applicant does not challenge any of the credibility findings in his written filings with this Court.

[13] While the Applicant argued that sworn evidence is presumed to be true, this presumption may be rebutted, as it was here, by the existence of reasons to doubt its truthfulness: *Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302, 31 NR 34 (FCA), I see no reviewable error in the inferences drawn by the RPD because they were based on the

evidence. Moreover, delay in seeking protection is a well-accepted ground for doubting subjective fear (the onus to establish which lay on the Applicant): *Antrobus v Canada (MCI)*, 2012 FC 3 at para 10; *Goltsberg v Canada (Minister of Citizenship and Immigration)*, 2010 FC 886 at para 28 (“An adverse credibility finding can be based on any aspect of the applicant’s testimony, as well as the applicant’s actions, such as delay in claiming refugee status in Canada [...]. Delay or failure to claim refugee protection is an important consideration in assessing whether a claim is well-founded”); *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1070 at para 21 (“As for the delay in filing a claim, this is certainly a factor the panel could take into consideration in assessing the applicant’s credibility, even if it could not be a determinative factor in itself .... It is true that the applicant’s subjective fear, on which some doubt may be cast, given the delay in filing his claim, is not relevant under section 97 of the *Act*. Nonetheless, the objective risk allegedly faced by the applicant must be based on a credible story.”); *Ngwenya v Canada (Minister of Citizenship and Immigration)*, 2008 FC 156 at para 19 (“Refugees are not obliged to seek asylum in the first country they reach, however a failure to make a claim at the first safe opportunity to do so can impugn the Applicant’s credibility”); *Gamassi v Canada (Minister of Citizenship and Immigration)* (2000), 194 FTR 178 at para 6, 103 ACWS (3d) 815 (FC-TD) (“The delay in claiming refugee status, which is not explained, as in this case, is an important factor in determining the lack of subjective fear of persecution”); *Huerta v Canada (Minister of Citizenship and Immigration)* (1993), 157 NR 225, 40 ACWS (3d) 487 (FCA).

[14] Reviewed as a whole, the reasons of the RPD are justified, transparent and intelligible.

They fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[15] The Respondent, who addressed the Court on the merits of this matter, did not identify a question to certify, and in my view none arises.

[16] This application for judicial review must therefore be dismissed. There is no question to certify.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.
3. There is no order as to costs.

“Henry S. Brown”

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Judge



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

**DOCKET:** IMM-236-15

**STYLE OF CAUSE:** EVGENIY CHECHKALIUK v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 22, 2016

**JUDGMENT AND REASONS:** BROWN J.

**DATED:** DECEMBER 29, 2016

**APPEARANCES:**

Evgenity Chechkaliuk  
(self-represented)

FOR THE APPLICANT

Lucan Gregory

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Self-Represented

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT