Date: 20060501

Docket: IMM-2742-05

Citation: 2006 FC 548

Ottawa, Ontario, May 1, 2006

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ARTAN AGASTRA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

APPLICATION

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated March 29, 2005 (Decision), wherein it was determined that Artan Agastra (Applicant) was not a Convention refugee or person in need of protection.

BACKGROUND

[2] The Applicant was born on October 9, 1960 and is a citizen of Albania. He says he fears political persecution due to his support for the Democratic Party (DP), a municipal party, and his opposition to the Socialist Party (SP) in Albania.

[3] The facts and allegations set out below are summarized from the Applicant's Personal Information Form (PIF) and from the transcript of the refugee hearing held on February 22, 2005.

[4] The Applicant says he belongs to a politically persecuted family and party. The Communist regime has arrested and murdered members of his family, who are well known supporters of the DP. The Applicant fears the Albanian Secret Police (known as SHISH), and particularly one SHISH member named Xhemil Mata.

[5] The Applicant has been a member of the DP since January 1991, and even helped to found the party. He was the Chairman of the DP in Baban and a member of the Leading Committee of the DP in Korce.

[6] In January 1991, he lived in Tirana and traveled to Korce to help create the DP. He says that the Communist Secret Police in Korce summoned him and beat him in an effort to stop him

from creating the DP. In March 1991, the Applicant says he was beaten again because of his involvement with his brother's political campaign for the DP.

[7] The DP came into power in Korce. In October 1992, the Applicant was working as part of the Finance Police and was eventually transferred to Customs Police. He was laid off in 1995. A few years later, in April 1997, the SP fired shots outside his home. A week later, the SP attempted to bomb his house, but the bomb did not detonate. After these incidents, the Applicant and his family moved temporarily to his wife's village.

[8] In June 2001, the Applicant was assigned to the campaign for Mr. Ridivan Bode, General Secretary of the DP. The Albanian State Police, acting on SP instructions, stopped the Applicant's car. He was told to desist from his political activities, and then he was beaten. In October 2003, the DP won the election over the SP in Korce. The DP Leader's home was subsequently burned down.

[9] The Applicant based a large portion of his refugee claim on two distinct incidents.

[10] The first incident occurred on February 7, 2004, when the Applicant participated in a DP demonstration in Tirana. Government agents posing as demonstrators began to cause trouble. The police arrested a few people, including the Applicant, on the basis of false provocation. The Applicant was beaten by masked police and threatened with death if he continued to support the DP. No medical report was provided to support this incident, even though the Applicant states that he

was seen by a nurse at a medical clinic. The Applicant did not mention in his PIF that he sought medical attention.

[11] The second important incident occurred on April 22, 2004, when the Applicant says he participated in another demonstration in Tirana. The crowd tried to enter Parliament and was dispersed by police. The Applicant was arrested and detained for 4-5 hours. He says he was "abused" and threatened with death. No medical report was provided.

[12] At the end of April 2004, two threatening letters were delivered to the Applicant's home. Two men were also present outside the Applicant's house and he thought they wanted to kill him. He went into hiding after this incident. He obtained a Canadian visa and arrived in Toronto on May 28, 2004. He made a refugee claim on July 12, 2004. The Applicant claims that the SP is still looking for him.

[13] The Applicant alleges that he was physically assaulted numerous times and was treated at a clinic at least twice. He has not produced any medical evidence to substantiate his claims, even though medical reports were requested by the Board.

[14] I note that the Applicant made two earlier visa applications to Canada, which were both denied. At the time of those applications, the Applicant stated that he wanted to visit Canada for one month and had no fear of returning to Albania.

DECISION UNDER REVIEW

[15] The Board found the Applicant not to be a Convention refugee because he does not have a well-founded fear of persecution. The Board also found that the Applicant is not a person in need of protection in that his removal to Albania would not subject him personally to a risk to his life or to cruel or unusual treatment or punishment, and there are no substantial grounds to believe that his removal to Albania will subject him personally to a danger of torture.

[16] The Board found numerous inconsistencies, implausibilities and omissions in the Applicant's evidence.

[17] The Applicant alleged that he was a member of the executive of the Devoll[i] branch of the DP and offered an attestation from the Devoll[i] branch in support of his claim, dated 08/12/03. When he was asked why he would require this letter in the year 2003, he replied that he had filled out a new form for his membership and that it was issued when he transferred from Devoll[i] to Korce. Taking into consideration the fact that Devolli is in the Korce region, the Board found that the Applicant was unable to explain why he would require a letter of attestation from a branch in the same region. All he could say was that others were given the same letter in similar situations. The Board found that the Applicant's explanation lacked credibility and that the letter was issued for some purpose other than the one submitted by the Applicant and was not required by the DP

organization. The Board also noted that the Applicant had applied for a Canadian visa in November 2003.

[18] The Applicant alleged that he reported the abuse he had suffered to the Korce branch of the DP. The Board drew a negative inference from the fact that he did not obtain a letter of attestation from the Korce branch of the DP when he had stated that he only reported the abuse to this specific branch. On a balance of probabilities, the Board found the Applicant to be in default of Rule 7 of the Refugee Protection Division (RPD) Rules and sections 106 and 100(4) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) (which provisions place the onus on a refugee claimant to provide documents establishing his claim or provide acceptable explanations for the absence of such documents).

[19] The Applicant stated that he required medical treatment from the Ward clinic in Korce after the 2004 DP demonstration. Having been asked if he had obtained a medical report, the Applicant stated that he had not, nor did he try to obtain one. The Board found that the Applicant was in default of Rule 7 of the RPD Rules and section 106 of the IRPA.

[20] The Board did not find credible the Applicant's explanations as to why he had not mentioned in his PIF that he required and received medical treatment following the alleged beatings during the campaign. The Board found that the Applicant added the issues of medical treatment and several beatings on the day of the hearing in order to embellish his claim. In general, the Board

found that the Applicant was not a credible or trustworthy witness and that he did not suffer the harm alleged.

[21] The Applicant claimed he had been detained and beaten during a demonstration on February 7, 2004. Relying on the fact that the documentary evidence made no mention that protesters were detained and beaten by the police during or immediately following the protest, the Board found that the Applicant used a well-known protest to embellish his claim and that he did not suffer the harm alleged. The Board also rejected elements of the Applicant's documentary evidence pertaining to the February 7, 2004 demonstration and gave more weight to other evidence that identified its source material in detail. Since the latter documents did not mention that there had been hundreds of arrests following the February 7, 2004 demonstration, the Board found, on a balance of probabilities, that there had not been hundreds of arrests.

[22] The Applicant submitted several articles in support of his claim. In one, his name appears in "an incongruous manner," according to the Board. Documentary evidence mentioned the serious fundamental problems with the use of media for political reasons in Albania. Publishers and newspaper owners often edit stories to serve their own political ends. The British Embassy in Tirana reported that it is possible to have an article in a newspaper printed in exchange for a cash payment, although it is more difficult to do so in national newspapers. Other sources mentioned that sensationalism was the norm in newspapers and political party-oriented newspapers printed gossip,

unsubstantiated accusations and outright fabrications. Relying on these documents, the Board gave no weight to the Applicant's newspaper articles.

ISSUES

[23] The Applicant raises the following issues:

1. **Did the Board err in its assessment of the Applicant's attestation from the Devolli branch of the DP?**

2. **Did the Board err by requiring the Applicant to produce more attestations when he already had official attestations from the DP?**

3. **Did the Board err by requiring the Applicant to produce a medical report even though he testified that he only received first aid and that no such report exists?**

4. **Did the Board err by attacking the Applicant for PIF omissions even though the Applicant does not rely on those particular facts to advance his claim?**

5. **Did the Board engage in a selective analysis of the documentary evidence?**

APPLICANT'S SUBMISSIONS

[24] The Applicant entered into evidence a reference letter from the Devolli branch of the DP, dated 08/12/03, in order to support the fact that he had been a member of the executive branch of the party. Having been questioned as to why he would require this letter in the year 2003, the Applicant replied that he had filled out a new form for his membership and that the letter was issued when he transferred his membership from Devolli to Korce. The Applicant says the Board erred in finding that his explanation for the issuance of the letter lacked credibility. The Board's analysis lacks any explanation and appears arbitrary. The Applicant also states that the Board erred when it found that the attestation was issued for some other purpose than the one stated by the Applicant. The Board's finding is speculative and is based upon conjecture rather than fact.

[25] The Applicant further states that the Board erred when it found that he had not produced sufficient attestations to support his claim. The Board's request for a further attestation was unreasonable. The Applicant also suggests that the Board erred in finding that the attestations were unreliable because they lacked some security features, such as an address and telephone number. An address and a telephone number are not security features. The Board could have contacted the DP to see if the documents were authentic.

[26] The Applicant testified that he had obtained medical attention following the 2004 DP demonstration at which he was arrested and beaten while in police custody. In the Applicant's view,

the Board had no basis to reject his explanation and to demand that he produce a medical report, which simply did not exist because there was no record of his visit to the clinic.

[27] The Board also found that the Applicant's failure to mention in his PIF that he had required medical attention undermined his credibility. The Applicant submits that it is not possible for him to anticipate every detail that a Board member will find significant. He says he did not consider these facts to be significant and so did not mention them in his PIF. Because he did not rely on these facts to support his claim, there was no reason for him to include this information in his PIF in the first place.

[28] The Applicant contends that the Board made a selective analysis of the documentary evidence. The documentary evidence confirmed that the government arrested protesters and opponents of the regime, but the Board preferred to cite only those reports that supported its position.

RESPONDENT'S SUBMISSIONS

[29] The Respondent says that the Board based its Decision on credibility grounds. It found that the Applicant's testimony contained inconsistencies and implausibilities. The standard of review for negative credibility findings is patent unreasonableness. In the present case, the Board made findings that were reasonably open to it and did not make a reviewable error.

[30] The Respondent says the Board did not err in finding that the attestation letter lacked credibility. The Board asked the Applicant to explain why he would have needed an attestation letter in 2003, well before his departure for Canada. It was open to the Board to treat the Applicant's explanation as implausible.

[31] The Applicant argues that the Board erred in requiring a third attestation. In the Respondent's view, a review of the Board's reasons demonstrates that it had major concerns with the lack of attestation relating to the Applicant's physical injuries. It was open to the Board to question why this attestation was not available.

[32] The Respondent further states that it was not unreasonable for the Board to note that the attestations were unreliable because they lacked basic security features. The onus is on the Applicant to make his claim.

[33] The Applicant claims that the Board erred because it required him to produce a medical report. However, the Respondent submits that, if the Board's reasons are read in context, it is apparent that the Board questioned why the alleged beatings did not appear in the PIF despite the alleged political motive. It was open to the Board to draw a negative inference from the omission of a medical report due to the alleged political motive for the beatings.

ANALYSIS

Standard of Review

[34] The Applicant challenges findings of fact made by the Board. This Court must give high deference to the Board's factual findings and must be mindful that credibility findings are within the heartland of the Board's specialized function. The Board's findings should be reviewed on a standard of patent unreasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, [1993] F.C.J. No. 732 (QL) (C.A.); *Pissareva v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 2001 (QL) (T.D.); *Umba v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 17 (QL) (F.C.)).

General Guidance

[35] The Applicant raises many good points for consideration by the Court that would be highly persuasive if the Court were in a position to consider his claim afresh on the evidence presented. The fact is that, as with many judicial review applications, interpretations of the evidence that go against the Board's conclusions might well be reasonable, but that does not mean that what the Board did was patently unreasonable.

[36] Justice Pelletier described the situation the Court is faced with in this application in *Conkova v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 300 (QL) (T.D.) at para. 5:

> The standard of review of decisions of the CRDD is generally patent unreasonableness except for questions involving the interpretation of a statute when the standard becomes correctness. *Sivasamboo v. Canada*, [1995] 1 F.C. 741 (T.D.), (1994) 87 F.T.R. 46, *Pushpanathan v. Canada*, [1998] 1 S.C.R. 982, (1998) 160 D.L.R. (4th) 193. The issue here is the CRDD's assessment of the evidence, a matter clearly within its mandate and its expertise. The view which the CRDD took of the evidence was one which could reasonably be taken, just as the opposing view could also reasonably be taken. The evidence, as is so often the case, is ambiguous and equivocal. Some elements support the applicants' position, others undermine it. The CRDD's task is to consider all the elements (which does not require that specific mention be made of every piece of evidence which is reviewed) to weigh it and to come to a conclusion. As long as its conclusion is not one which is wrong on its face, it is not patently unreasonable. *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748, (1996) 144 D.L.R. (4th) 1. In this case, the conclusion to which the CRDD arrived is not wrong on its face, even though others might come to a different conclusion. There is no reason for this Court to intervene.

[37] The Court has to keep in mind that just because the Applicant can reasonably take issue with the Board's findings on the evidence and provide alternative conclusions that are not unreasonable, does not mean that the Board has committed a reviewable error. Something more is required.

Points Raised

[38] As regards the Board's finding that the letter from the DP dated 08/12/03 was not reliable, I do not agree with the Applicant's submission that this was arbitrary or without justification. In the full context of the Decision, the Board gave many reasons for doubting the Applicant's claim that he was a high-ranking member of the DP, which in turn called into question the credibility of this letter. The Board also took note of the very early date of this letter, which suggested other reasons for its existence. The context in which this finding is made convinces me that the Board did not make an arbitrary or purely speculative finding. The Board's conclusions, although not inevitable, were not patently unreasonable.

[39] The Applicant submits that the Board unreasonably expected him to provide further attestations from Albania to support his claim, and dismissed for improper reasons the attestations from the DP that he had provided. I cannot agree. The onus is on the Applicant to provide all necessary documentation to support his claim. In this case, the Board gave valid reasons for doubting the credibility of the attestations that were provided. These reasons were more extensive than merely a reliance on the lack of "security features," as suggested by the Applicant. The Board provided sustainable reasons for doubting the Applicant's claim in regard to his high and well-known position in the DP, based on his dismissal from the government staff and his replacement by "politicized" staff. On this basis, it was open to the Board to find the letters in support of the Applicant not to be credible. It was also not patently unreasonable for the Board to consider the lack

of “security features” as a relevant and contributing factor to its conclusion. Additionally, the Applicant is incorrect to assert that the Board should have contacted the DP directly to verify the letters. It is the Applicant’s responsibility to make his claim and provide credible documentation. The Board is not required to verify the Applicant’s evidence through its own efforts. Once again, it is possible to disagree with the Board and, reasonably, to reach a different conclusion on this issue. But I cannot say that what the Board did was patently unreasonable.

[40] Also, it was not unreasonable for the Board to draw an adverse inference from the Applicant’s failure to provide an attestation. The Board reasoned that the Applicant should have been able to do so, given what he alleged was a close association with high-ranking members of the DP and the available services of that organization to provide supporting documentation. The Board explained that, if the Applicant was a high-ranking or well-known member of the DP, he ought to have been aware of the services that the party had established to assist its members. This is a logical finding and is neither speculative nor unreasonable.

[41] Similarly, the Applicant contends that the Board had no basis to reject his testimony that he had obtained medical treatment following the 2004 DP demonstration, or to demand that he produce documentation verifying that medical treatment. In my view, the Board provided a basis for disbelieving that testimony because of (a) the omission of this information from the Applicant’s PIF, and (b) the confusing explanation given by the Applicant. He said that he had omitted the information because he had received many beatings, but he also said that he had not mentioned the

beatings and the medical treatment because there had been so many of them. It was clearly open to the Board to find these explanations questionable and to expect corroborating documentation. Additionally, the Board had other reasons for doubting that the Applicant had been beaten at the 2004 DP demonstration, namely that the documentary country evidence indicated a peaceful, non-violent demonstration. On the basis of this evidence, the Board was entitled to draw a negative inference.

[42] While the Applicant argues that it was the Board that embellished his claim by asking him about his injuries and his medical treatment (matters he says he did not rely upon), and that he omitted the relevant medical information from his PIF because he did not think it was important, I am not satisfied that it was patently unreasonable for the Board to explore this matter with him and to draw a negative inference from his account. The Applicant's PIF narrative made much of the fact that he had been beaten on various occasions and the Board would naturally wish to know whether medical treatment resulted and whether medical reports were available. Given that the Applicant was represented by counsel and, as discussed by the Board, is a well-educated man who held responsible positions, it was not unreasonable for the Board to suspect that the Applicant, who claimed to have been beaten on numerous occasions, but had not referred to medical treatment in his PIF, was embellishing at the hearing when this matter was raised with him.

[43] The Applicant's final avenue of attack is his submission that the Board relied on selective use of the documentary evidence, and ignored articles and documents that contradicted its

conclusions. In my reading of the Decision, and upon review of the documentary evidence, I am not persuaded that the Board failed to consider relevant evidence. The Applicant in this case is referring to evidence he submitted in the form of a number of articles, which primarily report on abuses committed by the government in association with the 2004 DP demonstration. The Board addressed the articles submitted by the Applicant by explaining how journalistic articles in Albania are highly politicized and sensationalized and are generally not reliable. On the other hand, the Board referred in detail to sources of documentary evidence from the U.S. State Department and the British Home Office that tended to discredit the Applicant's claims. It is trite law that the Board, as a trier of fact, is entitled to prefer some documentary evidence to other evidence, and in this case the Board gave reasons for doing so. Also, my reading of the Decision is that the Board turned its mind to all the evidence before it, even if it did not specifically address every document in the record. A tribunal is presumed to have considered all the evidence before it and is not obliged to mention all of the evidence in its reasons (*Taher v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1433 (QL) (T.D.) at para. 14). Once again, on the documentary evidence available, the Board could reasonably have come to other conclusions, but it weighed the evidence and its findings were not patently unreasonable in the context of the whole documentary record. I cannot interfere on this ground.

[44] The Board also made a number of negative credibility findings that were not challenged by the Applicant. All in all, the Board provided an adequate and reasonable basis for its credibility

findings and its negative conclusions. The Decision is far from being patently unreasonable even though the Applicant has certainly shown that other interpretations were reasonably possible.

ORDER

THIS COURT ORDERS that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2742-05
STYLE OF CAUSE:	ARTAN AGASTRA APPLICANT and MINISTER OF CITIZENSHIP & IMMIGRATION RESPONDENT
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 16, 2006
REASONS FOR:	RUSSELL, J.
DATED:	May 1, 2006

APPEARANCES:

Mr. David Yerzy	FOR APPLICANT
Ms. Angela Marinos	FOR RESPONDENT

SOLICITORS OF RECORD:

Mr. David Yerzy Barrister & Solicitor Toronto, Ontario	FOR APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR RESPONDENT