

Federal Court



Cour fédérale

Date: 20191212

Docket: IMM-6439-18

Citation: 2019 FC 1598

Ottawa, Ontario, December 12, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

GEORGII GARDZHAKAULI

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Georgii Gardzhakauli, the Applicant, is a citizen of Russia. He reports that he has been persecuted by Russian state actors as an ethnic Ossetian who has provided financial support to opposition candidates in South Ossetia. He has sought protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, [IRPA].

[2] The Refugee Protection Division [RPD] found that Mr. Gardzhakauli was neither a Convention refugee pursuant to section 96 of the IRPA nor a person in need of protection pursuant to section 97. The RPD cited credibility as the determinative factor. The Refugee Appeal Division [RAD] confirmed the decision of the RPD and dismissed the appeal.

[3] Mr. Gardzhakauli now seeks judicial review of the RAD decision pursuant to subsection 72(1) of the IRPA. He has argued that the RAD ignored or misapprehended evidence, and erred in finding him not to be credible. In written submissions, he argued that the RAD failed to address his assertion that the RPD was biased. In oral submissions, Mr. Gardzhakauli's counsel advised that he was not pursuing this argument. The application therefore raises a single issue:

- A. Did the RAD unreasonably conclude that Mr. Gardzhakauli's narrative was generally not credible and that the documentary evidence proffered was otherwise not sufficient to establish his claim?

[4] Mr. Gardzhakauli has failed to demonstrate that the RAD has committed any error that warrants the Court's intervention. For the reasons that follow, the application is dismissed.

II. Background

[5] Mr. Gardzhakauli reports that he was born in Telavi, Georgia in 1974 and that he moved to Rostov, Russia in 2000. He states that he became a Russian citizen in 2008 and lost his Georgian citizenship in 2015. He reports that in 2011, he started a construction company in Rostov and, in that same year, donated a sizeable sum of money through that company to the campaign of an opposition candidate in South Ossetia. Because of this political activity, he states

that the Russian Federal Security Service raided his home in 2012, seizing items and confronting him with records of his political donation. He was accused of being a spy, and threatened with torture. He reports being detained, interrogated and threatened on a number of other occasions between 2012 and 2014. A warehouse connected to his business was destroyed by fire in 2014—an event he also believes resulted from his political activity.

[6] In October of 2014, he reports that he moved from Rostov to Vladikavkaz, a Russian city just north of the Georgia–Russia border, where he started a new construction company. He reports that a competitor in the Vladikavkaz construction industry directed him to shut down his company and return to Rostov and that when he failed to do so he was subject to serious assaults that in some instances involved police officers and municipal officials. In April 2016, he went into hiding at a friend’s house. In June 2016, while in hiding, he was found and beaten. He left Russia for Canada in September 2016.

III. Standard of Review

[7] RAD decisions, including credibility findings, are reviewed against a standard of reasonableness (*Karki v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1294 at paras 45 and 46).

[8] A decision is reasonable where on a reading of the decision as whole a reviewing court concludes: (1) the elements of justification, transparency and intelligibility are reflected in the decision making process, and (2) the result falls within the range of possible, acceptable outcomes that are defensible on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at

para 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 9).

IV. Analysis

A. *Did the RAD unreasonably conclude that Mr. Gardzhakauli's narrative was generally not credible and that the documentary evidence proffered was otherwise not sufficient to establish his claim?*

[9] Mr. Gardzhakauli cites *Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 to establish that, as a refugee claimant and absent reasons to conclude otherwise, the RAD was required to presume his sworn evidence was truthful. He submits that the RAD's negative credibility findings are unreasonable and that it failed to consider a significant portion of his claim. I disagree. The basis for the RAD's negative credibility findings are identified and those findings are justified. Mr. Gardzhakauli's submissions to the effect that a significant portion of his claim was ignored by the RAD is simply not borne out by an objective review of the decision.

[10] Decision makers are presumed to have considered all the evidence before them. They need not explicitly address every piece of evidence. However, a failure to address evidence that is directly contradictory to a decision maker's conclusion may lead a reviewing court to conclude that the tribunal did not have regard to the material before it (*Pathinathar v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1312 at para 15, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[11] In this case, the RAD engaged in a full review of the record including the transcript of proceedings before the RPD. In considering the RPD's credibility findings, the RAD independently considered the findings reached. It rejected one of the RPD's negative findings on the basis it involved a "microscopic" parsing of the evidence. However, it specifically agreed with and adopted the remaining negative findings "for the same reasons as those provided by the RPD". The reasons are clearly articulated in the RPD decision and, in my view, provide a reasonable basis upon which the RAD was able to conclude that Mr. Gardzhakauli's narrative was not credible. The RAD also reasonably concluded that the negative credibility findings extended to the section 97 claim and that further analysis of that aspect of the claim was therefore not warranted.

[12] Mr. Gardzhakauli also takes issue with the RAD's treatment of the corroborative documentary evidence in the form of three letters and a medical report with photos.

[13] The RAD did not discount or dismiss the documents and photos on the basis that it had found Mr. Gardzhakauli's narrative not to be credible. Instead, it assessed this evidence and clearly articulated its reasons for according it little weight.

[14] The RAD noted that the letters recounted very general facts that had been reported to the authors by Mr. Gardzhakauli. It further noted that the letters were very similar in style, content and length. On the basis of these observations it was reasonable for the RAD to conclude that the letters did not, on their own or in conjunction with other evidence, establish the claim being advanced.

[15] In respect of the medical report Mr. Gardzhakauli relies on the Supreme Court of Canada's decision in *Kanhasamy v. Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*] to support the proposition that the RAD erred by discounting the report and photos on the basis that they did not disclose the cause of the injuries. *Kanhasamy* does not assist Mr. Gardzhakauli.

[16] In *Kanhasamy*, the Supreme Court reviewed an immigration officer's decision refusing an application for Humanitarian and Compassionate relief. It found that the officer unreasonably placed minimal weight on a medical report submitted to prove the psychological effect of removal because its author did not have personal knowledge of how the applicant sustained his injuries (para 49). In contrast, in Mr. Gardzhakauli's case, the RAD was not assessing an application for Humanitarian and Compassionate relief but a claim under sections 96 and 97 of the IRPA. He put forward the medical reports not to prove the psychological effect of removal but rather to corroborate his narrative and support the position that he had a well-founded fear of persecution or was a person in need of protection.

[17] The medical report states that Mr. Gardzhakauli was "beaten," suffered injuries and received treatment. While these statements may well be corroborative of the narrative, the RAD had reasonably concluded the narrative not to be credible. The RAD's articulation of its view that the report was of little probative value in terms of its failure to indicate what happened, is unfortunate. However, on review, I must consider the RAD's treatment of the medical report in the broader context of the whole of the decision. I am satisfied that the RAD did not consider the report in isolation but rather in light of its prior negative credibility findings. It was on this basis

that the RAD concluded the report was of minimal value in establishing the claim for protection. In this context it was not unreasonable for the RAD to note that the information contained in the medical report on its own or in conjunction with other credible evidence was not sufficient to establish the section 96 and 97 claims being advanced.

[18] The RAD did not err in concluding that Mr. Gardzhakauli's narrative was generally not credible and that the documentary evidence was insufficient to establish the claim.

V. Conclusion

[19] The application is dismissed. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-6439-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6439-18

STYLE OF CAUSE: GEORGII GARDZHAKAULI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 2, 2019

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 12, 2019

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