

Federal Court



Cour fédérale

Date: 20110329

Docket: IMM-2883-10

Citation: 2011 FC 381

Ottawa, Ontario, March 29, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

KIRILL PAK

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 23 December 2009 (Decision), which

refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of Kazakhstan. He claims to have a well-founded fear of persecution based on his membership in a particular social group, namely homosexual men. He has said that, in his country of origin, he was subjected to a death threat by the police as well as threatening notes, slashed tires and broken windshields because of his sexual orientation. He alleges that he was beaten in June 2003, August 2007 and February 2008, and that he fears returning to Kazakhstan due to those among the citizenry and the police force who hate gay men. In April 2008, he applied for a Canadian visitor's visa. On 17 June 2008, he left Kazakhstan and arrived in Canada the following day. He claimed refugee protection on 24 June 2008.

[3] The Applicant appeared before a panel of the RPD on 14 April 2010. He was represented by counsel and an interpreter was present. At this time, Applicant's counsel produced a package of fifteen items, including medical reports, letters and other personal documents; no other disclosure had been made prior to the hearing date. The RPD accepted the contents of the package into evidence, in consideration of the fact that it was Applicant's counsel, and not the Applicant, who was responsible for the late disclosure.

[4] In its written Decision, dated 27 April 2010, the RPD rejected the Applicant's claim, having found that he was "entirely lacking in credibility," that he had no well-founded fear of persecution

based on sexual orientation and that he was not personally at risk of being killed or tortured if he were to return to Kazakhstan. This is the Decision under review.

DECISION UNDER REVIEW

[5] The Decision states that the determinative issues were credibility and absence of a well-founded fear of persecution based on sexual orientation.

Credibility

The Applicant Failed to Establish His Identity as a Gay Man

[6] The RPD felt that the Applicant's evidence, as presented in his Personal Information Form narrative (PIF), in his documentation and in his oral evidence, was highly contradictory.

[7] The RPD found that the Applicant had not adduced "credible and trustworthy evidence" to establish his identity as a gay man. The Applicant provided a letter, dated 9 March 2010, from Toronto's 519 Church Street Community Centre for LGBTQ refugee claimants, confirming his membership since January 2010. When asked at the hearing why he did not join the group soon after his June 2008 arrival in Canada, the Applicant replied that he did not know the group existed until January 2010. The RPD found this claim to be "highly improbable," considering that the Applicant had attended a gay pride parade in Toronto two weeks after his arrival in Canada, had actively participated in photo opportunities with parade-goers and was accompanied by a friend who could have acted as an interpreter so that the Applicant could gain information about the local

LGBTQ community. The express purpose of the gay pride parade is to disseminate information about the Toronto LGBTQ community and about specific organizations such as the 519 Church Street Community Centre, which is well-known. The RPD found that the Applicant's explanation for not joining the group until a few months before the hearing was lacking in credibility.

[8] The Applicant also provided a letter from his mother, stating that he was gay and that she knew he was. When questioned at the hearing, the Applicant admitted that he had instructed his mother as to what she should say in the letter. For this reason, the RPD gave the letter little weight since it was clearly produced solely for the hearing.

[9] The Applicant reported hearing from others that one of his gay friends in Kazakhstan was strangled to death and that three of his other gay friends were falsely accused of the murder. This information, in the RPD's view, was irrelevant. No news reports were provided to substantiate the story, despite the Applicant's claim that the murder was "publicized." The RPD drew no conclusions from this information.

[10] Finally, the Applicant's claim that he had a gay relationship before coming to Canada was not supported by sufficient credible evidence. He stated in his PIF that he and a young man had "spent time together" in an apartment belonging to the Applicant's aunt and that he was "certain" that the young man's parents had known of their intimate relationship. At the hearing, he claimed that they had lived together in the aunt's apartment and that the young man's parents had known that they were intimate. The RPD concluded, based on these factors, that the Applicant was not gay.

The Applicant Failed to Establish That He Had Been Attacked

[11] The RPD also examined the Applicant regarding contradictory reports of how he had been subjected to violence due to his sexual orientation and how he had responded to those attacks. The Applicant claimed in his PIF that, in 2003, he was punched and cut with a knife by five men who attacked him and his boyfriend. He did not visit a hospital because his injuries were not serious, and he did not file a police report because he feared homophobic treatment by the authorities.

[12] The Applicant claimed that, in 2007, however, he did go to the police to complain that he and his boyfriend had been attacked because they were “holding hands, hugging and kissing.” The RPD did not believe that a man who feared the police would “unnecessarily volunteer” details about their intimate behaviour.

[13] The Applicant claimed that he was again attacked in February 2008. In his PIF, he stated that his injuries were “not too serious” and that he did not go to the hospital for fear that the police would be brought in to investigate. Later, at the hearing, he stated that he went to a clinic and that his injuries were serious; he produced a medical report to that effect. The Applicant’s sole explanation for these radically differing accounts was mistaken translation. Consequently, the RPD rejected the medical report as having been “manufactured for the [sole] purpose of embellishing a claim.” The RPD found that the assault had never taken place, and it drew an adverse credibility finding against the Applicant.

[14] The Applicant also claimed at the hearing that he feared returning to Kazakhstan because he could be killed by an organization called the “League of Muslims—Shahids,” whose agenda it was to kill homosexuals. He had not previously mentioned his fear of this group. When questioned, he failed to provide a satisfactory explanation for this omission, and he confessed to not knowing whether this group had taken any action against anyone based on their sexual orientation. The RPD found this to be a “serious” omission and drew from it an adverse credibility finding.

[15] The Applicant’s evidence concerning his employment history while in Kazakhstan was also contradictory. In his PIF, he stated that he had been a self-employed car dealer from 2003 to 2008. At the hearing, he said he had been a partner in a ceiling installation business from about 2006-2008. When reminded of the evidence in his PIF, the Applicant said that he had worked as a driver. He could provide no explanation for neglecting to include the ceiling installation business in his PIF, even though he was aware that he could amend his PIF. The RPD, therefore, found that the Applicant was deliberately misleading and unwilling to explain the inconsistencies, and it made an adverse credibility finding.

Conclusion

[16] The RPD found that the extent and number of contradictions and the questionable nature of the documents submitted at the hearing constituted “a pattern of fabrication that gives rise to doubts generally about the [Applicant’s] veracity.” It did not accept on a balance of probabilities that the Applicant was gay or that, in Kazakhstan, he was a target for violent treatment based on his sexual

orientation. He did not have a well-founded fear of persecution, as required under section 96, nor would he be subject to a risk to life or to cruel or unusual treatment or punishment if returned to Kazakhstan, as required under section 97.

ISSUES

[17] The Applicant raises the following issues:

1. Did the RPD err in its determination that the Applicant lacked credibility, in particular by engaging in an overzealous search for contradictions?
2. Did the RPD err in its determination that the Applicant lacked credibility, specifically by making unjustified findings that there were significant PIF omissions concerning his work history and the agent of persecution?
3. Did the RPD err by making an adverse finding of plausibility because the Applicant sought police protection?
4. Did the RPD err by engaging in speculation and stereotyping when it found it implausible that a gay person would not learn about the 519 Church Street Community Centre soon after his arrival in Canada?
5. Did the RPD err by discounting corroborating evidence simply because it came from the Applicant's mother?
6. Did the RPD err by failing to consider the letter from the Applicant's friends which gave evidence about country conditions for gay people and which corroborated his claim that he was gay?

7. Did the RPD err by failing to understand the evidence, specifically as it related to the murder of the Applicant's gay friend and the false charges laid against three other gay men for the murder?

[18] These issues can be summarized as follows:

- a. Whether the RPD's credibility findings were reasonable; and
- b. Whether the RPD properly assessed the evidence.

STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[21] The assessment of an applicant's credibility and treatment of the evidence are within the RPD's area of expertise. For this reason, they attract a standard of reasonableness on review. See *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA); *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571 at paragraph 14; and *Dunsmuir*, above, at paragraphs 51 and 53.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable

outcomes which are defensible in respect of the facts and law.” See *Dunsmuir, above*, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

The Applicant

The Decision Indicates an Overzealous Search for Inconsistencies

[23] The Applicant submits that, in the Decision, the RPD states and re-states its findings regarding inconsistencies in the Applicant’s evidence, thereby making the list of inconsistencies seem longer than it actually is. In the Applicant’s view, there are only two inconsistencies: whether the Applicant went to the hospital after being attacked; and whether he lived with his boyfriend in Kazakhstan.

[24] With respect to the first inconsistency, there was a translation error. The Applicant did receive medical attention and provided medical reports as evidence. The RPD made no adverse findings as to the genuineness of those medical reports.

[25] With respect to the second inconsistency, the RPD misconstrued the evidence in stating that the Applicant had said that he and his boyfriend had cohabitated. The Applicant’s evidence was that “they shared an apartment from time to time.” The RPD has exaggerated the number and

seriousness of the inconsistencies and has engaged in the kind of “microscopic examination of the evidence” that was discouraged by the Federal Court of Appeal in *Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168, [1989] FCJ No 444 (QL). Even if the Applicant had fabricated part of his story to bolster his claim, this does not necessarily mean that his story is wholly unbelievable. As Justice Russel Zinn stated in *Guney v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1134 at paragraph 17: “The fact that a witness has been caught in one lie, in itself, is insufficient to discredit all of his evidence, where, as here, the evidence is otherwise plausible and consistent.”

PIF Omissions Were Irrelevant

[26] The Applicant contends that the RPD erred in finding that the omissions from his PIF were serious. The Applicant failed to indicate in his PIF that he worked for his brother’s ceiling installation company while also working as a car dealer. This is irrelevant to his claim and is not a serious omission.

[27] Similarly, the Applicant’s failure to state in his PIF that he feared the League of Muslims—Shahids is a minor point. The Applicant stated that he feared all people in Kazakhstan who hated gays and, the Applicant argues, this group is just an example of such people, all of whom are agents of persecution. The RPD exaggerated the importance of a few minor details and lost sight of the substance of the facts that ground the claim. See *Djama v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 531 (FCA) (QL).

The RPD Erred in Assessing the Evidence of the Police Visit

[28] The Applicant argues that the RPD acted unreasonably in making an adverse credibility finding based on his revealing to the police the intimate nature of the behaviour in which he and his boyfriend were engaged when they were attacked in 2007. The Applicant was simply being truthful and forthcoming. The reasoning of the RPD, insofar as it suggests that the Applicant should not have revealed to police the motive for the attack, is likely to discourage victims to seek out state protection and to set them up for failure whenever they do seek out state protection. As the Federal Court of Appeal observed in *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238, [1992] FCJ No 481 (QL): “Such a gratuitous counsel of cowardice as the only standard of plausible behaviour can hardly be taken as an objective reflection by the Board.”

The RPD Engaged in Stereotyping

[29] The RPD’s finding that it is implausible that the Applicant took so long to discover the 519 Church Street Community Centre is rooted in a stereotype. Simply because the Applicant did not seek out a group that services the gay community does not mean that he is not gay. Moreover, 519 Church Street does not serve the gay community exclusively. Simply because the Applicant may not meet the RPD’s view of a “stereotypical” gay man does not mean that he is not who he claims to be. See *Herrera v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1233.

The RPD Erred in Discounting the Mother's Letter

[30] The Applicant contends that the RPD erred in rejecting the letter from his mother, which stated that he was gay and that she knew he was. Despite the RPD's assertions, there is nothing improper about submitting an affidavit for the sole purpose of a hearing, and the Applicant did nothing wrong in instructing his mother as to what she should say in her letter. It is perverse for the RPD to give it little weight for the reasons stated. The RPD characterizes the letter as self-serving. However, as Justice Robert Barnes stated in *Suduwelik v Canada (Minister of Citizenship and Immigration)*, 2007 FC 326 at paragraph 23: "The vague characterization of a claimant's testimony as self-serving is ... unhelpful because a refugee's evidence will seldom be otherwise."

The RPD Ignored Relevant Evidence

[31] The Applicant contends that, in failing to address the letter from his gay friends, which attests to the persecution faced by gay men in Kazakhstan, the RPD ignored relevant evidence that corroborated the Applicant's story. While the RPD was not obligated to address all of the evidence before it, the Court may infer from this silence that the Decision was made without regard to the relevant evidence. As Justice John Evans of this Court observed in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 (QL) at paragraph 17:

Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

The RPD Failed to Comprehend Evidence of Persons Similarly Situated

[32] The RPD failed to acknowledge the importance of the Applicant's evidence that one of his gay friends in Kazakhstan was strangled to death and that three of his other gay friends were falsely accused of the murder. This constitutes evidence of persons similarly situated and is an example of the risk faced by members of the gay community in the Applicant's country of origin. This is the kind of injustice that accounts for the Applicant's fear of persecution. Failure to see the information as relevant manifests the RPD's inability or unwillingness to understand the evidence before it.

[33] The Applicant argues that the RPD at times disregarded and at times failed to consider important evidence in support of his claim. Moreover, it exaggerated its adverse credibility findings. In so doing, it committed a reviewable error, which rendered the Decision unreasonable.

The Respondent

Credibility Findings Are Reasonable

[34] The Respondent submits that, based on the recurring inconsistencies, omissions and contradictory information in the Applicant's evidence, it was reasonable for the RPD to find that he was not gay and that he did not suffer the attacks claimed. The Respondent summarizes the RPD's principal findings as follows:

- a) the Applicant contradicted his own evidence several times;
- b) there were inconsistencies between the documents, the PIF and the oral evidence concerning the nature and seriousness of his injuries;

- c) the Applicant acted in a manner contrary to an earlier statement he gave regarding homosexuals reporting to police;
- d) there were inconsistencies in the dates and nature of the Applicant's employment and work history in the PIF, the oral evidence and the immigration forms;
- e) the Applicant gave inconsistent information about his living arrangements in Kazakhstan;
- f) the Applicant provided inconsistent information as to whether his boyfriend's parents knew of their relationship;
- g) there were material omissions in the PIF;
- h) the Applicant gave two completely different scenarios relating to the June 2003 attack in his PIF and testimony; and
- i) the Applicant submitted questionable documents at the last minute.

[35] The RPD is obliged to state its adverse credibility finding in clear and unmistakable terms, supporting its findings by examples that fostered its doubt of the Applicant's evidence. The RPD has done so. See *Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236, [1991] FCJ No 228 (FCA) (QL).

[36] The presumption that testimony is truthful is predicated on an absence of reason to doubt the truthfulness of such testimony. See *Maldonada v Canada (Minister of Employment and Immigration)*(1979), [1980] 2 FC 302, [1979] FCJ No 248 (FCA) (QL) at paragraph 5. In the instant case, the RPD provided numerous reasons why it doubted the truthfulness of the Applicant's evidence. Justice William McKeown held in *Castroman v Canada (Secretary of State)* (1994), 27

Imm LR (2d) 129, [1994] FCJ No 962 (FCTD) (QL) that “[o]ne of the primary ways that the Board tests a claimant’s credibility is by comparing the PIF with the claimant’s oral testimony.” The RPD conducted such a comparison and found that the Applicant’s evidence was so inconsistent that it adversely affected his credibility.

[37] Although the Applicant contends that the RPD was overzealous and that it exaggerated the seriousness and number of inconsistencies, the jurisprudence clearly states that the RPD is entitled to reject explanations that it does not find to be reasonable. See *Allinagogo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 545.

[38] The Applicant’s suggestion that the RPD engaged in stereotyping regarding his involvement in the 519 Church Street Community Centre misconstrues the reasoning. The RPD was clear: the timing of his joining the group—that is, mere months before the hearing—indicated that the Applicant joined simply to bolster his claim that he was gay.

Omissions in the PIF Were Significant

[39] The Respondent contends that it was reasonable for the RPD to consider the omissions from the Applicant’s PIF as significant to its assessment of his credibility. See *Grinevich v Canada (Minister of Citizenship and Immigration)* (1997) 70 ACWS (3d) 1059, [1997] FCJ No 444 (FCTD) (QL); and *Lobo v Canada (Minister of Citizenship and Immigration)* (1995), 54 ACWS (3d) 1348, [1995] FCJ No 591 (FCTD) (QL).

[40] The Applicant did not provide satisfactory explanations for why he failed to mention his fear of the League of Muslims – Shahids in his PIF and why his PIF and his oral evidence differed with respect to the aftermath of the August 2007 attack. These are important facts, and all important facts should appear in the PIF. See *Basseghi v Canada (Minister of Citizenship and Immigration)* (1994), 52 ACWS (3d) 165, [1994] FCJ No 1867 (FCTD) (QL).

The RPD's Assessment of the Evidence Was Reasonable

[41] The RPD is entitled to make reasonable findings based on common sense and rationality. It may reject evidence that is not consistent with the probabilities affecting the case as a whole. See *Aguebor*, above. Although the Applicant argues that the RPD discounted, ignored and failed to grasp the relevance of persons similarly situated, he cannot show that the RPD made a single erroneous finding with respect to any evidence. Credibility and assessment of the evidence is within the RPD's expertise, and a court should intervene only if a tribunal has based its decision on "an erroneous finding of fact made in a perverse or capricious manner or if it delivered its decision without regard for the material before it." See *Theodor v Canada (Minister of Citizenship and Immigration)*, 2009 FC 396. Further, a tribunal is assumed to have weighed all evidence before it unless the contrary is shown. See *Florea v Canada (Minister of Employment and Immigration)* (1993), [1993] FCJ No 598 (FCA) (QL). Although the Applicant disagrees with the way in which the RPD weighed the evidence, this does not afford a legal basis for the Court to intervene.

ANALYSIS

[42] The determinative issue in this case was credibility. The RPD could not believe that the Applicant was a homosexual. Hence, the RPD rejected the Applicant's claim to be a refugee or a person in need of protection based upon his sexual orientation.

[43] The assessment of credibility lies at the heart of the RPD's expertise. See *Aguebor*, above. The Applicant has made a concerted effort to suggest that the RPD was overzealous in searching for inconsistencies, in finding PIF omissions and inconsistencies in testimony, in discounting evidence because of its source, and by ignoring evidence. I have examined in turn each point raised by the Applicant. There are several instances where, taken individually, adverse inferences need not necessarily have been drawn. Taken as a whole, however, the RPD states its adverse credibility findings in clear and unmistakable terms and provides reasons why it doubted the truthfulness of the Applicant's evidence.

[44] The Applicant suggests that the RPD was overzealous in finding minor discrepancies and hence failed to approach the material discrepancies with an open mind and to take into account the Applicant's explanations. However, the Decision as a whole and the transcript of the hearing reveal a cumulative approach to credibility. The major discrepancies were so blatant that it was not unreasonable for the RPD to find that, overall, it could not believe the Applicant.

[45] The Applicant simply could not explain the conflicting accounts he had given of his work history, and the RPD gives good reasons why it could not accept the Applicant's explanation (an

error in translation) for discrepancies about his injuries and hospital attendance resulting from the 2008 attack. There are other reasonable findings in addition to these.

[46] Other findings are weaker. For example, the finding that the Applicant lacks credibility because of the reasons he gave for not joining the 519 Church Street support group prior to January 2010. However, overall, I cannot say that any of the findings or conclusions are so unreasonable that the Decision falls outside the range of possible, acceptable outcomes that are defensible in respect of the facts and law. Consequently, I cannot interfere. This does not mean that I would necessarily have come to the same conclusions myself, but I was not at the hearing and the RPD is charged with deciding issues of credibility. Taken individually, it is possible to argue with some of the RPD's conclusions, as the Applicant has. Taken as a whole, however, it is clear why the RPD could not believe the Applicant, and its conclusions fall well within the *Dunsmuir* range of reasonableness.

[47] There is nothing in the Decision to suggest that the RPD's findings and conclusions were unreasonable. The Applicant is, in the end, asking the Court to re-weigh the evidence and come to a conclusion different from the one reached by the Board. The Court cannot do this. See *Giles v Canada (Attorney General)* 2010 FCA 54 at paragraph 6.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There is no question for certification

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2883-10

STYLE OF CAUSE: **KIRILL PAK**

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 8, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT** **Russell J.**

DATED: March 29, 2011

APPEARANCES:

David P. Yerzy

FOR THE APPLICANT

Khatidja Molloo

FOR THE RESPONDENT

SOLICITORS OF RECORD:

David P. Yerzy
Barrister and Solicitor
Toronto, ON

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE RESPONDENT