

Federal Court



Cour fédérale

Date: 20111013

**Dockets: IMM-1488-11
IMM-1492-11**

Citation: 2011 FC 1157

Toronto, Ontario, October 13, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

Docket No.: IMM-1488-11

CONSTANTIN LUCHIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

AND BETWEEN:

Docket No.: IMM-1492-11

STANISLAV LUCHIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The decision presently under review is a Pre-Removal Risk Assessment (PRRA) regarding two brothers' s. 96 and s. 97 refugee protection claims on the basis of their identity as High Orthodox Jews in Moldova. The brothers fear persecution and risk in Moldova if forced to return.

[2] The Refugee Protection Division (RPD) rejected the Applicants' claims on a finding that each lacked subjective fear. While stating that "[t]he panel does not doubt that there is an existence of anti-Semitic behaviour or tendencies from some citizens of Moldova", and racism in Moldova is a "serious problem" (Stanislav Certified Tribunal Record pp. 16 - 17), nevertheless, the RPD found that any s. 97 risk could be state protected. Leave was not granted to review the RPD decision.

[3] With respect to the decision presently under review, the Applicants filed an expert report named as "new evidence" which explains the history of persecution against High Orthodox Jews in Moldova and provides an apparently credible prospective opinion that they would face risk if they return (Stanislav Certified Tribunal Record, pp. 72 - 77). The argument advanced by Counsel for the Applicants in the PRRA application for admission of the report is as follows:

We respectfully submit that while the Board had the discretion to weigh the evidence in rendering a decision regarding the availability of state protection in Moldova, at the time the RPD did not have before it the expert opinion from OPWI. Accordingly, it is submitted that the new evidence, coupled with the following information [the Immigration and Refugee Board's (IRB) National Document Package on the Republic of Moldova] that was before the RPD, could reasonably have led the Board to reach a different conclusion.

(Stanislav Certified Tribunal Record, p. 59)

[4] The PRRA Officer who considered the expert report did not admit it as evidence for the following reasons:

I have carefully read and considered the report from One Free World International, El Shafie Ministries that was prepared 13 August 2010.

The report was conducted by Rev. Majed El Shafie as requested by the applicant's counsel. This report is based on information as retold by the applicant as well as the personal knowledge, experience and research done by Rev. El Shafie. In this report the Reverend points out the general history of anti-Semitism in Moldova and how, in the opinion of the Reverend, the applicant would face persecution and overt anti-Semitism; however no corroborating objective evidence has been submitted to substantiate the Reverend's opinions and statements. Documents submitted that postdate the IRB rejection do not pass the test of new evidence as set out in Section 113(a) of the Act simply by virtue of their post-IRB rejection date. In some cases, documentation, although currently dated, contains or refers to information pertaining to facts already considered and presented to the IRB at the applicant's hearing. In these instances, the Regulations require that the applicant must show how this evidence meets the requirements of Section 113(a) in that it arose after the rejection; was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented such evidence to the IRB tribunal. In his submissions, the applicant has not explained why, according to the Act, this documentary evidence was not reasonably available or could not reasonably have been expected in the circumstances, to have been obtained and presented to the IRB at the time of his hearing. For these reasons I will not be considering this report in this assessment.

(Decision, pp. 4 - 5)

[5] On the basis of the argument advanced to the PRRA Officer for admission of the expert report, I find it is fair to say that the evidence was tendered to bolster the evidence that was placed before the RPD for consideration. However, since leave was not granted to judicially review the RPD decision, it constitutes the final word on s. 97 and cannot be revisited on a PRRA application unless evidence tendered is found to meet the test stated in s. 113(a) of the *IRPA* as found by the PRRA Officer. Since no compelling argument was made with respect to these criteria when the expert report was tendered, I find no reviewable error in the PRRA Officer's decision to reject the evidence.

[6] As an ancillary admissibility argument made in the course of the present Application, since the RPD rejected the Applicants' claims on a finding that each lacked subjective fear, the RPD did not conduct a proper s. 97 analysis and, therefore, the PRRA Officer has the obligation to do so, and in so doing, to consider the expert report. I cannot accept this argument because leave was not granted to review the RPD decision, and by operation of law, but for compliance with s. 113(a) of the *IRPA*, all s. 97 concerns must be considered as fully canvassed and decided by the RPD.

ORDER

THIS COURT ORDERS that as I find there is no reviewable error in the decision under review, the Application is dismissed.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-1488-11 AND IMM-1492-11

STYLE OF CAUSE: CONSTANTIN LUCHIAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

AND BETWEEN:

STANISLAV LUCHIAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: October 11, 2011

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: October 13, 2011

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