

Federal Court



Cour fédérale

Date: 20150707

Docket: IMM-6772-14

Citation: 2015 FC 827

Calgary, Alberta, July 7, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

HURSHED ABDURAHIMOV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Hurshed Abdurahimov is a citizen of Uzbekistan. He began studying English in England in 2007. While in England, the applicant converted to Christianity and was baptized as an evangelical Christian. The applicant says that he is unable to practice his faith freely in Uzbekistan.

[2] The applicant came to Canada on January 18, 2014, but left soon thereafter on April 25, 2014, without making a refugee claim and travelled to Kyrgyzstan to marry his girlfriend. He then went to Uzbekistan, and returned to Canada on June 9, 2014.

[3] When the applicant was in Canada the first time, he spoke to people at Adam House, a Christian refugee house. He says that he asked if he could bring his then girlfriend to Canada, and they responded that it would take a long time. He also says that he got conflicting advice and thus was confused as to what to do. The applicant also got word that his girlfriend's parents wanted her to marry someone else and therefore he decided to go to Kyrgyzstan to marry his girlfriend, which he did.

[4] The applicant then went back to Uzbekistan to get money from acquaintances in order to obtain a Canadian visitor's visa for his wife and airline tickets. He testified that he had to go to Uzbekistan to ask for the money personally. He was unable to obtain a visa for his wife.

[5] When the applicant arrived at the Uzbekistan airport he was detained by immigration officials because he was carrying a bible with him. The applicant stated that he was carrying the bible for someone else, and did not reveal he had converted. The immigration official did not believe him and punched him in the face. He was eventually released.

[6] The applicant says that his father threatened to inform the authorities in Uzbekistan that he tried to spread Christianity. The applicant also says that his half-sister converted to

Christianity, and that his father and stepmother harassed and hit her in order for her to convert back.

[7] The applicant testified that he could not find a church in his city in Uzbekistan. He did find a few orthodox Christian churches, but did not like their teachings.

[8] The Refugee Protection Division [RPD] rejected the applicant's refugee claim. In so doing, it (i) made a negative inference as to subjective fear from the applicant's delay in claiming refugee status and from his reavilment to Uzbekistan, (ii) found that he could have received money using a loan or promissory note and that his presence in Uzbekistan was not necessary, (iii) drew negative inferences from the failure to mention his father's threat or his half-sister's conversion in the original Basis of Claim [BOC] form, (iv) noted from the country condition documents that Uzbekistan is a religiously tolerant place and therefore found the applicant's fear of practicing evangelical Christianity to be speculative and rejected his story of being punched in the face for carrying a Bible, and (v) assigned little weight to the applicant's baptism photos, certificate of baptism, and letter from his pastor in England.

[9] The only issue is whether the decision under review is reasonable.

[10] The applicant submits that his delay in claiming and going to marry his girlfriend instead of filing his refugee application were reasonable actions and should not lead to an inference that he lacks subjective fear. He points the court to decisions where it has been found that the bond of family loyalty may lead a person to engage in dangerous conduct that might otherwise be

inconsistent with subjective fear of persecution: See for example *Mohammadi v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1028.

[11] I agree with the applicant that this reasoning can be applied to his trip from Canada to Kyrgyzstan to marry his girlfriend. However, it does not speak to why the applicant would return to Uzbekistan. In *El Kaissi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1234 at para 29 the court observed that “[a]bsent an explanation or pressing need, however, re-availment is considered voluntary and calls the individual's subjective fear into question.”

[12] The issue the court must address is whether it was unreasonable for the RPD to find that the applicant re-availed to Uzbekistan in the sense that he was truly compelled to return there without making a refugee claim. Having read the transcript of the hearing, I find that the assessment of the RPD that the applicant's personal presence was not required was fair. The applicant submits that it overlooks that there was no imminent risk to him in returning to Uzbekistan and that fact must colour the assessment of re-availment. I disagree. First, that submission belies the applicant's evidence that immediately upon arrival he was punched in the face for holding a bible. Second, a claimant's fear, whether of immediate or future risk, must not be speculative and no one knows when the feared risk will materialize. Accordingly, regardless of the basis of the fear, re-availment that is not forced may be considered as evidence that there is a lack of subjective fear.

[13] The applicant submits that the negative credibility findings from the amendments to the BOC were unreasonable. He explained to the RPD that he omitted these facts initially because

the office that assisted him in filing out the form said he needed to shorten the narrative. With regards to his half-sister's conversion, the applicant states that when he realized the information was missing he advised his lawyer.

[14] The RPD rejected these explanations. The applicant relies on *Chen v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1062, at para 22, where the court states:

The RPD also draws an adverse inference for the fact that the Applicant did not mention the summons in his initial PIF. However, that approach disregards the Applicant's amendment which included reference to the summons. Applicants are permitted to amend their PIF statements before a refugee board hearing once they have secured the assistance and advice of counsel knowledgeable about the immigration process. The RPD's approach is problematic as it suggests that amendments may be readily disregarded simply because they are amendments.

[15] However, I agree with the submission of the respondent that this does not mean that a negative inference can never be drawn from a failure to mention an event: see for example *Aragon v Canada (Minister of Citizenship and Immigration)*, 2008 FC 144. The RPD did not draw an adverse inference merely because the additional information was omitted from the first BOC; rather it considered the materiality of the missing information and the applicant's explanation for why the information was left out. The explanation he offered was not credible given that he signed the BOC stating that he had read it and it was complete. The assessment of the RPD that the applicant was adding these facts to bolster his story was reasonable.

[16] The RPD accepted that the baptismal certificate and photo showed that the applicant had been baptised in his apartment bathtub. But, as it noted, that "does not indicate that the claimant is a genuinely evangelical Christian." It assigned little weight to the pastor's letter as "much of

the information in the lay pastor's letter was given to her by the claimant whom the panel has found to be generally not credible." The applicant took the court through the letter with a view to convincing me that the RPD was in error in assigning "much" of the source of its factual content to the applicant. I accept that some of the information offered was provided first hand, but other information therein was sourced from the applicant. The RPD's assessment, while not necessarily one I would have reached, cannot be said to be unreasonable.

[17] I do agree with the applicant that the RPD's assessment of the country condition evidence was questionable. The court is particularly disturbed by its finding that because the country's restriction on proselytizing applies to all people including Muslims, evangelical Christians would not face persecution because all religions are subject to the same prohibition. This is not only nonsensical, it is wrong in law. The fact that all persons suffer persecution in a country does not mean that none of them are entitled to the protection of the Convention; rather, it probably entails that all are entitled to the protection. Moreover, the statement of the RPD ignores that proselytising is not a key component of every religion, whereas the applicant stated that it was of his.

[18] Although its findings in this respect are unreasonable, that would result in the applicant being successful in this application only if his fear and allegation of his faith were accepted. The RPD concluded, however, that:

there is insufficient credible or trustworthy evidence to establish the claimant's profile or allegations. The panel found the claimant to be generally not credible.

[19] That finding was reasonable and constitutes a sufficient basis to dismiss the application, regardless of the conditions in Uzbekistan for evangelical Christians.

[20] Neither party proposed a question to be certified nor there is one of the facts.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6772-14

STYLE OF CAUSE: HURSHED ABDURAHIMOV v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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APPEARANCES:

Elyse Korman FOR THE APPLICANT

Sybil Thompson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Otis and Korman FOR THE APPLICANT
Barristers & Solicitors
Toronto, Ontario

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