

Federal Court



Cour fédérale

Date: 20170111

Docket: IMM-2269-16

Citation: 2017 FC 32

Toronto, Ontario, January 11, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

ALEKSI BRATCHULI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Aleksi Bratchuli [the Applicant], has applied for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the RPD] dated May 5, 2016 [the Decision], rejecting the Applicant's claim for refugee protection and concluding that the claim was manifestly unfounded.

[2] The Applicant states that he was born in an area of Georgia close to the border with South Ossetia and that he speaks Georgian with an Ossetian accent.

[3] The Applicant's grandparents lived in South Ossetia and his father travelled there frequently to visit them. People in his village noticed these trips and thought his father was supporting South Ossetia against Georgia. The Applicant says that on December 12, 2006, his father became involved in a fight with the local police chief [Patashuri], another police officer [Zurabashvili] and other Georgian men. The Applicant says that his father died that day due to his injuries. When the Applicant's brother complained to the Office of the Prosecutor, both the Applicant and his brother were threatened by policemen.

[4] The Applicant also says that on July 18, 2014, there was another fight which involved Patashuri and Zurabashvili, and that his brother died in hospital after that assault.

[5] The Applicant then complained to the Office of the Prosecutor and the Office of the Ombudsman. However, in October 2014, he received a call from Zurabashvili informing him that if he did not withdraw his complaints, he would be the next one to die. The Applicant states that on December 21, 2014, Patashuri and Zurabashvili and four other men attacked him in front of his house in Tbilisi, and beat him until he was unconscious. Neighbours heard the fight. In the hospital, he gave the police the names of the people who beat him and the police promised to investigate.

[6] After his release from the hospital, the Applicant stayed with a friend for safety, but on April 15, 2015, Patashuri and Zurabashvili and two other men appeared at the friend's house and beat him again. He awoke in the hospital and was interviewed by the police. He says that in May 2015, he went to the Ministry of Internal Affairs in Tbilisi for help. He was told that an investigation was in progress, but the complaint was later closed. The Applicant and his wife decided that he should leave Georgia. He met with a smuggler in Turkey and arrived in Vancouver on September 22, 2015.

[7] The record shows that the Applicant was interviewed several times by immigration officers when he entered Canada [the POE Interviews]. He was provided with a Georgian interpreter for all of his interviews. He was also given an opportunity to write, in his own language, the reasons for his travel to Canada [the Statement].

I. The RPD Decision

[8] The RPD found that the Applicant had provided three fraudulent documents: his brother's death certificate, a photograph of his brother's tombstone, and a letter from the Georgian Ombudsman.

[9] The Respondent attempted to verify the brother's death certificate by inputting its serial number into a Georgian Government website. This process showed that the serial number matched the father's and not the brother's death certificate. The Applicant explained that this was an error on the part of the Georgian Government, but provided no further evidence to address this issue despite being aware of the problem several months before the hearing. In

addition, the RPD found that the father's and brother's death certificates were very different in appearance. The brother's death certificate did not contain a barcode like the father's, and they did not share the same government seal despite being issued by the same government agency within a short time of each other.

[10] The RPD also found that a photograph of the brother's tombstone in Georgia had been altered, as the number "4" in the date of death was not consistent with the numerical style of the other number on his own tombstone, or the "4" on his father's tombstone. The RPD concluded that the photograph had been altered in an effort to deceive the panel into believing that the year of death was 2014.

[11] The Applicant also provided a letter from the Ombudsman of Georgia to support the allegation that he had been actively seeking state protection in Georgia. The letter states that a complaint was received from the Applicant on June 5, 2015. However, in his Basis of Claim [BOC] form, the Applicant said that he pursued an investigation with the Ombudsman in 2014. Further, in his Statement, he wrote that he filed the complaint on December 12, 2006.

[12] He was unable to explain these inconsistencies.

[13] During his POE Interviews and in his Statement, the Applicant claimed his brother was killed in 2000, and that his father was killed in 2006. However, in his BOC form, he stated that his brother was killed in 2014 and his father was killed in 2006. The Applicant blamed this

contradiction on the interpreter, but since the Applicant had written the Statement in his own hand and in his own language, the RPD did not accept this explanation.

[14] The Applicant also stated in the POE Interviews that his brother was pushed into the water and drowned by party-goers. However, in his BOC form, he said that his brother was beaten to death by police officers.

[15] When asked in the POE Interviews why he could not return to Georgia, the Applicant stated that he feared random people on the street and explained that he would get into fights; yet in his BOC form, he says he fears the Georgian police and provides the names Patashuri and Zurabashvili. The Applicant explained that he did not want to tell the CBSA officers about the names of the police in Georgia as he was concerned that that information would get back to Georgia. The RPD did not accept this explanation, saying that he should at least have told the border officials that he feared police generally when this was a central element of his claim.

[16] The RPD accepted that the Applicant might suffer from PTSD, Post-Concussion Syndrome, and a major depressive disorder as set out in the medical opinion of the psychiatrist. However, the RPD doubted that he suffered from those conditions because of the two beatings he described in his BOC form.

II. The Issues

- A. Did the RPD fail to assess the impact of the Applicant's medical condition on his ability to provide evidence?

- B. Did the RPD fail to appoint a designated representative, when such an appointment was clearly required?
- C. Did the RPD err when determining that the number “4” on the photo of the brother’s tombstone had been altered?

III. Discussion and Conclusions

- A. *Did the RPD fail to assess the impact of the Applicant’s medical condition on his ability to provide evidence?*

[17] Two medical opinions were before the RPD. One was prepared by a psychiatrist and the other by a general practitioner. The former concluded that the Applicant’s memory and ability to concentrate are impaired, and that he would have trouble organizing his thoughts and remembering exact dates and timelines. The latter found, among other things, that he has difficulty concentrating and recalling numbers, dates and recent events. The RPD accepted these findings, but did not find that his symptoms were caused by beatings by the police. In my view, this conclusion was reasonable.

- B. *Did the RPD fail to appoint a designated representative, when such an appointment was clearly required?*

[18] The Applicant submits that only a severe breakdown can explain the fact that he provided Canadian authorities with such inconsistent versions of events and counsel for the Applicant says that this is the only rational explanation for his divergent stories and that his previous counsel and the RPD should have recognized that fact.

[19] The Applicant says that a designated representative should have been appointed for him at the RPD hearing.

[20] However, I have not been persuaded by this submission because there is no evidence from his counsel or from the RPD or from the two medical practitioners who examined him to suggest that the Applicant had lost his grip on reality.

C. *Did the RPD err when determining that the number “4” on the photo of the brother’s tombstone had been altered?*

[21] I am not able to decide whether the RPD’s conclusion about the photograph is reasonable. However, even if it was unreasonable, it would be an immaterial error. The other inconsistent evidence provides a sufficient basis for concluding that the Decision is reasonable.

IV. Certification

[22] No question was posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2269-16

STYLE OF CAUSE: ALEKSI BRATCHULI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 23, 2016

JUDGMENT AND REASONS SIMPSON J.

DATED: JANUARY 11, 2017

APPEARANCES:

Victor Pilnitz FOR THE APPLICANT

Alison Engel-Yan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Victor Pilnitz FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

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