

Federal Court



Cour fédérale

**Date: 20190306**

**Docket: IMM-2492-18**

**Citation: 2019 FC 278**

**Toronto, Ontario, March 6, 2019**

**PRESENT: The Honourable Mr. Justice Diner**

**BETWEEN:**

**BABICH AKZIBEKIAN  
OLENA BASOVSKA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This application judicially reviews a decision [Decision] of the Refugee Protection Division [RPD or Panel] which found that the Applicants are neither Convention refugees nor persons in need of protection. For the reasons that follow, this application for judicial review is dismissed.

## II. Background

[2] The Applicants are spouses from the Ukraine. They allege a fear of persecution based on the male Applicant's political opinion and membership in the Party of Regions. I will briefly summarize their story, the credibility of which was the primary issue in both the proceedings and Decision below, but make no determination as to the truth of its contents.

[3] The male Applicant began to volunteer for the Party of Regions in 2009 and became a member in 2010. The male Applicant's role with the Party of Regions involved preparing rallies and demonstrations, spreading leaflets and agitating on behalf of the party.

[4] From September 2013 until when the Applicants made their claims for refugee protection in Canada in December 2015, the male Applicant was threatened, and then attacked, by members of the Right Sector (a far right Ukrainian nationalist political party). As a result, he sustained injuries requiring medical attention on several occasions.

[5] The male Applicant's daughter, her mother and the male Applicant's own mother continue to receive threats in the Ukraine.

## III. Issues and Standard of Review

[6] Both parties agree, and I concur, that the RPD's credibility findings are reviewable on the standard of reasonableness (*Clermont v Canada (Citizenship and Immigration)*, 2019 FC 112 at

para 11). The sole issue raised in this application for judicial review is whether the RPD's Decision was reasonable.

IV. Analysis

A. *Was the Decision reasonable?*

[7] The Applicants argue that the RPD's credibility findings were microscopic and should not have sustained a negative credibility determination. The Applicants further argue that the RPD failed to make explicit findings on the authenticity of the tendered documents.

[8] The Respondent counters that the Applicants' arguments amount to a disagreement with the manner in which the RPD assessed the evidence and merely offers alternate inferences and explanations for the evidence.

[9] For the reasons that follow, I find that the Panel's credibility findings reasonably sustain the Panel's negative credibility determination.

(1) *Inconsistencies, omissions and embellishments*

[10] In determining whether the Panel made microscopic credibility findings, I will begin by summarizing six key items underlying the Panel's negative credibility finding.

[11] First, the Panel found an inconsistency between the male Applicant's Basis of Claim [BOC] written statement, and his oral testimony before the RPD, regarding the identity of the

agents of persecution during an April 8, 2014 rally. Specifically, in his BOC, the male Applicant omitted to mention that his attackers were members of the Right Sector but explained that their faces were covered with masks, whereas he testified orally that he knew they were members of the Right Sector by their appearance. When confronted with the inconsistency, the male Applicant explained that it was an error that this information was not in his BOC because it was a very important detail that he would not have missed.

[12] Second, the male Applicant testified that, in his statement to the police following the April incident, he told the police that members of the Right Sector had attacked him. He claims the police informed him that they would not accept his statement if he used such words, and was instead told what information to include in his written statement regarding his attackers' identities. However, this fact was omitted from his BOC. When confronted with this omission, the male Applicant stated that it should be in his BOC but was somehow missing, and that it was a very important point.

[13] Third, with respect to the male Applicant's participation at a rally on August 28, 2014, the Panel found that his BOC indicated that he was "confronted and beaten up by the right sector people" after which he broke away and was chased back to his car. However, the Applicant testified at his hearing that he was injured by Right Sector members while going back to the parking lot after he left the rally; they threw bricks hitting the back of his head, spine and legs. When confronted with the inconsistency the male Applicant explained that he did not really have injuries but that it was "kind of a scuffle" like "pushing, pulling by the shirt" and was able to break free.

[14] Fourth, the Panel found that the male Applicant's police complaint made September 3, 2014 (reporting on the August incident) was not consistent with his testimony or his BOC: in this police complaint, he stated that the members of the Right Sector "solicited him" using "foul language" until he was able to shake them off before they met up again in the parking lot – which was different from both explanations already provided. When confronted with this inconsistency, the male Applicant explained that he had to write his complaint in a way that the police would accept.

[15] Fifth, in his BOC, the male Applicant stated that he began to receive threatening phone calls on his cell phone after September 2014. In his testimony, he stated that the threatening phone calls resumed after he filed a complaint with the prosecutor. The Panel noted that his BOC failed to mention this resumption of the phone calls. When confronted with this omission, the male Applicant stated that it should be in his BOC.

[16] Sixth, the male Applicant testified that members of the Right Sector, along with other extremist groups, continue to search for him in the Ukraine. While the male Applicant named other extremist groups at the hearing, he did not mention those other groups in his BOC. When confronted with this omission, he explained that he provided examples of the people persecuting him when he was still in the Ukraine, but that he did not know precisely who harmed other family members (i.e. who followed his daughter, broke into his mother's house or beat her up).

[17] The Applicants claim that the Board made these credibility findings on a microscopic evaluation of issues peripheral or irrelevant to the case.

[18] I disagree with that characterization. Implausibility, inconsistency, omission and contradiction are the cornerstones of adverse credibility findings. I do not find that the Panel's findings in this case were microscopic. Here, the Applicants raise arguments primarily based on a difference of opinion with respect to the Panel's credibility findings. After reviewing the record, I concede that another panel may have differed in its attribution of the weight accorded to the inconsistencies, omissions and embellishments. However, it is not the Court's role to reweigh the evidence. Rather, the weighing of evidence and credibility determination evaluation is the heartland of the RPD's expertise (*Farah v Canada (Citizenship and Immigration)*, 2019 FC 27 at para 9).

[19] Case law makes it clear that if factual determinations were open to the tribunal to make, and if the conclusion fell within the range of possible and acceptable outcomes, then the Court has no legitimate ground upon which to interfere (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[20] I recognize that there are situations where this Court has intervened due to microscopic credibility findings. For instance, this occurred recently in *Clermont*, where the RPD's credibility findings were declared unreasonable, given that the RPD made a negative credibility determination based on alleged inconsistencies that were peripheral to the claim. Those so-called inconsistencies were found to be illusory "distinctions without a difference", and thus irrelevant to the claim (*Clermont* at paras 27–28).

[21] Here, however, I do not find that the inconsistencies, omissions and embellishments the Panel observed were based on a microscopic evaluation of issues that were peripheral or irrelevant to the claim. Rather, they were material omissions, and it was thus open to the Panel to find the male Applicant's explanations unsatisfactory in the circumstances.

(2) *Supporting documentation*

[22] The Applicants also argue that the RPD overlooked corroborative evidence based on the negative credibility findings without addressing the documents' authenticity. The Respondent counters that the Panel reviewed the documentary evidence submitted, and explained why these documents did not corroborate the Applicants' claim, and why they were given little weight.

[23] I agree with the Respondent, and do not find this to be a case where the Panel ignored or overlooked the supporting documentation, or weighed them unreasonably. It provided reasonable explanations as to why it placed little weight on the medical, psychological and police reports.

[24] Regarding the failure to consider the authenticity of supporting documents, the Applicants rely on *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 and *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082. However, these cases are distinguishable. In *Oranye*, there were fundamental weaknesses regarding the panel's sweeping dismissal of documentary evidence based on the "easy availability of fraudulent documents" in Nigeria. There, in allowing the judicial review, the Court found that "[f]act finders must have the courage to find facts. They cannot mask authenticity findings by simply deeming evidence to

be of ‘little probative value’”. And in *Sitnikova*, an officer gave email correspondence purportedly from several different individuals little weight on the basis that “an email address can be created by anyone”. The Court found that in choosing to give the documents little weight, the officer was implicitly finding the applicant’s sworn statement regarding the provenance of the documents not to be credible.

[25] Here, on the other hand, the credibility findings were made on the basis of the male Applicant’s own statements, contradictions, and omissions, unlike in *Sitnikova*. And unlike in *Oranye*, the Panel provided a well-articulated analysis of the facts.

[26] As this Court has often found, a general lack of credibility can extend to supporting evidence, trickling down to other elements of the claim. It is open to the RPD not to give evidentiary weight to assessments or reports if underlying elements are found not credible (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 24; see also *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238).

## V. Conclusion

[27] In light of the above, I am of the view that the RPD’s Decision is reasonable in that it bears the qualities of justification, transparency and intelligibility, and falls within a range of possible, acceptable outcomes. Accordingly, this application for judicial review is dismissed. No questions were raised for certification.



**JUDGMENT in IMM-2492-18**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and none arise.
3. There is no award as to costs.

"Alan S. Diner"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2492-18

**STYLE OF CAUSE:** BABICH AKZIBEKIAN, OLENA BASOVSKA V THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 7, 2019

**JUDGMENT AND REASONS:** DINER J.

**DATED:** MARCH 6, 2019

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