

Date: 20040809

Docket: IMM-5336-03

Citation: 2004 FC 1088

Ottawa, Ontario, this 9th day of August, 2004

PRESENT: THE HONOURABLE MADAM JUSTICE SNIDER

BETWEEN:

GEZIM MERSINI

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, a citizen of Albania, arrived in Canada in 2001 and claimed Convention refugee status. By decision dated June 10, 2003, a panel of the Immigration and Refugee Board, Refugee Protection Division ("the Board") denied his claim.

Issues

[2] The Applicant raises two issues:

1. Was the Board's conclusion that the Applicant was not a credible or trustworthy witness patently unreasonable?
2. Did the Board err by ignoring one of the grounds of his claim?

Board's Decision

[3] The Board described the basis of the Applicant's claim as a "well-founded fear of persecution at the hands of the Socialist Party (SP) who form the current government, the police and unknown masked people who support the SP, by reason of his political opinion." Credibility was the determinative issue for the Board. It found that the Applicant failed to discharge the onus of establishing his case, pointing to "numerous instances of inconsistencies and omissions which leads the panel to find the Applicant not to be a credible or trustworthy witness". In particular, the Board described five such "inconsistencies and omissions" as follows:

- The Applicant's testimony that he was a member of the Democratic Party ("DP"), sub-branch 53 was contradicted by the membership card which described the sub-

branch as 60/3. His only explanation for this discrepancy was that the card must contain a "typo".

- Inconsistent with claimants in other cases, he had no satisfactory explanation for failing to submit a letter of attestation of his DP membership.
- In his Personal Information Form ("PIF"), he stated that he was attacked by 4 masked men. In his oral testimony, he described the men as wearing uniforms.
- In his PIF, there was no mention of his father's membership in the DP.
- Testimony that his café was "obliterated" in 1997 was inconsistent with his Port of Entry notes where he stated that he owned a coffee shop and evidence at the hearing that he paid taxes for the year 1999.

Analysis

Issue no 1: Credibility

[4] In respect of the issue of credibility, the applicable standard of review is patent unreasonableness. That is, the decision will only be overturned if I find that it was entirely unsupported by the evidence before it.

[5] Looking at the decision as a whole, I cannot conclude that it was patently unreasonable. While any one of these errors or omissions might have been inconclusive on its own, cumulatively, they were sufficient for the Board to find that the Applicant lacked credibility with respect to two key aspects of his claim - his membership in the DP and the alleged events of persecution. While I might have decided otherwise with respect to one or more of the issues, evidence exists to support each of the five findings. There is no reviewable error.

Issue no 2: Failure to consider grounds of claim

[6] The Applicant submits that the Board failed to deal with a central aspect of his claim, that being his membership in a family that had a close relationship with Dr. Sali Berisha, a former president of the DP. At the time of completing his PIF, counsel for the Applicant identified the Convention grounds on which the claim rested as "Political Opinion" and "Membership in a

particular social group - Family". The Applicant asserts that this second aspect of his claim was supported by the evidence as follows:

- the Applicant's brother-in-law was a driver for Dr. Berisha;
- the Applicant's brother-in-law and sister were granted refugee status in France;
- Dr. Berisha was physician to the Applicant's father; and
- the Applicant submitted photos of certain family members posing next to Dr. Berisha.

[7] I agree with the Applicant that the Board does not state in its decision that it is rejecting the claim of family membership. The Board specifically states, at one point in its decision, that the Applicant "bases his claim on his political opinion, his membership in the DP and persecution he suffered while in Albania". The inference that the Applicant would have made is that the Board must have accepted as credible the family membership aspect of his claim. Alternatively, by not addressing why this part of the claim was not credible, the Board erred (*Rahman v. Canada (Minister of Employment and Immigration)* (1989), 8 Imm. L.R. (2d) 170 (F.C.A.); *Pour v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 1282 (C.A.) (QL)).

[8] While ignoring a part of a refugee claimant's claim would ordinarily be a serious and potentially fatal error, I am satisfied that, in this case, there was no reviewable error. The onus rests with a refugee claimant to introduce into evidence all the material that may be essential to assessing his claim (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689). Although the Applicant now alleges that his claim of family membership was a central aspect of his claim, the record does not bear that out in a number of material ways. For example, although the Applicant frequently mentioned in his testimony his family's association with Dr. Berisha, he did not claim that he, personally, had suffered persecution because of his family's experiences. The Applicant acknowledged that he would not likely have been successful in claiming refugee status in France, thereby effectively admitting that his situation was different and less compelling than that of his sister and brother-in-law. Although the Applicant submitted photographs of family members posing with Dr. Berisha, there were none of the Applicant. Finally, and perhaps most telling, there is the testimony of the Applicant. When asked why the Socialists and the government wished to harm him, his response was "Because I was a member of the Democratic Party". In short, the Applicant's membership in a particular social group (family) was not "central" to his claim. It appears to have been an afterthought that was not supported by any evidence.

[9] The Board member was certainly aware of the Applicant's family's relationship with Dr. Berisha; it is referred to in the decision. Thus, the Board did not err by ignoring the evidence before it.

[10] It would have been preferable for the Board to address more directly this ground of the Applicant's claim. Given the Applicant's focus on his membership in the DP and alleged incidents of persecution, however, it is understandable why the Board directed its decision to this aspect of his claim. Having reviewed the record, I am satisfied that there was insufficient evidence to found a claim based on the Applicant's family's relationship with Dr. Berisha. It is not enough for adult refugee claimants to baldly state that, because of difficulties encountered by family members, they ought to be considered Convention refugees. There must be some evidentiary basis upon which a claimant is linked to the persecution suffered by the family members. Here, there was no such evidence. On the specific facts of this case, failure of the Board to address this ground of the claim is not fatal to the decision. Even with direct reference to the family relationship ground of his claim, the decision would not have been different for the simple fact that there was insufficient evidence to substantiate this ground.

Conclusion

[11] For these reasons, I am satisfied that the decision should stand. The application will be dismissed.

[12] Neither party proposed a question for certification. None will be certified.

ORDER

THIS COURT ORDERS that:

1. The application is dismissed.

2. No question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5336-03

STYLE OF CAUSE: GEZIM MERSINI v. THE M.C.&I.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 3, 2004

**REASONS FOR ORDER
AND ORDER:** The Honourable Madam Justice Snider

DATED: August 9, 2004

APPEARANCES:

Mr. Jeffrey L. Goldman FOR APPLICANT

Ms. Mary Matthews FOR RESPONDENT

SOLICITORS OF RECORD:

Mr. Jeffrey L. Goldman FOR APPLICANT
Barrister and Solicitor
Toronto, Ontario

Mr. Morris Rosenberg FOR RESPONDENT
Deputy Attorney General of Canada