

Date: 20081028

Docket: IMM-1875-08

Citation: 2008 FC 1208

BETWEEN:

DARIA GLUKHOVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON D.J.

I. Introduction

[1] These reasons follow the hearing at Toronto, of the 21st of October, 2008, of an application for judicial review of a decision of the Refugee Protection Division (the “Tribunal”) of the Immigration and Refugee Board wherein the Tribunal determined the Applicant not to be a Convention refugee or person otherwise in need of like protection within Canada. The decision under review is dated the 25th of March, 2008.

II. Background

[2] The Applicant is a female citizen of Russia who, on the date of the hearing before this Court, was 21 years of age.

[3] The Applicant testified before the Tribunal and by affidavit before the Court that, between the ages of 12 and 14, she realized that she was “different” from her female friends. By the age of 14, she testified, she was having sexual fantasies about another female. She concluded that her sexual orientation was as a lesbian. She further concluded that Russia was a dangerous place to be for gay males and lesbian females and she therefore determined to suppress her sexual orientation and to discuss it with no one, not even her parents.

[4] The Applicant twice travelled outside Russia during her teenage years and before completing her schooling in Russia. After completing her schooling in Russia, she came to Canada on a study permit in January, 2006. She worked diligently to improve her English language skills while in Canada. Similarly, while in Canada, she determined that Canadians, generally speaking, were much more tolerant in their attitudes towards gays and lesbians, than were Russians.

[5] On completing her course of study in Canada, she returned to Russia in August of 2006. She disclosed her sexual orientation to her parents who were supportive of her efforts to deal with the difficult situation in which she found herself. Less than a month after returning to Russia, that is to say on the 20th of September, 2006, the Applicant, with her parents’ support, returned to Canada and on the 13th of October, 2006, she claimed refugee protection.

III. The Decision under Review

[6] In the opening paragraphs of its decision, the Tribunal wrote:

In arriving at my decision, I took into consideration the *Chairperson's Guidelines*, the claimant's age and education and the fact that homosexuality is seen as "perversion or mental disorder" in Russia, which is a homophobic state. Attitudes toward homosexuality have gradually been changing, particularly in the urban areas, but most gays and lesbians cannot live a free and open life.

[7] Nonetheless, the Tribunal determined that the Applicant was neither a Convention refugee, nor was she in need of like protection in Canada since she does not have a well-founded fear of persecution based on a Convention ground, in Russia.

[8] The Tribunal found the Applicant's identity as a national of Russia to be established. It determined that the Applicant's identity as a homosexual was a determinative factor in deciding against her claim. It found her actions not to appear to be consistent with someone fleeing persecution.

[9] The Tribunal wrote:

The claimant [the Applicant] left the safety of Canada in August 2006, after a stay of 8 months but without claiming refugee status and left voluntarily to go back to her home country of Russia. The claimant also testified that she has been afraid about her safety in Russia due to her sexual orientation since 2001. The Refugee Protection Division (RPD) recognizes that some claimants feel compelled to go back to their home country, despite apparent risks to themselves but only under very unusual circumstances such as death in the family, serious illness of a close family member or other serious family emergencies. In this case, the claimant re-availed herself without any such reasons or emergencies.

[10] In essence, the Tribunal found the Applicant's determination to return to Russia to explain her conviction regarding her sexual orientation and her fears resulting from that conviction in support of her conclusion to flee Russia not to amount to "very unusual circumstances" or "serious illness" or "other serious family emergency".

[11] The Tribunal further noted that the Applicant's failure to avail herself of earlier opportunities to abandon Russia while she was a teenager to amount to re-availments without justification.

[12] Having found that the Applicant lacked a well-founded fear of persecution by reason of her re-availments, the Tribunal went on to comment on other concerns supporting its conclusion that the Applicant was not a Convention refugee or a person in need of like protection. It wrote of a "major material omission" in the Applicant's PIF and in the notes of her "CIC Interview" relating to a lesbian relationship that she entered into while in Canada. The Tribunal clearly misinterpreted the facts before it in this regard since that relationship did not occur until early 2007, after her PIF had been filed and her CIC Interview had been conducted. Nonetheless, no explanation was provided as to why the Applicant had not amended her PIF, prior to her hearing before the Tribunal, to disclose her lesbian relationship.

[13] The RPD expressed concern about the Applicant's failure to provide evidence to corroborate her claim as to her sexual orientation. It found purportedly corroborative documentary evidence to be unsatisfactory.

IV. The Issues

[14] Counsel for the Applicant raised a range of issues regarding the Tribunal's analysis which, he urged, rendered the decision under review unsupportable. Those issues ranged from allegedly ignoring the Applicant's age and dependence on her parents untenable in the re-availment analysis, to misunderstanding or misinterpretation of the evidence before it and engaging in a microscopic examination of certain of the evidence before it.

V. Analysis

[15] I am satisfied that certain elements of the decision under review are suspect. In particular, the failure of the Tribunal to acknowledge the dependence of the Applicant on her parents when she travelled within Europe while still a teenager and the resulting impact of that age and dependence on her then re-availment to be questionable. In contrast, I find the Applicant's determination to return to Russia in August of 2006 to explain her orientation and her related fear to her parents, without first having claimed Convention refugee or like status in Canada to be particularly difficult to rationalize given her alleged fear. No disclosure that she made in Russia could be seen to strengthen the well-foundedness of her fear. Similarly, her conduct while first in Canada and then later on her return to Canada in failing to effectively pursue the strengthening of her claim could be legitimately seen by the Tribunal as inconsistent with a well-founded fear of persecution if she were required to return to Russia in circumstances that might well result in public knowledge of her sexual orientation.

[16] On balance, and against a standard of review of reasonableness or, in respective factual matters that set out in paragraph 18.1(4)(d) of the *Federal Courts Act*, I am satisfied that the decision under review was open to the Tribunal. In the result, this application for judicial review will be dismissed.

VI. Certification of a Question

[17] Counsel were advised at the close of hearing of the Court's conclusion. Neither counsel recommended certification of a question. The Court itself is satisfied that no serious question of general importance arises out of this matter that would be determinative on an appeal of my decision. In the result, no question will be certified.

“Frederick E. Gibson”

Deputy Judge

OTTAWA, ONTARIO
October 28, 2008

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1875-08

STYLE OF CAUSE: DARIA GLUKHOVA v.
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