Federal Court  Cour fédérale

Date: 20090521

Docket: IMM-3890-08

Citation: 2009 FC 526

Ottawa, Ontario, May 21, 2009

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ANDREY KORNIENKO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Andrey Kornienko (the "Applicant") seeks judicial review of the decision of the Refugee Protection Division, Immigration and Refugee Board (the "Board") dated August 2008. In that decision, the Board found the Applicant not to be a Convention refugee nor a person in need of

protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The Applicant is a citizen of Russia from the town of Irkutsk in Siberia. He operated a sports equipment business. In October 2002, two men began extorting $200.00 a month from him. About 11 months later, they increased their demands to $1000.00 a month. The Applicant could not afford to pay this amount. He claims that they followed him on an out-of-town trip, stopped and beat him. The Applicant visited a hospital where he made a report and the police were called. According to the Applicant, the police advised him to downplay the matter and expressed the opinion that his injuries were the result of a fall while skiing.

[3] The Applicant also claimed that the extortionists had stolen computers from his shop. The Applicant sought recovery against his insurance company in that regard. When his claim was denied, he brought an action. His lawsuit was dismissed and the Applicant alleges that the Court was bribed to do so.

[4] The Applicant then pursued an arbitration of his claim. Subsequently, a dead dog was left at his door with a note saying that he would meet the same fate if he did not abandon the arbitration.

[5] At this time, that is in February 2005, the Applicant told his wife to move to his mother's residence and he left the country for Canada. He asked a neighbour to look after his apartment. In

August 2005, the neighbour told him that his apartment had been vandalized and that the persons responsible for the damage claimed to have done so on behalf of the insurance company.

[6] The Applicant had entered Canada in March 2005. Upon receipt of the news about the destruction of his apartment, he filed a claim for refugee protection in August 2005.

[7] The Board found that the basis of the Applicant's claim for refugee protection was criminality, that is the extortion that had been committed against him. It determined that this criminal activity had no nexus to the grounds for refugee protection that are set out in section 96 of the Act and further, that there was no evidence that government organizations were involved in the criminal activity against the Applicant. The Board concluded that the Applicant would not face persecution on a Convention ground if he returned to Russia.

[8] The Board then considered whether the Applicant is a person in need of protection pursuant to section 97 of the Act. It made a negative finding in that regard. Relying on specialized knowledge, the Board rejected the Applicant's evidence about the medical report that he had received after the hospital visit following the beating that he suffered. It considered the various scenarios that the Applicant had presented relative to his problem with the extortionists and gave reasons for not finding them to be credible.

[9] The Board discussed a possible Internal Flight Alternative ("IFA"), a subject that was raised with the Applicant during his hearing. The Applicant had rejected the possibility of an IFA when the matter was addressed during his hearing.

[10] The Board acknowledged the Applicant's evidence that he had postponed making a claim for refugee protection after he arrived in Canada because he hoped that the situation in Russia would change sufficiently to allow him to return home. The Board concluded that a delay of six months in claiming protection demonstrated a subjective lack of fear, saying that "… on a balance of probabilities, I find the claimant's explanation for the delay, not to be credible and on a balance of probabilities, I find that the claimant lacks subjective fear". For these reasons, the Board concluded that the Applicant was not a person in need of protection pursuant to section 97 of the Act.

[11] In this application for judicial review, the Applicant challenges the Board's credibility findings and argues that the Board erred in reaching these conclusions on the basis that it ignored the evidence that was before it.

[12] As well, the Applicant raises an issue of procedural fairness and submits that the Board breached the rules of procedural fairness by proceeding with the hearing without first seeking a forensic analysis of the medical report.

[13] Pursuant to the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, decisions of administrative tribunals are reviewable on the standard of reasonableness where questions of fact are involved. Credibility is a question of fact. Issues of procedural fairness are reviewable on the standard of correctness.

[14] The first question to be addressed is whether the Board committed a reviewable error in assessing the Applicant's credibility, particularly with respect to the medical report that he submitted.

[15] The medical report is called "Forensic Examination Report". It was issued by the Irkutsk Regional Office of Forensic Medicine, Shelekhov Department. The Report says "The patient did not seek emergency assistance in medical institutions". In contrast, in his affidavit filed in support of this application for judicial review, at paragraph 15, the Applicant deposes that "After the beating I went to the hospital…". Before the Board, the Applicant testified that following the beating, "After some time when I felt better I went to another city and went to a trauma department in that city."

[16] These passages illustrate the type of inconsistent evidence that was before the Board. The Board provided clear reasons for its assessment of the evidence. In my opinion, the Board's conclusions about the Applicant's credibility were reasonably supported by the evidence and there is no basis for judicial intervention in that regard.

[17] Did the Board commit a breach of natural justice by failing to obtain a forensic analysis of the medical report?

[18] In this regard, I note that the Applicant relied on prior decisions that relate to errors by the Board in failing to authenticate identity documents, including *Ramalingam v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 10 (QL). He concedes that the medical report is not an identity document but because it was produced by a government run institution, the presumption of validity of government issued documents should apply.

[19] I note that the medical report is not an identity document and, in this case, the Board gave reasons why it found the document to be unreliable and further, why it did not believe the Applicant's evidence about the circumstances in which it was issued.

[20] I refer to the decision in *Culinescu v. Canada (Minister of Citizenship and Immigration)* (1997), 136 F.T.R. 241 where the Court said the following about the Board's duty to authenticate documents, at paragraphs 14 and 15:

> a. In the case at bar, the applicants contend that the panel committed an unreasonable error in finding that their claims concerning legal proceedings were implausible. Their argument is based on the fact that there was no evidence that contradicted their testimony or that could have caused it to be implausible. They submit that it was the Board's duty to have the documents they filed in evidence studied by experts, especially if it doubted their authenticity.
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> b. The Board had no such duty. It is enough that there be sufficient
> evidence before it to cast doubt on the authenticity of the order to stand trial to find that the applicant's testimony was implausible. In the case at bar, the documentary evidence was convincing enough to support the Board's findings. Its findings are accordingly not

> perverse, capricious or patently unreasonable so as to justify the Court's intervention. I would like to add that the Board's record contains no evidence capable of vitiating the panel's findings.

[21] The Board here had the opportunity to review all the documents and to observe the Applicant while he gave his testimony. Considered globally, the oral and documentary evidence support the Board in finding him not to be credible. The lack of credibility was not based solely upon the Board's assessment of the medical report.

[22] In the result, the Board's final determination was not unreasonable and there is no basis for judicial intervention.

[23] This application for judicial review is dismissed. There is no question for certification arising from this application for judicial review.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed, no question for certification arising.

"E. Heneghan"
Judge

SOLICITORS OF RECORD

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