

Federal Court



Cour fédérale

Date: 20110707

Docket: IMM-7428-10

Citation: 2011 FC 826

Ottawa, Ontario, July 7, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

SHAFKAT GAZIEV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 26 (the Act) of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated November 18, 2010, where it was determined that the applicant is not a Convention refugee and is not a person in need of protection.

[2] For the reasons set out below, the application for judicial review shall be allowed.

[3] The applicant is a citizen of Tajikistan and fears that if returned he will be persecuted because of his political opinions.

[4] The determinative issues in the Board's analysis were the applicant's credibility and his subjective fear.

[5] The Board found that although he was a conduit in the passing of the political materials (pamphlets and flyers) he did not play a major role in the political activities of the Party of Progress (Party). The Party had been refused registration, its leader Rustan Faziev died in prison and therefore, there was no evidence that the Party was still active and posed a major risk to the authorities. Therefore, the Board was not convinced that the applicant was a person of interest to the police.

[6] The standard of review in similar cases is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9). As such, the Court will only intervene if the Board's decision is found to be outside of the range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir*, para 47).

[7] After a careful analysis of the oral and written submissions by the parties and the review of the Tribunal's Record, the Court finds that its intervention is warranted here.

[8] First, the Board found that the applicant was not truthful in his oral testimony. This assertion (decision, para 6) is based on an alleged contradiction between one of the answers given by the applicant (Tribunal's Record, page 170) with his narrative in his Personal Information Form (PIF). The question from the Board was "do you know if a warrant of arrest was issued against you? The applicant answered "Well yes, they told me that KGB has been inquiring about me and they sort of wanted to pass me to them further."

[9] The applicant further on the same page, explained that his father had to pay an important bribe for his release and that's when his father was told that the applicant should leave the country or else KGB had already been inquiring about him.

[10] The Court is of the opinion that the qualified answer given by the applicant cannot be considered as an embellishment to support the allegations of his claim as concluded by the Board. There is no inconsistency between that answer and what is written in the PIF (Applicant's Record, page 29).

[11] Second, the Board stated that because the applicant was not a very active member in the unregistered Party and that its leader had died in prison, then the applicant would not face a risk to his life. In fact, the applicant has been arrested and tortured because the police thought that he was part or helping the Party. The Board made no reference to the country conditions and failed to analyze the applicant's fear of persecution based on his political opinion *Hilo v Canada (Minister of Employment and Immigration)* [1991] FCJ No 228 (CA) (QL), 15 Imm LR (2d) 199 at para 6).

[12] Third, the respondent argues in its further memorandum of argument that the applicant has not made his application in a timely matter. It is true that in the transcript of the Tribunal's Record, the Board questioned the applicant on this issue. The decision has eight paragraphs and no comments or conclusions are made in reference to the applicant's delay in making this claim for asylum in Canada. Therefore, the Court will not address that issue.

[13] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review be allowed. The matter is remitted for redetermination by a different Board.
2. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT
NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-7428-10

STYLE OF CAUSE: SHAFKAT GAZIEV and MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 30, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Beaudry, J.

DATED: July 7, 2011

APPEARANCES:

D. Clifford Luyt	FOR APPLICANT
Christopher Ezrin	FOR RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt Barrister & Solicitor Toronto, Ontario	FOR APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR RESPONDENT