Federal Court  Cour fédérale

**Date: 20160428**

**Docket: IMM-898-15**

**Citation: 2016 FC 480**

**Ottawa, Ontario, April 28, 2016**

**PRESENT: The Honourable Madam Justice Gagné**

**BETWEEN:**

**IEVGENII VOLOSHYN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the Matter

[1] Mr. Ievgenii Voloshyn challenges a decision rendered on February 5, 2015, in which the Refugee Appeal Division [RAD] dismissed his appeal of a negative decision rendered by the Refugee Protection Division [RPD]. Both have found that he is neither a Convention refugee nor a person in need of protection.

## II. Facts

[2] The Applicant is a 28 year old Ukrainian citizen of Russian ethnicity, who lived in Kiev. He fears being forcibly recruited into paramilitary groups destined to be sent to the front lines in eastern Ukraine. Several events in March 2014 led to this fear.

[3] On March 15, 2014, a paramilitary group telephoned his mother requesting that he present himself at a military unit in Kiev, which he did not do. The Applicant states that he already completed his army service in 2006-2007 and declares having been a "private".

[4] On March 17, 2014, he says that while he was walking his dog, masked men armed with batons surrounded him. They asked him why he was not at the military camp, and asked him where he lived. He claims they had a computer print-out and looked up his name. They told him to present himself to the military station.

[5] On March 18, 2014, his mother called his uncle in Canada to arrange for a visa to Canada for him. The Applicant immediately moved to his girlfriend's parents' place in another area in Kiev for safety. The following day, on his way to work, the Applicant was stopped at a "checkpoint" set up by paramilitaries. He saw the masked men grab one young man and pull him away. The Applicant drove down a side street to escape.

[6] The Applicant left Ukraine for Canada on May 10, 2014, and claimed refugee protection at the end of June 2014.

[7] The Applicant believes his name has been circulated to the government and that there is a reasonable chance he would be detained at the airport in Ukraine if he were to return. He believes that his refusal to join the paramilitary groups will entail reprisals and punishment from the paramilitaries or the Ukrainian government, because his refusal could be seen as desertion. Moreover, the Applicant fears increased punishment because of the existing anti-Russian sentiment in Ukraine.

[8] The RPD rejected the Applicant's refugee claim on October 1, 2014, on the basis of a lack of credibility and lack of well-foundedness of his claim.

## III. Impugned Decision

[9] On appeal, the RAD began by indicating that there would be no oral hearing, as no new evidence was submitted in support of the appeal. The RAD stated that it would conduct its own assessment of the RPD's decision, using the approach in *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799, and that it would afford deference to the RPD's credibility findings and other findings where the RPD has a particular advantage in reaching its conclusions.

[10] The RAD acknowledged that the documentary evidence in the National Documentation Package stated that the Ukrainian President had signed an order reinstating military conscription on May 1, 2014, and that the Applicant left the country that same month. However, the RAD noted that the evidence showed that conscription only affected men aged 18 to 25 years and that the Applicant had not received any calls or written notice from the Ukrainian government ordering him to present himself for military service. Moreover, there was no evidence that the

Ukrainian forces are today recruiting men in the Applicant's age category (above 25), nor was there evidence that the Ukrainian government would kill the Applicant if he failed to report for military service. Thus, the RAD found it unlikely that the Applicant would be subject to conscription in the Ukrainian forces or that he would be punished by the Ukrainian government for desertion, since he had not been officially recruited.

[11] The RAD acknowledged that the Ukrainian government may have been dependent on the paramilitaries from February to May 2014, but concluded that since then, the government had made efforts to strengthen its army with the help of foreign investments. The government created the National Guard on March 12, 2014, one of its goals being to disarm the volunteer militias.

[12] The RAD also agreed with the RPD's other conclusions: it found that there was no evidence that paramilitaries would have transmitted information about the Applicant to the Ukrainian armed forces. It also found that the bill that would purportedly limit the use of the Russian language in public affairs in Ukraine had not been passed into law.

[13] The RAD concluded at paragraph 30 of its reasons that:

> …the [Applicant], as a Russian speaking Ukrainian citizen who is not politically active and who lives in Kiev would not face a serious possibility of persecution in Ukraine today by either the government or society. He would also not, on a balance of probabilities, be personally subjected to a danger of torture, a risk to his life, or a risk of cruel and unusual treatment or punishment, should he return to Ukraine. For these reasons his appeal is rejected.

## IV. Issue and standard of review

[14] This judicial review raises a single issue:

> *Did the RAD make a reviewable error in finding that the Applicant is neither a refugee nor a person in need of protection?*

[15] I agree with the parties that the applicable standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

## V. Analysis

[16] Since this case was argued before me, the Federal Court of Appeal [FCA] rendered its decision in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93. I have given the parties the opportunity to provide additional submissions as to whether the FCA ruling had an impact on the present case. I only received a reply from the Respondent, who focuses on the answer provided by the FCA to the certified question, and who argues that in the present case, the RAD's decision can withstand the correctness standard with regard to its findings of fact and mixed fact and law and that deference was owed to the finding of credibility. I agree with the Respondent.

[17] That said, as Justice Gleason held in *Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at para 11 [*Andrade*], "the starting point for the inquiry in respect of an argument regarding the impact of failure to mention key evidence is that the reviewing court must presume that the tribunal considered the entire record", and thus the Applicant "bear[s] a high burden of persuasion". Second, in assessing reasonableness, the Court must

assess the outcome and the reasons of the tribunal, as per *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14. Third, the Court must give deference to the tribunal's findings, especially where such findings are at the core of the tribunal's expertise.

[18] In its assessment of the evidence, a decision maker is not required to refer to and analyze every single piece of evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 16 (QL) [*Cepeda-Gutierrez*]). Moreover, *Andrade*, above at para 9, holds that *Cepeda-Gutierrez* "does *not* stand for the proposition that failure to analyze evidence that runs contrary to a tribunal's conclusion necessarily renders a decision unreasonable". Thus, the bar for finding that the decision is unreasonable is high.

[19] For the reasons below, I find that the RAD's decision is reasonable.

[20] First, I cannot agree with the Applicant's contention that the RAD erred in concluding that the Russian language is well-entrenched in Kiev and that the RAD ignored contrary evidence demonstrating the Applicant has a well-founded fear in the new Maidan government. It was open to the RAD to make that conclusion on the evidence before it. As for the question of the repeal of the language minority law, the RAD may have wrongly concluded that the Ukrainian parliament had not passed it into law, since some of the evidence in the Certified Tribunal Record suggests that the law was repealed. However, there was no clear evidence on that issue, and thus I find that the RAD's conclusion was reasonable. Moreover, I am not

satisfied that this issue went to the heart of the Applicant's claim; his claim was rather based on his fear of forced recruitment.

[21] Second, I reject the Applicant's argument that the RAD erred in finding that the Maidan government would not harm or kill him if he failed to return for military service, due to the RAD's failure to take into account the draft law that would make deserters liable to receiving the death penalty. The RAD found that the Ukrainian government would not find the Applicant to be a deserter in the first place, because he had not been officially recruited. Thus, the evidence of the draft law is not relevant to the Applicant's situation.

[22] Third, with respect to the Applicant's argument that the RAD should not have upheld the RPD's application of too high a standard of proof with respect to the transmission of information from the paramilitaries to the government, I am of the view that the decision in *Zhu v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1026 (FCTD), cited by the Applicant, is distinguishable from the present case. In that case, there was evidence of a transfer of information: the applicant had given information to the RCMP about human smugglers ("snakeheads") in China, which was transferred to counsel in a related court case; the applicant was thus claiming to be a refugee *sur place*. The Court held that it was unreasonable for the Convention Refugee Determination Division [CRDD] (as it then was), to require evidence that the information transferred to counsel in the court case had *also* been transferred to the "snakeheads" in China:

> [16] Once the evidence established that Mr. Zhu's information was given to counsel for the accused, and filed in evidence at a public trial and in publicly available court records, it was, in my view, patently unreasonable for the CRDD to suggest that further

> evidence was required to establish that the information actually came to the attention of a potential agent of persecution. …

[23] In the present case, however, there was no evidence of a transfer of information from the paramilitaries to the Ukrainian government in the first place. Thus, it was reasonable for the RAD not to intervene in the RPD's finding to that effect.

[24] Fourth, I reject the Applicant's argument that the RAD misapprehended the evidence regarding conscription. Contrary to the Applicant's assertion, the RAD not only cited the 2005 "peace-time" document, but it also cited recent evidence that there had been second and third waves of conscription in May and July 2014, respectively. The RAD even acknowledged that the Applicant had left during the May 2014 wave of conscription. Nevertheless, it found that conscription only affected men aged 18 to 25 years, and that the Applicant had not received any calls or written notice from the Ukrainian government ordering to present himself for military service. Thus, the RAD reasonably concluded the Applicant would not be a target for conscription.

[25] Finally, I disagree with the Applicant's contention that the RAD's reasons were not transparent because they did not comment on the contradictory evidence. As mentioned above, the jurisprudence is clear that a tribunal need not refer to and analyze every single piece of evidence (*Cepeda-Gutierrez*, above at para 16), and that the existence of contradictory evidence will not necessarily render a decision unreasonable (*Andrade*, above at para 9).

## VI. Conclusion

[26] Therefore, this judicial review is dismissed. The parties did not propose any question of general importance for certification and none arises from this case.

## JUDGMENT

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

1. This application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-898-15 |
| **STYLE OF CAUSE:** | IEVGENII VOLOSHYN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | DECEMBER 9, 2015 |
| **JUDGMENT AND REASONS:** | GAGNÉ J. |
| **DATED:** | APRIL 28, 2016 |

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