

Federal Court



Cour fédérale

**Date: 20160722**

**Docket: IMM-148-16**

**Citation: 2016 FC 864**

**Ottawa, Ontario, July 22, 2016**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**PAVLO DOVHA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Pavlo Dovha, filed a claim for protection on his own behalf and on behalf of his daughter, Darya Dovah [Darya]. Those claims were dismissed by the Refugee Protection Division [RPD]. The Refugee Appeal Division [RAD] allowed the appeal of the claim of Darya finding that she was a lesbian who will face persecution in the Ukraine and thus was a Convention refugee.

[2] Mr. Dovha's appeal was dismissed. The RAD at paragraph 6 of its reasons states its understanding of the basis of his claim for protection, as follows:

The principal Appellant alleged before the RPD that he fears returning to Ukraine because he will be forced into military service due to the civil unrest happening in Ukraine, or he will be imprisoned for refusing to comply with orders to serve in the military.

[3] Mr. Dovah takes no issue with the findings based on his fears of military service; rather, he submits that the RAD failed to consider the second basis of alleged persecution – him being a family member of a lesbian. He points out that the RPD did not deal with this basis of his claim because it found that Darya was not a lesbian. However, once the RAD did make that finding as regards Darya, he submits it erred in failing to assess his risk as her father.

[4] The Minister submits that there was no obligation on the RAD to consider this ground because it was not raised as a ground of appeal. The Minister relies on Rule 3(3)(g)(i) of the *Refugee Appeal Division Rules*, SOR/2012-257, which provide that an appellant's record "must contain ... a memorandum of argument that includes full and detailed submissions regarding the errors that are the grounds of the appeal." The Minister also relies on this Court's judgment in *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2015 FC 321, which held that the RAD is not required to consider an argument that was not raised before it and that to do so would be contrary to the statutory scheme and established jurisprudence.

[5] Mr. Dovah takes the position that he did not directly raise the issue of him being at risk because of his daughter's sexual orientation, because the RPD did not address it because it found that she was not a lesbian. He argues that once the RAD found that Darya was lesbian, then it

had to address the issue of his risk as a family member, even though it was not directly raised by him as a ground of appeal.

[6] I do not agree. Even though the RPD did not deal with this purported ground of risk, it is incumbent on an appellant to raise it on appeal.

[7] I say “purported” ground of risk, because I have very carefully read the basis of claim submitted by Mr. Dovah and I am not persuaded that he ever raised as a ground of his risk, his relationship with his lesbian daughter. Rather, he raised only his fears of military conscription or imprisonment if he refused to serve.

[8] He filed a three-page narrative he attached to his basis of claim form. In it he says that he and Darya “cannot come back to Ukraine because our lives are in danger there.” He states that Darya “was persecuted because of her sexual orientation.” He then details in the following seven paragraphs his refusal to serve in the military and the possible consequences. He then writes “the reason why we cannot come back to Ukraine is a danger that threatens my family life.” This is the only sentence that even suggests, albeit inferentially, that there is one danger affecting the family as a whole. Following this he details in the next 18 paragraphs the incidents to Darya as a result of her being lesbian, including there being “insulting graffiti on the door” of his house and the family having to move to a new apartment. He then sets out more recent events concerning attempts to conscript him, including an attempt to obtain an exemption. He concludes: “I with my daughter cannot come back to Ukraine because I am afraid for our safety

there. Ukrainian authorities do not protect my daughter and I can be imprisoned from 2 to 5 years” [emphasis added].

[9] In my view, this last sentence in particular makes it clear that he is not relying on his own claim on any ground other than that of military conscription.

[10] In summary, the RAD had no obligation to consider a ground not raised in the appeal document filed by Mr. Dovah, and the ground he now alleges it failed to consider was not before the RPD or the RAD on the materials he filed with his claim.

[11] The decision is reasonable, and this application must be dismissed.

[12] Neither party proposed a question for certification. There is none on this record.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-148-16

**STYLE OF CAUSE:** PAVLO DOVHA v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 14, 2016

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JULY 22, 2016

**APPEARANCES:**

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