Date: 20070206

Docket: IMM-592-07

Citation: 2008 FC 154

Ottawa, Ontario, February 6, 2008

PRESENT: The Honourable Orville Frenette

BETWEEN:

BADRI NATSVLISHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board) dated January 8, 2007, concluding that the applicant was not a Convention refugee or a person in need of protection.

I. The facts

[2] The applicant is a citizen of Georgia who claims fear of persecution in that country based on his sexual orientation.

[3] He was married to a woman for seven years and has two children (14 and 16 years old) who remain in Georgia with his sister. He declared in his Personal Information Form (PIF) that he was separated from his wife but in his testimony he declared that he was divorced. He did not produce either a marriage certificate or a divorce order.

[4] He claims he was divorced because his wife was dissatisfied with his sex life. He alleges that he had been gay since he was sixteen years old but he did not openly express his orientation because of the homophobic attitude of Georgian society. He was married, he alleges, to give the appearance that he was “normal”.

[5] He lived for 23 years without expressing his homosexuality except for one brief relationship at age 39 with a co-worker named Giorgi. Giorgi left him for six months, returning on October 2005. He then appeared to be under the influence of drugs and asked for money, threatening to expose the applicant’s sexual orientation. The applicant gave him $100.00. Later he asked for money from the applicant’s sister, but she refused. He decided to come to Canada because he feared the black mail and discrimination and harassment in Georgia.

[6] According to the documentation produced in evidence, a report of Legal Affairs and Human Rights Committee of the Parliamentary Council of Europe of February 16, 2000, homosexuality was taboo in Georgia.

[7] An update produced on November 24, 2004 reveals that Georgia has decriminalized homosexuality on November 16, 2004. According to this document, homosexuals are still discriminated against in Georgia.

II. The decision under review

[8] In her decision of January 8, 2007, the Board member determined that the applicant was not a Convention refugee or a person in need of protection. She based her decision on the applicant's lack of credibility and the implausibility of his version of events. She took into account "claimant's lack of education and sophistication" (a grade 10 education) and "the homophobic society in which he lived."

III. Issues

A. Did the Board err in its assessment of the credibility and implausibility of the applicant's version of the facts and events?

B. Did the Board commit a reviewable error in its assessment of the consequences of sexual orientation in Georgia?

IV. Standard of review

[9] It is very clear that in law, the Board's factual findings, including its credibility determinations and the weight to be given to evidence, is to be given high deference and can only be set aside if found to be patently unreasonable.

[10] These findings will only be reviewed or set aside if they are "clearly irrational", or "evidently not in accordance with reason" (*Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247; *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (QL); *Harusha v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 2004).

V. Analysis

A. Did the Board err in its assessment of the credibility and implausibility of the applicant's version of the facts and events?

[11] The applicant submits that the Board made several reviewable errors in the assessment of the applicant's sexual orientation and argues that the Board disregarded the reality of how gay men are perceived by Georgian society, particularly in a small town of 4000 people where the applicant resided.

[12] The applicant argues that the Board performed a microscopic examination of the applicant's evidence to support its conclusion, an exercise criticized in *Attakora v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 444 (F.C.A.) (QL).

[13] The respondent replied that the only finding that was decided by the Board was the negative credibility of the applicant and the implausibility of his version of the events. This led to the denial of his claim that he had same-sex relationships, either in Canada or in Georgia, or that he was a homosexual. She held, therefore, that he was not in need of protection.

[14] An analysis of the Board's findings on the applicant's credibility is founded upon several aspects of his testimony. The Board member made a thorough assessment of the evidence to reach her conclusion.

[15] I do not accept that conducting a thorough examination of evidence constitutes the type of microscopic examination criticized in the *Attakora* case.

[16] While interpreting the evidence about the claimant's story, the Board member must give consideration to the claimant's age, cultural background and previous social experiences: *R.K.L. v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 162 (QL). And I must add, when dealing with various countries, the moral and social values in those countries.

[17] However in this case, the credibility finding was based upon a number of elements arising from the applicant's evidence. From a overall perspective, the general conclusion can be justified by a rational assessment of the evidence.

[18] Therefore, the Board did not commit a reviewable error since the finding is not patently unreasonable. As for the implausibility of the applicant's version of events, it is based on the totality of the evidence. Such a finding is inherently a subjective assessment and should be approached with caution: *Toth v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 305 (QL).

[19] However, I cannot conclude that in this case, the Board's decision is patently unreasonable on this point.

B. Did the Board commit a reviewable error in its assessment of the consequences of sexual orientation in Georgia?

[20] The applicant submits that the Board's decision contains sufficient patently unreasonable findings of fact and credibility to overcome the deference owed to her by this Court in such decisions. He maintains that the decision contains inappropriate and therefore erroneous projections of North American logic and reasoning without properly taking into account of the life of a gay man in the conservative and homophobic society which exists in Georgia.

[21] The respondent contests this argument and submits that the Board did consider the country conditions in Georgia.

The Board's decision clearly states that it accepted the applicant's evidence including documentation to the effect that Georgia was a homophobic society. The documentation referred to reveals that homosexuality was a crime in Georgia until November 16, 2004 when the government passed a law decriminalizing such a practise. It also documented the discrimination practised against homosexuals and homophobic social attitudes in that country. An analysis of the decision shows that the Board considered the applicant's evidence on the issue of homosexuality in Georgia and compared it to the situation in Canada.

[22] I therefore must conclude that this issue cannot be invoked as a reviewable error in this case. There were no patently unreasonable errors made in the Board's decision.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-592-07
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