Date: 20080529

Docket: IMM-4907-07

Citation: 2008 FC 691

Ottawa, Ontario, May 29, 2008

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

NATALIYA MATSKO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Nataliya Matsko is a thirty-two years old citizen of the Ukraine who claims Canada's protection on the ground she was persecuted in her country of nationality because of her religion. She indicates she is a member of the Pentecostal Church and asserts no state protection is available to her. By decision dated October 15, 2007, the Refugee Protection Division (the tribunal) denied her claim for two reasons: she was not credible and the country reports for the Ukraine do not indicate members of that church there are "subject to such persecution or that they are even subject to persecution at all. Discrimination is mentioned but not murder or assault."

<u>The tribunal's decision</u>

[2] The tribunal opened its analysis by stating the following:

> When a claimant swears that certain facts are true, there is a presumption that they are true unless there is a valid reason to doubt their truthfulness. An important indicator of a witness's credibility is the consistency of the witness's story. The quality of the evidence presented is also an indicator of credibility.

[3] The tribunal found Miss Matsko not to be credible for the following reasons:

1. She lacked corroboration for her testimony she was hospitalized several times and the tribunal found not credible her reason for not having them, namely, hospitals in the Ukraine only release such reports to the patient and nobody else, not even to her parents who may have sought to obtain the reports. Moreover, she never wrote to the hospitals directly to try to obtain copies of the reports, nor did she communicate directly with them and the documentary evidence does not mention unavailability on the ground asserted by the applicant.

2. She also "has no corroborating letters from her father or mother, nor has she given any reason for that. She even went so far as to say her father was sixty years old and has problems writing. Nevertheless, she confirmed to the panel her mother has no problems writing. In addition, she told the panel her parents do not communicate with her in writing but by telephone or e-mail. That does not explain why the panel did not obtain the information either, or why she was unable to obtain corroborating letters from either of her parents."

3. She testified being detained twice: at the end of the summer of 2000 and in the winter of that same year but failed to mention in her PIF the summer detention.

4. Moreover, when filling out her Schedule I questionnaire for interview purposes with immigration officials, she wrote she had not been detained "which contradicts her PIF". The tribunal did not accept her explanation she did not understand the word "detained" but only the word "prison".

5. She testified she was the only member of her family to have experienced serious problems on account of her religion which was inconsistent with what she had written in her PIF "my parents and I were constantly offended and threatened with physical punishment."

6. She was unable to explain satisfactorily why her parents still live in the Ukraine if they are also being persecuted. The tribunal did not accept her explanation they were old (age 60) and "don't want to go anywhere".

7. She was inconsistent in her testimony saying at one time her parents were not being persecuted as severely as she yet later told the tribunal they were being persecuted in the same way as she was yet they are still living in the Ukraine.

[4] The tribunal advanced an alternative ground for rejecting her claim stating "the credibility and probative value of testimony must be assessed in terms of what is generally known about the conditions and laws in the claimant's country of origin as well as in terms of the experiences of persons in a similar situation in that country".

[5] The tribunal then found:

> Thus, nowhere in the independent documentary evidence available to the panel does it see that the members of that church in Ukraine are subject to such persecution or that they are even subject to persecution at all. Discrimination is mentioned but not murder or assault. However, the claimant told the panel that the priest or pastor concerned died as a result of ill treatment that he had suffered during an attack.
>
> The panel has no document before it to substantiate that and, as noted, the documentary evidence does not indicate anything of the kind and I am referring, for example, to "Country Reports 2005," submitted as Exhibit A-2, which states the following about freedom of religion:
>
> *"The law provides for freedom of religion and the government generally respected this right in practice. Nonetheless, they were isolated problems at the local level. Some local officers at times impeded attempts by minority and non traditional religions to register and buy or lease property."*

[6] The tribunal concluded by stating it could not give probative value to Exhibit P-6 a letter from S. Yurkin, senior elder of the Grace Slavic congregation in Toronto and P-7 from Sister Tetyana telling of the death of her pastor in the Ukraine.

<u>The applicant's issues</u>

[7] Counsel for the applicant raises three issues: (1) the tribunal erred in law in requiring the applicant's evidence to be corroborated; (2) the tribunal's credibility findings were arrived at in some cases by misreading or ignoring the evidence and, in the other cases, in an arbitrary or

capricious manner, which in the pre-*Dunsmuir* era where classified as patently unreasonable errors. This reference is, of course, to the recent decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 where the patently unreasonable standard was integrated into the reasonableness standard; (3) the tribunal failed to consider her corroborating evidence in terms of Exhibits P-6 and P-7.

Analysis

(a) The standard of review

[8] It is well accepted in the jurisprudence of this Court that credibility findings are findings of fact and if a decision turns on an applicant's credibility, such decision calls into play section 18.1(4)(d) of the *Federal Courts Act* which provides this Court may grant relief if it is satisfied a tribunal "based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it" which the case law equated to the common law standard of the now defunct standard of patent unreasonableness. In my view, *Dunsmuir*, above, does not impact on the previous jurisprudence under section 18.1(4)(d) because a breach of that provision is necessarily unreasonable as redefined by that case since such a decision would be based on an erroneous finding of fact which was material and central to the decision. [Emphasis mine.] It is to be recalled findings of fact command the most deference from the Courts and such findings will not lightly be interfered with because it is not entitled to reweigh the evidence.

[9] Requiring corroboration when a tribunal should not is a question of mixed fact and law which is to be reviewed on the standard of reasonableness.

(b) Discussion and conclusions

[10] After reading the transcript of the applicant's testimony and considering the documentary evidence in the certified tribunal record as well as in the applicant's application record, I cannot conclude the tribunal's credibility findings are flawed and the tribunal's consideration of the documentary evidence irrational, perverse or capricious to the point of warranting the Court's intervention.

[11] In substance, what counsel for the applicant is asking me to do is to reweigh the evidence which was before the tribunal which is something this Court is not permitted on judicial review.

[12] The tribunal cited several reasons in support of its credibility findings: inconsistent internal testimony, contradictions between her POE and her testimony and PIF, omissions in her PIF and implausibilities in her story. A review of these findings in the transcript shows that these findings were supported by the evidence and the applicant's explanations not unreasonably rejected.

[13] A consideration of the documentary evidence supports the tribunal's overall conclusion that religious freedom exists in the Ukraine and that "non-orthodox religions" are flourishing and expanding despite some local irritants. Counsel for the applicant could only refer to one instance of persecution in the documentary evidence but as pointed out by counsel for the respondent, the example did not fit the applicant's profile.

[14] Counsel for the applicant's submission the tribunal erred in the view it took into account the lack of corroborative evidence in terms of hospital reports and her parents' letters cannot be accepted by the Court as an error by the tribunal in the circumstances of this case. The jurisprudence holds that where a claimant's story is found to be flawed because of credibility findings, the lack of documentary corroboration is a valid consideration for the purposes of further assessing credibility (see *Bin v. Canada (Minister of Citizenship and Immigration)*, [2001] 213 F.T.R. 47, 2001 FCT 1246 relying on *Syed v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 357, at paragraph 15.) This view is buttressed by Rule 7 of the *Refugee Protection Rules* which states that an applicant must provide acceptable documents in support of a claim.

[15] Finally, the tribunal, in the circumstances of this case, was entitled to give no probative value to Exhibits P-6 and P-7 (see *Kalangestani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1528 relying on *Hamid v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 1293, at paragraph 20).

[16] In my view, Exhibit P-6 adds little to the applicant's story and based on the applicant's testimony on Exhibit P-7, the pastor's death, the tribunal could fairly come to the conclusion it did on the lack of corroborative impact these Exhibits had.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this judicial review application is dismissed. No certified question arises.

"François Lemieux"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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