

Date: 20090305

Docket: IMM-2835-08

Citation: 2009 FC 234

Ottawa, Ontario, March 5, 2009

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ERMAL ELEZAJ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a citizen of Albania seeking the judicial review of a decision the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated May 31, 2008, wherein the Board determined that the applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] The applicant alleges to be homosexual. His claim is based on an alleged fear of persecution at the hands of his former girlfriend's relatives who would have beaten him and threatened to kill him after they learned about his sexual orientation.

[3] The Board simply did not believe the applicant's story. In a thirteen-page decision, the Board thoroughly motivated its negative credibility findings. Same should not be disturbed by the Court unless found to be unreasonable in the circumstances, which is not the case here.

[4] As a first ground of attack, the applicant argues that the Board breached his right to procedural fairness by relying on mistranslated questions and answers, while assurance had been given earlier to the applicant that the Board would rely only on the corrected version of the record of the December 2006 hearing. There is no doubt that "the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision" (*Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643, at para. 23). That said, having reviewed the Certified Tribunal Record and heard counsel representations, I am satisfied that the hearing before the Board was fair. Moreover, I entirely agree with the respondent's view that the applicant has not established that the Board relied on an erroneous translation to make the impugned credibility findings. Be that as it may, the discrepancies noted between the interpreter's version and the accurate interpretation are relatively minor. Moreover, the negative credibility findings made by the Board as explained below can sustain an attack based on the alleged failure to consider relevant evidence or on alleged capricious or arbitrary findings, having regards to the totality of the evidence.

[5] This brings me to the second ground of attack, which questions the reasonableness of the Board's overall conclusion. I am not convinced that I should embark on a microscopic-analysis of the Board's reasons. Overall, there are enough unexplained contradictions, inconsistencies and implausibilities in the testimony and evidence adduced by the applicant, which do not need to be repeated in the present reasons, to support a general finding of non-credibility. Suffice it to say that the Board's findings of fact are based on the evidence and are not otherwise arbitrary or capricious. Accordingly, following my careful review of the written submissions of the parties and the Certified Tribunal Record, as well as the documentary evidence. It is not for this Court to substitute its personal opinion for that of the Board in re-evaluating the evidence submitted before it. I also dismiss the applicant's argument that the Board made a reviewable error in discarding the affidavit of the applicant's mother. In view of the other evidence supporting its negative credibility findings, the Board was entitled not to give any weight to such corroborative evidence emanating from a close relative.

[6] In conclusion, I am of the view that the Board's overall conclusion dismissing the applicant's claim is entirely reasonable and does not warrant this Court's intervention, considering that it "falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190), and that there has been no breach of natural justice or procedural fairness. Accordingly, this application for judicial review is dismissed.

[7] The applicant is proposing the following two questions for certification:

1. Is it an error for a tribunal to take a linear approach to the evidence and discard documentary evidence that could corroborate the applicant's testimony on the basis of its finding that the applicant's oral testimony is not credible?
2. Must the breach of procedural equity be determinative of the case in order to justify the Court's intervention?

[8] In my humble opinion, neither of the questions proposed above meets the test for certification, as they do not transcend the interest of the parties, do not contemplate issues of broad significance and are not determinative of the judicial review. I would add that the questions as framed are too general and any answer would not likely clarify an undecided legal point of general importance. Questions related to evidentiary findings or breach of procedural equity are mostly fact driven and will not generally transcend the interests of the immediate parties to the litigation. This case is no exception. Thus, no question shall be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2835-08

STYLE OF CAUSE: **ERMAL ELEZAJ**
v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 25, 2009

REASONS FOR JUDGMENT
AND JUDGMENT: MARTINEAU J.

DATED: March 5, 2009

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