

Federal Court



Cour fédérale

Date: 20121206

Docket: IMM-3456-12

Citation: 2012 FC 1429

Ottawa, Ontario, December 6, 2012

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

SERGO LATSABIDZE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Sergo Latsabidze challenging a decision by the Refugee Protection Division of the Immigration Refugee Board (Board) by which his claim to refugee protection was denied. Mr. Latsabidze claimed to be a homosexual who had been persecuted in Georgia by virtue of his sexual orientation. The Board rejected the claim because it did not believe that he was a homosexual.

[2] The Board questioned Mr. Latsabidze about his involvement in the Toronto gay community and about his sexual activities. He testified that he was not active in the gay community because of language limitations, stress and his commitment to his Georgian boyfriend. The Board rejected these explanations for the following reasons:

Although the lack of promiscuity may not be determinative of the claimant's sexual orientation, I am not inclined to believe that if the claimant is truly gay, he has no interest in involving himself with gay activities, without necessarily getting into a gay relationship here in Toronto, without his Gocha. I do not believe that language is a barrier for him to be involved in gay activities in Toronto, that he is still under stress and that he does not feel protected because there are Georgians here. On a balance of probabilities, the claimant is not what he claims to be.

The above passage constitutes a plausibility finding that is based on an unacceptable stereotype. The Board was effectively saying that gay men are promiscuous and that they are incapable of living in monogamous relationships. The Board also assumed that no gay man would choose to live outside of the gay community. It is worth noting that this Board member dismissed a similar claim in the matter of *Kornienko v Canada (MCI)*, 2012 FC 1419 using language that is almost identical to that used here.

[3] The inappropriateness of using stereotypes of this sort is reflected in several decisions of this Court including *Dosmakova v Canada*, 2007 FC 1357, [2007] FCJ no 1742 where Justice Eleanor R. Dawson observed at para 12 "that plausibility findings cannot be made on the basis of stereotypical attitudes or projected behaviours that is unsupported by the evidence". Also see: *Essa v Canada*, 2011 FC 1493 at paras 30 – 31, [2011] FCJ no 1819, *Herrera v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1233 at para 12, [2005] FCJ no 1499, *Menaj v Canada*,

2008 FC 611 at para 17, [2008] FCJ no 754, *Kravchenko v Canada*, 2005 FC 387 at para 6, [2005] FCJ no 479, *Trembliuk v Canada*, 2003 FC 1264 at para 8, [2003] FCJ no 1590.

[4] Counsel for the Respondent urged me to uphold the decision notwithstanding this problem because of the Board's other credibility concerns.

[5] I am not prepared to excuse such a serious error. The idea that gay men are invariably promiscuous and incapable of establishing stable relationships is a pejorative characterization and it colours all of the Board's evidentiary findings, as well as its state protection finding.

[6] The state protection analysis is also flawed because it is perfunctory and made without reference to the evidence.

[7] For the foregoing reasons, this application is allowed. The matter must be re-determined on the merits by a different decision-maker. Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed with the matter to be re-determined on the merits by a different decision-maker.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3456-12

STYLE OF CAUSE: LATSABIDZE v MCI

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: November 29, 2012

REASONS FOR JUDGMENT: BARNES J.

DATED: December 6, 2012

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