

Chouljenko v. Canada (Minister of Citizenship and Immigration)

Between
Vladimir Chouljenko, plaintiff, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 1234
Court File No. IMM-3879-98

Federal Court of Canada - Trial Division
Montréal, Québec
Denault J.

Heard: July 26, 1999.
Judgment: August 9, 1999.
(10 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Credible basis for claim — Determination of country of nationality.

Application by Chouljenko for judicial review of the decision of the Refugee Division of the Immigration and Refugee Board that he was not a Convention refugee. Chouljenko claimed refugee status based upon his fear of persecution in Azerbaijan because of his Armenian nationality. He was born to a Russian father and an Armenian mother. He stated that he and his family had hidden in various places to avoid death. In 1995 he allegedly was kidnapped by members of the National Popular Front but escaped with the help of a friend. The Refugee Division concluded that he had not shown a valid fear of persecution based on his nationality. It concluded that he had not proven that he was of Armenian nationality. It also questioned his credibility.

HELD: Application allowed. Chouljenko provided sufficient evidence of his nationality. It was unreasonable for the Refugee Division to require him to present additional documentation proving that he was of Armenian nationality when he had given legitimate reasons as to why such documentation was unavailable.

Statutes, Regulations and Rules Cited:

Immigration Act, R.S.C. 1985, c. I-2, s. 69.1(9.1).

Counsel:

Jacques Beauchemin, for the applicant.
Jocelyne Murphy, for the defendant.

1 **DENAULT J.** (Reasons for Order):— This is an application for judicial review from a decision of the Refugee Division of the Immigration and Refugee Board ("the Refugee Division") made on August 18, 1998, which concluded that the claimant was not a Convention refugee and that there was an absence of basis for this claim pursuant to s. 69.1(9.1) of the Immigration Act, R.S.C. 1985, c. I-2.

2 Certain of the events giving rise to this application should be mentioned. The plaintiff claimed refugee status in Canada based on a fear of persecution in Azerbaijan because of his Armenian nationality. The plaintiff was born in Kazakhstan of a Russian father and Armenian mother. On January 13, 1990, learning of genocide against the Armenian people, the plaintiff and his family allegedly abandoned their family home and their personal possessions in order to avoid death. The plaintiff and his family subsequently had to hide in various places on several occasions because Armenians were being sought by members of the National Popular Front. In March 1995 the plaintiff was allegedly kidnapped by members of the National Popular Front. With a friend's help the plaintiff succeeded in escaping the clutches of his kidnappers. He later rejoined his family and learned that one of his daughters had been kidnapped by a group of nationalists and ransom was required for her release; once the ransom was paid, his daughter was returned to him. The plaintiff subsequently obtained a passport with a U.S. visa and on November 14, 1997 he left his family and Azerbaijan and a few days later claimed refugee status in Canada.

3 As the plaintiff feared persecution in Azerbaijan for his Armenian nationality, the Refugee Division formulated the question to be answered as follows:

[TRANSLATION]

The question that arises is as follows: Has the claimant been able to show that he was of Armenian nationality? Did he show that he made every possible effort to obtain the documents proving that he is of Armenian nationality? The panel answers this question in the negative.

The panel concluded that the plaintiff had not shown that he had a valid fear of persecution because of his nationality. It arrived at this conclusion on the basis that the plaintiff had not shown that he was of Armenian nationality and had not made every possible effort to obtain the documents proving this point, which it felt was of [TRANSLATION] "fundamental importance" (page 2 of the decision), namely his Armenian nationality. The Refugee Division also questioned the plaintiff's credibility and the truth of his story.

4 In support of his application for judicial review the plaintiff argued primarily that the Refugee Division erred in law in concluding that he had not presented sufficient evidence of his Armenian nationality. Certain alternative arguments sought to show that

the panel was wrong in finding contradictions in the evidence and concluding that the evidence was insufficient to establish a reasonable fear of persecution.

5 In my opinion, analysis of the first argument made by counsel for the plaintiff suffices to dispose of this case.

6 The plaintiff submitted, first, that his own testimony on his Armenian nationality, corroborated by that of his mother, and the events he related in his Personal Information Form sufficed to show that he was identified as of Armenian nationality by the persecuting group. As regards the absence of a birth certificate or internal passport which might have established his Armenian nationality, the plaintiff argued that in the circumstances in which he fled from his country it was unreasonable for the Refugee Division to blame him for not acquiring such documents on his departure, especially, he said, as it would have been dangerous to have documents which could have identified him as an Armenian in his possession.

7 The defendant argued that the reasons put forward by the plaintiff to justify his inability to provide documents attesting to his nationality had been found unsatisfactory and in any case the explanations given to the Refugee Division were not regarded as credible.

8 I feel that in view of the evidence in the record regarding the plaintiff's nationality, it was unreasonable in the case at bar for the Refugee Division to require him to present evidence of [TRANSLATION] "every possible effort to obtain the documents proving that he is of Armenian nationality".

9 The plaintiff in fact testified as to his Armenian nationality and the perception his persecutors had of this fact, and these facts were corroborated by the unambiguous testimony of his mother, who has already been granted refugee status by the Refugee Division. It is true, as regards the latter's testimony, that each claim stands on its own merits and so the fact that she has been recognized in Canada as a refugee does not establish that her son should be also. However, when after her son said he was an Armenian she appeared to testify to this fact, her testimony should be believed and accepted unless the panel clearly explains why it was not credible. Here, the Refugee Division did not question this testimony, simply stating that [TRANSLATION] "... even though the claimant's mother may have established that she was an Armenian, that does not mean that the claimant chose his mother's nationality at age 16". In short, the Refugee Division avoided the question and appeared to blame the plaintiff for not choosing his mother's nationality at age 16, a circuitous and irrelevant means of disregarding the clear and forthright testimony of the mother about her son's nationality. In doing this, the Refugee Division not only ignored corroborative evidence without questioning it, but also required documentary evidence when the plaintiff had provided a reasonable explanation of why he did not take this on his hasty departure from Azerbaijan and why it was subsequently impossible for him to obtain it. I feel this is an error which justifies this Court's intervention.

10 For these reasons, the application for judicial review should be allowed. There is no basis in the case at bar for certifying a serious question of general importance.

Certified true translation: Bernard Olivier, LL. B.

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ORDER

The application for judicial review is allowed, the decision of the Refugee Division on August 18, 1998 is quashed and the matter is referred back to the Immigration and Refugee Board for re-hearing by a differently constituted panel.

Certified true translation: Bernard Olivier, LL. B.