

United States v. Miszczuk

Memorandum in Support of Motion to Dismiss

Exhibit G

U.S. Department of Justice
Executive Office for Immigration Review
Immigration Court

Matter of

File A 24 642 104

WLODZIMIERZ MISZCZUK,

Respondent

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IN REMOVAL PROCEEDINGS

Transcript of Hearing

Before PAUL M. GAGNON, Immigration Judge

Date: July 10, 2007

Place: Boston, Massachusetts

Transcribed by DEPOSITION SERVICES, INC. at Rockville, Maryland

Official Interpreter:

Language: Polish

Appearances:

For the Department of
Homeland Security:

Susan Hiller, Esquire

For the Respondent:

Pro se

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1 JUDGE FOR THE RECORD

2 This is the matter of Wlodzimierz Miszczuk, A 24 642
3 104. This is a removal hearing in the Boston Immigration Court,
4 Boston, Massachusetts, Judge Paul M. Gagnon presiding. The date
5 is July 10, 2007. The Government is represented by Assistant
6 Chief Counsel Susan Hiller. The respondent appears before the
7 Court today representing himself. He's indicated to us in the
8 past his best language is Polish so we are joined also by a
9 Polish interpreter. I'm going to take his oath now.

10 JUDGE TO INTERPRETER

11 Q. Do you solemnly swear to truly and accurately
12 translate between the English and Polish languages for us today?

13 A. I do.

14 Q. Okay. Thank you. Let me say at the outset, I've
15 had some trouble communicating with Mr. Miszczuk in the past. He
16 speaks English and also Polish. We had a Polish interpreter on
17 the telephone and I think part of the problem may just have been
18 that it was telephonic. But if you're having difficulty
19 understanding him please let me know right away.

20 A. Of course, Your Honor.

21 Q. As I know you would anyway. I just wanted to
22 mention that.

23 JUDGE TO RESPONDENT

24 Q. Okay. Sir, can you raise your right hand, please.
25 Do you solemnly swear that the testimony you're about to give

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1 will be the truth, the whole truth and nothing but the truth?

2 A. Yes.

3 Q. Okay. Thank you. Okay. State your name, please.

4 A. Wlodzimierz Miszczuk.

5 Q. Okay. Now Mr. Miszczuk, because we've had some
6 trouble communicating in English in the past I've asked to have a
7 Polish interpreter here today. So he's here to help us. Okay.

8 A. Thank you.

9 Q. Now, what I'd like you to do for me, sir, is to
10 try to pay attention to this. Please wait until he translates
11 the question into Polish before you start your answer. Okay.
12 And you answer, please in Polish, not in English. Okay.

13 A. Very well.

14 Q. All right. Now, how old are you?

15 A. Seventy.

16 Q. Okay. Now, sir, I'm going to discuss some things
17 that we have discussed before but I want to get them all on the
18 record now. The purpose of this proceeding is to determine
19 whether or not you should be removed from the United States. You
20 have the right to have a lawyer in the Immigration Court but it
21 would be at your own expense. Now I have continued your case on
22 a number of occasions already so that you could try to get a
23 lawyer, sir. We've given you a list of free or reduced fee legal
24 service providers. In fact, we've given you several of those
25 lists. Now, you also told me that you had friends or family that

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1 were also trying to see if they could find a lawyer for you. And
2 I believe you've also told me in the past that in your opinion
3 the lawyers were charging too much money and you couldn't afford
4 their services. And that you apparently didn't have too much
5 luck in convincing any of the free or reduced fee legal service
6 providers to help you out with this case. But just to be sure,
7 let me ask you now. Have you had any luck at all finding a
8 lawyer yet?

9 A. Do I have to answer?

10 Q. Well, yes, sir.

11 A. I tried many times. I even wrote two letters to
12 the Polish Embassy in Washington.

13 Q. Well, you don't have --

14 A. In Boston --

15 Q. -- you don't have a lawyer yet. Right?

16 A. I had three attorneys who were supposed to get in
17 touch with an American attorney but he says this case will cost
18 too much money.

19 Q. Okay. Now, I want you to remember why we're doing
20 this today, sir. He's going to translate everything you say to
21 me back into English. Okay. So take a breath every once in a
22 while. 'Cause I want to hear everything you have to say today.
23 So now if our interpreter thinks you're going on a little bit too
24 long he's going to put his hand up like this. So just stop for a
25 minute. Okay. And he'll translate what you've said so far and

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1 then we'll come back and hear the rest of what you want to say.
2 Okay. So, what we're going to do today, sir, is we're going to
3 have to have your hearing now and you're going to have to act as
4 your own lawyer. Okay.

5 JUDGE TO MS. HILLER

6 Q. The Government's prepared to go forward in the
7 removal portion --

8 A. Yes, Your Honor.

9 JUDGE TO RESPONDENT

10 Q. Okay. Sir, so I'm going to have some questions
11 for you during this hearing. Okay. Now you'll have an
12 opportunity to examine any evidence the Government presents and
13 to question any witnesses that they might present. Now, if you
14 have any evidence or witnesses that you want me to consider I'll
15 look at those pieces of evidence and listen to those witnesses as
16 well. Okay. Sir, it says here that you are not a native or
17 citizen of the United States, but you are a native and citizen of
18 Poland. Is that true, sir?

19 A. Yes.

20 (OFF THE RECORD)

21 (ON THE RECORD)

22 JUDGE TO RESPONDENT

23 Q. Okay. Sir, now it says that you entered the
24 United States on May 26, 1982 as an immigrant. Is that true?

25 A. Yes, it's the same day but I was refugee to

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1 Austria and Austria got refugee status.

2 Q. Uh-huh.

3 A. In Vienna I applied to American Embassy. And I
4 waited with my daughter who was five years old. I waited for one
5 year for visa in Austria.

6 Q. Okay. Sir, but you did come into the United
7 States on that date that I just asked you about. Correct?

8 A. Yes on May 26, '82.

9 Q. And what city did you enter the United States?

10 A. Providence, Rhode Island.

11 Q. Okay. Now it says that on August 22nd, 2006 you
12 were convicted in the District Court in Warwick, Rhode Island for
13 the following offense. Okay. It was domestic vandalism charge,
14 sir. Okay. And that was on August 22nd, 2006 in the District
15 Court in Rhode Island. And you got a one year prison sentence
16 suspended.

17 A. No, that's not true.

18 Q. Okay. Well I think the Government has a record of
19 that conviction. I'm going to take a look at it. Okay. What
20 you did, sir -- okay, sir, well I've got a record of conviction
21 which I've marked as Exhibit 2 in this case. And it's got your
22 name and your date of birth on it. So based on my review of that
23 record of conviction it appears to me that you were in fact
24 convicted of that domestic vandalism offense. Now it also says
25 that and also you got a one year suspended sentence on that, sir.

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1 A. Yes, because it was only telephone. The thing is
2 she was very drunk and then she withdrew everything.

3 Q. Well, I know, sir. But what I'm asking you is if
4 you had this conviction which you said no. But it looks like
5 from the record that you did.

6 A. Yes, yes, there was one.

7 Q. So you were convicted of that? Okay. I
8 understand you're telling me there's two sides to the story but
9 you were convicted.

10 A. Yes, I'm telling the truth.

11 Q. Okay. Sir, now it also says that on February 23,
12 1994 you were convicted in Providence Superior Court in Rhode
13 Island for the offense of sexual assault in the second degree.
14 Hold on a second.

15 (OFF THE RECORD)

16 (ON THE RECORD)

17 JUDGE TO RESPONDENT

18 Q. Okay. Sir, what I was asking you is on February
19 23rd, '94 you were convicted in Providence Superior Court in
20 Rhode Island for sexual assault in the second degree. Is that
21 true, sir?

22 A. Absolutely not.

23 Q. Okay. Sir, well once again I've got a record of
24 conviction here which is marked as Exhibit 3. Which you have in
25 front of you sir, and it's got your name and your date of birth

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1 on it. And I'm reviewing this conviction and it appears to me
2 very clear that you were in fact convicted of this offense.

3 A. I was just a big victim. I didn't happen.

4 Q. Well, I understand you told me in the past, sir,
5 that you thought you were unjustly convicted. But that doesn't
6 change the fact that you were in fact convicted.

7 A. The case was held behind my back.

8 Q. Okay. Sir, but the trouble -- we're dealing with
9 here sir is I can only go by what the court record shows, sir.
10 Sir, just let me say this. Okay. I'm reviewing this conviction.
11 It say you entered what's called Alfred plea. Now, you had a
12 lawyer down there in Rhode Island. Right?

13 A. No, I didn't have any attorney?

14 Q. Well, it says that you did, sir.

15 A. Public defender.

16 Q. That's a lawyer, sir.

17 A. He didn't help me at all.

18 Q. Okay. Sir, but what you did when you entered that
19 Alfred plea is that you told the Court I don't think I'm guilty
20 but I'm accepting a finding of guilt here. Okay.

21 A. It can't be this way because for four years nobody
22 investigated this.

23 Q. Okay. Sir, now based on your answers to my
24 questions and my review of these records of conviction I am
25 making a finding by clear, convincing and unequivocal evidence

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1 that you are subject to removal from the United States because of
2 these crimes of which you've been convicted. Now, sir, now that
3 I've found that you are subject to removal from the United
4 States, I need to figure out whether you have any claims to
5 citizenship or any other relief from removal. Now, is either
6 your mother or father a United States citizen?

7 A. They died recently. Mother died in '73. They
8 were killed by the Russians.

9 Q. They were citizens of Poland. Is that right, sir?

10 A. Yes.

11 Q. Okay.

12 A. There were uncles here, brothers of my sister.
13 They were fighting from England against the Germans.

14 Q. Okay. I see. Okay, sir. Do you have any reason
15 to think that anybody would torture or persecute you when you go
16 back to Poland?

17 A. The situation has changed. When I was living
18 there was no American Army in Poland. Now they're stationed
19 rockets and Mr. Putin said if the rockets are installed the first
20 target will be Poland.

21 Q. Okay. Sir, but what I'm asking you is do you
22 think that anybody in the Government of Poland would torture or
23 persecute you if you went back to Poland?

24 A. I have no idea because I wasn't in the country for
25 26 years.

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1 Q. Okay. So I'll take that answer as no, sir.

2 A. I don't understand.

3 Q. Well, I think you do understand, sir. I'm asking
4 you if you think anybody is going to torture or persecute you if
5 you go back to Poland.

6 A. I have no idea.

7 Q. Okay. So you have no reason to think that anybody
8 would torture or persecute you. Correct, sir?

9 A. I have because I escaped from Poland. If I
10 wouldn't escape from Poland I would have been sitting in jail for
11 three years at least.

12 Q. Right. That was during the Communist Regime in
13 Poland. Correct, sir?

14 A. Yes.

15 Q. Sir, you followed the situation of Poland since
16 that time. Correct? The Government changed to a democratic
17 government after that. Right, sir?

18 A. Yes. But the thing is that I was then 45 years
19 old. Now I'm 70 years old and all my relatives have died in
20 Poland. I have nobody there.

21 Q. All right. Sir, I'm ordering your removal from
22 this country to the country of Poland because your criminal
23 record and the crimes you committed here in the United States
24 you're not going to be able to come back here legally. If you
25 come back illegally you will be subject to criminal prosecution

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1 just from being in the United States, sir. Now, sir, you have a
2 right to appeal my decision to the Board of Immigration Appeals.
3 If you wish to appeal my decision I'm going to give you an appeal
4 package here which tells you how to pursue that appeal, sir. You
5 have to -- excuse me, sir.

6 A. Yes, of course.

7 Q. You have to follow the instructions in the appeals
8 package and your appeal will have to reach the Board of
9 Immigration Appeals in Falls Church, Virginia no later than
10 August 9, 2007 which is 30 days from today's date.

11 A. (Interpreter) What should it be, Falls --

12 Q. Falls Church, Virginia.

13 A. How long? How long will I wait for appeal if I
14 want to appeal?

15 Q. If you want to appeal you have to file it and it
16 has to reach there within 30 days of today's date. Now, do you
17 want to take an appeal, sir?

18 A. Of course, yes, of course I want to do this
19 because now that (indiscernible) I am a big victim.

20 Q. Okay. Sir, I'll reserve your right to appeal.
21 Now, sir, do you understand everything we've done at the
22 Immigration Court today and at all the previous proceedings?

23 A. I understand, but a lot of persons understand that
24 this oldest, what was before didn't make any sense.

25 Q. Well, you understand what we did today, sir?

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1 A. I understand, but I don't understand the Judge.

2 Q. You don't understand me, sir?

3 A. I don't understand the decision.

4 Q. Well, what don't you understand about it, sir?

5 A. Because nobody defended me and how can you base on
6 this Because this I never talk to the judge regarding these
7 matters.

8 Q. Sir, you talked to me several times. Are you
9 talking about me or are you talking about a different judge, sir?

10 A. I'm talking about the case that happened in 1990.
11 Why did I have to wait four years for the verdict?

12 Q. Okay. Sir, this is what I want you to understand.
13 This is why I put most of the morning here just to do your case.
14 Okay. So I want you to understand what's going on here. Okay.
15 The only thing that we decide here in the Immigration Court is
16 whether you get to stay in the United States or whether you go
17 back home to where you came from. Now, I understand that you
18 take issue with what happened in the criminal courts in Rhode
19 Island. But, sir, the thing is you have, I've reviewed these
20 criminal records and I can only go on the criminal records I have
21 in front of me. So as you stand before this Court you have been
22 convicted of these offenses. That's why I had the records
23 brought in to me today and I reviewed them with you. It's clear
24 that those are your conviction records, sir. And because you
25 have these convictions I have no choice but to say you can't stay

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1 here in the United States anymore. You have to go back to
2 Poland. So I'm sorry -- so when I asked you if you understand
3 what we've done in Immigration Court, that's what I'm asking you.
4 Do you understand what we've done here in this Court?

5 A. Yeah.

6 Q. Okay. Sir --

7 A. Will I talk to anybody else besides this Court?

8 Q. You're all done with this Court now unless you're
9 successful on your appeal and the Immigration Appeals Court sends
10 it back to me. So the officer has already given you your appeals
11 packet so you need to fill that out and send in your appeal
12 before August 9th, as I said within 30 days of today's date.

13 A. Did I get this?

14 Q. Yes, sir, it's right there.

15 A. Yes.

16 Q. Okay. We have the records of your records of
17 conviction. You should take those.

18 A. Please tell the Judge that I have all my letters
19 to the Embassy are being held at the detention center. I haven't
20 gotten any response.

21 Q. I can't do anything about that, sir. Okay. The
22 only thing I can suggest to you is this. I know you have some
23 family around. You need to tell them that you're probably going
24 back to Poland pretty soon, so if they can help you out getting
25 set up in Poland you need to start working on that, sir. Okay.

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1 Sir.

2 A. No, it's not okay. I am okay. But no, it's not
3 okay this country.

4 Q. Okay. Sir, I understand your frustration.

5 A. They broke my life.

6 Q. Okay. Sir, good luck to you. Okay. Sir.

7 HEARING CLOSED

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CERTIFICATE PAGE


I hereby certify that the attached proceeding
before PAUL M. GAGNON in the matter of:

WLODZIMIERZ MISZCZUK

A 24 642 104

Boston, Massachusetts

was held as herein appears, and that this is the original
transcript thereof for the file of the Executive Office for
Immigration Review.



Caroline G Gibson (Transcriber)

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August 27, 2007
(Completion Date)