Federal Court  Cour fédérale

Date: 20150306

Docket: IMM-5315-14

Citation: 2015 FC 285

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 6, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

SALAH-EDDINE BELOUADAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant contests a decision by the Refugee Protection Division (the RPD) of the Immigration and Refugee Board, dated June 12, 2014, determining that he is not a refugee or a

person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act).

[2] For the reasons below, the applicant's application for judicial review is dismissed.

II. Background

[3] The applicant is a citizen of Algeria, which he left in February 2008. In November of the same year, after staying in Ireland, where his claim for refugee protection was unsuccessful, the applicant arrived in Canada and filed a claim of the same nature. Stating that he had been a victim of a terrorist attack perpetrated in Algeria in December 2007 and that he feared for his life because of the prevailing state of insecurity in Algeria, he claimed protection in Canada, by seeking refugee status within the meaning of the *Refugee Convention* or person in need of protection status under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), respectively.

[4] In September 2011, the Minister of Public Safety submitted the findings of criminal record checks to the RPD. This check revealed correspondence from Interpol stating that the applicant [TRANSLATION] "is known to the judicial system for illegal possession of a firearm (10-04-1995) and for illegal drug trafficking (29-07-97)" (Exhibit M-1). The Minister considered requesting that the applicant be excluded on the basis of the combined effect of section 98 of the Act and Article 1F(b) of the *Refugee Convention*, under which a person with respect to whom there are serious reasons for considering that he or she has committed a serious non-political crime outside Canada is not eligible for refugee or person in need of protection status.

[5] During the process of obtaining this information, the Minister asked the applicant to authorize follow-up with Algerian authorities while guaranteeing that the fact that he had filed a refugee protection claim in Canada would not be revealed to them. The applicant refused his give his consent.

[6] In response to Exhibit M-1, the applicant amended, in March 2012, his Personal Information Form (PIF). He alleged that this was inaccurate information likely connected to an event that occurred in 1995, during the civil war in Algeria, where he says that he was arrested by Algerian police, accused of acting against the country's authorities and held and tortured for 26 days. He also indicated that he was released without any formal charges being brought against him and that he was then able to start and complete his military service and live without any problems with the authorities until the events that precipitated his departure from Algeria in late 2007.

[7] On August 16, 2012, the RPD allowed the applicant's refugee claim on the basis of the exception under subsection 108(4) of the Act, which stipulates that refugee protection does not cease when the reasons justifying the original claim no longer exist, provided the refugee claimant successfully proves that he or she has become, since arriving in Canada, a *"refugee sur place"*. This RPD decision was set aside by the Court on May 10, 2013, on the grounds that the RPD had made an error by failing to determine whether the applicant met the definition of refugee or person in need of protection before the underlying reasons for the refugee claim ceased to exist.

[8] The case was thus referred back to a differently constituted panel of the RPD, for reconsideration of the applicant's refugee protection claim. At this new hearing before the RPD, the applicant this time testified that he had had run-ins with Algerian authorities between 1995 and 2007, stating that he had been arrested two or three times and that the police had gone to his home and that of his parents in 2001 and 2002 to check on his whereabouts.

[9] The RPD rejected the applicant's refugee protection claim on the basis that he did not appear credible, in particular because of the vague and general nature of his account and the numerous contradictions plaguing his testimony and the different versions of his PIF. It also rejected the claim that the applicant now qualified as a *"refugee sur place"* because Exhibit M-1 was added to his file, on the grounds that he had not demonstrated that the Algerian authorities had been contacted by the Canada authorities or that they would have been in a way that could put the applicant's safety at risk in the event he had to return to Algeria.

[10] Finally, the RPD did not accept the argument whereby the applicant was a member of a social group within the meaning of the section 96 of the Act, that of [TRANSLATION] "failed refugee protection claimants", on the basis, in particular, of the absence of evidence that the Algerian government is aware of the applicant's refugee protection claim in Canada and that there is a reasonable possibility that he will be persecuted when he returns to Algeria as a result of filing such a claim.

III. Issue and standard of review

[11] The instant case raises only one question, namely, whether, in determining that the applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the Act, the RPD made, based on the record it had before it, an error justifying the Court's intervention.

[12] It is well established that the determination of Convention refugee or person in need of protection status within the meaning of sections 96 and 97 of the Act raises questions of mixed fact and law falling within the RPD's expertise and requires it to be reviewed, when contested before this Court, on the standard of reasonableness. This principle especially holds true for the RPD's findings on credibility, which, given its role as trier of fact, command the greatest deference (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 89; *Camara v. Canada (Citizenship and Immigration)*, 2008 FC 362, at para 12; *Lin v. Canada (Citizenship and Immigration)*, 2008 FC 1052, at para 13; *Giron v. Canada (Citizenship and Immigration)*, 2013 FC 7, at para 14; *Dong v. Canada (Citizenship and Immigration)*, 2010 FC 55, at para 17, *Lawal v. Canada (Citizenship and Immigration)*, 2010 FC 558, at para 11; *Sanchez v. Canada (Citizenship and Immigration)*, 2011 FC 491, at para 12).

[13] Following this standard of review, the Court's role is not to reweigh the evidence that was before the RPD and substitute its own findings for those of the RPD. Its role is limited to intervening only if the contested decision lacks justification, transparency and intelligibility, or falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47).

[14] This same standard applies equally to RPD decisions rejecting a refugee claim based on the notion of *"refugee sur place"* (*Djouah v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 884, 438 FTR 178, at para 14).

IV. Analysis

A. *The applicant's credibility*

[15] As the Federal Court of Appeal stated in *Sellan v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381, an adverse credibility finding will normally be fatal to a refugee protection claim unless the record contains reliable and independent documentary evidence to rebut it (*Sellan*, at para 3).

[16] The applicant criticizes the RPD for being [TRANSLATION] "too hard" on him, fixating on details and demonstrating insensitivity to the stress of having to testify before it again, to his memory problems and to the long period of time that had elapsed since the events.

[17] In my opinion, this criticism has no merit, which undoubtedly explains why counsel for the applicant did not emphasize this point at the hearing and focused his efforts instead on the impact of Exhibit M-1 on his client's refugee protection claim.

[18] There are in fact a sufficient number of contradictions and grey areas in the applicant's written accounts and testimony to support the conclusion reached by the RPD. Such is the case for the evidence related to

a. the location (at home or in the street) and date (1994 or 1995) of the applicant's first arrest, which allegedly was followed by 26 days of detention during which he was tortured;
b. the number of times he reportedly had run-ins with the police, since the applicant testified that there had never been any incidents other than the one in 1994 (or 1995) before retracting what he had said and stating that there were two or three others;
c. the fact that the arrest in 1994 (1995) is not mentioned in the applicant's first PIF and was not raised in the applicant's account until he had to respond to Exhibit M-1;
d. the fact that the searches to which he says he was subjected in 2001 and 2002 by the police are not mentioned either in the initial PIF or in the amended PIF; and
e. the vague and imprecise character of the applicant's testimony on the nature of the injuries suffered during the terrorist attack that allegedly convinced him to leave Algeria.

[19] The applicant links the holes in his memory and the vague and imprecise character of his account to the trauma he reportedly suffered following the terrorist attack. However, there is no medical evidence on record to support this claim, hence it was reasonable for the RPD to disregard it. The same observation can be made regarding the argument concerning the time elapsed since the events, which, at the time the applicant filed his refugee claim in 2008, dated back barely 10 years. This elapsed time is thus entirely relative. Moreover, it is hard to believe that someone who now claims to have been held and tortured for 26 days did not manage to remember such an event when completing his refugee protection claim.

[20] As counsel for the respondent noted at the hearing, everything suggests that the applicant fabricated a story of persecution based on his criminal past revealed by Exhibit M-1. The RPD was justified in not giving any credibility to this story.

B. ***Membership in the "failed refugee protection claimants" social group***

[21] The RPD noted here that the applicant did not produce evidence that the Algerian authorities were aware of the fact that he had filed a refugee protection claim and that he would be persecuted for this reason if he had to be deported to that country.

[22] The applicant has not convinced me that this finding is unreasonable. On the contrary, this finding is supported by the documentary evidence before the RPD and cited by the applicant in the memorandum he filed in the instant case. This evidence indicates that the Algerian authorities have no interest in failed refugee protection claimants except where these people are suspected of being involved in international terrorism. However, there is not a shred of evidence on record that the applicants would be the subject of such suspicions. Counsel for the applicant even tried to convince me that the criminal record for illegal possession of a firearm would link his client to international terrorism. Despite a commendable effort by counsel for the applicant, this is a path I would not go down. This argument falls within the realm of supposition and hypothesis. This cannot be allowed, especially since the evidence shows that the applicant was able to complete his military service unhindered despite the existence of this criminal record.

[23] Moreover, based on the recent documentary evidence from the United Kingdom's Home Office and produced by the respondent as part of the instant proceeding, Algerian citizens who

return to their country after trying, unsuccessfully, to obtain refugee status in a foreign country can do so without issue and without being subject to unusual treatment.

[24] Therefore, it is not necessary to decide whether the [TRANSLATION] "failed refugee protection claimants" group constitutes a "social group" within the meaning of section 96 of the Act, since even assuming that such is the case, the applicant has not established a reasonable possibility that he would be persecuted as a member of this group in the event of his return to Algeria.

C. ***Claim for "refugee sur place" status***

[25] The applicant argues that since the Minister of Public Safety provided evidence, by filing Exhibit M-1, he runs a serious risk of persecution once back in Algeria because this document, which became public as a result of the judicial review proceedings regarding his refugee protection claim and thus theoretically accessible by Algerian authorities, shows that he is now targeted by Interpol and subject to monitoring activities.

[26] According to the applicant, the production of Exhibit M-1 would therefore provide a completely new and independent basis for his refugee protection claim, specifically, an event that occurred after the applicant's arrival in Canada, justifying a reasonable fear of persecution by Algerian authorities and giving rise, as a result, to the application of the concept of "refugee sur place."

[27] However, evidence is still required, and the applicant bears the burden of proving that the Algerian authorities are aware that he has been the subject of correspondence between Interpol and the Canadian authorities, and that it is reasonable to believe that they will react, should he return to Algeria, with acts of persecution (*Bastamie v. Canada (Ministry of Citizenship and Immigration)*, 2012 FC 246, at paragraphs 23-24).

[28] But as the RPD duly noted, this evidence was not produced. On the contrary, as we have seen, the applicant did not produce evidence of communication between the Canadian and Algerian authorities in relation to Exhibit M-1, whereas it is known that he refused to give Canadian authorities his consent for them to contact their Algerian counterparts. Nor did he produce evidence that the Algerian authorities were now aware of Exhibit M-1, that they were therefore now interested in him and that, as a result, he was at risk of being persecuted on his return to that country.

[29] The applicant's entire argument rests on the last sentence of Exhibit M-1 in which Interpol asks the Canadian authorities to [TRANSLATION] "please keep us informed of the outcome of this case". The RPD saw this as a mere formality. The applicant sees this as irrefutable proof that he is now targeted and at risk of persecution.

[30] Examined in light of all the facts in this case, this sentence cannot have the scope given to it by the applicant. In my opinion, the RPD was therefore entitled to rule that Exhibit M-1 was insufficient to establish that the applicant was now targeted by the Algerian authorities.

[31] It is useful to recall here that the applicant, before changing his version of the facts during his testimony in May 2014, always indicated that he had been able to live in Algeria problem-free until the terrorist attack in December 2007 and that he was able to complete his military service without issue. It must also be remembered that the evidence unequivocally shows that, except for those suspected of being involved in international terrorism, the Algerian authorities do not target failed refugee claimants.

[32] Unlike in the *Djouah* case, above, which the applicant cited to support his claims, there is no evidence that the Algerian authorities uttered threats against him. The applicant quite simply does not have the profile of someone who would be sought by the authorities of his country. In short, the RPD acted correctly in concluding that the applicant was by no means a "refugee sur place", despite the existence of Exhibit M-1.

[33] The application for judicial review is dismissed.

[34] Neither party sought certification of a question for the Federal Court of Appeal, as provided in subsection 74(*d*) of the Act.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.

2. No question is certified.

"René LeBlanc"

Judge

Certified true translation
Michael Palles

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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