

Federal Court



Cour fédérale

Date: 20150727

Docket: IMM-7649-14

Citation: 2015 FC 915

Ottawa, Ontario, July 27, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

DUWAYNE RENALDO WILLIAMS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] of a decision of the Refugee Appeal Division [RAD], dated October 20, 2014, dismissing the Applicant's appeal from the negative decision of the Refugee Protection Division [RPD] of June 16, 2014.

[2] The Applicant alleges that he fears persecution and possibly death if returned to Jamaica due to his sexual orientation as a bisexual male. He came to Canada in May 2007 on a valid work

permit for the summer and his permit was extended to the fall. In October 2008, he returned to Jamaica to reapply for another work permit, which was granted, and he returned on December 5, 2008.

[3] During his brief return to Jamaica, the Applicant alleges that he was “*outed*” and his family and community became aware of his sexual orientation as a bisexual male. He states that he was beaten and chased from the community, which forced him to flee to his father’s house. He returned to Canada on December 5, 2008 and he remained in Canada continuously since his return, despite the fact that his legal status in Canada expired in May 2009.

[4] The Applicant only filed his claim for refugee protection in Canada on January 20, 2014, allegedly because he did not realize that he could seek asylum in these circumstances.

[5] The RPD heard the Applicant’s application for refugee protection on May 27, 2014 and rendered its decision on June 12, 2014 rejecting the claim. The RPD found that the Applicant did not provide sufficient trustworthy and credible evidence to establish his claim. The RPD had credibility concerns with the Applicant’s evidence, particularly his inconsistent evidence regarding his sexual orientation.

[6] The RPD also had concerns concerning his inability to properly identify the name of his same-sex partner in Jamaica, his failure to disclose a long-term relationship with a female, inconsistencies concerning the description of the person who “outed him,” his delay in making a refugee claim (having entered Canada initially in 2007 and returning in 2008), and the fact that

his involvement in LGBT groups in Canada only commenced after filing his claim for refugee protection in 2014.

[7] In conducting the appeal the RAD adopted and followed the case law in *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799, [2014] 4 FCR 811 regarding the applicable standard of review.

[8] The RAD reviewed all of the RPD's credibility concerns with the Applicant's evidence and concluded that "based on the totality of the evidence in this case," that it concurred with the RPD and would have come to the same conclusions. These reasons are transparent, intelligible and rational and are supported by law. In the case at bar, the finding that the Applicant was generally lacking in credibility is based on the evidence on record. In view of this conclusion, I will only address the additional two points raised by the Applicant at the hearing.

[9] Firstly, the Applicant contends that "when looked at within the framework of the responses concerning his sexual identity provided by the applicant to the Panel during the hearing, the applicant did not provide contradictory testimony concerning his sexual orientation regarding whether he was bisexual or gay." He argued that "both his self-identification as a bisexual, and the specific contexts in which he provided the self-identification" was not unreasonable. By this argument, the Applicant is clearly seeking to have the evidence and findings of the RPD and the RAD reweighed, which it is not this Court's function in the context of judicial review.

[10] The second issue stems from the decision of the RPD to attach less weight to a letter from the Applicant's mother because it was neither sworn or witnessed and made no mention of her receiving death threats contrary to the Applicant's testimony. The RAD refused to admit the same letter as new evidence, although sworn and witnessed. It also agreed that the RPD was in error in finding that the letter did not state that there were death threats against the mother which were mentioned in the letter. The RAD maintained that the RPD did not err in finding that the mother's letter was not persuasive in establishing the Applicant's allegations due to the cumulative credibility concerns and because it was not sworn or witnessed.

[11] For the purpose of argument, I am prepared to accept the Applicant's contention that the letter should have been admitted as new evidence upon it being witnessed and sworn. However, I find that its corroborative value, which was its purpose, does not diminish the numerous credibility concerns with the Applicant's inconsistent testimony and conduct, all of which are supported and reasonable in the circumstances.

[12] For the foregoing reasons, I conclude that the decision of the RAD was reasonable based upon the principles described in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Accordingly, the application must be dismissed. There are no questions for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and there are no questions for certification.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7649-14

STYLE OF CAUSE: DUWAYNE RENALDO WILLIAMS v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 15, 2015

JUDGMENT AND REASONS: ANNIS J.

DATED: JULY 27, 2015

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