

Federal Court



Cour fédérale

**Date: 20151027**

**Docket: IMM-1886-15**

**Citation: 2015 FC 1215**

**Ottawa, Ontario, October 27, 2015**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**HAROUN WUCHE BRAHIM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This case is an application for judicial review of the February 20, 2015 decision of the Refugee Protection Division of the Immigration and Refugee Board [the RPD] finding that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

## **II. Background**

### **A. *The Applicant's Alleged Fear***

[2] The Applicant is a 26 year-old citizen of Chad of Goran ethnicity. He entered Canada on August 13, 2014 and claimed refugee status the same day.

[3] The Applicant alleges that he began experiencing problems from Chadian authorities in early June 2013 when his cousin, a member of the opposition and resident of the United States, started calling him to discuss among other topics, Chadian politics. The Applicant alleges that his phone was monitored by Chadian authorities and that on June 10, 2013 armed men took him to a National Security Agency (ANS) compound where he was interrogated and tortured for 8 days until his parents secured his release by bribing a security guard. He then left for the city of Dougja where he remained with family members in hiding until he left for the United States in March 2014. While in Washington, the Applicant participated in a demonstration in August 2014, which was captured in photographs.

### **B. *The RPD Decision***

[4] After noting several inconsistencies between the immigration officer's point of entry notes, the Applicant's Personal Information Form and his oral testimony, the RPD found that the Applicant was not credible. Some of the inconsistencies include the fact that the Applicant omitted to state at the port of entry that the political dissident who contacted him in Chad was in fact his cousin and that the Applicant gave inconsistent accounts as to the frequency, dates, and

content of the conversations shared with his cousin. According to the RPD, the Applicant also gave contradictory accounts of his escape from prison. Given the negative credibility findings, the RPD found that it was implausible that the Applicant was hiding in Dougja since his national ID card was issued in N'Djamena in January 2014.

[5] Since the RPD found that the Applicant was not credible, the RPD gave no evidentiary value to the medical documents submitted by the Applicant or the letter submitted by the Applicant's cousin.

[6] The RPD also examined documentary evidence regarding the Goran ethnic group and found that while some people of Goran ethnicity are targeted by the regime for their involvement in rebel factions, the ethnic group as a whole does not suffer systematic persecution in Chad. The RPD accepted that the Applicant participated in the demonstration in Washington in August 2014, but found that the Applicant did not provide any evidence establishing that the authorities in Chad are aware or could become aware of the Applicant's participation in the demonstration.

### **C. *The Applicant's Challenge of the RPD Decision***

[7] The Applicant alleges that the RPD did not properly assess the medical evidence produced by the Applicant which explained the inconsistencies in his testimony since "confusion in an applicant's testimony could be explained by trauma." The Applicant submits that the inconsistencies in the Applicant's testimony are insignificant and that the RPD adopted an unreasonable approach to draw negative credibility findings since it conducted an over-vigilant

“microscopic examination of the evidence” (*Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444, at para 9, 15 ACWS (3d) 344).

[8] The Applicant further submits that the RPD’s analysis of whether the Applicant presented a valid *sur place* refugee claim is incomplete since the RPD did not assess whether the Chadian authorities are likely to become aware of the Applicant’s participation in the demonstration given the country’s current conditions, namely, that the authorities ban demonstrations thought to be critical of the government. This, coupled with the fact that the regime targets people of Goran ethnicity who rebel against it places the Applicant at risk if he were to return. The Applicant claims that the *sur place* refugee claim is not affected by the tribunal’s negative credibility findings.

### **III. Issues and Standard of Review**

[9] The issue raised by this judicial review application is whether the RPD, in concluding as it did, committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7.

[10] It is well established that the standard of review applicable to RPD credibility findings is that of reasonableness. These matters raise questions of fact or mixed fact and law falling within the RPD’s area of expertise and as a result are owed deference (*New Brunswick (Board of Management) v Dunsmuir*, [2008] 1 RCS 190, 2008 SCC 9 [*Dunsmuir*]; *Aguebor v Canada (Minister of Employment & Immigration)*, 42 ACWS (3d) 886, at para 4, 160 NR 315; *Nava*

*Flores v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1147, at paras 25 and 26; *Hidalgo Carranza v Canada (Citizenship and Immigration)*, 2010 FC 914, at para 16).

[11] For the same reasons, assessing the validity of *sur place* refugee claims also attracts the standard of review of reasonableness (*Ahmadi v Canada (Citizenship and Immigration)*, 2012 FC 812, at para 15 [*Ahmadi*]; *Matute Andrade v Canada (Citizenship and Immigration)*, 2010 FC 1074, at para 23).

#### IV. Analysis

##### A. *Whether the RPD's credibility findings were unreasonable*

[12] I agree with the Respondent that contradictions and discrepancies in the Applicant's evidence are well-founded reasons for negative credibility findings (*Kumar v Canada (Minister of Employment and Immigration)* 39 ACWS (3d) 1027, [1993] ACF no 219).

[13] Moreover, contrary to the Applicant's submissions, I am of the view that the RPD did keep in mind the Applicant's medical and psychological reports produced as evidence. The Applicant was designated as a "vulnerable person" for the purposes of the RPD hearing on the basis of his doctor's report, which indicated that the Applicant was diagnosed with depression and post-traumatic stress disorder. The RPD discussed the Applicant's diagnosis at length and concluded that the Applicant's behaviour during the hearing did not correspond with the doctor's assessment of the Applicant. While the Applicant told his doctor he felt extremely anxious to testify and was afraid of having a panic attack during the hearing, the RPD found that the

Applicant did not have any trouble testifying. The RPD then relied on *Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379, at paras 37 and 39 [2014] 2 FCR 3 [*Kaur*], to find that the Applicant's psychological conditions could not explain the flagrant contradictions in the evidence, especially since he was represented by a lawyer.

[14] In *Kaur*, Chief Justice Paul Crampton, stated the following with respect to the above:

[37] For example, the fact that the report may, as in this case, state that an applicant's PTSD, or other condition, causes the applicant to be fragile, confused, anxious, distressed or emotional during questioning, or to dissociate under stress, ordinarily would not reasonably explain a failure to mention an important aspect of the applicant's story in his or her PIF. This is especially so when the PIF was prepared with the assistance of counsel. Having regard to the above-mentioned teachings in *Newfoundland Nurses*, *Alberta Teachers* and *Halifax*, it is also not immediately apparent how such psychological conditions might suffice to deprive an adverse credibility finding that was based on flagrant contradictions or important discrepancies of its rational support or to deprive it of any reasonable basis.

[15] In my view, even in light of the Applicant's psychological state of mind, the fact that he denied speaking to his cousin about politics during the hearing, which is an essential fact in his refugee claim, is a contradiction that cannot be explained by confusion resulting from trauma. I agree with the Respondent that it was open to the RPD to come to a negative credibility finding since this contradiction is a central element of the claim.

[16] This contradiction, coupled with the other contradictions found by the RPD lead me to conclude that the RPD's negative credibility finding falls within a range of acceptable outcomes defensible in fact and law (*Dunsmuir*, above at para 47). The RPD found that the Applicant had a different version of events regarding what happened the day the ANS agents captured him. At

the hearing, the Applicant stated he was at home when he spoke to his cousin and that ANS agents captured him two hours after the conversation had ended, yet he informed the officer at the port of entry that the ANS agents captured him as soon as he took the call from his cousin and that he purposely did not take the call at his residence since to do so would be “too dangerous.” The Applicant also gave contradictory versions of what occurred after the escape from the ANS compound. At first, he told the officer at the port of entry that he did not know where he went and then he stated he was taken to the American Embassy to acquire an American visa, yet at the hearing the Applicant testified that his uncle brought him to Dougia, where he lived until he left Chad. He also testified that his uncle and two of his uncle’s friends met him at the ANS compound to transport him to safety, yet at the port of entry the Applicant declared only his uncle and one friend was present.

[17] Since the RPD did not find the Applicant credible nor believed the underlying facts of his claim, it was entirely open for the RPD to give no evidentiary weight to the doctor’s assessment or the letter from his cousin (*Murji v Canada (Minister of Citizenship and Immigration)*, 2004 FC 148, at para 16; *Danailov v Canada (MCI)*, [1993] FCJ No 1019, at para 2; *Garcha v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1012, at paras 19-21, 2002 FCJ No 1393).

**B. Whether the RPD’s *sur place* refugee claim analysis was unreasonable**

[18] This Court has held that an applicant may validly make a *sur place* claim when he or she is able to show that they participated in a demonstration against government policies in their country of origin and that their participation has come or is likely to come to the attention of the authorities in his or her country of origin (*Kammoun v Canada (Minister of Citizenship and*

*Immigration*), 2006 FC 128 at para 18; *Win v Canada (Citizenship and Immigration)*, 2008 FC 398, at para 30).

[19] In this case, the RPD accepted that the Applicant participated in a demonstration in Washington, yet did not grant the *sur place* refugee claim since it held the opinion that the evidence did not establish that the photos were divulged to Chadian authorities, nor that the Chadian authorities were aware or would become aware of the photos.

[20] I accept that people who protest within Chadian borders are targeted by the regime, but the Applicant participated in a demonstration in the United States. This Court has held in the past that when an applicant protests outside of their country of origin, they have the onus of demonstrating that the government in their country of origin has become aware or will become aware of the applicant's activities (*Ahmadi*, above at para 19). As Justice Richard Mosely stated in *Ahmadi* at paragraph 19:

[19] [...] The applicant alleges that the US Department of State, 2009 Human Rights Report: Iran, indicates that any form of protest is repressed in Iran. While this is true, the document speaks of protests in Iran. The applicant protested outside of Iran and thus he had to demonstrate that the Iranian government would be aware of his political involvement. The officer found he had not done so. That was a finding open to the officer on the evidence.

[21] In my view, this case is similar to *Ahmadi*, above. While the documentary evidence presented by the Applicant demonstrates that the Chadian regime represses protesters within its borders, the Applicant did not demonstrate that the Chadian government would become aware or have already become aware of his political involvement in a protest occurring outside of the country. While the RPD does not refer to any documentary evidence in its decision in this



respect, I have reviewed the evidence and am of the opinion that there is nothing to indicate that the Chadian government actively seek out protestors on foreign soil to then target them when they return to Chad. Given the foregoing, it was entirely open for the RPD to find that the Applicant did not meet the threshold for the *sur place* claim.

[22] The Applicant's judicial review application is dismissed.

[23] No question of general importance has been proposed by the parties. None will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review application is dismissed;
2. No question is certified.

"René LeBlanc"  
\_\_\_\_\_  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1886-15

**STYLE OF CAUSE:** HAROUN WUCHE BRAHIM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 7, 2015

**JUDGMENT AND REASONS:** LEBLANC J.

**DATED:** OCTOBER 27, 2015

**APPEARANCES:**

Styliani Markaki

FOR THE APPLICANT

Lynne Lazaroff

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Markaki, Styliani  
Barristers and Solicitors  
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney  
Deputy Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT