

Federal Court



Cour fédérale

Date: 20151208

Docket: IMM-2-15

Citation: 2015 FC 1352

Ottawa, Ontario, December 8, 2015

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ERALD ISLAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada dated December 12, 2014 [Decision], which refused the Applicant's application for status as a Convention refugee and as a person in need of protection under ss 96 and 97 of the Act.

II. BACKGROUND

[2] The Applicant is a 24-year-old citizen of Albania who claimed refugee status on the basis of his sexual orientation. The Applicant alleges that he has suffered in his country as a result of his homosexuality.

[3] The Applicant says he first realized he was a homosexual in 2006, in grade 9. After becoming close with a male classmate, the pair began to show affection publically at school. Once noticed by their fellow students, they became victims of verbal and physical abuse. The Applicant states that he divulged information about his relationship to his mother. She informed the Applicant's father, who beat him as a result.

[4] The next week, the Applicant says that he and his friend were beaten and thrown into a river by five young men. The Applicant's mother took the pair to the hospital where the Applicant provided details of the attack to the police. Rather than helping, the police mocked the Applicant. The Applicant says he also encountered difficulties with the hospital staff. He was moved into his aunt's home in Vlore by his mother in August 2007.

[5] The Applicant says he met another man with whom he began a relationship in the summer of 2011. In December 2011, the couple were attacked by three men when leaving an apartment. The Applicant was treated for his injuries at the hospital but stayed inside his apartment from then on.

[6] In February 2012, the Applicant moved to Tirana to live with his cousin who, along with the Applicant's mother, made arrangements for him to leave Albania. The Applicant's Personal Information Form (PIF) states that he flew from Albania to Toronto via Italy and Germany on June 12, 2012, claiming refugee protection on June 14, 2012.

[7] The Applicant's itinerary was later revised to reflect travel from Albania on April 26, 2012, through Greece, Switzerland and the United States, ultimately arriving in Canada on May 4, 2012.

III. DECISION UNDER REVIEW

[8] In its written Decision, the RPD says that the determinative issue in the claim was credibility. The RPD member concluded that the Applicant was not credible based on inconsistencies, testimonial vagueness and changes in his evidence. As such, the Applicant did not establish his identity as a gay person or the basis required for his claim.

A. *Credibility and Misrepresentations*

[9] Initially, the Applicant had indicated on his Claim for Refugee Protection in Canada Form that he left Albania on June 11, 2012 and arrived in Canada on June 12, 2012, making his refugee claim on June 14, 2012. These details were repeated in his PIF, signed on August 10, 2012. The Applicant submitted a PIF amendment on February 12, 2012 making no reference to his travel information.

[10] On October 11, 2013, the Applicant was sent a disclosure package pursuant to the High Value Data Sharing agreement with the United States. Included in the documents was biometric information and fingerprints that produced a match with a person using a Greek passport, with a different name and birthdate. The information indicated that the Applicant had entered the United States at the John F. Kennedy International Airport in New York City on May 1, 2012. After being given this information, the Applicant submitted an additional PIF amendment stating that he actually left Albania on April 26, 2012 and entered Greece. On May 1, 2012, he travelled to Switzerland, to the United States, and arrived in Canada on May 4, 2012.

[11] When asked for an explanation for the discrepancy in his travel records at his RPD hearing, the Applicant admitted to falsifying information. He claimed he did so out of reaction to being threatened by the agent who helped get him to Canada. The RPD did not find this explanation satisfactory; the Applicant only provided his true travel itinerary when independent evidence showed his previous story to be untrue.

[12] Given that all information in a refugee claim is confidential, and that the Applicant was represented by legal counsel at the time of his PIF filing, the RPD concluded that it can be assumed that he understood the importance of making a truthful claim. In addition, the Applicant signed two declarations in his submissions, including the PIF, in which he agreed to abide by the critical requirement of telling the truth. Both Declarations indicate that they are the same force and effect as if made under oath.

[13] Information about the Applicant's travel, and the documents he used to travel, may be related to issues that could be determinative in a refugee case, such as the failure to claim protection elsewhere and delay in claiming. The RPD pointed out that:

The ability to test the credibility of various parts of the [Applicant's] information in the PIF is therefore compromised when the [Applicant] continues to amend his facts to accommodate new information. Meanwhile, the [Applicant] did not provide any other evidence, in the form of passport stamps, tickets or receipts, which would corroborate his new allegations about the dates he left his country and arrived in Canada.

[14] After indicating "N/A" to the question asking him to list all passports and travel documents issued to him in the past 10 years, the Applicant stated at his hearing that he previously held an Albanian passport, which he had recently renewed in 2012. When asked why a photocopy of this document was not provided, the Applicant replied that it had been left at his home, but that his mother could not locate it. Given that this was a newly issued passport and that the refugee forms repeatedly ask about identity documents, the RPD considered the Applicant's failure to provide this evidence a deliberated decision to avoid producing documentation prior to the hearing.

[15] The RPD concluded that the Applicant's previous misrepresentations of sworn testimony cast his subsequent testimony into doubt.

B. *The Applicant's Identity as a Homosexual*

[16] The RPD noted that while the Applicant presented corroborative evidence referencing his homosexuality (by way of photographs at gay events, receipts from gay bars, affidavits from

former colleagues stating that he was gay, etc.), he did not provide any evidence from any of the six gay partners he claims to have had in Canada. The Applicant explained that he did not request letters from these partners because of his level of English and the short length of the relationships.

[17] The testimony from those witnesses who did appear at the hearing raised several issues when compared to the Applicant's account. Numerous inconsistencies emerged in regards to the Applicant's work history, occasions when he told worksite colleagues that he was gay, and observations made of his behaviour at gay bars. In regards to a particular evening when a witness had attended a gay bar with the Applicant, descriptions emerged from the Applicant's and the witness' testimony that were so dissimilar in reference to key issues, that the RPD concluded that the evidence must have been fabricated to buttress the Applicant's claim.

[18] The RPD also found that the Applicant's timeline of alleged experiences of harassment and violence in Albania further contribute to his lack of credibility. At the hearing, when pressed for additional details he became vague and evasive.

[19] The Applicant's counsel's explanation for the many gaps in information and serious inconsistencies in the evidence – that he is young, uneducated and “not fussy about details,” was not accepted as the Applicant demonstrated an ability to provide great detail when repeating information from his PIF.

[20] The RPD concluded that the Applicant lacked credibility generally, failed to establish himself as a homosexual person, and provided insufficiently reliable evidence to support his claim. The RPD decided that he could not be found to have a well-founded fear of persecution, or a foundation for establishing a personal risk to life, or cruel and unusual treatment or punishment, or danger of torture pursuant to ss 96 or 97 of the Act.

IV. ISSUES

[21] The Applicant raises two issues in this matter, which I have simplified below:

1. Did the RPD properly assess the evidence?
2. Was the RPD's credibility finding reasonable and determinative of the Applicant's claim?

V. STANDARD OF REVIEW

[22] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[23] The standard of review for findings of credibility is reasonableness: *Dunsmuir*, above; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*]. Both the assessment of an applicant's credibility and treatment of the evidence are within the RPD's area of expertise. Therefore, both issues attract a standard of reasonableness on review. See *Aguebor v Canada (Minister of Employment and Immigration)* (1993) 160 NR 315, 42 ACWS (3d) 886 (Fed CA) [*Aguebor*]; *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571 at para 14.

[24] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above, at para 47; *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[25] The following provisions of the Act are applicable in this proceeding:

Convention Refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son

opinion,

appartenance à un groupe social ou de ses opinions politiques:

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

(b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by

(ii) elle y est exposée en tout

the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir

VII. ARGUMENT

A. *Applicant*

[26] The Applicant admits that he misrepresented his travel path to Canada out of fear that he would be killed by his smuggler were he to reveal the smuggling route and method. One of the reasons for which the RPD found this explanation to be unacceptable was that information in a refugee claim is confidential. The Applicant, however, argues that the RPD never confirmed whether he understood this. Similarly, the fact that the Applicant understood that his life was in jeopardy were he to reveal this information was never addressed. The Decision does not provide a reason as to why the explanation provided by the Applicant was not reasonably acceptable. Given that the RPD found that the incorrect travel information relates to key issues, such as failure to claim refugee status and delay in claiming, the RPD should have asked relevant questions or sought more information at the hearing on this issue.

[27] As regards his Albanian passport, the Applicant says that when filling out his PIF, he did not have the document with him and could not locate it. He misunderstood the question and therefore did not indicate that he had the passport when he completed the forms.

[28] The Applicant further submits that he supplied evidence in support of his homosexuality that portrayed him kissing men. Because the RPD Decision only makes reference to photos of the Applicant hugging other men, the Applicant argues that it is clear that his evidence was not reviewed by the RPD. The Applicant asserts that kissing a man is greater proof of being gay than hugging a man. Had the RPD reviewed these photos, the Applicant would have been accepted as gay.

[29] The RPD did not give weight to the corroborative evidence submitted in supporting the Applicant's assertion that he is gay as "[i]t is possible for anyone – gay – or not to go to a gay bar and order drinks, to get photographs arm in arm with someone of the same sex, and to ask for a [LGBT organization] membership." The Applicant claims that this is further proof that the evidence was not adequately reviewed, as photos of the Applicant kissing other men were produced. This is exactly the evidence the RPD indicates is required and which the RPD says the Applicant failed to provide.

[30] In terms of the witness produced by the Applicant who spoke of being informed by the Applicant of his homosexuality, the RPD does not speak to the proper circumstances relating to when the Applicant actually told the witness that he was gay. The RPD focussed on dissimilarities between the witness' and the Applicant's accounts of an evening spent at a gay

bar, ignoring evidence which they presented. Both provided in their affidavits that the Applicant told the witness he was gay at a job site after the boss went to urinate and the Applicant watched, “checking the boss out.”

[31] The Applicant submits that because the RPD held that the circumstances of when the Applicant revealed that he was gay to the witness were at the heart of the claim, it is important to note that these two sources of testimony and affidavit evidence were consistent. The RPD therefore made an error of law, and it cannot be said that there is a credibility issue in this regard.

[32] The Applicant did not produce witnesses from the gay community to speak to his sexual orientation. The involvement of a gay witness to comment on the Applicant’s sexuality as a condition to believing the Applicant is not a requirement. It is therefore a palpable error of law for the RPD to impose it is as such. The Decision does not address why the Applicant’s explanations – that his relationships were too short and that his English was too poor for him to make a lasting relationship – were not accepted.

[33] The Applicant further argues that this is an occasion where the Court should intervene in the credibility findings of the RPD. The Court stated in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, that “[a] tribunal may make adverse findings of credibility based on the implausibility of an applicant’s story provided the inferences drawn can be reasonably said to exist.” This should, however, only be done in the clearest of circumstances, such as when facts presented are outside of what could reasonably be expected,

otherwise a plausibility determination may be nothing more than unfounded speculation: *Aguilar Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155.

[34] The Applicant defends his vague or indirect answers to certain inquiries made by the RPD by stating that he had been severely beaten in the head during the incidents he described in Albania. Persons who have been beaten in the head may have psychological trouble answering questions, and may have physical difficulty remembering details. Had this been considered, the RPD would not have made the finding that it did.

B. *Respondent*

[35] The Respondent submits that the RPD did not find the Applicant credible because of inconsistencies in his evidence and the vagueness of his testimony. Its finding was reasonable, as it fell within a range of possible outcomes, and the Court should therefore not interfere:

Kanagasabapathy v Canada (Minister of Citizenship and Immigration), 2003 FCT 78 at para 23.

[36] The Respondent says that the reasons provided by the RPD in its negative decision on the Applicant's credibility were made in "clear and unmistakable terms" and were properly supported with specific examples: *Hilo v Canada (Minister of Employment and Immigration)*

[1991] FCJ No 228 at para 6; *Pak v Canada (Minister of Citizenship and Immigration)*, 2011 FC 381 at para 35.

[37] Specific references were made to the evidence before the RPD, including the Applicant's repeated misrepresentation of his travel path and his inconsistent evidence with respect to

whether he had previously held a passport. The lack of credibility finding was premised in the RPD's concerns with respect to the Applicant's misrepresenting and withholding of information.

[38] The Court has held that a credible basis for a claim is assisted by consistency between information in the PIF submissions and oral testimony: *Castroman v Canada (Secretary of State)* (1994), 27 Imm LR (2d) 129 (FCTD); *Eustace v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1553; *Rani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 73 at paras 7-8. The Applicant failed in this area, as inconsistencies between the different sources of testimony emerged at the hearing. As a result, the RPD was unable to find that the Applicant had provided the credible evidence required to establish his identity as a homosexual person, and thus the basis of his claim.

[39] The Respondent therefore contends that the Applicant has not shown that the credibility findings of the RPD were unreasonable, and has not discharged the burden of showing that unreasonable inferences were drawn. It has not been shown that the Board refused to consider evidence, ignored evidence or made an erroneous finding with respect to evidence, and the credibility findings should therefore not be disturbed. See *Aguebor*, above.

C. *Applicant's Further Submissions*

[40] The Applicant bolsters his original submissions by highlighting key points of evidence and oral testimony. Referencing the hearing transcript, the Applicant says that despite referring to the matter in the Decision, the RPD did not ask a single question regarding the Applicant's

failure to mention his passport in his PIF. This is a denial of natural justice, as the Applicant has a right to know the case he has to meet.

[41] It was Applicant's counsel who first initiated questions at the hearing regarding the delay in claiming refugee status. This delay was explained as a period during which the Applicant was waiting to receive his birth certificate and ID card from his mother.

[42] The Applicant says that the RPD makes no analysis or finding in regards to his failure to claim refugee status in one of the countries he passed through on his way to Canada. As such these matters cannot be said to be relevant to credibility.

[43] With regards to the passport, the Applicant says that at the time of the hearing (December 2014), his Albanian passport was around two years and eight months old. It cannot, therefore, be said to have been "newly issued." Rejecting his explanation that it could not be located, because it was newly issued and should have been easy to locate as a result, is an error.

[44] The Applicant says that at the hearing, he was not asked about the circumstances regarding when he told a colleague (who served as a witness) that he was gay. Therefore, any alleged contradictions between accounts cannot be used by the RPD as factors contributing to a lack of credibility. Furthermore, although the RPD indicated that the circumstances of when the Applicant revealed that he was gay are at the heart of his claim, it ignored the consistencies between the accounts (that it occurred at work, when the boss was urinating). This means that the

RPD made an error of law on the face of the record. It cannot be said that there is a credibility issue in this regard.

[45] Addressing the multiple physical altercations and blows to the head that the Applicant suffered in Albania, he states that the evidentiary record details the significance of these incidents by way of multiple pictures of the injuries, and two hospital reports. Had this evidence been adequately considered by the RPD, the Applicant submits that it would have not made the finding that it did.

D. *Respondent's Reply*

[46] The Respondent replies that the RPD specifically described the Applicant's explanation relating to his travel path, and the ways it did not find it a satisfactory reason for his knowingly providing false evidence. The Respondent says that this was reasonable, given what is at stake in a refugee claim.

[47] The RPD noted the following: the Applicant changed his story only after it was shown to be false by independent evidence; that it can be presumed that the Applicant, who was represented by counsel at the time of his PIF filing, knew of the importance of telling the truth; the form, signed by the Applicant, stated the importance of telling the truth and declared the contents true; part of the declaration stated that false statements may result in an exclusion from Canada and may be grounds for prosecution or removal; the PIF was signed as being complete and true; and the relevant documents were interpreted to him and he would therefore have known of the potential consequences of making false representations. It therefore cannot be said that the

RPD did not weigh the evidence or consider the Applicant's explanation that he understood that his life was in jeopardy.

[48] The Respondent submits that the Applicant's argument that the RPD cannot claim relevance to issues relating to failure to claim and delay in claiming because it did not analyze the facts surrounding them is based on a misconstruction of the Decision. These were simply statements that speak to the RPD's ability to test the credibility of various parts of the Applicant's information; the RPD was not making a definitive finding on subjective fear. It was simply noting the difficulty in testing the credibility when information is evolving.

[49] The Applicant's argument that the passport was not, in fact, new, does not point to an error in the RPD's assessment of the evidence, to which deference is owed: *Khosa*, above, at paras 44, 59; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2001 SCC 62 at paras 11-16; *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 229 at para 13.

[50] While the Applicant submitted that his head injuries should be taken into account for his trouble with remembering details, the Respondent notes that, at the hearing, counsel explained that the Applicant was simply not really fussy about details, was young and not highly educated.

[51] The Respondent argues that the Applicant's complaints about the RPD's assessment of whether he is a homosexual (that the RPD failed to review photos; that the RPD found inconsistencies where there were none; that the RPD erred in requiring a gay witness to

corroborate the Applicant's sexuality; that the RPD did not take into account his beatings) vary from merely expressing disagreement with the weighing of evidence to misconstruing the Decision. They do not speak to an error in the Decision.

VIII. ANALYSIS

[52] In my view, the Applicant is right to say that the central issue before the RPD was whether he is gay. However, in order to assess whether he is gay the RPD was entitled, indeed obliged, to examine the evidence before it.

[53] To begin with, the RPD had a general concern about the Applicant's credibility. This grew out of, primarily, his false narrative as to how he reached Canada and, secondly, his failure to provide his most recent passport as a basic identity document. The Applicant takes issue with both of these findings but I do not think the RPD's treatment of these matters contains a reviewable error.

[54] The RPD considered the Applicant's explanation for giving a false travel path (his fear that the agent aiding him would kill him) but did not accept the explanation for reasons that appear in para 8 of the Decision. The Applicant now complains that the RPD should not have presumed that he knew that "All information in a refugee claim is confidential." However, as the PIF form completed by the Applicant makes clear, the information given "may be disclosed only under the terms of that Act [ie. the Privacy Act] and of the Access to Information Act." It is true that the PIF also says that the information may be used in other claims, but this could not be done unless the Applicant is notified and it is clear that the "IRB will not disclose the information if

there is a serious possibility that it will endanger the life, liberty or security of any person or is likely to cause an injustice.” The Applicant, who signed this form and was represented by counsel, could be reasonably assumed to have known that the information is confidential. I see no reviewable error here.

[55] There is also nothing unreasonable about the RPD’s finding that the Applicant chose not to produce his 2012 passport for the hearing. When the RPD says the passport was “newly issued” it obviously means that it was newly issued at the time the Applicant left it in his house. Contrary to what the Applicant alleges, there was no error of fact here.

[56] These findings led the RPD to conclude at para 11 of the Decision as follows:

These concerns demonstrate a general lack of credibility. The claimant’s previous deliberate misrepresentation of sworn testimony gives me reason to doubt the claimant’s subsequent testimony.

[57] In other words, given the credibility issues, the Applicant no longer enjoyed the presumption of truthfulness and the RPD was reasonable to require and test other corroborative evidence that went to the central issue of his homosexuality. See *Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302 (Fed CA); *Rosa v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1234 at paras 59-60; *Byaje v Canada (Minister of Citizenship and Immigration)*, 2010 FC 90 at para 26.

[58] The Applicant makes a great deal of the RPD’s failure to accept the pictures he introduced of him kissing men as evidence that he is gay. The Applicant and his counsel were

put on notice that the pictures were of very poor quality and that the RPD could not identify the Applicant in them. At page 156 of the Certified Tribunal Record [CTR] at lines 23-32, the Presiding Member has the following to say on this point:

PRESIDING MEMBER: I also don't know exactly in what form you sent in your disclosure. I'll just let you know though, it looks like a number of items were faxed. The photographs are -- basically, what I have is a lot of blackness, with -- with, you know, white teeth showing. So --

[59] My own review of the pictures in the CTR is that some of them do indeed show male figures kissing, and they are not all blackness and teeth (though some of them are). However, it isn't clear that one of the figures is the Applicant; further clarification was needed. It would have been a simple matter for counsel to either put the pictures to the Applicant for identification purposes or to provide clearer pictures. The Applicant now says these pictures were pivotal to his case, but he never provided the identification or clarification that was so obviously required. Hence, I cannot say that the RPD's conclusion that the photographs provided insufficient credible and reliable evidence of this homosexuality was unreasonable.

[60] The other piece of crucial evidence produced to demonstrate that the Applicant was gay was the male witness he called to testify at the hearing. The RPD goes into this evidence in considerable detail:

13. Meanwhile the testimony of the witness who did appear at the hearing was inconsistent from that of the claimant at several points. First of all, the claimant stated that he had worked for the witness for 7-8 days in the summer of 2012, and that he never worked for the witness after that. The witness on the other hand, said that the claimant did not work for him in the summer of 2012, but that the claimant had worked for his friend. He said that the claimant first worked for him off and on in November and December – before they allegedly went to Crews and Tango

together in December 2012 – as well as on occasion after that time. The witness stated that the circumstances of the November 2012 interchange, in which the claimant allegedly “checked out” the witness and revealed that he was gay, was when the claimant was working on a renovation project with the witness. The claimant, on the other hand, said that at this time he has just randomly encountered the witness at the job site and dropped by to talk.

14. With respect to what the claimant told the witness about his experiences as a gay person, the claimant stated that it was while he was working for the witness in the summer that he asked the witness about directing him to a place where he could meet gay people. In contrast, the witness said he first observed that the claimant was not attracted to women when they rode together to job sites, and then confirmed his suspicion that the claimant was gay in the context of the November incident, which is when the witness stated that the claimant first asked him about going to a gay bar. The claimant tried to reconcile this testimony by saying that he originally asked the witness about going to a gay bar in the summer, but that he later reiterated his request in November. This does not resolve the inconsistency, as it would not make sense for the claimant to ask the witness about gay bars two months before the alleged incident in which the witness realized the claimant was gay. In addition, the claimant says that he had told the witness about his relationships with men in Albania but not about any in Canada. The witness, in contrast, said that he knew nothing about whether the claimant had had any gay relationships in Albania, but that he had heard from someone that the claimant had had a partner in Canada.

15. With respect to the alleged outing to Crews and Tango, during which the witness had allegedly observed the claimant kissing men and grabbing their behinds, there was also contradictory testimony. The claimant had said he was dancing at the bar, and when asked for clarification, has described the situation as one where both he and the witness were standing and drinking and sometimes people got the claimant into a dance, while the witness just remained standing. The claimant repeated that they were not sitting down. The witness, on the other hand, described the two of them as sitting at tall bar stools at a table, and initially stated that he did not notice anyone dancing and that the claimant did not dance. When counsel told the witness that the claimant had said he was dancing, then the witness modified his testimony and said that of course there was music and the claimant moved around a little bit when people were making advances toward him. This is still different from the way the claimant had initially described the situation, and I do not give weight to

testimony which adjusted only after discrepancies in spontaneous testimony were disclosed to the person testifying. The other difference in the claimant's and the witness's testimony about what happened at the bar – namely whether the beer the claimant was drinking was Stella or a Molson Canadian – was, as pointed out by counsel, a minor discrepancy. However, the overall description between the evidence of the witness and that of the claimant was different in so many areas and with respect to both details and to key issues, that I can only conclude that the evidence was contrived in an attempt to buttress the refugee claim.

16. In submissions, counsel suggested that the claimant was likely not really a detail person, and that in cases of discrepancies the evidence of the witness should likely be believed as more accurate than that of the claimant. I do not accept this argument. In fact, the witness's allegations were also different in some points from his own written affidavit, such as with respect to when he first hired the claimant (i.e. summer 2012 or November 2012), and the name of the bar they went to (Church and Tango vs. Crews and Tango). Meanwhile, the contradictory information is not only with respect to details of the incident, but also with matters that go to the heart of the claim, such as the circumstances in which the claimant allegedly told the witness that he was gay. This demonstrates a lack of credibility with respect to both the claimant's story and to the one witness he presented in his claim.

[61] The Applicant now says that the RPD failed to review the evidence as to when the Applicant told the witness he was gay. He says that the RPD alleges errors but fails to say what they were and, in any event, there were none. He also says that he was not asked about the circumstances in which he met the witness, so there can be no errors.

[62] There is a great deal more to the RPD's treatment of the witness' testimony than the issue of whether the Applicant told the witness he was gay. Yet the Applicant says very little about anything else other than there may have been some confusion by the RPD about what he meant by dancing at the bar. However, the RPD's main point is "the overall description between the evidence of the witness and that of the claimant was different in so many areas and with respect

to both details and key issues” that it can be found that the evidence was contrived to bolster the claim. Particularly important for this conclusion is that the Applicant modified his testimony after discrepancies were pointed out to him by counsel, who had also told the RPD that the Applicant was not a detail person and that, when it came to discrepancies, the witness should be believed. This amounts to an acknowledgment that there were discrepancies and that the Applicant could not be relied upon to give accurate answers. The “circumstances in which the claimant allegedly told the witness that he was gay” related back to the inconsistency about time between the summer and November 2012. I do not see any material error here that undermines the RPD’s general conclusions about troubling inconsistencies in evidence.

[63] The Applicant faults the RPD for its conclusions about his failure to produce a gay witness who could speak to his sexual orientation as this should not have been required to corroborate that he was gay.

[64] First of all, the RPD was examining all forms of corroboration that were before it because the Applicant was found to lack credibility generally. The RPD does not demand that he produce a gay witness as a condition for proving his homosexuality. The Applicant says he has had six gay partners since he came to Canada and has joined a gay organization, and yet he said he could find no one to speak for him from the gay community:

12. With respect to the claimant’s identity as a gay person, the claimant provided corroborative evidence in the form of photographs of him in attendance at gay events and hugging men. He has a membership card from the 519 organization. He also has many receipts for drinks at Crews and Tangos, a bar that he says caters almost exclusively to gay clientele. He presented affidavits from two men with whom he worked who said they knew he was gay, and one of these men served as a witness at the hearing.

However, he did not present any letters of witnesses from any of the six gay partners he said he had had since he came to Canada, or from members of the organizations he said he was part of. He said that his relationships with his gay partners were too short (up to only about one month long) to ask them to write a letter or appear at the hearing, and that his English was not good enough yet to allow him to have more stable relationships. With respect to his most recent alleged relationship, with Kosta, the claimant said that he had asked Kosta to write a letter for him but since Kosta was now with a different partner, the claimant did not want to ask him further. He also said he asked people from 519 and people who he had been with in the Pride parade to write a letter, but that he had no contact with them and his English was still not good enough to ask them further.

[Footnotes omitted]

[65] Given the time he has spent in Canada and the way he has allegedly spent that time, the RPD simply finds it unconvincing that, if the Applicant is gay, he could not “find at least one person from the gay community or from his previous partners who would vouch for his sexual orientation and gay relationships.” The RPD asked for an explanation for this lack of evidence and gave reasons why what the Applicant said was not convincing. In light of the RPD’s credibility concerns, there was nothing unreasonable about this conclusion and its basis in the failure of the Applicant to call at least some evidence from sources that could vouch for his sexual orientation, rather than calling a heterosexual witness who has had no sexual relationship with him. See *Lopez Aguilera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 173 at paras 12-13; *Castañeda v Canada (Minister of Citizenship and Immigration)*, 2010 FC 393 at para 19; *Nechifor v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1004 at para 6.

[66] The Applicant complains that, in assessing discrepancies in his evidence, the RPD should have taken into account the head injuries he suffered in Albania and the hospital reports.

However, there was no evidence of any cognitive problems before the RPD. The Applicant never raised this issue, and Applicant's counsel explained that the problem was that the Applicant was not really a detail-oriented person, that he was young and not highly educated.

[67] The Applicant has raised a number of issues but, overall, I can find no reviewable error that would justify returning this matter for reconsideration.

[68] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2-15

STYLE OF CAUSE: ERAHD ISLAM v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 29, 2015

JUDGMENT AND REASONS: RUSSELL J.

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