

Federal Court



Cour fédérale

Date: 20160805

Docket: IMM-3390-15

Citation: 2016 FC 900

Ottawa, Ontario, August 5, 2016

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

GEDION MESFIN BERSIE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated June 30, 2015, [Decision] confirming the decision of the Refugee Protection Division [RPD] of March 11, 2015. The Decision denied the Applicant's claim for Convention refugee status on the basis that he was not credible and he failed to provide a reasonable explanation for his lack supportive documentation.

[2] For the reasons that follow I have determined the application must be dismissed.

I. Background Facts

[3] The Applicant was a citizen of Ethiopia. He applied for refugee protection on the basis that he feared persecution if he returned to Ethiopia because of perceived political opinions arising from his affiliation with Abel Wabela [Wabela], who was a member of the Zone 9 Bloggers - a group that wrote and published articles critical of the Ethiopian government. The Applicant claimed to have reviewed, edited and discussed various blogs with Wabela with whom he had become friendly when they both worked for Ethiopian Airlines.

[4] The Applicant also claimed that he had been arrested, detained, interrogated, tortured and eventually released over a six-day period in May, 2014. He was released on condition that he report to the police station daily and appear as a witness against Wabela when required.

[5] The determinative issue before the RPD was credibility. The Applicant raised three issues in his appeal to the RAD. He alleged the RPD: (1) made serious errors assessing credibility; (2) ignored a psychological report; (3) made unsustainable implausibility findings.

[6] The RAD heard this matter before *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 [*Huruglica FCA*] was released. In conducting the appeal the RAD followed this Court's guidance in *Huruglica v. Canada (Citizenship and Immigration)* 2014 FC 799. They said that they would give deference to credibility findings of the RPD but would conduct their own review and come to an independent assessment of whether the Applicant is a Convention

Refugee or person in need of protection. This approach accords with the direction in *Huruglica FCA*.

II. The RAD Decision

[7] The RAD reviewed the record before the RPD and listened to the audio recording of the hearing. The Applicant's relationship with Wabela was an essential element of the Applicant's claim. In that respect, the RAD noted Rule 11 of the *Refugee Protection Division Rules*, SOR/2002-228 requires a claimant to provide "acceptable documents" to establish, in addition to identity, other elements of the claim or, an explanation of why they were not provided and what steps were taken to obtain them.

[8] The RAD found on the balance of probabilities that the Applicant was not credible. He provided no persuasive evidence of any association with either Wabela or the Zone 9 Blog. After listening to the audio recording the RAD remarked upon the extensive questioning of the Applicant by the RPD about the content of his discussions with Wabela. The RAD found his answers were vague and nonspecific, even when he was prompted by the RPD to provide more information. The RAD concluded the Applicant struggled to provide anything other than superficial detail. They noted the supporting documents submitted by the Applicant about the history and the issues addressed in the Zone 9 Blog were all publicly available. They found his testimony did not show he was knowledgeable of even the basic information in those documents.

[9] The Applicant, in support of his claim of editing and proofreading Wabela's blogs and contributing a blog of his own under an alias, only produced his diploma in journalism. The

RAD concluded his testimony was not commensurate with either his education or the issues Wabela and he would have discussed. The Applicant said he had destroyed any documents or emails with Wabela once Wabela was arrested. The RAD felt he could have utilized his network of family contacts to attest to his ability to perform the work he said he did for Wabela. The RAD found these problems detracted from the Applicant's credibility.

[10] The RAD reviewed the Applicant's testimony that authorities were searching for him and found there was no persuasive evidence to confirm it. They did not believe the Applicant's claim that he was arrested, detained and interrogated because of his friendship with Wabela as the authorities released him without charge or other documentation. They reviewed his testimony alleging he was what they called a central figure in the case against Wabela and found it was not plausible that the Applicant could leave Ethiopia using his own passport. They noted there was documentary evidence confirming the government closely monitors individuals of whom it is suspicious.

[11] Regarding the Applicant's allegation that the RPD ignored a psychological report the RAD found the report was in the record. They reviewed and considered it. They noted the report was based on one 60 minute interview and no clinical testing. They found the conclusions drawn in the report were, in the absence of any clinical assessment, speculative and in some instances were a form of advocacy rather than clinical opinion. The RAD also found the Applicant had failed to provide evidence that he could not obtain psychological treatment in Ethiopia. The RAD gave the report little weight and found it did not explain the failings in the Applicant's testimony before the RPD.

[12] Finally, the RAD found the Applicant's knowledge about the human rights group to which he claimed to belong, that wrote a letter of support for him, was lacking. Based on the group's letterhead that it was a human rights advocacy organization and documentary evidence describing the objectives of the group the RAD rejected the Applicant's explanation that it was not really a human rights group but a support group that advocated for the Ethiopian political party in Canada. They found his testimony undermined the credibility of his allegations that he was part of any activist organization in Ethiopia.

[13] The RAD concluded the Applicant did not satisfy the burden of establishing a serious possibility that he would be persecuted or subjected to a risk to his life or risk of cruel and unusual treatment or punishment or danger of torture by any authority in Ethiopia. They found based on the evidence that they reached the same conclusion as the RPD. They dismissed the appeal and confirmed the RPD decision.

III. Issue and Standard of Review

[14] The issue is whether the RAD's decision that the Applicant is neither a Convention refugee nor a person in need of protection, was reasonable.

[15] The standard of review by this Court of a decision of the RAD has recently been confirmed by the Court of Appeal to be reasonableness. *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, at para. 35 [*Huruglica FCA*].

[16] In *Ghauri v Canada (Citizenship and Immigration)*, 2016 FC 548 at paragraph 23

Mr. Justice Gleeson summarized the findings in *Huruglica FCA* establishing the standard of review the RAD is to apply to RPD decisions:

[23] The RAD must apply the correctness standard of review with respect to reviewing findings of law, as well as findings of fact and mixed fact and law of the RPD that raise no issue of credibility of oral evidence and must take a case-by-case approach to the level of deference it owes to the relative weight of testimony and their credibility or lack thereof (*Huruglica* at paras 37, 69-71, 103).

[17] In determining the standard of review to apply to the RPD decision the RAD followed the trial decision of *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2014 FC 799.

The RAD performed its own independent assessment of the evidence including reviewing the record before the RPD and listening to the audio recording of the hearing. They independently assessed the testimony of the Applicant and made their own credibility findings ultimately agreeing with the RPD findings. The effect of the RAD conducting a fresh review of the evidence and formulation of their own conclusions prior to confirming the RPD decision met the required standard of review.

[18] The Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, instructs that a decision is reasonable if it falls within a range of possible, acceptable outcomes that are defensible on the facts and law. As subsequently stated in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62 at paragraph 16 “if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met”.

IV. Arguments of the Parties

[19] The Applicant argues there was no valid reason to question his credibility so the RPD was in error to require documentary evidence to corroborate his allegations and therefore the RAD was in error in coming to the same conclusion. He states he did provide a plausible explanation for his lack of documentary evidence linking him to Wabela in that, in order to protect himself, he destroyed all such documents as soon as Wabela was arrested. The Applicant also relies on various decisions of this Court to say the RAD cannot make a negative credibility finding solely on the basis of a lack of corroborative evidence. The Applicant states the RAD did not provide clear and sufficient reasons for rejecting the Applicant's plausible explanation nor for preferring the documentary evidence about the level of control in Ethiopia to his testimony that he left with his own passport.

[20] The Applicant also criticizes the RAD for conducting what he says was a microscopic, selective and overzealous examination that resulted in several erroneous findings of fact which then led to unreasonable findings on credibility. Examples provided by the Applicant included that the RAD misstated his testimony about what was discussed with Wabela and the nature of the testimony he would give about Wabela if called as a witness.

[21] The Applicant says the way in which he left Ethiopia was exaggerated by the RAD by saying that he was a central figure in a high profile anti-terrorism case. Then the RAD ignored the Applicant's plausible explanations of his various efforts to hide his activities from security when getting ready to leave Ethiopia. The Applicant also complains the RAD used a North American analysis when questioning why he was released from prison.

[22] The Applicant claims his relationship with Wabela was misstated when the RAD simply said he worked in the tool room, he and Wabela were on different shifts and there were many employees. The Applicant testified he and Wabela met outside of work hours when their shift breaks co-incident and they would then discuss issues. The Applicant asserts that when the RAD said the fact that the Applicant and Wabela worked “in the same company does not mean they were known to one another” it was an understatement designed to support their credibility finding.

[23] The Respondent says the RAD conducted a “robust evaluation of the probative value of the evidence”, “a meticulous assessment of the Applicant’s credibility” and, “an exhaustive examination of the facts”. They say the RAD looked at the totality of the evidence then found the Applicant was vague and non-specific in his testimony and failed to provide a reasonable explanation for the absence of documentation.

[24] As to the finding that the Applicant’s evidence was vague and non-specific, they point out that the RAD listened to the tape of the RPD hearing and concluded that he “struggled to provide anything but superficial detail”. He gave generic answers about matters central to his claim and was generally confused about organizations with which he claimed to be associated.

[25] The Respondent relies on the decision of Madame Justice Gauthier in *Mercado v Canada (Minister of Citizenship and Immigration)*, 2010 FC 289 in which she cites Mr. Justice Nadon in *Hamid v Canada (Minister of Employment and Immigration)*, [1995] FCJ No. 1293 (F.C.) to say that once a Board comes to the conclusion that an Applicant is not credible, some form of

corroboration or independent proof will be required to offset the negative credibility conclusion. The Respondent alleges no such proof was put forward by the Applicant. As the lack of credibility related to the central element of the Applicant's claim, such corroboration was a necessity.

[26] The Respondent submits the Applicant failed to meet the onus he bore to satisfy the decision maker with "clear, convincing and cogent evidence" on the balance of probabilities that he was either a Convention refugee or a person in need of protection. They say the RAD, as it was entitled to do, gave more weight to the absence of supporting documentation central to the Applicant's claim than to the psychological report that, in their opinion, contained speculative information.

V. Analysis and Conclusion

[27] The Court of Appeal in *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at paragraph 24 (FCA) established the starting point for review of decisions based on credibility and the requirements that must be met by the decision-maker when rejecting a claimant on grounds of credibility:

The Tribunal is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.

An important indicator of credibility is the consistency with which a witness has told a particular story. (*Dan-Ash v Canada (Minister of Employment and Immigration)* (1988), 93 NR 33 (FCA))

When a tribunal rejects a claim on the ground that the claimant is not credible, it must state that ground clearly (*Ababio v Canada*

(Minister of Employment and Immigration) (1988), FCJ No 250 (FCA)) and it must give reasons for the credibility finding. *(Armson v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 800 (FCA).

(spacing added to separate discrete principles)

[28] This case turns on whether the RAD made findings that were without regard to the evidence. Despite the earnest and able arguments of counsel for the Applicant in my view the RAD made reasonable findings and came to a conclusion that was open to it on the evidence.

[29] Lack of corroborative documentation, while a factor, was not the only reason the RAD found the Applicant was not credible. The RAD also found he did not make reasonable efforts to obtain corroborating documents. His testimony was reviewed via the audio recording of the hearing and the RAD found it did not support his claim. The psychological report was reviewed and found insufficient. Jurisprudence dealing with credibility and sworn testimony was reviewed and applied as was Rule 11. The record before the RPD was reviewed and the RAD came to an independent assessment of all the evidence. All in all there was ample reason for the RAD to come to the conclusions on credibility that it did. It is not for the court to re-weigh this evidence.

[30] The Applicant accuses the RAD of conducting a microscopic analysis yet, in reply they point out minor issues such as the discussion of the “different shifts” and whether the Applicant knew Wabela. The transcript of the testimony on that point, put in evidence in this application, is not in any way additional proof of the degree of relationship between Wabela and the Applicant. In fact, the short excerpt opens with the Applicant saying with reference to Wabela “[w]e do not have any special friendship outside of work.” The omission to mention the Applicant’s brief

evidence that he and Wabela met when their shift breaks coincided does not mean it was not considered. Even if it was overlooked it is not enough to overcome the balance of the testimony of the Applicant or counter the overall negative credibility findings.

[31] The reasons provided by the RAD enable the Applicant to understand why the determination was made, even though he disagrees with it. It is not my role to re-weigh the evidence. Given the expertise of the RAD and the deference owed to that expertise I am unable to say the decision was perverse, capricious or made without regard to the evidence.

[32] The application is therefore dismissed.

[33] No serious question of general importance arises for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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