

Federal Court



Cour fédérale

Date: 20160909

Docket: IMM-1176-16

Citation: 2016 FC 1022

Ottawa, Ontario, September 9, 2016

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ASHIK RANA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

UPON an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the decision dated February 25, 2016 by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB], determining that the Applicant, Mr. Ashik Rana, is not a Convention Refugee or a person in need of protection under sections 96 and 97 of the IRPA;

AND UPON considering that the issue before this Court is whether the RPD erred in its assessment of the Applicant's credibility;

AND UPON considering that the applicable standard of review with respect to findings of credibility and the weight of the evidence is that of reasonableness and that this Court must give deference to the RPD's findings on credibility and its assessment of the evidence, as the RPD is in a better position to appreciate the credibility of the Applicant and to draw the necessary inferences (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Aguebor v Canada (Minister of Employment and Immigration)*, (1993) 160 NR 315 (FCA) at para 4; *Vargas v Canada (Citizenship and Immigration)*, 2014 FC 484 at para 9);

AND UPON considering that under the reasonableness standard of review, this Court is concerned with the "existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para 47);

AND UPON considering that it is not this Court's role to reweigh the evidence and substitute its own assessment of the credibility of the Applicant for that of the RPD and that this Court's intervention shall only be warranted where the RPD's findings are based on erroneous findings of fact, made in a perverse or capricious manner or without regard for the evidence (*Khosa*, at paras 59 and 61; *Ortiz Garcia v Canada (Citizenship and Immigration)*, 2010 FC 804 at para 9; *Diaz Serrato v Canada (Citizenship and Immigration)* 2009 FC 176 at para 16);

AND UPON reviewing the material filed by the parties, as well as considering their written and oral submissions, this Court is of the view that the application for judicial review should be dismissed for the following reasons:

[1] The Applicant's principal argument is that the RPD erred in its assessment of his credibility by failing to give sufficient weight and consideration to two (2) medical reports submitted to the RPD. According to the Applicant, the medical reports demonstrate that he was incapable of providing credible testimony due to his impaired mental state. He submits that the RPD should have provided a more detailed analysis of why the reports did not weigh more heavily into its assessment of the Applicant's credibility. The Applicant further submits that the RPD kept relevant and determinative information about the Applicant's inability to testify from its consideration. In particular, the RPD failed to acknowledge in its reasons that the medical doctor in the second report had reiterated that the Applicant was not fit to testify and that it was unlikely that he would ever be fit to provide articulate and sound testimony.

[2] Upon review of the record, I am satisfied that the RPD properly considered the medical reports submitted by the Applicant in assessing his credibility.

[3] At the outset of its decision, the RPD stated that in deciding the Applicant's claim, it considered the *Guidelines Concerning Procedures with Respect to Vulnerable Persons Appearing before the IRB*. After providing an overview of the Applicant's allegations and stating that the determinative issues of the case were credibility and the availability of an internal flight alternative in Dhaka, Bangladesh, the RPD reviewed the two (2) medical reports under the

heading “Credibility” and provided a detailed description of the doctor’s assessments, as contained in the reports. Even if the RPD did not explicitly mention the doctor’s opinion that the Applicant was not fit to testify and that it was unlikely that he ever would be, the RPD was alive to the issue, noting in its decision that the Applicant required extensive and prolonged psychological treatment before he could speak of the events that caused him to seek refuge in Canada. The RPD specifically indicated in its decision that this information was considered in its assessment of credibility.

[4] Moreover, it appears from the transcript that, at the beginning of the hearing, the RPD engaged in a discussion with the Applicant regarding how he was feeling and whether he had taken his medication, which had the effect of making him calm and helped him sleep better. The RPD noted in its decision that the Applicant’s behaviour during the hearing was such that he understood the questions asked of him as well as the nature of the proceedings and answered questions in a detailed manner.

[5] The Respondent submitted that the Applicant did not request the appointment of a designated representative to assist him during the proceedings and that he did not object to testifying or seek an adjournment of the hearing. Thus, the Applicant should not be permitted to benefit from his failure to seek accommodation nor should such a failure be used to undermine the decision of the RPD.

[6] In my view, in the absence of an adjournment request or an objection to proceed, it was open to the RPD to assess the Applicant’s demeanor and coherence when testifying and to decide

how much weight should be given to the medical reports. The RPD had the advantage of considering the medical reports but also hearing the Applicant. It was also for the RPD to decide if the inconsistencies in the Applicant's evidence could be explained and excused by his mental state.

[7] In the end, the RPD found that a number of issues nonetheless undermined the Applicant's credibility.

[8] The first issue related to the absence of recent political activity by the Applicant. Although the Applicant's refugee claim was based on his alleged involvement in the Bangladesh Nationalist Party [BNP] and the resulting persecution from members of the opposing political party as well as the authorities, the Applicant testified that he had not participated in political activity in Bangladesh since moving to Dhaka in January 2009. The Applicant further stated that he had not had any involvement with the BNP or anyone related to the group for over five (5) years since leaving Bangladesh.

[9] The second issue that undermined the Applicant's credibility related to the contradictions regarding the Applicant being pursued by the Bangladesh police. While the Applicant testified that the Bangladesh police was looking for him since November 2009, he did not advise Canadian immigration officials of this fact when asked the question on his IMM 5611 form at the time of entry into Canada.

[10] The RPD also took issue with respect to the Applicant's failure to claim refugee status in the United States. After leaving Bangladesh in January 2010, the Applicant lived in the United States for nineteen (19) months. The Applicant gave several reasons for the delay in seeking protection, including the cost of retaining an American lawyer to make the claim and waiting for his sister to return to Canada after being away in the early part of 2010. The RPD found that the Applicant's failure to claim protection while living and working illegally in the United States for nineteen (19) months was inconsistent with the conduct expected of someone who feared for his life.

[11] The RPD also found that the Applicant's credibility was undermined with respect to an internal flight alternative. During his testimony, the Applicant claimed that while he was living in Dhaka, he changed residences a number of times to avoid being captured by his aggressors. The RPD found that the Applicant's inability to provide at least one address of where he had resided and his failure to have made appropriate inquiries as to whether his aggressors were actually pursuing him further undermined his credibility. The RPD also noted that during the entire period he was in Dhaka, the Applicant continued to work out in the open at the same location.

[12] Finally, the RPD assessed the other documentary evidence submitted by the Applicant in support of his claim for refugee status. The RPD found the evidence to have little or no probative value regarding various elements of the Applicant's claim, preferring to give more weight to its own assessment of the Applicant's credibility.

[13] Although the Applicant would have liked the RPD to provide a more detailed analysis on the weight it afforded the two (2) medical reports, the adequacy of reasons is not a stand-alone basis for quashing a decision. Reasons need not be perfect or comprehensive but must be sufficient to allow the Court to understand why the decision was made and whether it falls within a range of possible acceptable outcomes. The Court may look to the record for the purpose of assessing the reasonableness of the outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14 and 16).

[14] I find that the RPD appropriately weighed all of the documentary evidence, including the two (2) medical reports in assessing the Applicant's credibility. The Applicant is, in effect, asking this Court to reweigh the evidence before the RPD and to come to a different conclusion. Such is not the role of this Court upon judicial review.

[15] Moreover, the Applicant has failed to demonstrate that the RPD's credibility findings are unreasonable. His failure to do so is sufficient to defeat his application (*Bueso Trochez v Canada (Citizenship and Immigration)*, 2013 FC 1016 at para 42).

[16] For all of these reasons, I find the RPD's decision to be reasonable and that it falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para 47).

[17] The parties did not propose any certified questions in the present proceedings.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1176-16

STYLE OF CAUSE: ASHIK RANA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

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JUDGMENT AND REASONS: ROUSSEL J.

DATED: SEPTEMBER 9, 2016

APPEARANCES:

Rezaur Rahman FOR THE APPLICANT

Julie Greenspoon FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rezaur Rahman FOR THE APPLICANT
Barrister and Solicitor
Ottawa, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Ottawa, Ontario