

Federal Court



Cour fédérale

Date: 20170104

Docket: IMM-1092-16

Citation: 2017 FC 12

Ottawa, Ontario, January 4, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

CLAROY KADEEM REEVES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Claroy Kadeem Reeves, is a citizen of Jamaica who arrived in Canada in 2010 with his parents and sister as a temporary resident. His parents initiated a claim for refugee protection. The claim was rejected.

[2] A Pre-Removal Risk Assessment [PRRA] was initiated in January 2015 on the basis that Mr. Reeves fears harm should he return to Jamaica due to his sexual orientation, a risk that had not been raised in the refugee claim and had not previously been assessed. The PRRA application was refused in June 2015 and Mr. Reeves sought judicial review of that decision. Based upon agreement between the parties, the judicial review was discontinued and the matter was returned for redetermination.

[3] On redetermination, the PRRA Officer [Officer] conducted an oral hearing to address questions relating to Mr. Reeves' sexual orientation. In February 2016, the PRRA application was again refused as the Officer did not find Mr. Reeves credible on the question of his homosexuality. It is that decision that is now before this Court

[4] Mr. Reeves submits that the Officer's credibility findings were based on unreasonable or irrelevant considerations and that the Officer unreasonably addressed evidence advanced in support of his sexual orientation claim. He also submits that in failing to provide him with an opportunity to address alleged inconsistencies in the evidence, the Officer breached his right to procedural fairness.

[5] The application raises the following issues:

- A. Were the Officer's credibility findings unreasonable?;
- B. Did the Officer ignore or fail to assess corroborating evidence?; and
- C. Was the process procedurally unfair?

[6] I am of the opinion that the Officer reasonably addressed the evidence advanced by Mr. Reeves and reached findings and conclusions that were reasonable based on the facts and the law. There was no breach of procedural fairness. The application is dismissed for the reasons that follow.

II. Standard of Review

[7] The parties agree that questions relating to credibility and the weight to be given to evidence are questions of fact to be reviewed on a reasonableness standard. An Officer's findings of fact are to be granted a high level of deference by a reviewing court (*Chakrabarty v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 1199, *Girmaeyesus v Canada (Citizenship and Immigration)*, 2010 FC 53 [*Girmaeyesus*] at para 21, *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 89). This Court will only intervene where an Officer's decision fails to meet the requirements of justification, transparency and intelligibility, or falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[8] For questions related to procedural fairness, the correctness standard applies (*Girmaeyesus* at para 21).

III. Analysis

A. *Were the Officer's credibility findings unreasonable?*

[9] In the decision, the Officer identified a number of inconsistencies between the evidence Mr. Reeves provided in the course of his testimony and the narrative he provided for the purpose of his first PRRA in February 2015. The Officer also noted inconsistencies between Mr. Reeves' testimony and the evidence provided by Mr. Belnavis who had been in a relationship with the applicant from 2012 until the spring of 2015. The Officer drew negative credibility inferences as a result of these inconsistencies.

[10] In addition, the Officer drew a negative inference from Mr. Reeves' inability to recall the name of a school official in Jamaica to whom he had disclosed his sexual orientation over the phone and his inability to provide the first name of a teacher in Jamaica with whom he claimed to have been involved in an intimate relationship for several months prior to arriving in Canada.

[11] Mr. Reeves takes issue with the negative credibility inferences arguing they were unsupported by the evidence or that the Officer focussed on insignificant details. He argues that the failure to focus on the totality of the evidence prevented the Officer from recognizing the risk related to his sexual orientation. I do not agree.

[12] The Officer undertook a detailed assessment of the evidence and carefully considered and addressed the inconsistencies between Mr. Reeves' testimony and the other evidence advanced in support of the PRRA application. As noted above, it is for the Officer, not this Court, to weigh

and assess the evidence. In reviewing the evidence and the Officer's decision, I am satisfied that the credibility findings were reasonable. The Officer was legitimately concerned with the inconsistencies between Mr. Reeves' testimony and the other evidence presented. The Officer sought explanations for these inconsistencies and where they were provided, they were considered and addressed.

[13] Mr. Reeves' inability to provide any information regarding individuals who had suffered from homophobia in Jamaica is one of the numerous examples of stark inconsistency noted by the Officer. Mr. Reeves stated in initial submissions dated February 2015: "I do know a few people who have suffer[ed] and lost their lives", and in his affidavit dated December 2015, he indicated that the brother of his friend Selvin "was killed in Jamaica due to his sexual orientation". At the hearing, however, Mr. Reeves was unable to provide any information about specific individuals when asked by the Officer. Similar examples are evident when comparing Mr. Belnavis' evidence and Mr. Reeves' testimony.

[14] The Officer's negative credibility findings were reasonable.

B. *Did the Officer ignore or fail to assess corroborating evidence?*

[15] Mr. Reeves argues that the Officer's failure to address the affidavits submitted in support of the PRRA, evidence that was both relevant and credible, renders the decision unreasonable. He submits that where affidavit evidence was addressed, the Officer treated it unreasonably also undermining the reasonableness of the decision. Again I disagree.

[16] Essentially, Mr. Reeves is taking issue with the adequacy of the reasons provided. However, adequacy of reasons is not a stand-alone basis for interfering with a tribunal's decision: "... the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708 [*Newfoundland Nurses*'] at para 14).

[17] A tribunal need not refer to every piece of evidence or address every argument raised. Similarly, the fact that a tribunal does not address all the arguments or evidence a reviewing judge might have preferred does not impugn the reasonableness of either the reasons given or the result (*Newfoundland Nurses* at para 16).

[18] The Officer is presumed to have reviewed and considered all of the evidence. A review of the record in this case demonstrates that in fact, the Officer did. The Officer listed the evidence presented, acknowledged the country conditions and reaffirmed in a Note to File that all of the evidence, including the late submitted affidavit of Ms. Sunita Mistry, was considered. The Officer's reasons support the findings and ultimate decision both in fact and principle.

[19] The Officer neither ignored nor failed to assess the corroborating evidence. It was reasonable for the Officer to find that the evidence was insufficient to conclude that Mr. Reeves would face a personalized forward-looking risk upon his return to Jamaica.

C. *Was the process procedurally unfair?*

[20] Mr. Reeves argues that the Officer was required to give him an opportunity to respond to the inconsistencies in his evidence. The failure to do so, he argues, is a reviewable error.

[21] Justice Judith Snider addressed the issue of putting credibility concerns to an applicant in *Tekin v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357, stating at paragraph 14 that the decision-maker "... is not obligated by the duty of fairness to put all of its concerns regarding credibility before the Applicant ...” and then noted “In this case, the Applicant was represented by counsel, the parties were on notice that credibility was an issue and the inconsistency between the Applicant's PIF narrative and his oral testimony was readily apparent. As a result, the Board was not required to put this inconsistency to the Applicant and its failure to do so was not a reviewable error.”

[22] In this case, Mr. Reeves was provided with an oral hearing, he was represented by legal counsel and he was aware that the purpose of the hearing was to question him on his sexual orientation. Mr. Reeves and his counsel could have reasonably anticipated that credibility would be an issue. The Officer did put many of the inconsistencies to Mr. Reeves and many others are readily apparent. Inconsistencies and contradictions in a claimant's evidence is a well-accepted basis for impugning a claimant's general credibility (*Ikhuiwu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 35 at para 30).

[23] The Officer did not err by failing to put each of the identified credibility concerns directly to Mr. Reeves. The process was not procedurally unfair.

IV. Conclusion

[24] I am satisfied upon a reading of the decision as a whole that the Officer fully understood Mr. Reeves' claim and reasonably concluded that the evidence in support of that claim was insufficient to demonstrate a forward-looking risk. The application is denied.

[25] The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: CLAROY KADEEM REEVES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION AND THE
MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

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