Federal Court  Cour fédérale

Date: 20190122

Docket: IMM-3192-18

Citation: 2019 FC 93

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 22, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

WILLIAM MOÏSE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, originally from Haiti, is appealing against a decision of the Refugee Protection Division [RPD], dated June 13, 2018, which not only rejected his claim for refugee protection because it was deemed not to be credible, but also declared that there was no credible basis for the claim, pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] He argues that the RPD breached the rules of procedural fairness by failing to give him an opportunity to respond to a concern that was not addressed during the hearing, related to a contradiction between his testimony and one of the documents that he had filed in support of his claim. He is also contesting the RPD's findings that he failed to establish any credible basis for his claim for refugee protection.

[3] The relevant facts in this case can be summarized as follows. The applicant left Haiti for Canada on May 2, 2017. He claimed refugee protection a few days later, indicating that he was afraid of a former work colleague who had not been able to accept the fact that the applicant had been promoted to the position of director of the non-governmental organization where they both worked. After being threatened by this former colleague, the applicant claimed that he was attacked in his home by armed individuals. He was able to escape and headed to Port-au-Prince before leaving Haiti for the Dominican Republic in order to pursue his studies. These events allegedly occurred between November 2005 and September 2006.

[4] When he returned from the Dominican Republic in June 2010, the applicant learned that his former colleague now held an important position in the government. Around the same time, he was robbed by armed individuals who told him that they had not forgotten him. More than one year after this incident, the applicant left Haiti once again, this time for Spain, where he remained until December 2014. He alleges that when he returned to Haiti, his mother was beaten by individuals who had obtained information about his comings and goings.

[5] Starting in July 2015, the applicant made a number of return trips between Haiti and the United States. He also visited Canada. He states that in September 2016, his aunt's house, where he was living, was set on fire. A note found at the scene indicated that the fire had been set because his aunt had allowed him to live there. A few days later, he was robbed while he was travelling around on motorcycle. His aunt also received two new notes indicating that he would face persecution right across the country. During the night of March 25 to 26, 2017, his mother was allegedly attacked and raped. She died of her injuries the following day. It was at that point that the applicant decided to leave Haiti for Canada.

[6] The RPD did not believe the applicant's story, finding that his testimony was not credible with respect to key elements of his claim for refugee protection. Moreover, the RPD noted major contradictions in the evidence provided by the applicant concerning the promotion that had allegedly triggered all his misfortune and the timing of his decision to leave the organization that had also employed his former colleague. The RPD was also of the view that the applicant's conduct was not consistent with the behaviour of someone who feared for his life, due to the number of times that he left Haiti without seeking refugee protection in any of the various countries he visited, and because he sought protection in Haiti at every opportunity when returning there, despite the risks to his life that he claimed to face in that country.

[7] As I indicated right from the outset, the applicant maintains, first and foremost, that the RPD breached the rules of procedural fairness because he was not given an opportunity to respond to a concern about his credibility referenced in the RPD's decision, but which was not raised during the hearing. This concern relates to the probative value of a medical certificate

produced by the applicant in relation to the alleged attack against him in January 2006. The applicant alleges that the assault took place on January 6, 2006, while the medical certificate indicates that it took place on January 8. In light of this contradiction, the RPD did not give any weight to this medical certificate. The applicant claims that the RPD could not make such a decision without first confronting him with this contradiction.

[8] It is well established that questions of procedural fairness are reviewed on a standard of correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). In the case at bar, the respondent claims that the rules of procedural fairness do not require the RPD to confront a refugee claimant about contradictions arising from documents provided by that very claimant, and that the applicant's argument concerning procedural fairness must therefore be rejected.

[9] The respondent is correct. The case law of this Court is unambiguous: the rules of procedural fairness do not require refugee claimants to be confronted about information that they are aware of and which they have, in addition, provided themselves (*Gu v Canada (Citizenship and Immigration)*, 2017 FC 543 at para 29; *Aguilar v Canada (Citizenship and Immigration)*, 2012 FC 150 at para 31; *Mohamed Mahdoon v Canada (Citizenship and Immigration)*, 2011 FC 284 at para 22; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 17; *Azali v Canada (Citizenship and Immigration)*, 2008 FC 517 at para 26).

[10] It is an entirely different situation when extrinsic evidence is used against the refugee claimant and the claimant is not confronted about this information. That is not the case here. The

medical certificate at issue was included with the documentation submitted by the applicant in support of his claim for refugee protection. Therefore, we cannot reproach the RPD for failing to confront him about the discrepancy revealed by this medical certificate, concerning the exact date on which he claims to have been attacked in January 2006.

[11] What remains to be determined at this point is whether there are grounds to intervene, considering the RPD's finding that there is no credible basis for the applicant's claim for refugee protection. This is reviewable on a standard of reasonableness (*Joseph v Canada (Citizenship and Immigration*), 2018 FC 638 at para 11). On this point, it is well established that the reasonableness of a decision "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[12] The applicant rightly points out that there is a distinction to be made between a refugee protection claimant's lack of credibility and the lack of a credible basis for the claim itself (*Omar v Canada (Citizenship and Immigration)*, 2017 FC 20 at para 19 [*Omar*]. In *Rahaman v. Canada (Citizenship and Immigration)*, 2002 FCA 89, the Federal Court of Appeal warned the Immigration and Refugee Board, the predecessor of the RPD, against systematically making a "no credible basis" finding whenever it concluded that a refugee protection claimant was not a credible witness.

[13] The applicant also reminds us that a no credible basis finding by the RPD has the effect of depriving him of his right to appeal to the Refugee Appeal Division. Such a finding, when added to the initial rejection of his claim for refugee protection, is therefore not without consequences for the applicant. That is why the threshold for a no credible basis finding has always been considered to be high (*Omar* at para 19; *Wu v Canada (Citizenship and Immigration)*, 2016 FC 516 at para 12 [*Wu*]).

[14] In the case at bar, the RPD's finding that there was no credible basis for the applicant's claim for refugee protection is limited to a single paragraph, specifically, the very last paragraph of the decision, which reads as follows:

> [TRANSLATION]
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> 43. It is also the Tribunal's opinion that there was no credible and trustworthy evidence on which it could have based a favourable decision and finds that there is no credible basis for this claim for refugee protection, pursuant to subsection 107(2) of the [Act].

[15] Given the procedural considerations at issue here, is this justification sufficient and transparent? In other words, can it be said that, in the context of establishing whether or not there was a credible basis for the applicant's claim for refugee protection, the RPD rightly engaged in an analysis that was separate and distinct from the analysis of the applicant's credibility? The applicant submits that the answer to this question is no because, in his view, his mother's death certificate constitutes a credible and trustworthy piece of evidence which could have served as the basis for a favourable decision. He adds that only three of the eleven documents that he produced in support of his claim for refugee protection were discussed by the RPD when, based

on this Court's judgment in *Wu*, the RPD was required to assess all the evidence provided and expressly state its reasons for its conclusion (*Wu* at para 14).

[16] The respondent agrees that the reason provided by the RPD in finding that there was no credible basis for the applicant's claim for refugee protection did not provide very much detail. Nevertheless, the respondent maintains that the RPD applied the correct legal test and that it is therefore presumed to have considered all of the evidence in the file. The respondent adds, in this regard, that a review of the evidence not mentioned in the impugned decision indicates that the finding of no credible basis for the claim was reasonable. With regard to the death certificate of the applicant's mother, more specifically, the respondent argues that it cannot be deemed to constitute credible and trustworthy evidence, because it substantiates the circumstances in which the fatal injuries were allegedly suffered, but these circumstances were deemed not to be credible.

[17] The respondent is correct on this last point. The death certificate of the applicant's mother would not have precluded a finding of no credible basis for the claim, because all that it establishes is that the applicant's mother died on March 26, 2017. It is not possible to obtain any more information from it, in the circumstances of this case, and this single fact alone—the date of death of the applicant's mother—does not qualify as a credible and trustworthy piece of evidence which could have served as the basis for a favourable decision for the applicant's claim for refugee protection.

[18] However, did the RPD's failure to undertake an explicit review of each document prove fatal to its decision, at least with regard to the finding of no credible basis for the claim? I do not believe so. It is helpful to remember, at this point, that the inadequacy of reasons cited in a decision by an administrative decision-maker is not enough, in and of itself, to result in a quashing of the decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at para 14 [*Newfoundland Nurses*]). As the Supreme Court of Canada recalled in that case, the reasons do not need to be perfect or exhaustive in order to meet the requirements for reasonableness:

> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, 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.

[19] The reasons provided by the administrative decision-maker should instead be read "together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes". To this end, even though I cannot substitute my own reasons for those of the decision under review, as I was reminded by counsel for the applicant during the hearing, I can still review the record in order to assess the reasonableness of the outcome, which, in this case, is that there was no credible and trustworthy evidence which could serve as the basis for a favourable decision (see *Newfoundland Nurses* above at para 15).

[20] Indeed, as noted by the respondent, there is a presumption that the RPD reviewed all of the evidence that was before it; in fact, that is what it is expected to do. It is also well established that the RPD's decisions do not need to refer to all the documents included as evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL), at para 1). However, the RPD does have an obligation to refer to evidence which, on its face, contradicts its conclusions and to explain why the evidence concerned did not have the effect of changing those conclusions (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 FTR 35 at para 17, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*]).

[21] It is also in this context that, in my opinion, Justice Diner stated, at paragraph 14 of *Wu*, that the RPD "has an obligation to assess all the evidence and expressly state its reasons for its conclusion", because in that particular case, the RPD had failed to take into account a particular piece of evidence that, in Justice Diner's opinion, could have been considered to be trustworthy and credible evidence which could have served as the basis for a favourable decision.

[22] However, in the case at bar, I can find nothing of the sort. More specifically, none of the documents which the RPD failed to mention explicitly and which, according to the applicant, substantiated the key aspects of his claim for refugee protection—namely, a police certificate dated March 22, 2017; another related to a statement given by the applicant on December 26, 2016, concerning the theft of his passport; and, finally, a certificate confirming the applicant's marriage in the United States in October 2015—would, in my opinion, have had the effect of undermining the reasonableness of the RPD's finding concerning the lack of a credible basis for the claim. Therefore, I concur with the respondent's analysis in paragraph 39 of its

memorandum: these pieces of evidence do not substantiate the applicant's claim for refugee protection any more than his mother's death certificate, which I have already determined does not.

[23] It would certainly have been preferable, if not desirable, for the RPD's decision to have addressed each piece of documentary evidence that the applicant submitted in support of his claim for refugee protection for the purpose of establishing whether there was a credible basis for the claim, pursuant to paragraph 107(2) of the Act. However, for the reasons that I have set out, the fact that the RPD failed to do so is not fatal in the circumstances of the case at bar, as a review of the record reveals the reasonableness of the conclusion reached by the RPD on this issue.

[24] This application for judicial review will therefore be dismissed. Neither party proposed a question for certification for the purposes of an appeal. I also find that there are no grounds to do so in the circumstances of this case.

JUDGMENT in IMM-3192-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"

Judge

Certified true translation
This 31st day of January, 2019.

Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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