

Federal Court



Cour fédérale

Date: 20120713

Docket: IMM-9264-11

Citation: 2012 FC 884

Winnipeg, Manitoba, July 13, 2012

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

AHMAD WALI MOHMADI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant applies for judicial review of the November 18, 2011 decision of a Member of the Refugee Protection Division (RPD) of the Immigration and Refugee Board. The RPD refused the Applicant's claims for refugee protection pursuant to section 96 and subsection 97(1) of the Act, determining the Applicant is not a Convention refugee and is not a person in need of protection because the Applicant did not establish his identity.

Background

[2] The Applicant lived in Kabul, Afghanistan. He says he comes from a high profile family. He had an affair with a neighbour's wife and incurred the wrath of the husband. After the discovery, the husband attacked the Applicant but he was able to escape. The Applicant did not return home that night out of fear. The next day he called his brother who told him the husband and others had come to the house to beat his father. They had been armed and had asked the Applicant's father where he was. When they could not find him, they fired their weapons in the air and told his father that when the Applicant returned they would kill him. The Applicant's father was angry with the Applicant but arranged for an agent to get the Applicant out of the country.

[3] The Applicant arrived in Canada on March 14, 2010 and claimed refugee protection on March 23, 2010.

Decision Under Review

[4] The RPD found that the determinative issue in this claim was identity and found the Applicant was not credible with regards to his identity. This determination focused on inconsistencies and implausibilities the RPD found with the Applicant's documents, testimony and submissions.

[5] The RPD found the Applicant not credible because of inconsistencies and implausibilities with respect to the Applicant's taskira in that:

- The Applicant did not include in his PIF that he had his taskira, the primary Afghani identification document; instead he stated he had his birth certificate.
- The Applicant's signature did not appear on his taskira; the RPD stated it was logical that the taskira would contain the Applicant's signature in the space provided, despite the Applicant's testimony that this was not often the case.
- There were inconsistencies in dates provided on the taskira compared with the Applicant's testimony.
- The RPD found it illogical that his friend in Afghanistan would take the taskira to a government office for translation rather than sending it directly to the Applicant to obtain the needed translation.
- The RPD expected that the taskira would bear some sort of official seal or insignia. The lack of any security features or even an official seal led the RPD to place little weight on the taskira submitted.

[6] The RPD also discounted the Afghanistan passport that was submitted by the Applicant as part of his post-hearing submissions. The RPD assigned the passport little weight because the RPD decided the dubious taskira was used to obtain the passport.

[7] The RPD denied the claim under sections 96 and 97 on the identity issue.

Legislation

[8] The *Immigration and Refugee Protection Act*, SC 2001, c 27 provides:

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

106. La Section de la protection des réfugiés prend en compte, s’agissant de crédibilité, le fait que, n’étant pas muni de papiers d’identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n’a pas pris les mesures voulues pour s’en procurer.

[9] The *Refugee Protection Division Rules*, SOR/2002-228 provide:

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

7. Le demandeur d’asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S’il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s’en procurer.

Issues

[10] The sole issue in this case is whether the RPD’s decision that the Applicant had failed to establish his identity for the purposes of his refugee claim was unreasonable.

Standard of Review

[11] The Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact: *Dunsmuir* at paras 50 and 53. The Supreme Court also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated: *Dunsmuir* at para 62.

[12] The RPD's findings of fact and credibility and its assessment of evidence submitted to establish identity attract a standard of reasonableness: *Wang v Canada (Minister of Citizenship & Immigration)*, 2011 FC 969 [*Wang*] at para 22.

Analysis

[13] The Applicant submits the RPD's decision is unreasonable because it was based on unreasonable findings of fact. First, the Applicant argues it was unreasonable for the RPD to fail to give weight to the Afghanistan passport that was included in the post-hearing submissions. Second, the Applicant disputes the RPD's assumptions that the taskiras must bear the holder's signature and that it ought to have security features. The Applicant submits the RPD did not rely on any evidence and merely made assumptions.

[14] The Respondent submits the RPD's decision was reasonable and the application should be dismissed. The Respondent submits the RPD relied on contradictions and discrepancies in the

Applicant's documentation and testimony to conclude that the Applicant's identity could not be satisfactorily confirmed. The Respondent notes that where identity is not established, it is unnecessary to further analyze the evidence and the claim: *Li v Canada (Minister of Citizenship & Immigration)*, 2006 FC 296 at para 8.

[15] The Respondent submits the RPD's concerns regarding identity were largely based on the taskira provided by the Applicant. Regarding the passport, the Respondent submits the RPD acknowledged receipt of the passport, but decided not to assign much weight due to the RPD's previous concerns regarding the Applicant's identification documentation. The Respondent submits that even if the RPD noted that the Applicant's Afghanistan passport appears to be authentic, this does not prevent the RPD from concluding that the Applicant did not succeed in establishing his true identity: *Saleem v Canada (Minister of Citizenship & Immigration)*, 2008 FC 389, 166 ACWS (3d) 321 at para 29.

[16] In my view, the RPD made a key finding that was unreasonable. The RPD noted several problems with the Applicant's taskira including discrepancies and contradictions within the Applicant's testimony. Had this been all the RPD relied on, I may have concluded that the RPD's findings were reasonable. However, the RPD relied on this conclusion to find a different document, the Applicant's passport, of little weight.

[17] As part of his post-hearing submissions, the Applicant included an Afghanistan passport issued after the hearing date by the Afghanistan embassy in Ottawa.

[18] After considering the issues concerning the Applicant's taskira, the RPD turned to the question of the passport issued by the Afghanistan embassy and submitted in the post-hearing materials. With regards to this passport, the RPD stated:

The claimant has produced what appears to be an authentic passport that was issued by the Afghanistan Embassy in Ottawa on August 18, 2011. Under normal circumstances this would be viewed by this panel as a significant identity document. In this case there are numerous credibility issues surrounding identity that has caused me to question the identity of this claimant. The claimant's counsel has stated that the claimant was not able to get any further identity documents from Afghanistan. There is no explanation as to how exhibit 8 was obtained if he was unable to get further documents out of Afghanistan, or why the claimant would have two taskira's with two different numbers. Notwithstanding this the evidence is that the passport was issued on the strength of the documents that were presented to this panel. Documents that, for reasons listed above, I have serious credibility concerns as to their authenticity. The passport is no better than the documents used to establish identity. In this case, I find that the documents presented are insufficient to establish identity and hence place little weight on the passport when establishing identity.

[19] I find the RPD impugned one identification document based on problems with another. The Respondent submits there is evidence on the record before the RPD that supports giving the passport little weight. However I cannot ignore the RPD's choice of words where the panel states: "Documents that, for reasons listed above, I have serious credibility concerns as to their authenticity. The passport is no better than the documents used to establish identity." I take these words to limit the RPD's assessment of the passport to the problems with other documents, notably the taskira.

[20] In *Wang*, Justice Russell faced a similar issue where the RPD refused to assign significant weight to authentic documents because of problems with other fraudulent documentation submitted.

At paragraphs 48 and 49 he stated:

I am particularly concerned about the findings regarding the Applicant's driver's license and the post office seizure notice. The RPD says that the driver's license appears to be genuine but nonetheless dismisses it because it has found that the other documents are fraudulent and because fraudulent documents are readily available in China. The same is true of the post office seizure notice, which the Applicant submitted as proof that his wife tried to mail his RIC to him but post office officials seized it and sent it to the PSB. The RPD does not find that it is fraudulent but refuses to place "significant weight on the seizure notice as an explanation for the [Applicant's] failure to provide the [RPD] with acceptable identity documents," given its concerns relating to the authenticity of the other identity documents and the availability of fraudulent documents in China.

As Justice Carolyn Layden-Stevenson pointed out in *Lin v. Canada (Minister of Citizenship & Immigration)*, 2006 FC 84 (F.C.), at paragraph 12, a finding that one document is (or some documents are) fraudulent does not necessarily mean that all documents are fraudulent even in a situation where fraudulent documents are readily available. The RPD must make some effort to ascertain the authenticity of documents that appear to be genuine.

[Emphasis added]

[21] In this case, the RPD chose to impugn the passport based on his concerns with the documentation the Applicant relied upon to obtain the passport. It was unreasonable for the RPD to limit the assessment of the passport because of earlier concerns with the Applicant's taskira. As a result, I find the RPD's decision to assign the Applicant's passport little weight based solely on problems with another document to be unreasonable.

Conclusion

[22] I conclude the RPD's decision is unreasonable and the application for judicial review should be granted.

[23] No question of general importance has been proposed and I do not certify any question.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed; the RPD decision is set aside; and the matter is remitted for re-determination by a differently constituted panel.

2. No serious question of general importance is certified.

"Leonard S. Mandamin"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9264-11

STYLE OF CAUSE: AHMAD WALI MOHMADI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: SASKATOON, SASKATCHEWAN

DATE OF HEARING: JULY 12, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANDAMIN J.

DATED: JULY 13, 2012

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