

Federal Court



Cour fédérale

Date: 20160401

Docket: IMM-2726-15

Citation: 2016 FC 368

Ottawa, Ontario, April 1, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ALMUATASEM M S ALEMARI

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 a Member of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, rejecting the applicant's refugee claim after finding he was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA respectively. The RPD based this conclusion on a finding that the applicant was not credible.

[2] For the reasons that follow the application is dismissed.

I. Background

[3] The applicant is a citizen of Libya born on May 5, 1993 in that country. He arrived in Canada on December 26, 2010 as a student.

[4] On February 17, 2011 the applicant began protesting [the Protests] against the Gaddafi regime in front of the Canadian Parliament buildings.

[5] The applicant alleged that in March of 2011 he received a call from his father informing him that Gaddafi's men threatened to kill him and that his brother Malik, was taken by armed men in Libya because of the applicant's involvement in the Protests. The applicant alleged he then lost contact with his family because of the war in Libya.

[6] The applicant applied for refugee protection on August 16, 2011 and submitted a Personal Information Form [PIF] signed on September 6, 2011. Subsequently, the applicant alleged that he learned that his father, a high profile medical doctor and academic was forced to perform surgery on one of Gaddafi's sons. The applicant also alleged that he learned that a person he knew was kidnapped with others in March, 2015. Finally, notwithstanding Gaddafi's death, the applicant alleged in his updated narrative submitted on May 1, 2015 that due to his involvement in the Protests against the Gaddafi regime, pro-Gaddafi groups in Libya would want to harm him.

II. Decision under Review

[7] The RPD rejected the applicant's claim, finding too many inconsistencies existed in the applicant's evidence and concluded that the applicant was not credible.

A. *Identity Accepted*

[8] The RPD accepted the applicant's identity through his testimony and supporting documentation, including his Libyan passport.

B. *Subjective Fear*

[9] The RPD characterized the applicant's claim as primarily based on his main fear that should he return to Libya today, militias from either side of the Civil War might stop him at their checkpoints and inquire about his allegiance. The applicant feared either side in the Civil War would want to recruit him or at least investigate to find out who he is and would discover that he comes from a wealthy family triggering a risk of kidnapping or other forms of persecution to obtain money.

[10] Based on this profile, the RPD found it was speculative for the applicant to fear recruitment or being kidnapped for ransom because:

- A. His brother and father have been able to circulate in Libya going about their regular business, his father continues to work and his brother continues to attend high school and they continue to reside at the same address; and

B. Though the applicant's father and brother had experienced a number of incidents at checkpoints, there was never any question of forced recruitment or kidnapping for ransom despite the father's well-known connections to the Gaddafi regime and his wealth.

C. *Credibility*

[11] The RPD made a series of negative credibility findings as a result of inconsistencies and contradictions (1) in the applicant's testimony, (2) between the applicant's testimony and his PIF and (3) between the applicant's sworn evidence and the sworn declaration of his father. This led to the RPD disbelieving that the applicant's brother had been kidnapped as the applicant alleged.

III. Issues

[12] The application raises the following issues:

- 1) What is the standard of review;
- 2) Did the RPD err in its negative credibility findings; and
- 3) Did the RPD commit a reviewable error by failing to address the objective documentary evidence in relation to the applicant's risk profile?

IV. Analysis

A. *Standard of Review*

[13] The RPD's assessment of the evidence and credibility engages questions of fact and mixed law and fact that are to be reviewed on the reasonableness standard (*MDCOG v Canada (Minister of Citizenship and Immigration)*, 2010 FC 804 at para 9, 193 ACWS (3d) 226).

B. *Credibility findings*

[14] The applicant submits that the RPD's negative credibility findings were unreasonable, addressing each in turn. The applicant, relying on *Sheikh v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 568 at para 23, 190 FTR 225 (TD), argues that the RPD zealously searched for inconsistencies in the applicant's evidence. The respondent on the other hand argues that the credibility determinations were rational and open to the RPD to reach.

[15] Recognizing that the RPD is best positioned to gauge credibility and is to be accorded significant deference in this regard (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315 (CA)), I am satisfied that the RPD had a rational basis for the negative credibility findings made against the applicant.

[16] The record discloses real material contradictions and inconsistencies between the applicant's PIF, his testimony and his father's sworn declaration. For example:

- A. At the first day of hearings the applicant could not answer questions regarding his brother's kidnapping;
- B. The applicant could not explain why his father stated in his declaration that he found out about the applicant's involvement in the Protests through Facebook while the applicant stated his father learned from Gaddafi supporters approaching the father in Libya threatening to imprison or kill the father due to the applicant's involvement in the Protests; and
- C. The applicant testified that his brother Malik, was freed on August 20, 2011 but did not mention this release in the PIF, signed on September 6, 2011. Instead the PIF states there was no news concerning Malik.

[17] There was a rational basis underpinning the RPD's credibility findings.

C. *Assessing the applicant's profile against the documentary evidence*

[18] The applicant further submits that the RPD erred by ignoring the documentary evidence which confirmed that a person fitting the applicant's profile would face persecution and be at risk if returned to Libya.

[19] The applicant submits that the evidence established his family's profile as (1) being wealthy; and (2) being perceived as having been supportive of the former Gaddafi regime due to his father's high ranking position in Libya's medical and academic establishment. In turn, the applicant argues that the country condition documents demonstrate a real and immediate risk of

persecution of people associated with the Gaddafi regime, a risk the RPD did not address.

Relying on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paras 16-17, 157 FTR 35 (TD) [*Cepeda-Gutierrez*] the applicant argues the RPD was obliged to consider this evidence, that the RPD failed to do so, and that the failure is not cured by the RPD's general statement at paragraph 31 of the decision that it had "considered all of the evidence."

[20] The respondent argues that the RPD's credibility findings are dispositive of the claim, general documentary evidence is insufficient to overcome a finding of a lack of credibility (*Ozbay v Canada (Minister of Citizenship and Immigration)*, 2014 FC 674 at para 23 [*Ozbay*]), and the RPD was under no obligation to refer to every piece of evidence before it.

[21] In this case I am persuaded by the respondent's position. The RPD did not need to refer to each piece of evidence the applicant submitted (*Llana v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1450 at para 29) and "General documentary evidence, in the face of a version of events that is not believed, will not be sufficient to turn the tide" (*Ozbay* at para 23).

[22] While I agree with the applicant's submissions to the effect that a blanket statement by an administrative decision-maker that it has considered all the evidence is not sufficient where the evidence squarely contradicts a decision-maker's finding (*Cepeda-Gutierrez* at para 17), this is not the situation in this case.

[23] The RPD considered the applicant's profile but found his fear to be speculative based on the evidence that both his father and brother were circulating and conducting their daily affairs without experiencing any of the risks the applicant feared. Essentially the applicant's claim centred on the allegations (1) that Gaddafi's men kidnapped his brother; and (2) that due to the applicant's father's status, the applicant would be at risk of forced recruitment or kidnapping at checkpoints. Having reasonably found: (1) the kidnapping of the brother did not occur due to the applicant's general lack of credibility; (2) that no weight would be given to the corroborative evidence from the applicant's father; and (3) that the risks feared were speculative based on the applicant's evidence of the experience of his father and brother, it was reasonably open to the RPD not to address further evidence related to the applicant's risk profile.

V. Conclusion

[24] I am of the view that the decision falls within the range of reasonable acceptable outcomes based on the facts and the law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

[25] The parties did not identify a question for certification.

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: ALMUATASEM M S ALEMARI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 19, 2016

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