Federal Court Cour fédérale

Date: 20160714

Docket: IMM-72-16

Citation: 2016 FC 807

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 14, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

ADOUM OUSMANE ISSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[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 rendered by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada on December 11, 2015. The RAD confirmed the decision rendered by the Refugee Protection Division (RPD), which

indicated that the applicant did not have refugee status under section 96 of the IRPA, nor was he a person in need of protection under section 97 of the IRPA.

II. The facts

[2] The applicant, Adoum Ousmane Issa, is a citizen of Chad.

[3] Although he was married to his cousin, he claims to have been in a relationship with Djamila Oumar Deby, who is the head of state's niece. Ms. Deby was also married.

[4] On May 16, 2014, Ms. Deby apparently warned him that her family had learned that she was pregnant, beat and forcibly confined her, and threatened her with death. It seems she then denounced him to her family.

[5] The applicant allegedly sought refuge with his mother's cousin and moved to Massaguet to ensure his safety.

[6] That same day, it appears some of Ms. Deby's husband's cousins came to the applicant's home, beat members of his family and raped his sister.

[7] It seems his family then helped the applicant leave the country.

[8] On November 4, 2014, the RPD concluded that the applicant was not credible and rejected his claim for refugee protection.

III. Impugned decision

[9] The RAD initially ruled on whether new evidence that had not been submitted with the applicant’s file during his appeal was admissible. This included a statement from Ms. Deby, a medical certificate confirming the death of his mother’s cousin, a medical certificate confirming the injuries sustained by the applicant’s sister, as well as the civil aviation authority card belonging to Mahamat Zakaria, who helped the applicant flee the country.

[10] The RAD underscored the fact that authorization had not been requested to use these documents in accordance with RAD rules and that consequently, they could not be used by the applicant in his appeal. The RAD nevertheless analyzed the documents.

[11] The RAD concluded that the first portion of Ms. Deby’s statement was not admissible because it concerned facts that were known during the RPD hearing. The RAD also deemed that the second portion was not credible. Ms. Deby said that her parents had learned that she was pregnant on May 16, 2015, while the applicant had said that he had left Chad in June 2014. There are over eleven (11) months between those dates. The applicant therefore could not have impregnated Ms. Deby.

[12] The RAD also rejected the two medical certificates because they were not trustworthy. The RAD noted that the personal information included on the cousin’s medical certificate (i.e. name and date of birth) was not consistent with the personal information of the person who had provided written testimony in support of the applicant’s claim for refugee protection.

Furthermore, the letterhead was not from a real Chadian hospital and could have been computer-generated. As for the applicant's sister's medical certificate, the RAD noted that the letterhead was not consistent with the one on the other medical certificate. Specifically, some words were reversed. In addition, even though it was written in French, the medical certificate had no accents. The certificate also bore a file number that was lower than the one on the cousin's medical certificate, even though it had been issued four months later. The RAD also rejected the fourth document, the civil aviation authority card, because it provided no information relevant to the appeal or the claim for refugee protection.

[13] Seeing as the documents were inadmissible, the RAD refused to hold a hearing based on the fact that subsection 110(4) of the IRPA gave them no discretion under the circumstances.

[14] As for the basis of the claim for refugee protection, the RAD concluded that the RPD did not err in determining the applicant's credibility. The RAD noted that the applicant did not claim refugee protection at the first opportunity while in the United States, and this affected his credibility. His explanation about the delay was also unreasonable, given the vast size of the country, the confidentiality of refugee protection claimants and the fact that he could have been protected by authorities there.

[15] The RAD also found that the RPD had been very clear and meticulous in its assessment of the applicant's credibility and that the number of contradictions and omissions identified by the RPD dealt a fatal blow to his credibility. The RAD also uncovered another contradiction concerning the applicant's residence in May and June 2014.

[16] The SAR concluded that the RPD had not discounted a doctor's letter attesting to the applicant's depression, because an expert report alone cannot establish a refugee protection claimant's credibility.

IV. Issues in dispute

[17] There are two (2) issues in dispute:

1. Did the RAD err in refusing to admit the additional evidence the applicant submitted in his file?

2. Did the RAD fail to conduct its own assessment of the file by relying only on the conclusions drawn by the RPD on the applicant's credibility?

V. Analysis

A. *Did the RAD err in refusing to admit the additional evidence the applicant submitted in his file?*

[18] The applicant claims that as soon as the RAD concludes that submitted evidence includes new facts, it has no choice but to admit that evidence. On the contrary, the respondent argues that Parliament clearly intended to restrict the use of new evidence before the RAD. Only evidence that meets the criteria set out in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FC 385 (*Raza*)—namely newness, credibility, relevance and materiality—is admissible (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, at paragraphs 33-38 and 43 [*Singh*]; *Oluwole v Canada (Citizenship and Immigration),* 2015 FC 953, at paragraph 39).

[19] In *Singh*, the Federal Court of Appeal was very clear about the criteria set out in *Raza*:

> [43] In fact, the criteria used in Raza are consistent with the tests generally adopted by courts and administrative bodies, and are essentially designed to preserve the integrity of the judicial process: see *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 2 (CanLII) at para 10, [2000] 1 S.C.R. 44. Although they were established by the Supreme Court in the context of a criminal proceeding (see *Palmer v. The Queen*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759 at p. 775, 106 D.L.R. (3d) 212 [Palmer]), the criteria of newness, relevance, credibility and materiality were subsequently applied in civil matters (*J.T.I MacDonald Corp. v. Canada (Attorney General)*, 2004 CanLII 30110 (QC CA), 2004 CanLII 30110 at para. 3, [2004] J.Q. no 9409 (C.A.Q.), in disciplinary law (*Morin v. Regional Administration Unit #3 (P.E.I.)*, 2002 PESCAD 9 (CanLII) at para. 140, 213 D.L.R. (4th) 17 (P.E.I.C.A.), in aboriginal law (*Chippewas of Nawash First Nation v. Canada (Minister of Fisheries and Oceans)*, 2002 FCA 22 (CanLII) at para. 20, [2002] F.C.J No. 146) and in a number of other areas (see Donald J.M. Brown, *Civil Appeals*, Carswell, Toronto, 2015, pp. 10-16 to 10-18).

[20] It was therefore reasonable for the RAD to assess the credibility and relevance of the new evidence submitted for the appeal and to dismiss this evidence based on those criteria. I find that the inconsistencies noted by the RAD about Ms. Deby's affidavit and the medical certificates justify its conclusions.

[21] It was therefore reasonable for the RAD to deny the applicant a hearing. The wording of subsection 110(6) of the IRPA allows for no discretion. If there is no new admissible evidence, the RAD cannot hold a hearing.

B. *Did the RAD fail to conduct its own assessment of the file by relying only on the conclusions drawn by the RPD on the applicant's credibility?*

[22] The applicant claims that in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 (*Huruglica*), the Federal Court of Appeal clearly established that the RAD must conduct its own independent review of the claim for refugee protection, because the IRPA does not stipulate that deference is owed to the RPD for findings of fact, of law, or of mixed fact and law. It is not sufficient for the RAD to say that it conducted an independent assessment; its reasons must also demonstrate this. The RAD did not address the errors brought to light in the RPD decision, as it should have. The respondent, however, argues that the RAD decision clearly demonstrates that an independent assessment was conducted and that the member deviated from the RPD's reasons and dissected the documents himself to come to his conclusions.

[23] I agree with the respondent. Based on the RAD's decision, it clearly appears that the RAD conducted its own independent analysis of the file.

[24] First of all, at paragraph 62 of the decision, the RAD added to the RPD's comments concerning the applicant's credibility as it relates to his time in the United States, and the reasons why he did not claim refugee protection. Furthermore, at paragraph 68, the RAD noted an additional contradiction in the applicant's documents:

> [TRANSLATION] [68] I would like to add that, in form IMM 5669, the applicant stated that he had worked as a sales agent in N'Djamena from December 2011 to June 2014. He also stated that he resided at 22 Gouji in N'Djamena from January 2010 to June 2014. When he signed this document on June 14, 2014, the applicant declared that the information on the form was truthful, complete and correct. The driver's licence that was issued on May 24, 2014, indicates that he was living in N'Djamena. That information contradicts the claims notably included in the applicant's Basis of Claim (BOC) form, which indicated that as of

> May 21, 2014, he had taken refuge in the garden of one of his mother's cousins in Massaguet, 82 kilometers from N'Djamena.

[25] Furthermore, the footnotes of the decision, specifically footnotes 56-58 and 70-71, demonstrate that the RAD dissected the file itself and carefully consulted the documents contained in the RPD's file. These notes include several specific references to those documents. It is well established in case law that the reasonableness of a decision must be assessed in light of the entire file (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at paragraph 14).

[26] I therefore conclude that the RAD conducted its own assessment of the file and came to its conclusions about the applicant's credibility reasonably.

VI. Conclusion

[27] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question is certified.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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