Federal Court  Cour fédérale

Date: 20170106

Docket: IMM-582-16

Citation: 2017 FC 17

Ottawa, Ontario, January 6, 2017

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

AHMAD RASHID SIDIQI

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 by the Applicant pursuant to s. 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [the IRPA], of a decision made by the Refugee Protection Division [RPD], dated November 24, 2015, finding the Applicant to be neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the IRPA [the Decision].

[2] The application is dismissed for the following reasons.

II. Facts

[3] The Applicant is a university-educated Afghan citizen who worked as a civil servant before fleeing the country. He is married and has several children; his oldest daughter [Daughter] was fourteen at the time of the events that form the basis of his claim. He claims fear of persecution from his wife's brother-in-law [the Brother-in-Law], who he alleges is from a notorious family of warlords. Specifically, the Applicant alleges the Brother-in-Law's family are former Mujahedeen fighters and warlords, and that the Brother-in-Law inherited his brother's legacy as a local Mujahedeen commander. The Applicant alleges the Brother-in-Law is now the head of one of the most powerful families in Afghanistan with "a particularly brutal reputation". Furthermore, the Applicant alleges that it is common in Afghanistan for families with power like the Brother-in-Law's to have infiltrated the security apparatus of the government and of various provinces through their family members.

[4] The Applicant alleges that the Brother-in-Law married his wife's sister by force and often beats her. He alleges that the Brother-in-Law's son [Son] follows in his father's footsteps; he carries a gun and is already feared as a bully.

[5] The event forming the basis of the Applicant's claim arose sometime in 2014. The Applicant alleges that, at around this time, he attended a family wedding at which the Brother-in-Law was also present. The Applicant alleges that the Brother-in-Law approached him and demanded that the Applicant's Daughter be wed to the Brother-in-Law's Son; both children were

fourteen at the time. The Applicant alleged that he told the Brother-in-Law his daughter was too young for marriage and was still pursuing an education, at which point the Brother-in-Law became angry, placed his gun to the Applicant's cheek and threatened to kill him should he refuse again. Following the intervention of the other attendees, the Brother-in-Law allegedly announced to everyone at the party that the daughter was to be married to his Son. It was at this point that the issue became one of family honour.

[6] The Applicant alleges that he and his family immediately decided to drive to Kabul and left the next day without giving notice to anyone. Once there, the Applicant's family stayed with a trusted friend and the Applicant remained at a secure compound. The Applicant alleges that this living situation remained the same until he left Afghanistan in February 2015.

[7] The Applicant alleges that, while he was hiding in Kabul, the Brother-in-Law visited his friends and family, including the Applicant's father, in an attempt to find the Applicant, Daughter and the rest of the family. The Applicant alleged that his refusal to allow his Daughter to marry the Brother-in-Law's Son had resulted in a stain upon the Brother-in-Law's reputation. As a result, the Brother-in-Law was enraged and prepared to take whatever action was necessary to satisfy his honour….

[8] The Applicant was able to arrange business in the United States in 2015. An Afghan passport was issued to him and he received his U.S. visa in December 2014. He arrived in New York in February 2015.

[9] The Applicant did not attend the business conference he was supposed to attend. Instead, he remained with a friend in New York and on February 23, 2015, the Applicant made a claim for refugee status at the Niagara Falls border. However, the Applicant was not allowed into Canada because the uncle to whom he was anchoring his claim was allegedly travelling in India at the time and unable to meet him at the border. The Applicant returned to the U.S. to stay with cousins until July 2015. According to the Applicant, the reason for this long stay was because his uncle had injured his leg whilst in India and was therefore required to stay longer than planned. On July 20, 2015, the Applicant claimed refugee status at the Fort Erie border. His uncle was there and both were questioned. The officer at the point-of-entry [POE] determined the Applicant fell under an exception to the Safe Third Country Agreement and his claim was therefore referred to the RPD.

[10] The RPD found the Applicant lacked credibility and denied his claim. The Applicant appealed to the Immigration Appeal Division [IAD] but his appeal was dismissed due to lack of jurisdiction under paragraph 110(2)(d) of the *IRPA*.

III. Decision

[11] On November 24, 2015, the RPD determined the Applicant was neither a Convention refugee nor a person in need of protection under the *IRPA*. The decision turned largely on credibility of the Applicant and his story.

[12] The RPD made five major negative credibility findings based on: the Applicant's failure to claim in the U.S., the plausibility of the Applicant and his family having successfully hidden

from the Brother-in-Law for seven months while in Kabul, the lack of evidence regarding the Brother-in-Law's status as a warlord, the lack of documentation regarding the Applicant's family members or their locations in Kabul and the plausibility of the Applicant having left his Daughter in Kabul.

[13] The RPD found, on the balance of probabilities, that the Applicant was country shopping. It found it not credible for the Applicant to be unaware of his uncle's travel schedule if he was actually intending on using his uncle to anchor his claim. The RPD noted the Applicant had remained "for five months in the U.S. and that the failure to make a claim in the U.S. was not credible when his family remained in Kabul without a paternal family member to protect them".

[14] The RPD noted that no evidence had been provided to support the Applicant's claim that the compound was a secure hideout or to substantiate his claim that the Brother-in-Law was a powerful warlord, especially considering that the Applicant's wife and family had regular contact with his wife's sister, the Brother-in-Law's wife. It found that the personal documentation on the Brother-in-Law was lacking and that the documentary evidence provided did not support the contention that the Brother-in-Law is a prominent, powerful warlord in Afghanistan. The RPD noted the Applicant had provided a few internet articles and news articles on honour killings, the legal system in Afghanistan and an 18-year-old runaway, but that none referenced any warlord families in Afghanistan; neither did the National Documentation Package. The RPD found it not credible that an allegedly powerful warlord like the Brother-in-Law would be unable to locate the Applicant for seven months, particularly in light of the

Applicant's claim that there were powerful families that had "infiltrated the security apparatus of the government of Afghanistan."

[15] The RPD noted that there were no documents to support the Applicant's allegations that his wife and children were in Kabul or that he even had a wife and children, despite having five months while in the U.S. to obtain supporting documents.

[16] Finally, the RPD found that it "defies credulity that the claimant left his daughter [Daughter] who is in imminent danger" in Afghanistan. Citing *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (FCA) at 244, Macguigan, JA, the RPD stated:

> [25] The panel is aware that none of the above credibility concerns raised may be sufficient, each on its own, to negate this claim. However, the cumulative effect of all of them is that the panel does not have sufficient credible and trustworthy evidence upon which to base a determination that the claimant is a Convention refugee. As the Court of Appeal in Sheik held:
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> > […] even without disbelieving every word [a claimant] has uttered, a […] panel may reasonably find him so lacking in credibility that it concludes that there is no credible evidence relevant to his claim […] In other words, a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant information emanating from his testimony.

[17] Finding the Applicant's testimony to not have "the ring of truth", the RPD concluded:

> The panel therefore does not believe that the claimant was threatened by [the Brother-in-Law] does not believe that [the Brother-in-Law] wanted his son to marry the claimant's daughter; does not believe that he and his family went into hiding in Kabul and does not believe that his wife and children are hiding in the home of his friend in Kabul.

[18] It is from this decision that the Applicant seeks judicial review.

IV. Issues

[19] At issue is whether the RPD unreasonably made its credibility findings.

V. Standard of Review

[20] In *Dunsmuir v New Brunswick, 2008 SCC 9* at paras 57, 62 [Dunsmuir], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." The issue of credibility is to be reviewed on a standard of reasonableness. Substantial deference is to be afforded to credibility findings of the RPD: *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 22, 42 *Li v Canada (Minister of Citizenship and Immigration)*, 2011 FC 941 at para 314; *Zaree v Canada (Minister of Citizenship and Immigration), 2011 FC 889* at para 6; *Geng v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 488 at para 15.

[21] In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness 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.

VI. Analysis

[22] This application turns almost entirely on credibility findings made by the RPD. The RPD has broad discretion to prefer certain evidence and to determine the weight to be assigned to the evidence it accepts. This law is repeated in numerous cases, including *Tariq v. Canada (Citizenship and Immigration)*, 2015 FC 692, in which I made note of several of these authorities, including cases from the Federal Court of Appeal:

> [10] Because this is a case that turns almost exclusively on credibility, it is useful to note other law in this regard. It is well established that the RPD has broad discretion to prefer certain evidence over other evidence, and to determine the weight to be assigned to the evidence it accepts: *Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 67. Analyzing findings of fact and determinations of credibility fall within the heartland of its expertise: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 at 239 (FCA). In fact, the RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 805 at para 10. Therefore, the Court should not substitute its own findings for those of the RPD where the conclusions it reached were reasonably open to it: *Giron v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1377 at para 9 *[Giron]*.
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> [11] The Federal Court of Appeal stated in Siad v Canada (Secretary of State), [1997] 1 FC 608 at para 24 (FCA), that the RPD:
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> > is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within 'the heartland of the discretion of triers of fact' are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.

[23] The RPD is also entitled to make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings "should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case": *Haramichael*, above at para 15, citing *Lubana*, above at paras 10-11; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444. The RPD may reject uncontradicted evidence if said evidence "is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence": *Lubana*, above at para 10. The RPD is normally entitled to conclude that an applicant is not credible "because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in 'clear and unmistakable terms'": *Lubana*, above at para 9.

[24] I appreciate that in *Chen v Canada (Minister of Citizenship and Immigration)*, 2014 FC 749, the Court warns about the dangers of plausibility findings:

> 54 These are plausibility findings and, as the Court has pointed out many times, such findings are inherently dangerous and should only be made in the clearest of cases: see *Valtchev*, above, at paras 6-8; *Giron*, above; *Leung v Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 774 at para 15, 81 FTR 303 (TD); *Mahmood v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1526 at para 16; Ansar v Canada (Minister of Citizenship and Immigration), 2011 FC 11522011 FC 1152 at para 17; *Jung v Canada (Citizenship and Immigration)*, 2014 FC 2752014 FC 275 at para 74.

[25] However, on review, the findings of the RPD were open to it on the record. I will examine each.

A. *The Applicant's failure to claim in the U.S.*

[26] The Applicant attempted to enter Canada fairly soon after entering the United States. He was allowed to withdraw his claim because his uncle was not available. The RPD said it was not credible that he was not aware of his uncle's travel schedule if indeed he was counting on him being his anchor on the claim. In my view, it is reasonable to reject the Applicant's explanation. It is reasonable to expect that the Applicant would have contacted his uncle prior to attempting to enter Canada, yet it appears the Applicant did not.

[27] The Applicant then waited five months before returning to the border. The Applicant claimed said his Daughter was at risk; in my view, it was open to the RPD to find his explanation for this very lengthy delay was not credible if, indeed, the risk he and his Daughter faced in Afghanistan that indeed was the reason why the Applicant wanted to come to Canada. It was also open for the RPD to find the Applicant was asylum shopping – he had relatives in the US and an uncle in Canada. While the Applicant did allege his uncle's lengthy absence was a result of having injured himself in India, it remained open to the RPD to reject that as the explanation for the delay in the circumstances. This plausibility finding is tied to the facts and indeed, to the most critical fact, that being the alleged risk to the Applicant's Daughter.

[28] As this Court has frequently stated, the starting point in a credibility analysis is that a refugee claimant's allegations are presumed to be true unless there are reasons to doubt their truthfulness: Maldonado v. Canada (Minister of Employment and Immigration) (1979), [1980] 2 FC 302 (FCA); and see *Shehzad Khokhar v Canada (Citizenship and Immigration)*, 2008 FC 449 at para 20:

> [20] Further, in evaluating credibility, it must be borne in mind that a refugee claimant's allegations are presumed to be true unless

> there are reasons to doubt their truthfulness *(Valtchev v. Canada (Minister of Citizenship and Immigration)* (2001), 208 F.T.R. 267, 2001 FCT 776 at para. 6 (F.C.T.D.); see also *Maldonado v. Canada (Minister of Employment and Immigration)* (1979), [1980] 2 F.C. 302, [1979] F.C.J. No. 248 (F.C.A.) (QL) [Maldonado]).

[29] However, we see in the matter of the Applicant's failure to claim asylum in the U.S. a reason to doubt his truthfulness.

B. *The plausibility of the Applicant and his family having successfully hidden from the Brother-in-Law for seven months while in Kabul*

[30] The family hid successfully for at least fourteen months, notwithstanding the Brother-in-Law's asserted power and influence. This plausibility finding is grounded on the facts the Applicant himself alleged. Having made those assertions, he cannot allege an unreasonable plausibility finding in this respect. This is further support of the reasonableness of the RPD doubting his truthfulness.

C. *The lack of evidence regarding the Brother-in-Law's status as a warlord*

[31] Here again, the plausibility finding is grounded in the facts alleged by the Applicant himself. He claimed the Brother-in-Law was "notorious" and yet there is no evidence to corroborate this allegation. The RPD specifically stated: "[T]here is no mention of any War Lord Families in any area of Afghanistan. The National Documentation Package (NDP) for Afghanistan does not refer to any notorious clan." In this respect, the RPD did not just make a plausibility finding, it made a plausibility finding supported by country condition evidence. In this respect, the RPD must be credited with some specialized expertise.

D. *The lack of documentation regarding the Applicant's family members or their locations in Kabu*

[32] The Applicant had time to prepare for his refugee claim while in Kabul. He had an additional five months between his first and second trips to the Canadian border to prepare for his refugee hearing. After being allowed entry to Canada, he had a further two months to prepare for the RPD hearing. Despite having what may reasonably consider very ample time for preparation, the Applicant attended the RPD hearing with only his identity documents and a letter from his employer. He had no copies of any documents concerning his wife or family and nothing to show he even had a Daughter. In this respect, the decision of the late Justice Blanchard in *Khan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 400[2002] F.C.J. No 520, is relevant:

> 17. While there is no legal requirement to produce corroborative evidence, it was not unreasonable in the particular circumstances of this case for the CRDD to consider, as one of the several factors in assessing the well-foundedness of the applicant's fear, the complete absence of any evidence suggesting that the Taliban were targeting members of the Gadoon Tribe. I believe the statement Mr. Justice Hugessen in *Adu . Canada (M.E.I.)*, [1995] F.C.J. No. 114 (C.A.), online: QL (FCJ) is applicable to the circumstances of this case:
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> > The "presumption" that an Applicant's sworn testimony is true is always rebuttable, and in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention.

[33] The Applicant had the burden of proof. He and all such applicants are encouraged to document their claims. Moreover, in this case, the Panel Member asked the Applicant no less than six times if he had documentation of various descriptions. The Applicant had ample

opportunity to assemble supportive documentation; nothing was produced. He had an opportunity to address the missing documentation at the hearing yet, aside from his answers (which the RPD did not accept), he chose not to pursue the matter after being examined. In the circumstances, I cannot fault the RPD's assessment and finding which in my view was reasonable.

E. *The plausibility of the Applicant having left his Daughter in Kabul*

[34] Here again the plausibility finding is intimately tied to the Applicants key allegation: that his teenaged Daughter is at risk. Yet despite this alleged risk, the Applicant left his Daughter in Kabul while he fled to the U.S. and then to Canada five months later. The RPD stated that it "defies credulity that the claimant left his daughter who is in imminent danger." The claimant was able to obtain a US visa where he has family relations for himself but it appears made no effort to obtain a visa for his allegedly at risk daughter. In my respectful view, the RPD's comments in this respect are reasonable and fact dependent in this case.

[35] The Applicant also urged the Court to review the case in terms of the Applicant's submissions on arrival which he says supply missing information that may assist the Applicant. However, it is not for this Court to retry the case; judicial review is not relitigation. The RPD is not obliged to consider and report on all the evidence put before it in its reasons. The RPD is presumed to have reviewed the record before making its decision. In this case it appears that the Applicant's explanations in his previously filed material were not accepted to by the RPD as overcoming the considerable problematic and ultimately not-credible assertions made by the Applicant.

VII. Certified Question

[36] Neither party proposed a question of general importance to certify, and none arises.

VIII. Conclusions

[37] Having found the RPD entitled to make the various credibility assessments noted above, this reviewing Court must determine if the decision of the RPD is reasonable. It is well-known that judicial review is not a treasure hunt for errors. The decision must be treated as an organic whole, and in addition it must be read with the record.

[38] In my respectful view, the Decision is justified, transparent and intelligible within the decision-making process. Moreover, the Decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. It therefore meets the tests of reasonableness per *Dunsmuir*. Judicial review must be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that judicial review is dismissed, no question is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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