

Federal Court



Cour fédérale

Date: 20170301

Docket: IMM-3029-16

Citation: 2017 FC 253

Toronto, Ontario, March 1, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

FRED SHANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Shani, the applicant, is a citizen of Albania. He entered Canada in December 2015 and claimed protection on the basis that he had witnessed a member of the Demaj family murder one of his friends. He reports that he provided information relating to the murder to the police and was at a risk of harm.

[2] The Refugee Protection Division [RPD] found that Mr. Shani had failed to establish a serious possibility of persecution on a Convention refugee ground or that he faced a personal risk under section 97 of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) [IRPA]. The determinative issue was credibility.

[3] Mr. Shani appealed the RPD decision to the Refugee Appeal Division [RAD]. The RAD found that Mr. Shani's fears related to alleged criminal activity in Albania and that he had failed to establish a link to one of the five Convention refugee grounds under section 96 of the IRPA. In addressing his risks under section 97, the RAD found that his evidence was neither trustworthy nor credible. The RPD decision was upheld.

[4] Mr. Shani argues that the RAD erred by: (1) not conducting an independent review of the record, including a review of key documentation; and (2) failing to adequately consider the role that interpretation difficulties may have had on Mr. Shani's ability to consistently express himself clearly. He asks that the matter be returned to the RAD for redetermination.

[5] This application for judicial review raises the following two issues for my consideration:

- A. Did the RAD fail to conduct an independent assessment of the applicant's documentary evidence?; and
- B. Did the RAD fail to consider interpretation errors as an explanation for Mr. Shani's inconsistent evidence?

[6] Having considered the written submissions of the parties and having heard their oral arguments, I am unable to conclude that the RAD erred in assessing the evidence or that the RAD's determination falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law. The application is dismissed for the reasons that follow.

II. Standard of Review

[7] Mr. Shani submits that the RAD's failure to conduct an independent inspection and assessment of the documentary evidence impacted upon his right to have his case fully and fairly presented, rendering the process unfair. Mr. Shani argues that the appropriate standard of review in addressing this issue is correctness. In *Moreau-Bérubé v Nouveau Brunswick*, 2002 SCC 11 [*Moreau-Bérubé*], the Supreme Court of Canada noted that an assessment of the appropriate standard review is not required when evaluating an alleged breach of procedural fairness. Instead, a reviewing Court is required to assess the procedures and safeguards required in the particular circumstances (*Moreau-Bérubé* at para 74).

[8] Where a reviewing Court is considering the RAD's factual findings, its assessment of the evidence as well as its credibility findings, the standard of reasonableness applies (*Siliya v Canada (Citizenship and Immigration)*, 2015 FC 120 at para 20, *Yin v Canada (Citizenship and Immigration)*, 2014 FC 1209 at para 34 and *Gabila v Canada (Minister of Citizenship and Immigration)*, 2016 FC 574 at paras 19-21).

III. Analysis

A. *Did the RAD fail to conduct an independent assessment of the applicant's documentary evidence?*

[9] Mr. Shani argues that the RAD did not fulfill its duty to carry out its own analysis of the record (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103 [*Huruglica*]). Specifically, Mr. Shani submits that the RAD failed to inspect originals of key documentary evidence submitted to the RPD. Instead, the RAD stated in its decision that it deferred "...to the RPD's observation of the documents...". Mr. Shani relies upon this statement to ground his argument that the RAD process was unfair. I do not agree.

[10] In considering Mr. Shani's submissions, it is necessary to consider the RAD's statement in the context of the full analysis undertaken. The RAD first noted, relying on *Huruglica* that it was to review the RPD decision by applying a correctness standard. However, the RAD also noted that it may defer to the RPD where the RPD enjoyed a meaningful advantage on issues involving findings of fact or mixed fact and law.

[11] The RAD considered Mr. Shani's documentary evidence and reviewed the RPD's findings in this respect noting: (1) the absence of original documentation in the hearing before the RPD; (2) the RPD's negative inference relating to the provenance of the documents due to Mr. Shani's vague testimony as to why and how the documents were obtained; (3) the RPD's implausibility findings based on inconsistencies between the content of some of the documents

and Mr. Shani's other evidence; and (4) doubts as to the authenticity of the documents because stamps did not appear to have been fixed with ink.

[12] The RAD then embarked on an independent assessment of the documents based on the record and considered Mr. Shani's representations on the appeal. The RAD found a police letter to be of no probative value and of questionable genuineness. The RAD independently concluded that Mr. Shani's explanation of how the documentation was produced or acquired was not credible.

[13] While the RAD's statement that it "defers" to the RPD's observation of the documents was not the best choice of words, when considered in context the statement is, in my view, limited to the RPD's "stamp" conclusion rather than its overall assessment of the documents. I rely on the RAD's independent findings relating to probative value, genuineness and provenance of the documents in question to support this conclusion. It was neither unfair nor unreasonable for the RAD not to undertake a physical examination of the original documents. There was no breach of procedural fairness. I am also satisfied that the RAD's findings in respect of the documentary evidence are justified, transparent and intelligible.

B. *Did the RAD fail to consider interpretation errors as an explanation for Mr. Shani's inconsistent evidence?*

[14] Mr. Shani concedes that there are discrepancies in his testimony but attributes those discrepancies to interpretation problems. He argues, relying on *Bouanga v Canada (Citizenship and Immigration)*, 2014 FC 1029 [*Bouanga*], that the RAD erred in rejecting this explanation

solely on the basis of the general credentials of the interpreters employed by the respondent.

Again, I disagree.

[15] In *Bouanga*, unlike here, efforts were made to obtain an audit report of the impugned interpretation. The audit report identified numerous instances where the interpretation was not faithful to the native language of the applicant or to the English language. In addition, the audit demonstrated that the interpreter resorted to a third language without notifying the panel and "... the interpreter was summarizing, paraphrasing, condensing and exaggerating what was said, in addition to concealing the errors and omissions in his translation." (*Bouanga* at para 10).

[16] In this case, there is no evidence beyond Mr. Shani's bald assertion, to support the argument that discrepancies in his evidence are attributable to translation errors. The record does not identify examples of translation errors nor were examples identified in the course of oral submissions.

[17] Furthermore, the RAD's rejection of Mr. Shani's explanation for discrepancies in his evidence is not based solely on the qualifications of accredited translators. The RAD decision also noted numerous discrepancies on fundamental issues, including how Mr. Shani became aware of the murder that was the basis of his claim and who witnessed the murder. The RAD described these discrepancies as "dramatic and telling".

[18] I cannot conclude that it was unreasonable for the RAD to make reference to the qualifications of accredited interpreters as a reason for rejecting Mr. Shani's explanation for

inconsistencies in his evidence. The RAD did consider Mr. Shani's explanation. The rejection of that explanation falls within the range of possible, acceptable outcomes defensible in respect of the facts and law.

IV. Conclusion

[19] The RAD did not err in considering Mr. Shani's appeal. The RAD's decision is justified, transparent and intelligible, and within the range of possible, acceptable outcomes defensible in respect of the facts and law.

[20] The parties have not identified a question of general importance, and none arises.

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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