Federal Court  Cour fédérale

Date: 20171026

Docket: IMM-1424-17

Citation: 2017 FC 954

Ottawa, Ontario, October 26, 2017

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ERAKIL CHACHUA AKA IRAKLI CHACHUA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] While living in Georgia, the Applicant says he was beaten and threatened for his support of the United National Movement ("UNM") political party. Believing the suspects were police officers who continued to look for him, the Applicant arrived in Canada in December 2015. He filed a refugee claim and the Refugee Protection Division ("RPD") dismissed it due to

insufficiency of evidence. On the Applicant's subsequent appeal, the Refugee Appeal Division ("RAD") upheld the RPD's decision.

[2] This is a judicial review of the RAD's decision that the Applicant is not a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor a person in need of protection under section 97 of the IRPA. For the reasons that follow, I find the decision is unreasonable because it lacks transparency. Accordingly, this application is allowed.

II. Background

[3] While he was in Georgia, the Applicant supported the UNM political party. He describes himself as an activist who did things such as hang up UNM posters, distribute propaganda, and greet people. Since 2012, the political party in power has been the Georgian Dream Coalition ("GDC").

[4] In June 2014, the Applicant began having problems with the GDC. For example, the GDC's main coordinator warned the Applicant to stop supporting the UNM or else he would face "serious problems." The Applicant also received threats and insults from GDC activists while putting up UNM campaign posters.

[5] On June 18, 2014, the situation turned violent. The Applicant was taken to a hospital after being beaten by three men who got out of a Skoda with tinted windows. The men told him the

beating was a last warning about his activities. The Applicant complained to the Prosecutor's office but was told that he would continue to face troubles unless he stopped his UNM support.

[6] Two weeks later, on July 3, 2014, two people came to the Applicant's home and asked his wife for his phone number. After this, the Applicant moved to another city and lived in his in-laws' hostel. He started to receive phone calls on his phone, but he didn't answer them.

[7] In May 2015, his father-in-law saw a suspicious vehicle around his home. This led the Applicant to move to another city where he resided with his sister-in-law. The Applicant, who says only the police drive Skodas in Georgia, left the country because he believed the men looking for him were police officers. He filed for refugee status in Canada in December 2015, because he believes further prosecution awaits him in Georgia.

[8] On April 19, 2016, the Applicant had a refugee hearing. In their reasons dated June 2, 2016, the RPD refused his claim due to insufficient evidence.

[9] In his appeal to the RAD, the Applicant requested, and was granted permission, to submit new evidence. The new evidence is a letter dated June 23, 2016, from UNM members. His request to have an oral hearing was denied since his credibility was not in issue. Both the RPD and RAD found the Applicant credible.

[10] On June 20, 2016, the RAD confirmed the RPD decision and said the RPD "did not err to the point where the decision is incorrect." After an independent assessment, the RAD concluded

"there is insufficient evidence to find that there is more than a mere possibility that the [Applicant] would face persecution."

III. Issues

[11] Though the issue I will address is simplistic, it is important:

Was the RAD's decision reasonable, intelligible and transparent?

IV. Preliminary Matter

[12] As pointed out in the Respondent's Memorandum of Fact and Law, the Respondent's title is incorrect. The Applicant did not disagree. The style of cause will be amended to "The Minister of Citizenship and Immigration".

V. Standard of Review

[13] The Federal Court of Appeal in *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93 [*Huruglica*] held that the RAD is to do their own assessment of the evidence and reach its own conclusions. The RAD must apply a correctness standard of review but may also defer to the RPD on credibility findings where the RPD enjoys a meaningful advantage.

[14] This Court is to review the RAD decision on a standard of reasonableness (*Huruglica*).

VI. Analysis

[15] The Applicant submits that the reviewable error occurred when the RAD addressed the RPD's treatment of his explanation for why he was targeted.

[16] The Applicant says the RPD decision does not address nor did the RPD analyze the explanation he provided. In support, he first cites to the transcript where the Applicant provided his reason, and then the RPD decision at paragraph 15 which states :

> [n]o reason was given, or emerges from the evidence taken as a whole, to explain why the authorities would search for such a low-profile supporter of the UNM, who was not a member, or a candidate, or involved in any depth with the party.

[17] The transcript confirms the Applicant explained to the RPD that he was an activist and why the authorities would look for him. The Applicant pointed out the RAD itself said the RPD did not address his explanation. Therefore, the Applicant argues the RPD cannot find the evidence is inconsistent with the explanation, since the explanation was not considered. The Applicant argues the further analysis of the issue by the RAD minimized the RPD's significant error, and another assault related to his political activities could reasonably occur if he returns. The Applicant further pointed out the documentary evidence illustrates that activists, leaders, and members all fit the profile of people targeted.

[18] After hearing the Applicant's oral arguments, the Respondent relied on their written submissions and did not provide further oral arguments.

[19] The RAD failed to provide an analysis about how the Applicant's explanation is insufficient evidence. Instead of an analysis, the RAD acknowledged the RPD did not address this evidence, and said it was "not a sufficient error such that the decision as a whole is incorrect." The RAD does not explain how it is possible to find that the evidence was insufficient yet also find the Applicant is credible; believe the attacked occurred; believe he refused to cease support for UNM member David Zhgenti (even after being warned to stop); believe suspicious men visited his wife; and believe that a Skoda car matching the description of the car from the assault was repeatedly seen. The only analysis provided by the RAD is there was insufficient evidence. Given that there was an election within the year, and documentary evidence in support of the Applicant's explanation before the RAD and RPD, an analysis is important.

[20] The RPD erroneously found no reason was provided to explain why the Applicant would be sought after, and did not further question him on his reason for believing he was attacked. Yet the RAD determined the RPD did fairly question the Applicant and explored the issue by asking about his delay leaving Georgia. However, I agree with the Applicant that these are two separate issues. Since it is impossible to apply the evidence properly if the factual basis is incomplete, the decision of the RAD cannot be reasonable.

[21] There needs to be a chain of reasoning in a decision. The RAD came to the conclusion—and does not explain how it arrived at the conclusion—that the Applicant was not targeted. The RAD does not say why the evidence is insufficient in the face of the 2014 and 2015 documentary evidence illustrating those with activist profiles were put at risk. The Applicant has the right to know why the RAD finds he will not be targeted in the upcoming election based on the evidence,

instead of blanket statements. It is not enough for the RAD to just say “insufficient evidence.” The blanket statements make the decision not transparent and therefore not reasonable.

[22] Therefore, the RAD decision is based on an erroneous fact and lacks sufficiency of reasons contrary to *Dunsmuir*. Reasonableness requires that the decision must exhibit justification, transparency, and intelligibility within the decision making process and also the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir*; *Canada (Citizenship and Immigration)* v *Khosa*, 2009 SCC 12).

[23] I find the RAD decision is not transparent and is therefore unreasonable.

[24] No question was presented for certification.

JUDGMENT in IMM-1424-17

THIS COURT'S JUDGMENT is that:

1. The Style of cause will be amended to substitute "The Minister of Immigration Refugees and Citizenship" for "The Minister of Citizenship and Immigration";
2. The application will be granted and returned to the RAD to be re-determined by a different decision maker;
3. No question is certified

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1424-17
STYLE OF CAUSE:	ERAKIL CHACHUA AKA IRAKLI CHACHUA v THE MINISTER OF IMMIGRATION, REFUGEE AND CITIZENSHIP
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	OCTOBER 11, 2017
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	OCTOBER 26, 2017

APPEARANCES:

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