Federal Court  Cour fédérale

Date: 20190308

Docket: IMM-3211-18

Citation: 2019 FC 286

Ottawa, Ontario, March 8, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MERON WEREDE KINFE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks leave and judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001 c. 27 [the IRPA] of the decision of a visa officer [the Officer] dated May 14, 2018 [the Decision]. The Officer denied the Applicant's permanent residency application, determining that he was not a member of the Convention refugee abroad class pursuant to sections 16, 96, 145, and 147 of the IRPA.

II. Background

[2] The Applicant is a 28-year-old male whose nationality could not be ascertained by the Officer. Sometime in 2016, the Applicant submitted an application under the outside of Canada refugee category. The Applicant was to be privately sponsored.

[3] The Applicant was interviewed by the Officer in Sudan, where he resides, on April 18, 2018 with an interpreter.

[4] The Officer found significant contradictions in the Applicant's documents, and took issue with the credibility of his answers.

[5] The Officer noted that the Applicant presented a number of documents at his interview that were not submitted originally with the application. The Officer found this unusual, since they were in the Applicant's possession at the time of his application and, if genuine, would be highly relevant to his claim. The Officer gave little weight to these documents, as proof of the Applicant's status in Eritrea, as it is impossible to verify the genuineness of such documents. The Officer also noted that one of these documents, a temporary residence permit listing the Applicant's nationality as "Ethiopian", is inconsistent with the other documents on file, including the Applicant's refugee card from Sudan which shows his nationality as Eritrean.

[6] The Officer noted that the Applicant also submitted what appears to be a refugee registration card issued in Shagarab, Sudan, but stated during his interview that he was not registered as a refugee in Sudan. As a result, the Officer also gave little weight to this document.

[7] Overall, the Officer found that the grounds for the Applicant's refugee claim were not at all clear. The Officer concluded that although the Applicant wished to present himself as stateless and as having no durable solution in Eritrea, Ethiopia, or in Sudan—having few opportunities to work or study in those places— the Applicant failed to establish credibly that that he is in fact stateless. Due to the inconsistencies in the file and the Applicant's lack of credibility, the Officer was not satisfied that the Applicant meets the definition of a refugee, nor that the Applicant does not have a durable solution anywhere. The Officer concluded that there was not a serious possibility that the Applicant has a well-founded fear or persecution or that he has been and continues to be seriously and personally affected by civil war, armed conflict or massive violation of human rights.

III. Issues

[8] The issues are:

A. Can the Court admit the evidence submitted by the Applicant which was not before the Officer?
B. Did the Officer err in finding that the Applicant lacked credibility?
C. Did the Officer err in their assessment of the Applicant's identity?
D. Did the Officer conduct the examination of the Applicant in a manner that breached the principles of procedural fairness?

IV. Standard of Review

[9] The parties agree that an Officer's decision as to whether an applicant is a member of the Convention refugee abroad class or the country asylum class essentially raises a question of mixed fact and law and is therefore reviewable on the reasonableness standard of review. I agree.

[10] The standard of review for questions of procedural fairness is correctness.

V. Analysis

A. *Can the Court admit the evidence submitted by the Applicant which was not before the Officer?*

[11] The Respondent argues that the Applicant provided information in paragraphs 10 of his affidavit and in Exhibit "D" that was not before the Officer and they should be struck from the Applicant's Record.

[12] The Applicant concedes that both paragraph 10 and Exhibit "D" of his affidavit constitute extrinsic evidence and should be struck.

[13] This Court has consistently held that it cannot consider evidence that was not submitted to the Officer when the decision was being made and paragraph 10 and Exhibit "D" of the Applicant's affidavit are hereby struck.

B. *Did the Officer err in finding that the Applicant lacked credibility?*

[14] The Applicant argues that the Officer made unfavourable credibility determinations primarily because the Applicant did not possess verifiable corroborating documents. The Applicant takes the position that the Officer failed to appreciate that the Applicant had journeyed through inhospitable regions in three different countries, namely Eritrea, Ethiopia, and Sudan, and that the transient circumstances and relative powerlessness of refugees often means that they lack corroborating documents.

[15] The Applicant also argues that he did in fact provide some corroborative documentation and had reasonable explanations for his lack of more extensive documentation, informing the Officer that his original Eritrean temporary residence permit had been seized by Eritrean authorities upon his voluntary departure from Eritrea. The Applicant states that the Officer ignored substantial portions of the Applicant's oral statements and documentary evidence.

[16] The Applicant further argues that the Officer erred by concluding that it was implausible that the Applicant's mother remained in Eritrea after the civil war. The Applicant maintains that Eritrea and Ethiopia being contiguous countries, and considering that until a couple of decades ago, Eritrea was a part of Ethiopia, it is entirely within the realm of possibility that an Ethiopian woman could have remained in Eritrea after the civil war. The Officer engaged in unreasonable speculation devoid of any factual justification. Even the Applicant's documentary evidence, namely a copy of his mother's Eritrean temporary residence permit was not enough for the Officer to concede that the Applicant's mother could have been an Ethiopian living in Eritrea.

[17] Finally, the Applicant argues that the Officer's conclusions contradict standards established in *Vodics v Canada (Minister of Citizenship and Immigration),* 2005 FC 783 at paragraph 11, which established that in order to disbelieve an applicant "...concrete reasons supported by cogent evidence must exist before the person is disbelieved". The Officer did not provide any cogent evidence to support their assertion that the Applicant lacked credibility. As a result, the benefit of the doubt must be given to the Applicant's claim that he is stateless.

[18] While the Applicant is correct in stating that negative inferences cannot be drawn solely from the failure to produce corroborating documents, the burden of producing evidence in support of an Applicant's claim lies with the Applicant and if an applicant fails to provide acceptable documents, he or she must explain why he or she did not provide the documents and what he or she did in order to try obtain them. Moreover, the accumulation of contradictions in a claimant's file with regards to elements that are crucial to his or her claim may legitimately serve as a basis for a negative credibility finding (*Quintero Cienfuegos v Canada (Citizenship and Immigration),* 2009 FC 1262 at para 1).

[19] The question of identity is central to all refugee claims, and is at the very core of the Officers' expertise. A high degree of deference should be afforded to conclusions by an officer as to identity (*Mohamed v Canada (Minister of Citizenship and Immigration),* 2015 FC 137 at para 25).

[20] The discrepancies in the Applicant's testimony were not trivial and do form a sufficient foundation upon which his overall credibility could be impugned. The Applicant submitted a

Sudanese refugee card, in spite of his statement at the interview that he was not a refugee in Sudan, as well as a temporary residence permit listing his nationality as Ethiopian, even though the other documents on file, including the aforementioned refugee card, list his nationality as Eritrean. These inconsistencies go to the heart of the Applicant's identity and nationality, which are a pre-requisite for protection (*Lhamo v Canada (Citizenship and Immigration)*, 2016 FC 873 at para 28).

[21] These inconsistencies, in combination with the lack of detail with which the Applicant explained his parents' status in Eritrea, as well as the fact that the Applicant presented a number of documents at the interview that were not submitted with his application, even though they were available at the time, formed a reasonable basis for the Officer to conclude that the Applicant lacked credibility.

[22] It is well-known that the Applicant had the onus of establishing his claim (*Reis v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1289 at para 11). Here, the Applicant failed to submit evidence of the Eritrean government's treatment of undocumented migrants to the Officer. There is no basis to conclude that the Officer's analysis of the Applicant's mother's status was unreasonable.

[23] Finally, it cannot be said that the Officer entirely overlooked any of the Applicant's documentation in reaching the decision. The Officer considered each of the documents submitted by the Applicant and questioned the Applicant regarding their sources. The Officer's decision to give a low probative value to these documents was reasonable, as the Applicant did not provide a

reasonable explanation during his interview for providing originals of the documents, nor did he account for the inconsistencies between these documents and the content of his oral testimony.

C. *Did the Officer err in the assessment of the Applicant's identity?*

[24] The Applicant argues that identity documents issued by a foreign government are presumed to be valid unless evidence is produced to prove otherwise (*Mpoli v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 398 at para 5). The Applicant maintains that he provided a number of corroborating documents, but that the Officer completely rejected all Eritrean documents provided by the Applicant on the basis that the Officer had no way of verifying those documents. The Officer was therefore unreasonable in completely disregarding the documentation supplied by the Applicant.

[25] The Applicant also maintains that the Officer had no basis to give a low probative weight to the identity documents, as the Applicant's documents were not determined to be fraudulent, counterfeit or otherwise altered, the Applicant's documents all used the same name, and the Applicant's documents were not examined by an expert. Rather, the Officer determined that the identity documents were insufficient to establish the Applicant's identity because they were photocopies, could not be translated, and they contradicted each other as to the Applicant's nationality. As such, the Officer unreasonably concluded that the Applicant failed to establish his identity.

[26] The Applicant also relies on *Anto v Canada (Citizenship and Immigration)*, 2017 FC 125 [*Anto*], to argue that the RPD should apply a more flexible approach to establishing identity. The

Applicant argues that *Anto* specifically provides for statelessness as a basis where an applicant is unable to prove identity. In such cases, the RPD can establish an applicant's identity through alternate means. Contrary to this flexible approach, the Officer unreasonably dismissed the Applicant's claim out-of-hand.

[27] Finally, the Applicant argues that Citizenship in Eritrea and Ethiopia is a live issue, and as such, the Officer's conclusion that the Applicant must have either Eritrean or Ethiopian citizenship was unreasonable. In the Applicant's case, two governments came to different conclusions regarding the Applicant's citizenship, with neither country willing to claim the Applicant as a citizen. The Applicant argues that the Officer erred in concluding that the Applicant must have citizenship because he was born and went to school in Eritrea and was able to work with a valid work permit, as the Officer failed to consider that it is possible that the Eritrean government allows undocumented children to go to school and confers work permits to undocumented individuals.

[28] This Court has consistently emphasized the importance of identity as a prerequisite for protection and the high burden that rests on any claimant to produce acceptable documents to establish identity (*Lhamo v Canada (Citizenship and Immigration)*, 2016 FC 873 at para 29 [*Lhamo*], *Balde v Canada (Minister of Citizenship and Immigration)*, 2006 FC 438 at para 1). The onus is on the claimant to produce acceptable documentation establishing their identity.

[29] While identity documents do benefit from a presumption of validity, this presumption is rebutted where the Officer has valid reasons to doubt the authenticity of the documents, or where

identity documents contain unexplained errors (*Masongo v Canada (Citizenship and Immigration)*, 2008 FC 39 at para 13). Several reasons were advanced in this matter, including that there was a lack of credibility in the Applicant's evidence as to his identity and that several supporting documents were of doubtful authenticity. This is sufficient to reverse the presumption of validity of foreign documents. It was open to the Officer to question the validity of identity documents, as the Applicant did not submit original documents or corroboration from any third party witnesses from his community or people who knew him about his identity and his justification as to why only copies were provided lacked plausibility (*Lhamo*, above at para 23).

D. *Did the Officer conduct the examination of the Applicant in a manner that breached the principles of procedural fairness?*

[30] The Applicant argues that the Officer did not provide him with an opportunity to address the perceived inconsistencies in his file. For instance, the Officer noted that the Applicant claimed that he had a sister in Canada in his written application, but later denied having siblings in his oral interview. The Applicant argues that had the Officer asked him about this inconsistency, he could have explained that in some languages and cultures, particularly in Africa, it is common to refer to a close personal connection as a brother or sister. Furthermore, regarding the perceived inconsistency of the Applicant having a Sudanese document purporting to show that he was a refugee claimant and the Applicant's oral assertion that he was not registered as a refugee in Sudan, perhaps the Applicant meant that he had no permanency in Sudan as a refugee, or that he was not registered as a UNHCR refugee as he was not living in a refugee camp.

[31] The level of procedural fairness owed to visa applicants is low and does not generally require that applicants be granted an opportunity to address a visa officer's concerns.

[32] It is the Applicant's responsibility to "put their best foot forward" in their submissions to the Officer, rather than the Officer's responsibility to point out the contradictions in their application and ask for supplementary evidence (*Bradshaw v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 632 at para 83).

[33] In this case, the Officer raised the concerns that were central to their decision in the course of the interview with the Applicant, namely: the source and background of the Applicant's supporting identity documents, the Applicant's parents' nationality, and the Applicant's status in Sudan and Eritrea. The Officer was not required to share all of his concerns with the Applicant, and his failure to mention the inconsistencies regarding the Applicant's sister in Canada and the Applicant's status in Sudan does not amount to a breach of procedural fairness. These concerns were peripheral to the main and unresolved identity and credibility findings, and even if one were to accept the Applicant's explanations for these inconsistencies, this would not affect the outcome of the decision. There was no procedural unfairness.

JUDGMENT in IMM-3211-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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