Federal Court  Cour fédérale

Date: 20190506

Docket: IMM-4922-18

Citation: 2019 FC 583

Ottawa, Ontario, May 6, 2019

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

SERGO GAPRINDASHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Sergo Gaprindashvili, seeks judicial review of a decision (Decision) of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada. The RPD concluded that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The application for judicial review is brought pursuant to subsection 72(1) of the IRPA.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Applicant is a citizen of Georgia. He left Georgia on April 22, 2011 and journeyed to France, where he lived for 15 months before departing for Canada. The Applicant arrived in Canada on August 18, 2012.

[4] The Applicant's claim for refugee status is based on the following narrative. I note that the determinative issue for the RPD was the Applicant's credibility and that many aspects of his narrative are in dispute.

[5] The Applicant is Christian. His common-law spouse, Lika Mamiashvili, is Muslim. The couple have a son, born in 2002, and a daughter, born in 2011. Ms. Mamiashvili's parents are strongly opposed to the couple's marriage and have repeatedly pressured the Applicant to convert to Islam. The parents objected to the Applicant's son taking the Applicant's name unless he agreed to convert. In order to register his son using his name, the Applicant agreed to convert to Islam but did not in fact do so.

[6] On September 1, 2009, the Applicant moved with his wife and son from their home in Gurjaani, Georgia to the capital, Tbilisi. There, the Applicant worked at a porcelain company and attended a Christian Orthodox church. The Applicant alleges that his father-in-law and brother-in-law travelled to Tbilisi and wanted to separate the couple, insisting again that he convert to

Islam. The Applicant refused to convert and moved his family back to Gurjaani and into his parents' home in June 2010 to protect them from the pressure to convert.

[7] The Applicant's employer subsequently ceased operations. The Applicant and his cousin decided to open a business and borrowed $30,000 from Kakha Argvliani, whom the Applicant states is a powerful person with police connections. However, the moving company importing the Applicant's merchandise from Turkey was stopped by the Georgian government and the merchandise sequestered. As a result, the Applicant and his cousin lost their money and were not able to repay the loan. The cousin indicated that he would sell his house to repay the loan but needed time to do so. The Applicant alleges that, in the interim, his father-in-law discovered his inability to repay the loan and told Mr. Argvliani that the loan would not be repaid. From October 2010 onwards, the two men colluded to make the Applicant's life a nightmare.

[8] In his personal information form (PIF), the Applicant alleges that Mr. Argvliani sent his in-laws to his home. There, they berated and beat the Applicant until he was rendered unconscious and in need of hospital treatment. The Applicant's father was not present during the attack but went to the hospital and said that he would file a complaint with the police. The Applicant states that Mr. Argvliani has ties with the police and that the police refused to help.

[9] The Applicant also alleges that he was kidnapped in December 2010 by three unknown persons who took him out of the village. As they approached a forest, he saw his father-in-law and brother-in-law. They told him to convert to Islam if he wanted their help. He refused and was badly beaten. The Applicant states that he was also attacked and beaten on each of

January 2, 2011 and February 16, 2011. Following this latter incident, he decided to leave Georgia.

II. Decision under review

[10] The Decision is dated September 11, 2018. The RPD set out the narrative described above and stated:

> [9] The tribunal had difficulty in getting consistent testimony from the claimant. His answers were vague, evasive, contradictory, and confusing. His testimony was not spontaneous when questions were asked out of the order of the story. The tribunal did take into account both of the claimant's narratives. The first part was his PIF, received at the IRB on September 17, 2012, and the second received on July 24, 2018. The tribunal also referred to the Port of Entry (POE) interview notes.

[11] The panel determined that the Applicant's claim hinged on two factors: (1) the issues with his in-laws due to the fact he is Christian and his spouse is Muslim; and (2) the collusion of his in-laws with Mr. Argvliani, the lender, and the resulting violence perpetrated by his father-in-law, brother-in-law and Mr. Argvliani. The RPD believed neither of the Applicant's claims.

Religion

[12] The central issue for the RPD was the omission from the Applicant's POE notes and discussion with the Canada Border Services Agency (CBSA) agent of any mention of religious issues as the reason for his leaving Georgia. The CBSA agent questioned the Applicant at length regarding the problems that caused him to leave Georgia and he responded that he was having problems with the 'criminal authorities'. After repeated questioning, the CBSA agent told the

Applicant that he was being intentionally vague and that he was required by law to answer the agent's questions. The Applicant stated that he was answering the agent's questions and again repeated that his issues in Georgia stemmed from criminal authorities, whom he variously described as people who were bossy and who were in control of the situation. The Applicant stated that his problems resulted from the fact that he had borrowed a large amount of money and could not repay it.

[13] The RPD emphasized that the Applicant failed to mention religion or pressure from his in-laws to convert to Islam to the CBSA agent, despite being specifically asked why he feared persecution in Georgia. When the panel confronted him about the omission, the Applicant stated that he was being brief and would tell his story later. The RPD concluded that this was a major omission in light of the fact that the basis of his section 96 claim was religion:

> [16] The tribunal concluded that the claimant fabricated the story about the gravity of his religious problems, if in fact they exist, as he did not state it to the CBSA as the reason for his being persecuted. This was a major omission, given that the basis of his claim of being a "Convention refugee" is religion. His explanation that he was told to be brief is negated by the CBSA factual evidence when to the contrary, he was asked to explain. If religious persecution is in fact one of the two reasons that the claimant left Georgia, the tribunal does not find it credible that the claimant would not mention it at the border.

Indebtedness

[14] The RPD recounted the Applicant's statements that the loan in question was taken out in the second half of 2010 and that, on October 20, 2010, his father-in-law told Mr. Argvliani that the loan would not be repaid. As a result, the Applicant was verbally abused and beaten by his in-laws and other persons acting in collusion with Mr. Argvliani.

[15] The RPD noted that the Applicant's cousin had stated he would sell his house to repay the loan but that it would take some time. The panel acknowledged the cousin's letter in the record to this effect and stated that, assuming the Applicant and his cousin did receive a loan, the cousin was going to sell his house to repay it, after which the lender would have no reason to pursue the Applicant.

[16] The RPD then referred to the Applicant's documentary evidence which consisted of letters from family and friends in Georgia and medical reports. The panel stated that it did not question the Applicant's medical records but it did not accept that the injuries reflected in the records were caused by his in-laws as a way of pressuring him to convert to Islam. The cause of the Applicant's injuries was questionable as he told the CBSA agent that it was the criminal authorities who were pursuing him in Georgia while, before the RPD, he stated that it was the persons who lent him money and his in-laws who caused his injuries. The RPD did not question the injuries documented in the medical reports but gave the reports no probative value as to the cause of the injuries.

Sojourn in France

[17] The RPD briefly considered the Applicant's lengthy stay in France prior to coming to Canada. The panel did not accept the Applicant's explanation that he was waiting for papers prior to leaving. The RPD noted that, although the Applicant was not required to seek refugee protection at the first opportunity, he remained in France for over a year. Given the length of the stopover and the fact that France is a signatory to the Geneva Convention, the panel concluded that it was not unreasonable to expect that the Applicant would have sought protection in France.

[18] In conclusion, given the Applicant's general lack of credibility, the RPD did not believe that he faced a serious risk of religious persecution in Georgia. With respect to whether the Applicant was a person in need of protection, the panel analyzed his claim and determined that he faced neither a risk to life nor a risk of cruel and unusual treatment or punishment, nor was he a person in need of protection as defined in the IRPA.

III. Issues

[19] The Applicant raises four arguments contesting the reasonableness of the Decision:

1. Did the RPD err in relying on omissions in the Applicant's POE notes to make adverse credibility findings?
2. Did the RPD ignore evidence?
3. Did the RPD engage in a linear analysis of the evidence?
4. Did the RPD err in treating the Applicant's failure to make a refugee claim in France as a determinative issue?

IV. Standard of review

[20] Generally, the RPD's findings of fact and its application of the law to those facts in determining whether the Applicant was a Convention refugee or person in need of protection are reviewable for reasonableness. More specifically, it is well-established that the RPD's findings regarding the Applicant's credibility are to be reviewed by this Court on a standard of reasonableness (*Behary v Canada (Minister of Citizenship and Immigration)*, 2015 FC 794 at para 7; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22 (*Rahal*); *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315 (FCA)). The review of a tribunal's credibility findings for reasonableness

requires me to give significant deference to the findings of the tribunal, recognizing that "the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence" (*Rahal* at para 42).

V. Analysis

1. Did the RPD err in relying on omissions in the Applicant's POE notes to make adverse credibility findings?

[21] The Applicant submits that the RPD erred in making an adverse credibility finding based on his failure to refer to religious persecution (or his in-laws as agents of persecution) in his POE interview. He states that he did not provide this information because he believed he would be able to elaborate on the details of his claim at his RPD hearing. The Applicant refers to question 43 of the form he completed at the airport upon arrival in Canada, where he was asked:

> Why are you asking for Canada's protection? Please keep your answer short. You will have the opportunity to explain all the facts related to your claim to the Immigration and Refugee Board of Canada.

[22] The Applicant also relies on the fact that, during his interview with the CBSA agent, he was asked a number of questions regarding who he feared in Georgia and why. In response to the Applicant's query of whether he wanted the whole story, the CBSA agent stated, "yes, summerize [sic] the story for me".

[23] The Applicant argues that it was unreasonable for the RPD to rely on a single omission during his POE interview to impugn his credibility in every respect of his claim.

[24] The jurisprudence of this Court establishes that an applicant's statements to immigration authorities at the POE may be considered by the RPD (*Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at para 15). One or more material omissions and inconsistencies among an applicant's POE notes, basis of claim narrative and oral testimony at an RPD hearing can properly form the basis of an adverse credibility finding where the omission(s) or inconsistency(ies) is or are central to the claim (*Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at para 20). The RPD must assess the nature of the omission or inconsistency and its impact on the applicant's refugee claim (*Shatirishvili v Canada (Citizenship and Immigration)*, 2014 FC 407 at paras 29-30):

> [29] It is also open to the Board to base credibility findings on omissions and inconsistencies between POE notes, PIFs and a claimant's testimony at the hearing (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA); *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668 at para 18).
>
> [30] However, not all omissions will be sufficient to ground a negative credibility finding. In *Naqui v Canada (Minister of Citizenship and Immigration)*, 2005 FC 282, the Court stated at para 23 that "[t]he nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission."

[25] I find that the RPD did not err in treating the omission from the Applicant's POE interview of any reference to the religious dispute with his in-laws as determinative in its credibility assessment. The RPD reasonably characterized the Applicant's failure to mention religious persecution as a major omission. The basis of his section 96 claim for refugee protection was religious persecution at the hands of his in-laws but he failed to give any indication that his Christianity and refusal to accede to their pressure to convert to Islam factored into the claim. His omission was not one of detail or nuance. The omitted information was

essential to understanding his claim, including the risks he allegedly faced in Georgia (*Seenivasan v Canada (Citizenship and Immigration)*, 2015 FC 1410 at paras 19-25).

[26] The alleged persecution by the Applicant's in-laws based on his refusal to convert to Islam was the genesis of his difficulties in Georgia. The religious pressure and subsequent kidnappings and beatings all stemmed from the actions of his father-in-law and brother-in-law. In addition, the actions of his in-laws were the impetus for the violence attributed to Mr. Argvliani. The Applicant alleges that his father-in-law not only precipitated but also participated in the violence orchestrated by Mr. Argvliani. Although the Applicant states in his affidavit in support of this application that Mr. Argvliani is more powerful than his father-in-law and is the primary threat to the Applicant in Georgia, his statement is contradicted by his prior narratives that focused on the religious persecution brought to bear by his spouse's family.

[27] The Applicant argues that he was instructed to be brief in giving his reasons for coming to Canada and in summarizing his story. I would make two observations in this regard. First, I agree with the Respondent when he states that there is a difference between being brief and omitting in its entirety one of two critical elements of the claim. Second, the Applicant was asked repeatedly by the CBSA agent to explain the reasons he left Georgia. The written instruction in the POE form does not explain the Applicant's vague responses.

2. Did the RPD ignore evidence?

[28] The Applicant submits that, although the RPD referred to the medical reports and death certificate of his father filed as part of his documentary evidence, the panel failed to review or

assign weight to the eight corroborative letters submitted by family and friends. The Applicant states that the letters are significant as they speak to the facts in issue. He argues that the panel was required to consider this evidence in a meaningful way.

[29] The Respondent submits that the Applicant has provided no indication that the letters were ignored by the RPD. He argues that the presumption that the decision-maker has considered the full record has not been rebutted. The Respondent cites the judgment of the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16 for the proposition that the RPD was not required to comment on every piece of evidence placed before it.

[30] I find that the RPD did not ignore the letters submitted by the Applicant, nor was the panel required to consider each of the letters individually (*Newfoundland Nurses* at para 16; *Kakurova v Canada (Citizenship and Immigration)*, 2013 FC 929 at para 18). The case law establishes that an administrative tribunal is not required to refer to every piece of contrary evidence or to deal with every argument advanced. Here, the RPD referred to the "copious amount of letters from Georgia" and examined the content of the letter written by the Applicant's cousin and business partner. The panel also referenced the death certificate of the Applicant's father that was attached to the letter from his mother. In my view, the Decision indicates that the panel was aware of and had considered the letters.

[31] The RPD assessed the medical records submitted by the Applicant. The panel accepted the content of the records and the injuries he sustained. The Applicant cites in support of his

position an excerpt from the case of *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390, but the excerpt in question addressed the decision-maker's assessment of the authenticity of affidavits submitted by the applicant. In this case, the RPD did not question the authenticity of the documents in question.

3. Did the RPD engage in a linear analysis of the evidence?

[32] The Applicant argues that the RPD erred in the approach it took in first determining that he was not credible and then determining that his evidence did not support his claim. As stated in the preceding section, the Applicant submitted eight letters and a number of medical records as his documentary evidence. He acknowledges that no adverse findings were made regarding the reliability or authenticity of the documents but argues that they were given no weight because the RPD had decided that he was not credible. The Applicant submits that this type of approach has been rejected by the Court (*Mahamoud v Canada (Citizenship and Immigration)*, 2014 FC 1232 at paras 18-22; *Turcios v Canada (Citizenship and Immigration)*, 2015 FC 318 at paras 23-24).

[33] The Respondent submits that the RPD's determinative credibility finding was defensible. The panel did not dispute the medical reports but gave them no weight regarding the cause of the Applicant's injuries because the explanations were given by the Applicant and were vague. With regards to the letters, the panel acknowledged the letters but they did not overcome the adverse credibility determination (*Kivalo v Canada (Citizenship and Immigration)*, 2016 FC 728 at paras 47-49 (*Kivalo*); *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at paras 2-3 (*Sellan*)).

[34] The Applicant's medical records were addressed by the RPD and accepted as authentic, as was his father's death certificate. The panel's decision to ascribe them no probative value as to how the documented injuries occurred was reasonable as the records contained little specific information and the information was self-reported by the Applicant. In *Kivalo*, Justice Kane addressed the issue of self-reported injuries and medical records and found that the applicant's statement to medical personnel in that case as to the cause of her injuries "cannot corroborate her other accounts, which the RAD considered and found not credible" (*Kivalo* at para 49). The same reasoning applies in this case as the RPD conducted a similar analysis of the Applicant's medical records, distinguishing the injuries described in the records from the explanation of their cause furnished by the Applicant.

[35] The focus of the Applicant's submissions is the letters from members of his family and friends. The RPD accepted the content of the letter provided by the Applicant's cousin as it set out details regarding their dealings with Mr. Argvliani. The remaining letters can be grouped as follows: letters from each of the Applicant's father, mother and spouse, which speak to the religious issues with the spouse's family and the violence perpetrated by Mr. Argvliani; letters from two of his father's neighbours that describe angry encounters with the Applicant's in-laws and unknown persons; and two letters from other individuals, one of whom states that the Applicant hid in the writer's house in 2011 and the other who states that the Applicant's in-laws visited her parents' house in 2018 looking for the Applicant.

[36] I find that the RPD did not err in its treatment of the Applicant's supporting letters. The jurisprudence is clear that a valid negative credibility finding is sufficient to dispose of a claim in

the absence of independent and credible evidence (*Sellan* at para 3). In the cases cited by the Applicant, the evidence in question derived from independent sources (a police report, newspaper article, marriage certificate). The documentary evidence in this case is comprised in part of letters from the Applicant's family members who have an interest in his case. It is not independent and objective evidence. The other letters in question provide information regarding attacks on the Applicant but do not corroborate the alleged religious persecution that was critical to the RPD's adverse credibility finding.

4. Did the RPD err in treating the Applicant's failure to make a refugee claim in France as a determinative issue?

[37] The Applicant submits that the RPD unreasonably treated his failure to claim refugee status in France as a determinative issue contrary to the jurisprudence of this Court and the Federal Court of Appeal.

[38] The Respondent submits that it is trite law that a failure to seek asylum in a Geneva Convention country, such as France, without adequate explanation is a relevant consideration in assessing a claim for refugee status (*Garavito Olaya v Canada (Citizenship and Immigration)*, 2012 FC 913 at paras 52-55 (*Garavito Olaya*)). The Respondent also submits that the Applicant's failure to claim refugee status in France was not determinative of his claim.

[39] With respect to the Applicant's sojourn in France, the RPD stated:

> [23] The tribunal draws a negative inference and this further puts into question the claimant's story. The tribunal believes that the claimant wanted to come to Canada and fabricated his story, which was inconsistent from the CBSA and the narratives in his PIF.

[40] I find that the RPD committed no reviewable error in its consideration of the Applicant's failure to seek asylum in France. A delay in claiming refugee status can be fatal to an applicant's claim absent a satisfactory explanation for the delay, even where the applicant's credibility has not otherwise been challenged (*Garavito Olaya* at para 53). In the present case, the Applicant stayed in France for over a year. The panel found that his explanation that he was waiting for papers was not adequate to explain the length of the delay. I see no reason to intervene in this finding.

[41] Further, the RPD's finding was not determinative of its refusal of his claim. The panel's negative credibility finding was premised primarily on the omission from the Applicant's POE interview of any reference to religious persecution. His failure to claim refugee protection in France was a secondary factor only.

VI. Conclusion

[42] The application will be dismissed.

[43] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-4922-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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