Federal Court  Cour fédérale

Date: 20190617

Docket: IMM-5567-18

Citation: 2019 FC 821

Ottawa, Ontario, June 17, 2019

PRESENT: Mr. Justice Annis

BETWEEN:

MUHAMMAD HUSAIN ABDULRAHMAN (A.K.A. MUHAMMAD HUSAIN ABDULRAHMAN ABDULRAHMAN)

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

(Delivered orally in Toronto, Ontario, on May 28, 2019)

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act* [IRPA] which seeks to set aside the decision of the Refugee Appeal Division [RAD] of the Immigration Refugee Board refusing the appeal of the Applicant for

refugee protection under section 110 of IRPA, which decision was rendered on October 12, 2018.

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

I. Factual Background

[3] The Applicant is an Iraqi citizen. He has lived with his family in the Kurdistan Region of Iraq [KRI] since 2012.

[4] The Applicant's refugee claim alleged the following:

a) The Applicant's former brother-in-law, Rebaz Mohammed Faqe Rasul [Rebaz], was the Applicant's brother-in-law in two ways; he was both the Applicant's wife's brother and the Applicant's sister's husband. Rebaz is alleged to be a major in the Peshmerga forces.

b) Rebaz divorced the Applicant's sister in September 2016 and in keeping with an alleged cultural tradition, demanded that the Applicant divorce Rebaz' sister.

c) When the Applicant refused to divorce his wife, Rebaz threatened to kill him.

[5] The Applicant left Iraq on October 24, 2016 and entered Canada via the United States on November 11, 2016.

[6] The Applicant made a claim for refugee status in December of 2016. His claim was heard by the Refugee Protection Division [RPD] on March 13, 2017 and refused on May 19, 2017.

II. Issues

[7] The application raises the following issues:

1) Did the RAD err in refusing to admit the June 27, 2017 article discussing the cultural practice of bride exchange?

2) Did the RAD err in failing to undertake an independent consideration of the evidence in its finding that the documents from the police and judiciary in Iraq were not credible?

3) Did the RAD err in finding that the Applicant's allegations regarding the cultural context of the risk he faced were implausible?

III. The Standard of Review

[8] The parties agree that the RAD's assessment of the evidence and its application of subsection 110(4) of the IRPA regarding the introduction of new evidence are subject to a reasonableness standard of review.

[9] With respect to its findings of fact based upon the assessment of evidence, including plausibility findings regarding credibility, they are reviewed on a reasonableness standard, but accorded the highest deference. The Court cannot reweigh the evidence. Such findings can only be set aside if the error is plain to see, or when no evidence supports the finding. It is similarly impermissible to reweigh the primary evidence in the inference drawing step of an inferential

finding of fact (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 61, 64-67; *Jean-Pierre v Canada (Immigration and Refugee Board)*, 2018 FCA 97 paras 51-53; *Housen v Nikolaisen*, 2002 SCC 33 at paras 21-23; *Kallab v Canada (Citizenship and Immigration)*, 2019 FC 706).

IV. Analysis

(1) The RAD did not err in refusing to admit the June 27, 2017 article discussing the cultural practice of bride exchange

[10] The first issue relates to the refusal of the RAD to admit the June 27, 2017 article regarding the practice of bride exchange. This issue is related to the RAD's reasons not to admit the other documents similarly claimed to be new evidence.

[11] In the first instance there were procedural failures that the RAD pointed out with respect to the admissibility of the new documents. There is no information explaining how or why the documents listed in the legal assistant's affidavit were submitted to the RAD as new evidence. Similarly, there is also no affidavit from the Applicant explaining how and why the documents listed in the legal assistant's affidavit were submitted to the RAD as new evidence.

[12] I agree that such information is necessary in order to assess how such documents meet the requirement of section 110(4) of the Act. It is also incumbent on the Applicant to comply with Rule 3(3)(g)(iii) of the Refugee Appeal Division Rules, SOR/2012-257 to make full and detailed submissions regarding the means by which any proposed new evidence meets the requirements of section 110(4), and how the evidence relates to him.

[13] With respect to the June 27, 2017 article concerning the “bride exchange”, the RPD specifically asked the Applicant to corroborate his claim with objective evidence concerning the cultural practices of honour-based crimes and customs underlying marriage and divorce referred to in his Basis of Claim [BOC] form which he failed to do. The Applicant has not established that he could not have provided most of the documents at the time the RPD rejected his claim, which for the most part, except for the bride exchange article, predated the RPD’s decision. There were other authentication failures. While the article about bride exchange is originally written in Kurdish, only a translated version is provided. In addition, I agree with the RAD that the Applicant appears to be framing the issue now as one relating to the cultural practice of bride exchange which differs from that originally advanced of customs related to divorce.

[14] On a more substantive basis, the conclusion of the RAD is reasonable in that the country condition documentation of circumstances where males are victims of honour-based crimes applies to gay or effeminate men, or those engaged in illicit sexual relationships. The Applicant presents no evidence of men being victims of honour-based crimes in the nature described in his allegations, where one would expect documentary evidence to support those findings.

[15] In addition, the RAD reasonably pointed out that the Applicant did not demonstrate that his community considers his alleged situation as one of restoring honour. The cleric who attended the family mediation with Rebaz was of the opinion that the Applicant and his wife were not required to undergo a divorce.

[16] Finally, it is noted that the Applicant's entire claim is based upon what the RAD describes as his "bald assertion" that Rebaz is powerful and a member of the Peshmerga forces, without any persuasive evidence on the record to establish on the balance of probabilities that he was in such a position. Accordingly, I concluded that there were sufficient grounds for the RAD to refuse to admit the June 27, 2017 article. Moreover, even if admitted, it would not be sufficient to overturn the RAD's adverse credibility findings discussed below.

(2) The RAD did not err in failing to undertake an independent consideration of the evidence in its finding that the documents from the police and judiciary in Iraq were not credible

[17] There is clear evidence that the RAD member carried out an independent assessment of this evidence. The reasons state as follows:

> I do not find that the RPD erred in this respect [with respect to the absence of a letterhead on official documents], as the appellants own supporting documentation provided from the KRG, such as marriage documents, also use a standard form of letterhead. They also contain identification numbers and reference numbers for proper filing and tracking with the relevant government office, something the appellant's police and judicial documents do not have."

This reasoning refutes any suggestion that the RAD failed to carry out an independent assessment of the evidence.

[18] The RAD indicated that the RPD determined that the two police reports and arrest warrant were not reliable because they were hand written sheets without any letterhead or ink stamps, etc. It is acknowledged that only the arrest warrant was missing the letterhead and ink

stamps. This omission by and of itself would not be sufficient to undermine the credibility findings.

[19] In the first place, the Applicant was found not to be credible on two other grounds which were not denied. I refer here to the finding by the RAD that the Applicant did not contest the RPD's finding that he made a significant omission in his BOC form in respect of alleged threats made against him since leaving the KRI. As well, he did not dispute the RPD's findings regarding his failure to claim asylum in the United States. He was also found not credible in his statement that he did not investigate his options for claiming asylum in the United States. The RAD found that as an educated person with a university degree and extensive travel history, this was not consistent with someone who was seeking protection from persecution, but rather of a person exploring general migration options.

[20] The two police reports and arrest warrant should not have been admitted because they were not authenticated in any form or fashion. The RAD indicated that the documents appeared as though they could have been written by anyone, anywhere. Most importantly, they lacked reliability by the fact that they were received in an email providing a list of the attachments, but without any discussion about the documents, or the Applicant's original request. Thus, there is no means to confirm that the police reports and arrest warrant that accompanied the email were from a friend who works at the courthouse as claimed, or how he obtained them. As the providence of the documents could not be confirmed, they are not sufficient to overcome the other adverse credibility findings.

(3) The RAD did not make an adverse implausibility credibility finding against the Applicant

[21] The Applicant alleges that the RAD erred in concluding that the country condition evidence regarding the cultural practice of the risk arising from honour crimes against males was implausible, as such findings can only be made in the clearest of cases. This submission is based upon the line of authority that plausibility findings involving credibility should only be made in the clearest of cases as first described in the decision in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. I have for some time indicated my view that the rule in *Valtchev* misstates the probative value required to form an inferential finding of fact used to discredit credibility, and recently certified a question on this issue for the Court of Appeal to consider in *Kallab v Canada (Citizenship and Immigration)*, 2019 FC 706. In any event, I agree with the Respondent that the issue raised in paragraph 24 of the RPD's decision as cited by the Applicant is fundamentally an issue of the insufficiency of evidence demonstrating an absence of any basis in the country condition documentation supporting the existence of such an honour crime applying to situations of divorced couples.

[22] The RPD concluded at paragraph 24 of its decision as follows:

> I find that it is reasonable to expect, given the attention in country documents dedicated to the circumstances of honour crimes, that if there were a cultural practice in Iraq such as described by the claimant, there would be some evidence of this practice in country conditions.

[23] The Applicant has not provided any evidence to challenge this finding. In addition, to the extent that there is a plausibility finding, it is reasonable. The RPD pointed out that by

demanding the Applicant divorce his wife, this would result "in her becoming, in effect, dependant on her family, and bringing stigma to the family." Accordingly, there is no error that is plain to see or any basis to conclude that the Applicant's allegations concerning the foundation for his claim, namely being based on cultural honour crimes relating to divorce, were plausible, thereby supporting the RAD's adverse finding of credibility.

[24] In addition, although examples exist where men may be the subject of honour crimes, no examples were provided of them arising out of the circumstances of a divorce in the nature argued by the Applicant. Therefore, the RAD did not err in reasonably concluding that the Applicant's statements of the existence of an honour crime based on divorce were insufficient to prove that such a cultural practice exists.

[25] Accordingly, I conclude on the basis of the foregoing reasons that the application should be dismissed. No issue is certified for appeal.

JUDGMENT in IMM-5567-18

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified for appeal.

"Peter Annis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5567-18
STYLE OF CAUSE:	MUHAMMAD HUSAIN ABDULRAHMAN v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 28, 2019
JUDGMENT AND REASONS:	ANNIS J.
DATED:	JUNE 17, 2019

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