Federal Court  Cour fédérale

Date: 20190725

Docket: IMM-1616-18

Citation: 2019 FC 1002

Ottawa, Ontario, July 25, 2019

PRESENT: Mr. Justice Boswell

BETWEEN:

MARKOS ASSEFA HONGORO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Markos Assefe Hongoro, is an Ethiopian national who fled from Ethiopia to South Africa in 2009. His brother, who lives in Canada as a permanent resident, and a church group sponsored his application for permanent residence under the Convention Refugee Abroad class and Humanitarian-Protected Persons Abroad class in 2011.

[2] In a letter dated February 8, 2018, an Officer at the High Commission of Canada in Pretoria refused the application because the Applicant had provided inconsistent and conflicting information. Mr. Hongoro has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the Officer's decision. He asks the Court to set aside the decision and return the matter to be reconsidered by a different officer.

I. The Officer's Decision

[3] The Officer noted in the refusal letter that the Applicant had been interviewed with the assistance of an interpreter fluent in English and Hadiya, the Applicant's preferred language, and had not indicated any difficulty in understanding the translator or having the translator understand the Applicant. After outlining the statutory requirements to obtain permanent residence in Canada as a member of the Convention Refugee Abroad class or as a member of the Humanitarian-Protected Persons Abroad class, the Officer stated as follows:

> … I am not satisfied that you are a member of any of the classes prescribed because during your interview on 19 May 2017, you provided inconsistent and conflicting information. Such inconsistencies include the date you became a member of the Southern Ethiopia Peoples Democratic Coalition (SEPDC) Party. At your interview you indicated you were a member since 2000, however in a letter issued by the SEPDC Party dated 13 February 2013 it confirms your membership since 1996. You also provided conflicting information concerning the duration of your incarceration, the date of your arrest, date of arrival in South Africa as well as a conflicting account as to how you left prison. At your interview you were given the opportunity to address the concerns regarding the inconsistencies at which time you did not provide satisfactory information concerning your refugee claim.

[4] The Global Case Management System [GCMS] notes provided additional information concerning refusal of the application:

> … based on info provided I am not satisfied pa [*sic* (Primary Applicant)] has a credible refugee claim – at pa's interview he provided conflicting information concerning many details of his claim. There are numerous discrepancies. Firstly, the date of his membership to the SEPDC party. Applicant submitted a letter from the party issued in Ethiopia in September 2013 stating pa has been an active member of the party since 1996, at interview in 2015 pa stated he was a member since 2000 and at 2017 interview states membership from 2008-2009. Pa indicated to me he was jailed for 16mths - pa told previous officer in 2015 he was jailed for 3 months. Applicant was vague and unable to give details as to how he escaped or was released from prison and again provided a different version of events. At interview pa stated he escaped - there is no mention of an escape in pa's submission on file nor did pa indicate this previously at interview in 2015 at which time he indicated his family assisted him to get out of prison. Pa also provided vague details of date of arrest and provided conflicting dates related to his arrival in SA [*sic* (South Africa)]. Pa states he was released and arrived in SA in APR2009 - yet he holds an asylum seeker permit issued in SA on 20OCT2008 and indicated that he resided in Kenya for 1 year following his departure from Ethiopia. When asked to provide explanations concerning the discrepancies pa said the interpreters misunderstood him or the person who translated documentation misunderstood him - there is no indication that pa did not understand the interpreters at the respective interviews nor displayed difficulties with the questions put to him at interview. Applicant was counselled at interview regarding my concerns at which time pa was not able to provide satisfactory or credible explanations for the conflicting information. Pa indicated he has difficulties living in South Africa however, migrants share the same challenges of high unemployment and high rates of crime as do all South Africans. Based on the above I am not satisfied pa has provided satisfactory information and satisfied me he meets requirements of A96. The many discrepancies undermine the applicants credibility and information obtained at interview. Application refused.

[5] The Officer's reference to an interview in 2015 stems from the fact that the Applicant's application for a permanent resident visa was first refused in a decision dated March 11, 2015.

After the Applicant initiated judicial review proceedings in respect of that decision, the parties agreed that his application would be sent back to another officer for redetermination. The decision presently under review is that resulting from the redetermination.

II. Standard of Review

[6] It is well-established that an officer's decision as to whether an applicant is a member of the Convention Refugee Abroad class or the Humanitarian-Protected Persons Abroad class is a question of mixed fact and law reviewable on the reasonableness standard (*Helal v Canada (Citizenship & Immigration)*, 2019 FC 37 at para 14; *Sar v Canada (Citizenship and Immigration)*, 2018 FC 1147 at para 19; *Gebrewldi v Canada (Citizenship & Immigration)*, 2017 FC 621 at para 14; *Abdi v Canada (Citizenship & Immigration)*, 2016 FC 1050 at para 18; *Bakhtiari v Canada (Citizenship and Immigration)*, 2013 FC 1229 at para 22; *Qarizada v Canada (Citizenship and Immigration)*, 2008 FC 1310 at para 15; and *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 25).

[7] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[8] The standard of review for an allegation of procedural unfairness is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79). The Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115).

[9] An issue of procedural fairness "requires no assessment of the appropriate standard of judicial review. Evaluating whether the duty of procedural fairness has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation" (*Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 74). As the Federal Court of Appeal has observed: "even though there is awkwardness in the use of the terminology, this reviewing exercise is 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

III. The Parties' Submissions

[10] The Applicant claims the decision is unreasonable because the Officer failed to consider calendar conversion as the reason for inconsistency in the dates of various events. The Applicant points out that there was no consideration of the Ethiopian calendar and the possibility of calendar conversion confusion in either the GCMS notes or the refusal letter. According to the Applicant, in order to avoid the problem of calendar confusion and address the question of time frames properly, the Officer should have asked the Applicant to give the Ethiopian calendar dates and then do the conversion rather than asking the Applicant to give the Western date.

[11] The Applicant says calendar conversion information is generally available country condition information about Ethiopia. As such, it must be assumed that this information was before the Officer prior to the decision being made. In the Applicant's view, because the Officer did not consider calendar conversion information, the decision was made without regard to the material before the Officer.

[12] In the Respondent's view, the Applicant's argument that the Officer erred in not considering whether the inconsistencies were due to the difference in calendars, Ethiopian versus Gregorian, is meritless. According to the Respondent, the Officer did not have a duty to consider calendar conversion error as a possible explanation for the discrepancies in the dates and did not have a duty to convert the dates. The Respondent notes the Applicant did not raise calendar conversion as an explanation for the significant inconsistencies at the interview on May 19, 2017.

[13] The Respondent further notes the Officer informed the Applicant at the interview that there were discrepancies in his evidence concerning: the dates of when he arrived in South Africa; the year he became a member of the SEPDC party; and the duration of his incarceration and the details of his escape. The Respondent says that, although the Officer afforded the Applicant an opportunity to explain the discrepancies, he responded by saying he was stressed, could not remember dates, and that the interpreter may have misunderstood him. According to the Respondent, the Officer met the duty of procedural fairness by asking the Applicant to explain the inconsistencies.

IV. Analysis

[14] In view of the totality of the evidence, calendar conversion cannot explain all the inconsistencies and discrepancies in the Applicant's responses to questions at the interview or in his application. Calendar conversion does not, for example, explain or account for the Applicant's conflicting information as to his escape from prison.

[15] The Applicant's argument that calendar conversions may have led to the inconsistencies is not persuasive. It is not persuasive in view of *Haji v Canada (Citizenship and Immigration)*, 2015 FC 868 [*Haji*], where Justice Manson stated:

> [25] After reviewing the cases cited by the Applicant to support that a calendar conversion was owed to him by the RPD and the RAD, and that the Panels should have acknowledged the difficulties of calendar conversion in their decisions, I am convinced the cases do not stand for as high a threshold of procedural fairness as the Applicant asserts, and procedural fairness was not breached. It is important to note that in this case, the Applicant does not quarrel with the Respondent's characterization of the facts: the Applicant did not rely on the issue of calendar conversion as a reason for his inconsistencies in giving his evidence.
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> [26] While in *Gelashet*, *ZB, X (Re)*, *Megra* and *Mohammed* the issue of confusion of dates based on calendar conversion is raised, in those cases the applicant(s) had fewer inconsistencies in other areas of their testimony, calendar conversion could not fully explain date issues, or the specific issues of date conversion were merely mentioned (for example that years differ by 7 or 8 years between the calendars depending on what time of hear [*sic* (year)] it is). These cases do not support that the Panel was under a duty to conduct its own conversion, or that given other facts that support a negative credibility finding, the Board must disregard date discrepancies [citations omitted]. This is particularly true – while the Applicant failed to even raise calendar conversion as a basis for his inconsistencies in his time lines provided to the RPD.
>
> …

> [38] As well, given that the Applicant was given multiple opportunities to explain his inconsistent evidence and did not rely on the difference in calendars as an explanation for those inconsistencies, there was no breach of duty of fairness by the RPD or RAD in not canvassing an explanation for inconsistencies not raised by the Applicant….

[16] To similar effect is the Court's decision in *Tesfamichael v Canada (Citizenship and Immigration)*, 2017 FC 337, where Justice LeBlanc stated:

> [10] First, I do not find the Applicant's arguments based on the Ethiopian calendar compelling. As the Respondent points out, the difference between the Ethiopian and Western calendars was not raised by the Applicant when she was confronted by the Officer about the inconsistencies regarding the date she fled Eritria. She rather attributed her memory failures to the passage of time. There is no evidence either suggesting that this difference may have been the source of the Applicant's inconsistent evidence. As for the Applicant's claim that the Officer was under a duty to consider the existence of the Ethiopian calendar irrespective of the fact she herself never raised it when asked about the inconsistencies, I find this Court's decision in *Haji c Canada (Citizenship and Immigration)*, 2015 FC 868, where this argument was dismissed, to be persuasive authority.

[17] In this case, although there is general country information which states that calendar conversion can create differences of dates this does not assist the Applicant because he has not demonstrated that calendar conversion would account for all the inconsistencies.

V. Certified Question

[18] Prior to the hearing of this matter, the Applicant submitted the following question for certification:

> For the determination of a refugee protection claim at a visa post under [the] Immigration and Refugee Protection Act section

> 95(1)(a), does the visa officer have a duty to consider calendar conversion before making an adverse credibility determination against an Ethiopian claimant based on date confusion?

[19] In *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, the Federal Court of Appeal reiterated the test for certification of a question pursuant to paragraph 74(d) of the *IRPA*:

> [46] This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).

[20] In my view, the question proposed by the Applicant should not be certified because it is not a question of general importance, does not transcend the interests of the parties, nor is it dispositive of the case. It is also not appropriate to certify the Applicant's proposed question because Justice Manson declined to certify substantially similar questions in *Haji* because Mr. Haji (like the Applicant in this case) never raised the issue of calendar conversion as an explanation for inconsistent timelines or for credibility concerns which were brought to his attention (*Haji* at paras 35 to 38).

VI. Conclusion

[21] The Officer's reasons for refusing the Applicant's application for a permanent resident visa are intelligible, transparent, and justifiable, and the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant's application for judicial review is, therefore, dismissed.

JUDGMENT in IMM-1616-18

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed, and no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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