Federal Court  Cour fédérale

Date: 20190725

Docket: IMM-5284-18

Citation: 2019 FC 995

Ottawa, Ontario, July 25, 2019

PRESENT: Mr. Justice Boswell

BETWEEN:

WORKINEH LERISO HAFAMO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Workineh Leriso Hafamo, his wife, and their four minor children, are Ethiopian nationals with refugee status in the Republic of South Africa. In 2016, Mr. Hafamo's first cousin and some other individuals sponsored his application for permanent residence under the Convention Refugee Abroad class and Humanitarian-Protected Persons Abroad class. Mr. Hafamo was interviewed in connection with the application on August 24, 2018, by an Immigration Officer from the High Commission of Canada in Pretoria.

[2] In a letter dated August 29, 2018, the Officer refused the application because the Officer found Mr. Hafamo was not a member of the Convention Refugee Abroad class or the Humanitarian-Protected Persons Abroad class. Mr. Hafamo 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] At the time of the Officer's refusal of the application, Mr. Hafamo had been residing in South Africa for approximately 14 years.

[4] The Officer found that Mr. Hafamo had a durable solution in South Africa. The Officer stated in the refusal letter that, during the interview the Officer had expressed concerns that Mr. Hafamo had a durable solution in South Africa, and that although he had faced several robberies over the years, he seemed to be well established, doing well financially, and his children attended private schools.

[5] The Global Case Management System [GCMS] notes provided additional information:

> PA appears to have a durable solution in South Africa. He has formal recognition as a refugee. He also appears to be financially comfortable. According to the police reports, he has lost a 52' TV, R15,000 rand which was in his jacket left at home. He has also lost monies on other occasions that was not so insignificant. His business is still in operations. He appears to be well established. PA's children go to private schools. He indicated that he was refused entry unless he showed that he had money. However, in South Africa, every child, even with a refugee status, is entitled to attend public school. When I expressed my concerns to PA about his status, he indicated that his family has been threatened by the robbers and he has concerns that his children are not treated with dignity. Tuition fees are paid by relatives. Security is a regular issue for

everyone in South Africa, so is discrimination. Based on the above, on balance, I am not satisfied that PA and his family do not have a durable solution in South Africa. Refused.

II. Standard of Review

[6] It is well-established that the decision of an officer 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; *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 25 [*Saifee*]).

[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).

III. The Parties' Submissions

A. *Applicant*

[8] In the Applicant's view, while it must be assumed the generally available country conditions were before the Officer prior to the decision being made, the Officer here appeared to be operating only from general knowledge and not from country conditions information. The Applicant says it is a problem there is no reference at all in the Officer's reasons to country conditions information sources. According to the Applicant, the Officer's duty to examine the most recent sources of information was not respected.

[9] In the Applicant's view, the Officer's statement - that "security is a regular issue for everyone in South Africa, so is discrimination" - fails to take account of the differences between foreigners and locals. The Applicant complains that the assimilation by the Officer of foreigners to locals fails to take account of the xenophobia in South Africa.

[10] According to the Applicant, he and his family have been systematically, personally, and individually victimized, and their situation is not just theoretical and not just based on country conditions information. The Applicant says the Officer failed to consider the cumulative incidents of harassment and deprivation, and that even if individually these incidents were not significant, cumulatively they were.

[11] The Applicant further says that, when considering whether there is respect for human rights, one must have regard not only to what the standards are, but also what the implementation

is. The Applicant complains that, while the Officer referred to the right of children to attend school, the Officer did not consider whether the right was being respected.

B. *Respondent*

[12] According to the Respondent, the finding of a durable solution is a sufficient basis to refuse an application for permanent residence as a convention refugee or person in need of protection. In the Respondent's view, based on the Applicant's evidence, it was reasonable for the Officer to conclude that he has a durable solution in South Africa. The Respondent says the Officer did not discount that the Applicant has experienced some challenges in South Africa, including being the victim of crime and potentially discrimination.

[13] The Respondent further says a finding of a durable solution can exist where the harm occasioned in the country of habitual residence is part of a generalized risk. According to the Respondent, generalized risk need not be experienced by every citizen and a subgroup of the population can face a generalized risk; and risk may be general even if felt disproportionately by a large subgroup of a population.

[14] The Respondent contends that the Officer did not err by not citing specific country conditions documents in rendering the decision because it may be assumed that the Officer was either knowledgeable of the country conditions or could easily access available country conditions documentation. The Respondent says the question for the Court is not whether the Officer literally sought out and reviewed country conditions information, but rather whether it can be shown the Officer made the decision without knowledge of country conditions. In the

Respondent's view, the Officer's decision does not demonstrate a lack of knowledge of country conditions.

[15] The Respondent maintains that the Applicant's reference to country conditions documents describing xenophobic attacks against refugees in South Africa is irrelevant because he never claimed to be the victim of xenophobic attacks, nor did he claim that he would be in the future; he merely claimed that he was robbed several times.

[16] Contrary to what the Applicant argues, the Respondent says the Officer did not fail to consider his circumstances cumulatively. In the Respondent's view, there is nothing to suggest that the Officer considered each piece of evidence by itself without considering the circumstances of the Applicant's family as a broader whole. According to the Respondent, it was open to the Officer to conclude that the Applicant's status, his employment, and the fact that his children attended private school, outweighed the difficulties that the Applicant has experienced and may continue to experience in South Africa.

IV. Analysis

[17] Paragraph 139(1)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, provides as follows:

General requirements	Exigences générales
139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	**139 (1)** Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis:
…	[…]
(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely	**(d)** aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir:
(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or	**(i)** soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,
(ii) resettlement or an offer of resettlement in another country;	**(ii)** soit la réinstallation ou une offre de réinstallation dans un autre pays;

[18] There is no precise definition of the term "durable solution". As the Court in *Barud v Canada (Citizenship and Immigration)*, 2013 FC 1152 stated:

[12] … While the overall goal of the Refugee Convention may be to provide lasting protection to genuine asylum seekers, it does not follow that the term "durable solution" in the IRPR incorporates an international legal norm. It is not equivalent to the definition of a refugee, or the grounds for exclusion from refugee status [citation omitted], both of which are rooted in the Refugee Convention itself. In my view, consideration of whether an applicant has a reasonable prospect of a durable solution in a country other than Canada requires an assessment of the person's personal circumstances and the conditions in the person's country of residence [citation omitted]. It is a question of mixed fact and law that should attract a reasonableness standard of review. The real issue before me, therefore, is whether the officer unreasonably concluded that Mr. Barud had a reasonable prospect of a durable solution in South Africa.

[19] An analysis of whether a foreign national has a durable solution in a country other than Canada depends, in large measure, on the facts of each case (*Ha v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49 at para 79).

[20] This Court has looked to the OP 5 Manual, *Overseas Selection and Processing of Convention Refugees Seeking Resettlement and Members of the Humanitarian Designated Classes*, when determining whether a foreign national has a durable solution (*Al-Anbagi v Canada (Citizenship and Immigration)*, 2016 FC 273 at paras 18 to 21).

[21] Section 13.2 of the OP 5 Manual identifies three types of durable solutions: (i) voluntary repatriation when a refugee voluntarily returns to their country of nationality or habitual residence; (ii) local integration; and (iii) resettlement in a country other than Canada. In assessing local integration, the Manual directs officers to ask a series of questions, such as, whether a foreign national:

- has been granted formal asylum;
- faces a risk of refoulement or deportation;
- owns property or has rental housing;
- can seek and accept employment;
- has access to schooling for his or her children; and
- can freely move in the country of refuge.

[22] The Applicant faults the Officer's decision for the absence of any reference to country conditions documentation. This complaint, in my view, is ill-founded. Even though the Officer's decision shows no reference to any country conditions documentation, it may be assumed that

the Officer was either knowledgeable of the country conditions or could easily access available country conditions documentation (*Saifee* at para 30).

[23] The Officer's decision does not demonstrate a lack of knowledge of country conditions. On the contrary, the Officer explicitly acknowledged that security is a regular issue for everyone in South Africa, as is discrimination. The Officer also acknowledged during the interview that, while the Applicant had been robbed several times, "this is the state of affairs in the entire country".

[24] The Officer did not fail to consider the Applicant's circumstances cumulatively. The Officer's reasons demonstrate that he or she was cognizant of the challenges the Applicant and his family have faced and the ways in which they have established themselves in South Africa in determining whether a durable solution existed.

[25] The Officer reviewed the evidence holistically and considered such factors as: that the Applicant's children attended school; that the Applicant and his family had formal asylum status; that the Applicant owned a grocery store; and that the Applicant had financially established himself in South Africa. It was open to the Officer to conclude that these factors outweighed the difficulties that the Applicant had experienced and may continue to experience in South Africa.

V. Certified Question

[26] Prior to the hearing of this matter, the Applicant submitted a question for certification, namely:

For the determination of a refugee protection claim at a visa post under Immigration and Refugee Protection Act section 95(1)(a), does the onus rest on the applicant to present relevant country condition information or does the onus rest on the visa officer to consider relevant country condition information?

[27] 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).

[28] In my view, the question proposed by the Applicant should not be certified because it is not a question of general importance. Case law has already established that an officer has a duty to consider country conditions evidence (*Saifee* at para 28, and *Hassaballa v Canada (Citizenship and Immigration)*, 2007 FC 489 at para 33).

VI. Conclusion

[29] The Officer's reasons for refusing the Applicant's application 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-5284-18

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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