Federal Court  Cour fédérale

Date: 20190924

Docket: IMM-6188-18

Citation: 2019 FC 1216

Ottawa, Ontario, September 24, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MILTON ONAN AMADOR ORDOÑEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario, on September 18, 2019, and edited for syntax and grammar with added reference to the relevant case law)

[1] The Applicant, Milton Onan Amador Ordonez, seeks judicial review of a negative Pre-Removal Risk Assessment (PRRA) decision.

[2] For the reasons that follow, I am dismissing this application.

[3] The Applicant is a citizen of Honduras who came to Canada on a work permit. He did not leave at the end of his permit, and in March 2017 he was arrested by the Canada Border Services Agency.

[4] He expressed his fears of returning to Honduras, and was advised that he could submit a PRRA application. His initial PRRA was dismissed, but on the consent of the parties, it was reconsidered and redetermined by a different officer. This is the decision that is the subject of this judicial review.

[5] The Applicant claims to fear returning to Honduras because he is gay. There is no dispute that there is a risk of persecution and violence against persons on the basis of their sexual orientation in Honduras. In this case, however, the officer denied the Applicant's PRRA request on the basis of his credibility – essentially, the conclusion of the officer was that the Applicant had not met his burden of establishing that he is gay.

[6] The parties agree that this case turns on whether the officer's assessment of the Applicant's credibility is reasonable. The reasonableness standard of review is a deferential one, which recognizes that the decision-maker's role assigned by Parliament, and the expertise he or she brings to the task, and the opportunity to observe the witnesses first-hand for example, mean that a reviewing court should not lightly intervene to reverse a credibility determination: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 41-46 [*Rahal*]. As it was expressed, this lies at the heartland

of the decision maker's expertise: *Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 18 [*Ruszo*].

[7] This does not mean, however, that credibility decisions are somehow immune from review.

[8] I would observe that assessing the credibility of a person's claim that they are gay must rank as among the most difficult of the many challenging determinations that immigration officials must make. For that reason the Immigration and Refugee Board has adopted non-binding Guidelines to try to guide and assist decision-makers, taking into account the many complexities that can arise when a person makes such a claim: *Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression* (*SOGIE Guideline*).

[9] The Applicant challenges the PRRA decision on the basis that the officer made unreasonable credibility findings and incorrectly applied the *SOGIE Guidelines*. I am not persuaded that, taken as a whole and read in light of the record, as the jurisprudence commands me to do, the decision is unreasonable: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*), 2011 SCC 62.

[10] I do not propose to review each of the arguments in detail; like the parties at the hearing today, I will focus on the essential errors alleged by the Applicant.

[11] First, the Applicant says that the officer gave too much weight to the mistakes the Applicant made in naming the boy he was first attracted to, and that he simply switched the names and dates that he referred to during his testimony. The Applicant argues that this simple mistake was given unreasonably negative weight by the officer. The Applicant submits that the fact that the Applicant admitted that he had made this mistake should not undermine his credibility.

[12] I agree with the Respondents' observation that there are a number of significant discrepancies between the documentary evidence and the testimony on this point. I am not persuaded that the officer's decision rested only on the error in the Applicant's testimony. I find that the officer did not seize on a single simple mistake, but rather observed that the Applicant had given contradictory evidence on what must have been a key point or a key element in his life. On the evidence before me, I do not find that this is unreasonable.

[13] Second, the Applicant argues that the officer made repeated references to the Applicant's demeanour during his testimony, and the officer consistently adopted a negative view of gestures or behaviour that could be interpreted differently. For example, the reference to the Applicant's wringing of his hands or the pauses in his testimony may simply be a reflection of his difficulty in giving evidence about such sensitive topics. The Applicant is a simple person from a rural area of Honduras, and it is natural that he found this process to be difficult. The officer gave undue attention to his demeanour.

[14] On this point, the Applicant was unable to point to a particular reference that was not accurate, or that reflected an underlying assumption about how individuals should testify, or that reflected a failure to pay heed to the *SOGIE Guideline*. Instead, the argument is that this was simply mentioned too often in the decision, and that there could be other plausible interpretations of the Applicant's demeanour.

[15] I am not persuaded that this is sufficient to make the decision unreasonable. First, one of the reasons that judges on judicial review are commanded to give deference to the first-level decision-maker's assessment of credibility is precisely because the judge lacked the opportunity to see the testimony: see *Rahal*. While I agree that a decision-maker's reliance on demeanour alone as a basis to assess credibility is fraught with danger (see *Rahal* at para 45), I do not find that this is what happened here. Rather, the Applicant's demeanour is one of many factors considered by the officer. This is precisely what the officer is required to do, and I do not find any of the references to the Applicant's demeanour to reflect undue attention to a particular aspect, or to incorporate stereotypes or biased assumptions. The fact that there are other plausible explanations does not make the officer's assessments unreasonable.

[16] Third, while I agree with the Applicant that not all of the credibility findings of the officer may be as well supported in the evidence, I do not find that the officer has applied an unduly microscopic assessment to tangential points: see *Ruszo* at paras 20-22.

[17] For example, the Applicant has been consistent that he was attracted to a boy named Christian. I agree with the officer that his explanation for why he was so attracted to Christian

may be somewhat vague, but that is not difficult to understand – life is full of examples of people who have difficulty pinpointing why they are attracted to another. I agree with the Applicant that this should not have been given significant weight in assessing credibility. However, I do not find that this is the only basis for the officer's conclusion that the evidence of the Applicant, particularly in regards to his relationship with Christian, was vague.

[18] In this regard, I note that the Applicant testified that he and Christian often took walks; that was their primary activity together. I would observe that the officer was aware that they lived in the same area, and the Applicant had only recently left that area to come to Canada. Despite this, the Applicant was unable to give any basic details regarding these walks, for example where they went, saying they happened "so long ago." It was not unreasonable for the officer to find that this undermined his credibility.

[19] In a similar vein, I note that the officer based negative credibility findings on discrepancies between the Applicant's evidence and that of the supporting witnesses. While I agree with the Applicant that the evidence of his mother – who had disowned him when he came out to his family – can be understood in that context, I do not find the officer's assessment of the inconsistencies between the letter of his friend, and the evidence of the psychiatrist on the alleged suicide attempt, to be unreasonable. This was a very important moment in his recent past, and the differences in the basic outline of what happened and who found him and helped him are too stark to ignore. It was not unreasonable for the officer to discount the weight of this evidence, in light of these discrepancies.

[20] This leaves the important element that the Applicant had disclosed he is gay to a friend and to his pastor, before he knew that this could form the basis of his claim for protection. As the Applicant observes, this was given weight by Justice Susan Elliott in granting the Applicant a stay of removal on January 15, 2019: see *Ordoñez v Canada (Citizenship and Immigration)*, 2019 CanLII 1004 (FC). The officer did not give equal weight to this, but I am unable to conclude that this was unreasonable. These are different legal proceedings; Elliott J. did not have the benefit of the evidence and observing the Applicant's testimony that the officer had, and it is not in and of itself unreasonable for the officer to come to a different conclusion on the same evidence.

[21] I have considered the other submissions of the Applicant in regard to the other credibility findings and the difficulties with the officer's assessment, but again, considered as a whole and in light of the record, I do not find that they rendered the decision unreasonable. The assessments are not the kind of "generalized, imprecise and vague credibility conclusions without particulars" that are rejected in *Rahal* at paragraph 46, citing *Hilo v Canada (Employment and Immigration)* (1991), 15 Imm LR (2d) 199, [1991] FCJ No 228 (QL) (FCA)).

[22] For all of these reasons, I do not find that the officer's PRRA decision is unreasonable and I am dismissing this application for judicial review. No question for certification was proposed, and none arises in this case.

JUDGMENT in IMM-6188-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No questions for certification were proposed, and none arise.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6188-18
STYLE OF CAUSE:	MILTON ONAN AMADOR ORDONEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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