Federal Court  Cour fédérale

Date: 20090428

Docket: IMM-3624-08

Citation: 2009 FC 427

Montréal, Quebec, April 28, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

NATOLBAN MIALBAYE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant seeks under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), the judicial review of the decision dated July 17, 2008, by the Refugee Protection Division of the Immigration and Refugee Board (panel), refusing him the status of "refugee" and "person in need of protection" in accordance with sections 96 and 97 of the Act, and denying his refugee claim.

II. Facts

[2] A citizen of Chad, the applicant left his country on September 23, 2006, on a visa and was planning on a vacation in the United States. After stopping in Benin and Paris, he spent a few days in the United States and entered Canada on October 2, 2006, at which time he made his refugee claim.

[3] Essentially, the applicant alleges being subject to persecution and threatened by the authorities of his country after having published, in a large-circulation newspaper, an article on human rights violations.

III. Impugned decision

[4] The panel called into question the publication and the truthfulness of the article at the basis of his refugee claim, and found that even in presuming that it were true, it did not believe that the applicant is being sought in his country of origin.

[5] Having also taken note of the synchronicity between the vacation to the United States planned by the applicant and the sequence of events at the basis of his narrative, and multiple discrepancies and implausibilities in the evidence, the panel doubted the testimony of the applicant on many points such as the way in which he allegedly escaped a raid by soldiers before leaving

Chad; his travel arrangements; the collusion of the authorities of Benin with those of Chad to prevent him from taking the flight to the United States; and also the implausible intervention of the station head for Air France who purportedly took steps to provide him with a new plane ticket and had his visa authenticated by the Embassy of the United States.

[6] Consequently, the panel found that "the claimant's narrative is not credible" and that he is not a "Convention refugee" or a "person in need of protection" and, accordingly, rejected his refugee claim.

IV. Issue

[7] Was it unreasonable for the panel to find that the applicant's narrative was not credible?

V. Analysis

Standard of review

[8] The panel's findings of fact, and more specifically those dealing with the applicant's credibility, are subject to the standard of "reasonableness" with the result that in order to warrant its intervention, the Court must determine whether the impugned decision is reasonable, in light of its "justification", and if it "falls well inside the range of possible , acceptable outcomes in respect of both the facts and the law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[9] The Court must treat such a decision with deference and avoid intervening to substitute its opinion for that of the panel, unless the discrepancies and implausibilities noted by the panel are not supported by the evidence, do not take into account the explanations given or are simply capricious or extremely exaggerated.

Lack of credibility

[10] Giving very detailed reasons, the panel was careful to note in its decision the numerous shortcomings noted in the evidence that, when considered as a whole, irreparably affect the credibility of the applicant and his narrative.

[11] The panel was able to see on more than one occasion that the testimony of the applicant was confused, evasive and contradictory. This was despite the fact that the panel noted having a “bright, educated and articulate young man” in front of it.

[12] The Court, having analyzed the record and the decision under review, does not find any criticism of the panel for its finding that the applicant’s narrative was not credible. It was a reasonable finding supported by both the discrepancies and implausibilities noted in the applicant’s narrative, and by his manner of testifying (*Shahamati v. Canada (Minister of Employment and Immigration*), [1994] F.C.J. No. 415 (F.C.A.). The panel’s criticisms of the applicant do not appear to be capricious or exaggerated, and taken in their entirety, constitute a sufficiently significant whole to irreparably tarnish the applicant’s credibility.

[13] Contrary to the applicant's submissions, the panel did not have to, before delivering its decision, confront him again on the implausibilities indicated by the panel during its analysis of the evidence. The panel did not breach procedural fairness by not advising the applicant before the end of the hearing of its doubts with regard to the applicant's narrative and its implausibility (*Sarker v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 987). The applicant had the opportunity to fully explain himself during the hearing. If he did not know to take that opportunity to persuade and provide good explanations in a timely manner, he has only himself to blame.

[14] In trying to persuade the Court today that the panel erred with respect to the negative inferences it drew from the evidence and concerning the credibility of his narrative, the applicant is simply seeking to justify the evidence that the panel did not accept. In fact, the applicant is merely reiterating before this Court a large part of the explanations already submitted to the panel, to try once again to explain and justify the numerous implausibilities, inconsistencies and omissions for which he was criticized by the panel. The applicant is free to not accept the panel's decision, but he must accept that it is not up to this Court to reassess the evidence during an application for judicial review (*Zrig v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 565 (F.C.A.); *Islam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 301; *Khaira v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 62); and that it is also not up to this Court to substitute its opinion or the opinion of the applicant for that of the panel, all the more so because the panel retains the unique benefit of having been able to hear the applicant's narrative and judge his manner of testifying, which placed the panel in the best position to properly assess his credibility.

[15] Unfortunately for the applicant, this Court's work of review is limited to verifying whether the panel's decision is justified or not, both in fact and in law, according to the standard of reasonableness. Credibility determinations of a party lie within the heartland of the discretion of triers of fact. That of the panel in this proceeding therefore merits great deference and cannot be overturned unless it is perverse, capricious or delivered without regard for the important evidence, which is far from being the case here. (*Siad v. Canada (Secretary of State*) (C.A.), [1997] 1 FC 608, at paragraph 24; *Dunsmuir*, above).

[16] In short, the applicant did not succeed in proving that the impugned decision resulted from findings of fact made in a perverse or capricious manner without regard for the material before the panel, including the explanations which the applicant tried to provide it (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698).

VI. Conclusion

[17] For all of these reasons, the Court finds that the decision under review is justified in fact and in law, and does not contain any fundamentally important errors to warrant the intervention of this Court. The application for judicial review will therefore be dismissed.

[18] Furthermore, since no serious question of general importance was proposed or merits being proposed, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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