Federal Court Cour fédérale

Date: 20090928

Docket: IMM-810-09

Citation: 2009 FC 973

Ottawa, Ontario, September 28, 2009

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

YI FEI REN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Background

[1] The Applicant is a citizen of the People's Republic of China. He claims he is a Falun Gong practitioner and that he has a well-founded fear of persecution should he be returned to his country of citizenship. He arrived in Canada with fraudulent documents on April 10, 2006 and presented a few days later a claim as a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (the "Act").

[2] A hearing to adjudicate this claim was held on December 1, 2008 and August 27, 2008 before a Panel of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the “Panel”). The claim was rejected in a decision of the Panel dated January 14, 2009 (the “Decision”).

[3] The Applicant submitted to this Court an Application for leave and for judicial review of this Decision, and leave was granted by Justice Mandamin on June 24, 2009.

[4] A hearing on this judicial review was held before me in Toronto on September 22, 2009.

The Decision under Review

[5] The Panel’s Decision was based almost exclusively on credibility issues. In a nutshell, the Panel found the Applicant completely lacked credibility, had lied to Canadian officials about his past, and was trying to gain access to Canada based on a bogus Falun Gong story in order to circumvent Canadian immigration laws and regulations.

Position of the Applicant

[6] The Applicant has challenged virtually every finding of fact by the Panel.

[7] The Applicant submits that the basic and central principle of refugee law is that when a refugee swears the truth of certain allegations, this creates a presumption of truthfulness unless there is a valid reason to rebut the truthfulness of the allegations. In this case the Applicant alleges that the

Panel was overzealous, hypercritical and cynical in its assessment of the evidence and thus reached conclusions concerning the Applicant's credibility and the evidence that were not reasonable.

[8] The Applicant further argues that the Panel did not mention the documentary evidence submitted by the Applicant, specifically fine receipts and a notice of detention in China, and ignored the documents indicating the Applicant's active participation in Falun Gong activities in Canada.

Position of the Respondent

[9] The Respondent notes that the Decision rested entirely on a negative credibility finding concerning the Applicant. Since credibility findings are at the heart of the discretion of the Panel, this Court should not interfere.

[10] The Respondent further argues that the Panel did not err by bringing to the forefront the inconsistencies, implausible claims and contradictions in the evidence before it, and thus making a negative inference as to the credibility of the Applicant. Though it is true that a refugee claimant's allegations are presumed to be true, this presumption can be refuted based on inconsistencies and contradictions in testimony.

[11] In regard to the documentary evidence, the Respondent notes that it is well-established that a Panel of the Refugee Protection Division is presumed to have taken all of the evidence into consideration, regardless of whether it indicates having done so in its reasons. The fact some of the documentary evidence is not mentioned in the Board's reasons is not fatal to its decision, nor does it

indicate that it was misconstrued or ignored. In addition, the cumulative effect of inconsistencies and omissions may be such that the credibility of a litigant is so undermined so as to result in a general finding of lack of credibility.

Analysis

[12] It is trite law that factual findings of administrative tribunals must not be disturbed on judicial review save exceptional circumstances. This Court must not revisit the facts or weigh the evidence (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at para. 51 and 53: "Where the question is one of fact, discretion or policy, deference will usually apply automatically."; *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, at para. 46: "More generally it is clear from s. 18.1(4)(d) [of the *Federal Courts Act*] that Parliament intended administrative fact finding to command a high degree of deference").

[13] A high standard of review has consistently been held to apply to decisions of the Refugee Protection Division concerning findings of fact or of credibility in the context of claims under sections 96 and 97 of the Act: *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.), at para. 4; *He v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J No. 1107 (F.C.A.); *Long v. Canada (Minister of Employment and Immigration)*, 2007 FC 494, at para. 16 (Shore J.); *M.S.M. v. Canada (Minister of Employment and Immigration)*, [2005] F.C.J. no. 165, at para. 14 (Lemieux J.); *Zheng v. Canada (Minister of Employment and Immigration)*, 2007 FC 673, at para. 1 (Shore J.); *Wu v. Canada (Minister of Employment and Immigration)*, 2008 FC 673, at para. 6 (Harrington J.).

[14] In this case the Applicant has failed to convince me that the findings of the Panel as to his credibility do not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” (*Dunsmuir v. New Brunswick, supra* at para. 47; *Canada (Citizenship and Immigration) v. Khosa, supra* at par. 59).

[15] The Applicant takes issue with the finding of the Panel that his credibility was tainted by the fact he lied to Canadian immigration officials by not disclosing that he had resided in the United States of America from April 2001 to January 2005, had pursued unsuccessfully a refugee claim there and had subsequently returned to China. The Applicant says this adverse credibility finding is not reasonable since the Panel failed to accept his contrition about this lack of truthfulness. The Applicant argues that he is a simple and uneducated man and that he unwisely relied on the advice of the “snakehead” who brought him to Canada and who told him not to reveal this information. He now asks the Canadian authorities to forgive him.

[16] I find no merit to this argument. Refugee determinations in Canada are based on voluntary and truthful declarations from claimants. The Applicant decided not to reveal key information to Canadian authorities since he believed this would facilitate his access to Canada. His failures to declare his stay in the USA, his unsuccessful refugee claim there and his eventual return to China in 2005 clearly affect his credibility, and it was entirely reasonable for the Panel to draw an adverse inference from this.

[17] The Applicant also takes issue with the Panel's finding that he had not provided the documentation related to his refugee claim in the USA. The Applicant notes that the Panel was provided with various decisions from the American authorities concerning the withdrawal of at least part of the claim by the Applicant, as well as documentation concerning various appeals related to this claim, and consequently argues that the Panel thus misconstrued the evidence.

[18] I do not accept this argument. The material provided by the Applicant concerning his refugee claim in the USA is far from satisfactory. It is difficult to understand how exactly this claim was treated in the USA and even what exactly were the issues at stake in these proceedings, particularly after the Applicant appears to have withdrawn, in part, his refugee claim. The record shows the Panel required more information on this claim, including information as to why the Applicant had withdrawn part of his claim. The Applicant failed to provide any such information stating that he was a simple man who was entirely reliant on his American counsel. I find the Panel's findings in this matter to be reasonable.

[19] The Applicant also took issue with a statement in the Panel's Decision referring to the fact that the Applicant had previously tried to be sponsored for immigration to Canada by his first wife, but that this had not been completed, as his first wife had divorced him. I fail to see in what way a simple statement of an undisputed fact by a Panel can somehow be deemed not to be reasonable. The Applicant believes this fact to be irrelevant, but obviously the Panel did not. I see no reviewable error here.

[20] The Applicant also failed to explain why he had answered three times in his testimony that, out of fear, he did not practice Falun Gong when he returned to China in 2005, only to state the contrary later in his testimony. When confronted with this contradiction, the claimant stated he was "too nervous today. I didn't sleep well yesterday, I'm frail". Counsel for the Applicant offered an explanation for this contradiction, namely that the Applicant was practising Falun Gong at home while in China but not in a practice group. Though this after the fact explanation is certainly interesting, it is not the explanation his client gave when confronted with the contradiction. In these circumstances it was reasonable for the Panel to infer a negative credibility finding from such contradictory statements.

[21] The Applicant raised many other issues through a microscopic examination of the Decision. The Applicant contested the conclusions drawn by the Panel that his return to China in 2005, without being arrested at his arrival at the airport, did not support his story. He also contested the Panel's view that the fact his wife had never been harassed or arrested by the police did not support the claim. The Applicant also took issue with certain conclusions of the Panel based on certain date discrepancies, and on the fact that the Panel discounted the Applicant's Falun Gong activities in Canada. In argument, the Applicant took issue with just about every conclusion of fact and of credibility made by the Panel.

[22] After a careful review of the decision, the record and the transcript of the hearings, I find that none of these issues warrant the intervention of this Court. The Decision essentially turns on the

finding by the Panel that the Applicant lacked credibility. This finding is reasonable in light of the record placed before me.

[23] As noted by Teitelbaum J. in *Jiang v. Canada (Minister of Employment and Immigration)*, 2008 FC 775, at para. 12-13:

> The applicant submits that the tenor of the Board's reasons is generally microscopic and overreaching and thus constitutes a reviewable error. I note that while it is true that the Board should not engage in a microscopic and overzealous interpretation of the evidence (*Gill v. Canada (Minister of Citizenship and Immigration*), 2004 FC 921, [2004] F.C.J. No. 1144 (QL) at para. 13), there is a corresponding obligation on the reviewing court to read the Board's decision as a whole and within the context of the evidence (*Miranda v. Canada (Minister of Employment and Immigration*), [1993] F.C.J. No. 437 (QL)).
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> Indeed, this view was reiterated, albeit in the criminal context, by the Supreme Court of Canada in *R. v. Gagnon*, [2006] 1 S.C.R. 621, [2006] S.C.J. No. 17 (QL), at para. 19, where it held that:
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>> A trial judge's language must be reviewed not only with care, but also in context. Most language is amenable to multiple interpretations and characterizations. But appellate review does not call for a word-by-word analysis; rather, it calls for an examination to determine whether the reasons, taken as a whole, reflect reversible error.
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> Similarly, in my view, it is imperative to avoid minutely dissecting the reasons provided by an administrative tribunal.

[24] Similar comments can be found in *Miranda v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 437 (Joyal J.); *Ni v. Canada (Minister of Employment and Immigration)*, 2001 FCT 1240, at para.12 (Pelletier J.); *Gan v. Canada (Minister of Employment and Immigration)*, 2006 FC 1329, at para. 18 (Barnes J.).

[25] There remains only one issue which merits further attention by this Court, and this concerns the treatment afforded some of the documentary evidence. I refer in particular to the fine receipts and a notice of detention in China which were submitted by the Applicant. No mention is made of these documents in the Decision.

[26] The record shows conclusively that the Panel was aware of the Applicant's claims that he had been fined and also imprisoned in China as a follower of Falun Gong. Indeed the record shows the Applicant was questioned on these matters by the Panel. Though the Panel made a clear adverse finding as to the Applicant's lack of credibility, it did not explain specifically in its Decision why it had discarded the fine receipts and notice of detention documents. The issue therefore to consider is if a conclusion of general lack of credibility can be sufficient so as to dispense the Panel with explaining in its Decision the reasons for which it did not give weight to these documents.

[27] As noted by the Federal Court of Appeal in *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] F.C.J. No. 604 (F.C.A.): "In other words, a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony." See also *Touré v. Canada (Minister of Employment and Immigration)*, 2005 FC 964, at para. 5 (Pinard J.); *Long v. Canada (Minister of Employment and Immigration)*, *supra*, at para. 24.

[28] Moreover, as noted by Justice Shore in *Long v. Canada (Minister of Employment and Immigration)*, *supra*, at para. 26:

> It is well-established that, unless proven otherwise, the Board is presumed to have taken all of the evidence into consideration, regardless of whether it indicates having done so in its reasons. Moreover, as the Federal Court of Appeal noted in *Hassan v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 946 (QL) (F.C.A.), the fact that some of the documentary evidence is not mentioned in the Board's reasons is not fatal to its decision nor does it indicate that the evidence was ignored or misconstrued. This is especially so where the evidence not mentioned has little probative value. Hence, it is open to the Board to assess the evidence and give it little or no probative value. As stated by Chief Justice Bora Laskin, of the Supreme Court of Canada, in *Woolaston v. Canada (Minister of Manpower and Immigration)*, [1973] S.C.R. 102:
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>> I am unable to conclude that the Board ignored that evidence and thereby committed an error of law to be redressed in this Court. The fact that it was not mentioned in the Board's reasons is not fatal to its decision. It was in the record to be weighed as to its reliability and cogency along with the other evidence in the case, and it was open to the Board to discount it or to disbelieve it.

[29] In the particular context of this case, and taking into account both the findings of the Panel as to the Applicant's general lack of credibility, and the fact the Applicant withheld key information from Canadian immigration officials upon his arrival in Canada, the Court does not believe it is appropriate for it, in these particular circumstances, to grant the judicial review on the sole basis that the Panel failed to explicitly explain in its Decision the reasons for which it placed no weight on the concerned documents.

Conclusion

[30] Consequently the application for judicial review is denied.

Certified Question

[31] No question was proposed for certification and none is warranted in this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is denied.

"Robert M. Mainville"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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