

Federal Court



Cour fédérale

Date: 20110526

Docket: IMM-5837-10

Citation: 2011 FC 593

Ottawa, Ontario, this 26th day of May 2011

Before: The Honourable Mr. Justice Pinard

BETWEEN:

YOUSOUF HASSAN ALI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the “Act”) by Youssouf Hassan Ali (the “applicant”). The Board determined that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant is a citizen of Djibouti and a member of the Yibir tribe, a minority group which has suffered discrimination in Djibouti for many years. In the past they were refused access to education, though this has changed in recent years. The applicant was born on March 25, 1977.

[3] The applicant completed a BAC in administration and then went to university for two years. He wrote the teachers' test and received training as a teacher. He obtained a job at the same school where he was trained, and taught there for four years.

[4] The applicant alleges that he had been subjected to discrimination all his life. Other children at his school would mock him. He was unable to marry anyone from another tribe. The principal of the school in which he taught was prejudiced against him because of his ethnicity.

[5] The applicant allegedly met with nine other teachers to create a secret movement to fight discrimination against the Yibir tribe. Two other members were from the Yibir tribe, the others were from other tribes. They contacted human rights organizations by email regarding the discrimination suffered by Yibirs.

[6] The applicant alleges that in February 2005, as a result of his association with this movement, he was arrested, interrogated and tortured. The applicant left Djibouti on December 2, 2007.

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[7] The Board found that the applicant was not a credible or trustworthy witness. His evidence was inconsistent at times and there were key omissions in his testimony.

[8] The Board found the following contradictions and omissions in the applicant's testimony:

- He first stated that the human rights organization contacted by the group (ARDH) was in Djibouti, and then said it was located in Belgium;
- He stated that he received email responses from this group, but did not have copies of the emails because he deleted everything to avoid being traced;
- He said the incident in February 2005 was the first time he had problems with the police, but his Personal Information Form ("PIF") stated that the police had intervened in the movement's meetings several times in the past. Confronted with this, he said he was only discussing the imprisonment incident;
- He said he was first seen by a prison doctor, and then by his own doctor, but his PIF made no mention of the second doctor;
- He twice stated that he was the only member of the group imprisoned, then changed his story and said he meant he was the only one tortured;
- He stated that he was tortured because he was the most educated member of the group, but the Board noted all members were supposedly fellow teachers;
- He stated he was the only one tortured, and then said the other Yibir members were tortured as well.

[9] The Board found that these contradictions and omissions amounted to a lack of credibility and trustworthiness on the applicant's part, and cited the Federal Court of Appeal in *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 at para 8: "even without disbelieving every word an applicant has uttered, a [...] panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim [...]".

[10] The Board also found that the discrimination suffered by the applicant did not rise to the level of persecution. The Board cited both the Federal Court of Appeal's definition of persecution in *Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 at 133-134,

Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689 at 733-734, and the definition given by Professor James C. Hathaway in his book *The Law of Refugee Status*, (Toronto: Butterworths, 1991) at pp 104-105, and found that in order to be considered persecution, the mistreatment suffered or anticipated must be serious enough to constitute a key denial of a core human right. The Board found that while the claimant may have been subjected to discriminatory acts, such as being restricted in his choice of whom to marry and suffering mockery from fellow students, these acts did not amount to persecution. The Board noted that the applicant completed 17 years of school and obtained the job he sought.

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[11] Upon hearing counsel for the parties and upon considering the evidence, I am satisfied that the Board's credibility findings are generally well supported by the evidence, including the applicant's PIF and his testimony. I find that it was open to the Board to draw negative inferences from the noted contradictions and omissions in the evidence, in light of the variation in the applicant's responses regarding elements central to this claim. As the Board had the benefit of seeing and hearing the applicant and is in the best position to gauge his credibility and assess the evidence, the Court ought not substitute its own appreciation to that made by the Board.

[12] With respect to the issue of persecution or discrimination, the applicant argues that the Board erred by not looking at the cumulative effect of the discrimination suffered in order to determine whether it amounted to persecution. The applicant cites Justice Mahoney in *Sagharichi v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 796 (C.A.) at para 3:

It is true that the dividing line between persecution and discrimination or harassment is difficult to establish, the more so since, in the refugee law context, it has been found that discrimination may very well be seen as amounting to persecution. It is true also that the identification of persecution behind incidents of discrimination or harassment is not purely a question of fact but a mixed question of law and fact, legal concepts being involved. It remains, however, that, in all cases, it is for the Board to draw the conclusion in a particular factual context by proceeding with a careful analysis of the evidence adduced and a proper balancing of the various elements contained therein, and the intervention of this Court is not warranted unless the conclusion reached appears to be capricious or unreasonable.

[13] *Sagharichi* is also clear that a finding of this nature is within the jurisdiction of the Board.

While the applicant clearly disagrees with the Board's finding on this issue, in my view there is no evidence that the Board's finding was unreasonable given the applicant's history. The applicant had received 17 years of education, had obtained the job of his choice, and had held this job for four years prior to leaving the country. While he may have faced harassment and discrimination, I do not find it unreasonable for the Board to have determined that this did not amount to persecution.

[14] Finally, the applicant submits that the Board erred by failing to consider the documentary evidence corroborating his claim, namely that despite his success in obtaining education and a job, he did so despite serious discrimination.

[15] In my view, in light of the Board's finding that the applicant did not suffer persecution and that his allegations of police persecution were unfounded, it was unnecessary to discuss the documentary evidence regarding Djibouti and Somalia in general terms. The Board found that the applicant did not personally suffer these effects; this was determinative of the applicant's claim.

[16] For the above-mentioned reasons, I find that the Board's conclusions fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law"

(*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para 47).

[17] Consequently, the application for judicial review is dismissed.

[18] I agree with counsel for the parties that this is not a matter for certification.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board determining that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5837-10

STYLE OF CAUSE: YOUSOUF HASSAN ALI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 26, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: May 26, 2011

APPEARANCES:

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