

Federal Court



Cour fédérale

Date: 20160909

Docket: IMM-1487-16

Citation: 2016 FC 1028

Ottawa, Ontario, September 9, 2016

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

LEONARD AHI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Reasons delivered orally in Ottawa on September 8, 2016

[1] Leonard Ahi sought refugee protection in Canada claiming to be at risk in Albania because of a blood feud involving members of his extended family. The Refugee Protection Division of the Immigration and Refugee Board rejected Mr. Ahi's claim, finding his story to be thoroughly lacking in credibility.

[2] Mr. Ahi appealed the RPD's decision to the Refugee Appeal Division of the Immigration and Refugee Board. After reviewing the documentary record and listening to the tape recording of the RPD hearing, the RAD dismissed Mr. Ahi's appeal.

[3] Mr. Ahi argues that the RAD erred by deferring to the RPD's factual and credibility findings rather than carrying out its own independent review of the evidence as required by the Federal Court of Appeal's decision in *Huruglica v. Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93, [2016] F.C.J. No. 313, which was released two weeks after the RAD made its decision in this case.

[4] As this Court has noted, and the parties have agreed, the fact that a RAD decision pre-dates the Federal Court of Appeal's decision in *Huruglica* does not automatically invalidate a RAD decision. The question that has to be determined on a case-by-case basis is whether the RAD subjected the RPD's decision to the sort of probing examination prescribed by the Federal Court of Appeal in *Huruglica*, or whether it deferred to the RPD's findings: *Ketchen v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 388, at para. 28.

[5] In support of his claim that the RAD showed inappropriate deference to the RPD, Mr. Ahi points to the statement at paragraph 12 of the RAD's decision where the presiding member stated that, following the Court's decision in *Huruglica*, "I must show a degree of deference to the RPD with respect to its credibility assessment".

[6] While it is true that the RAD did not have the benefit of the Federal Court of Appeal's decision in *Huruglica* when it made the decision under review, a review of the RAD's decision

in this case confirms that the RAD did in fact carry out its own independent assessment of the evidence, coming to its own conclusions on the basis of that evidence.

[7] Indeed, right after the RAD made its statement quoted earlier, the RAD went on in paragraph 12 of its reasons to state that “I must provide my own assessment of the evidence to reach my own conclusion on this appeal”.

[8] Having carefully reviewed the RAD’s decision, this is in my view, exactly what the RAD did.

[9] For example, the RAD considered the evolving nature of Mr. Ahi’s evidence as to which family member had returned to Albania in 2014, after the alleged death of several family members. The RAD quite reasonably determined that the inconsistencies in Mr. Ahi’s evidence on this point raised a major problem with his credibility, explaining at paragraph 19 of its reasons why this is the case.

[10] I do not agree with Mr. Ahi that the inconsistencies in his evidence on this point were either “trivial” or “immaterial”, as this evidence related directly to the risk allegedly faced by Mr. Ahi and the members of his extended family in Albania.

[11] The RPD also found that Mr. Ahi’s evidence as to why he waited four years to leave Albania after two of his cousins were killed in 2011 was “vague and hesitant”. The RAD listened to the tape recording of Mr. Ahi’s RPD hearing and made its own independent evaluation of Mr. Ahi’s testimony on this point. The fact that the RAD came to the same conclusion as did the RPD on this issue, after listening to the testimony, does not mean that the RAD deferred to the RPD on this point.

[12] The RAD was moreover alive to the problems that can arise in making credibility assessments based on the demeanour of witnesses. The RAD noted at paragraph 15 of its reasons that “the demeanour of a witness cannot be given much if any weight in coming to a credibility determination”.

[13] It is true that the RAD did at some points show a degree of deference to the RPD’s findings. For example, at paragraph 29 of its reasons, the RAD noted that the RPD was better positioned than was the RAD to determine whether Mr. Ahi was present at an event recorded on video, given that Mr. Ahi was physically present before the RPD, but not before the RAD. This is not an error, however, as the Federal Court of Appeal specifically noted at paragraph 70 of *Huruglica* that there may be situations where the RPD enjoys an advantage over the RAD in assessing evidence. This was precisely that sort of situation.

[14] Finally, given the problems with Mr. Ahi’s testimony and the ready availability of forged documents in Albania, it was reasonable for the RAD to discount the documentary evidence produced by Mr. Ahi. The RAD also noted inconsistencies in dates referenced in some of the documents produced by Mr. Ahi, providing a further basis for discounting the probative value of the documents in question.

[15] Mr. Ahi has subjected that the RAD’s decision to the sort of microscopic analysis that has been rejected by the Supreme Court of Canada in cases such as *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, and *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708.

[16] Reading the RAD's decision as a whole, as I am required to do, I am satisfied that the RAD properly carried out the mandate entrusted to it by Parliament, as described by the Federal Court of Appeal in *Huruglica*.

[17] I am further satisfied that the RAD's reasons are transparent, intelligible and justified, and that the outcome of the appeal was one that was well within the range of possible, acceptable, outcomes which are defensible in light of the facts and the law: *Dunsmuir*, above at para. 47. In other words, it was reasonable.

[18] Consequently, Mr. Ahi's application for judicial review is dismissed. I agree with the parties that this case turns on its own facts, and does not raise a question that is suitable for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the within application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1487-16

STYLE OF CAUSE: LEONARD AHI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 8, 2016

JUDGMENT AND REASONS: MACTAVISH J.

DATED: SEPTEMBER 9, 2016

APPEARANCES:

Seamus Murphy

FOR THE APPLICANT

Julie Greenspoon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gerami Law PC
Barristers and Solicitors
Ottawa, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Ottawa, Ontario

FOR THE RESPONDENT