

Federal Court



Cour fédérale

Date: 20170111

Docket: IMM-1738-16

Citation: 2017 FC 35

Toronto, Ontario, January 11, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

OSMAN DUBOW-NOOR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Osman Dubow-Noor [the Applicant] has applied for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the RAD] dated April 4, 2016 [the Decision] in which the RAD upheld a decision of the Refugee Protection Division [the RPD] dated September 16, 2015 rejecting the Applicant's claim for refugee protection.

I. Background

[2] The Applicant is a citizen of Somalia who was born on December 30, 1990. He fled to Kenya in 2007. There, he registered with the United Nations High Commission for Refugees. He remained in Kenya until 2014. Then, he returned to Afmadow in Somalia.

[3] The Applicant fears death at the hands of Al-Shabaab because his father was viewed by Al-Shabaab as an opponent. Al-Shabaab has publicly vowed to kill the Applicant's father and his family. The Applicant testified that after his return to Afmadow in 2014, Al-Shabaab targeted his father and attacked the town of Diif, where his father lives. The Applicant said that two people related to his father were killed in the attack, but his father was unharmed because, although he had been in Diif, he had not been at the family home. Diif is a small village of 50-70 inhabitants.

[4] The Applicant also alleges that he is at risk of being kidnapped and forcibly recruited to fight for Al-Shabaab. The Applicant says that while he was sleeping at his sister's home in Afmadow, Al-Shabaab conducted a round up. His sister warned him that Al-Shabaab members were in the house next door. He ran from her house, hid in the bush, and then left Somalia for South America. He eventually arrived in the United States [US], where he was detained and his asylum claim was rejected. He arrived in Canada on July 5, 2015 and made his refugee claim on arrival.

II. The RPD Decision

[5] The RPD noted that there were parts of the Applicant's story that were not reasonably explained. For example, he could not explain why his father was targeted in 2014. His father had opposed Al-Shabaab during the period when it controlled Diif, yet he was not attacked during that time. It was unclear to the RPD why, in 2014, after Al-Shabaab had lost control of Diif, his father would be targeted resulting in an attack on the entire village and death threats to his entire family. The Applicant had no explanation for what could have caused these events.

[6] The RPD also found inconsistencies in the Applicant's statements about his family members. During the hearing, it was determined that he had not included a number of family members in his written forms. He explained that the omissions occurred because he was required to fill out the forms quickly at the border. However, he then gave contradictory evidence saying that he had two weeks to complete the Basis of Claim [BOC] form with the assistance of an interpreter. Thereafter, he completely changed his testimony and testified that he had not included his family members in his US forms, and did not want to prepare Canadian forms that were different. The problem with that explanation was that he had earlier testified that he had not filled out any forms in the US.

[7] With respect to the allegations of forcible recruitment by Al-Shabaab, the RPD preferred the objective documentary evidence. The RPD found that there was no evidence that adults are forcibly recruited and no evidence that Al-Shabaab uses house to house round ups to recruit in areas where it is not in control. At the relevant time, Al-Shabaab did not control Afmadow.

III. The RAD Decision

[8] The RAD dealt with the Applicant's request to introduce new evidence in the form of a document entitled "Shelter Cluster Somalia Mapping Exercise." It is dated December 2014, which was approximately nine months before the RPD's hearing. This evidence showed that another place with a similar name called Diff had a population of approximately 7,000 people. It was presumably adduced to rebut the Board's conclusion that if the attacks in Diif occurred in 2014, the Applicant's father would have been found because Diif is a tiny place.

[9] The RAD looked at Google Maps to explore whether there might be more than one place called Diif or Diff, but was unable to reach a conclusion. The RAD decided that the new evidence did not meet the provisions of section 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, because it was not new, and because it was not obvious that it was relevant.

IV. The Issues

- A. Did the RAD fail to conduct the independent assessment of the evidence required by *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93?
- B. Did the RAD reach conclusions that were not supported by the evidence?
- C. Did the RAD breach principles of procedural fairness by not providing the Applicant with an opportunity to respond to the Google Maps search?
- D. Did the RAD independently review the RPD's finding on implausibility?

V. Discussion and Conclusions

A. *Did the RAD fail to conduct the independent assessment of the evidence required by Canada (Citizenship and Immigration) v Huruglica, 2016 FCA 93?*

[10] The Applicant acknowledges that the RAD did independently assess the evidence dealing with forced recruitment, but contrasts that part of the Decision with the RAD's assessment of the RPD's credibility findings. The Applicant says that, in paragraphs 25 to 27 of the Decision, the RAD simply lists the RPD's findings and agrees with them without any analysis.

[11] I acknowledge that the reasons are sparse, but I cannot say that no independent analysis was undertaken. For example, the RAD concludes that the RPD's finding that Diif has 40 residents, is not supported in the evidence. The RAD also categorizes the credibility concerns and identifies some as part of a larger concern.

[12] The Applicant is particularly critical of the RAD's failure to consider whether to accept the explanations the Applicant provided for his failure to list his family members on his BOC forms. However, in my view, the RAD was not required to analyse those explanations because they had been discredited by the Applicant's own evidence. In this regard, see paragraph 6 above.

B. *Did the RAD reach conclusions that were not supported by the evidence?*

[13] On the issue of forced recruitment, the RPD had said that the documentary evidence showed that adult males were not recruited, and that recruitment did not occur in places where

Al-Shabaab was not in control. Since Al-Shabaab didn't control Afmadow, the RPD concluded that the Applicant's story about a recruiting round up in that town was not credible.

[14] I agree with the Applicant's submission that the documentary evidence suggests that some adult males are recruited, although the majority of recruits are children. As well, there is evidence that Al-Shabaab conducts swift and deadly attacks in areas it does not control. However, the RPD correctly concluded that there was no evidence that house to house round ups occurred in places such as Afmadow, where Al-Shabaab was not in control.

[15] Having found that the round-up in Afmadow did not occur, it was immaterial whether Al-Shabaab was recruiting adults in other places.

C. *Did the RAD breach principles of procedural fairness by not providing the Applicant with an opportunity to respond to the Google Maps search?*

[16] In my view, the RAD did not rely on extrinsic evidence when it consulted Google Maps to try to establish the relevance of the Applicant's new evidence about a larger place called Diff.

[17] It is clear that a search on Google Maps is not extrinsic evidence. In *Gutierrez v Canada (Citizenship and Immigration)*, 2013 FC 623, Mr. Justice de Montigny said:

[46] Second, public documents available on the Internet about the situation in a country that originate from credible and known sources are not extrinsic evidence. These documents were easily accessible on the Internet, and the fact that the officer consulted them and referred to them without advising the applicant is not a breach of the duty of procedural fairness: [citations omitted]

[18] Similarly, in *Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 705, Mr. Justice LeBlanc said “publicly available information is not considered ‘extrinsic’ evidence so long as the evidence is not novel”.

[19] In any event, contrary to the Applicant’s submissions, the RAD did not make any findings about Diif’s location or population based on the Google search. It relied on the Applicant’s evidence that the population of Diif, where his father lived, was 50 – 70 people.

D. *Did the RAD independently review the RPD’s finding on implausibility?*

[20] The Respondent concedes that although the word “implausible” was not used, the RPD made an implausibility finding when it concluded that, if the attack on Diif occurred, and if the Applicant’s father was present and was targeted by Al-Shabaab, it is implausible that he escaped harm given that Diif is a very small village. The Applicant says that in reaching this conclusion, the RAD was obliged to consider the BOC form which had stated that the Applicant’s father was not in Diif during the attack, even though at the RPD hearing the Applicant testified that his father had been in Diif at the time, but not at the family home.

[21] The Applicant relies on a passage from this Court’s decision in *Leung v MEI* (1994), 81 FTR 303 (TD), which is quoted with approval in *Valtchev v Canada (MCI)*, 2001 FCT 776 at paragraph 8. There, the Court speaks about implausibility findings and says:

The appropriateness of a particular finding can therefore only be assessed if the Board’s decision clearly identifies all of the facts which form the basis for their conclusions. The Board will therefore err when it fails to refer to relevant evidence which could potentially refute their conclusions of implausibility...

[My Emphasis]

[22] In my view, this passage does not apply on the present facts. Evidence which could potentially refute conclusions of implausibility must mean relevant trustworthy evidence. The Applicant cannot rely on his own inconsistent statement in the BOC form.

[23] For all these reasons, I have concluded the RAD Decision was reasonable.

VI. Certification

[24] No question was posed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1738-16

STYLE OF CAUSE: OSMAN DUBOW-NOOR v THE MINISTER OF
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