

Federal Court



Cour fédérale

Date: 20180516

Docket: IMM-4733-17

Citation: 2018 FC 513

Ottawa, Ontario, May 16, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MUNASHE JOSEPH GUDU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The refugee protection claim of the Applicant, Munashe Joseph Gudu, was denied by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB]. The basis for the Applicant's claim is that he has been politically active online since 2012, including on Facebook, Twitter, and his own blog, and, as a result, he fears persecution by the Zimbabwe government and its supporters.

[2] The Applicant appealed to the Refugee Appeal Division [RAD] of the IRB, which dismissed the appeal and confirmed the determination of the RPD that the Applicant is neither a Convention refugee pursuant to section 96 nor a person in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] This application for judicial review is with respect to the decision of the RAD.

II. Facts

[4] The Applicant is a national of Zimbabwe born in 1991. He came to Canada in April 2010 to study as an international student at the University of Manitoba. In February 2012, the Applicant returned to Zimbabwe for two or three months.

[5] When the Applicant came back to Canada, he became involved in the University of Manitoba chapter of Amnesty International and student politics. He started a blog, Dzimbabwe, about the political and human rights situation in Zimbabwe.

[6] The Applicant's parents came to Canada in the summer of 2014 and made claims for refugee protection that were accepted by the RPD in February 2015. After the Applicant's student visa expired in 2014, he applied for permanent residence under the Spouse or Common-law Partner in Canada class, which was rejected in May 2016. In September 2016, he made claims for protection pursuant to sections 96 and 97 of the IRPA.

[7] In his Basis of Claim Form, the Applicant states that he has a genuine fear that if he is forced to go back to Zimbabwe he will be arrested on arrival because of his blog. He further fears that he would be targeted because of the family name he carries as his family has always been considered a strong and controversial political family due to his parents' and grandparents' work against the ruling ZANU-PF party.

[8] The claim was heard by the RPD on November 14, 2016. The RPD found that significant problems emerged with the Applicant's credibility as he was prone to exaggeration and mischaracterization of facts on material aspects of his claim. The RPD found that some of the Applicant's assertions about himself were simply false and his allegations were not supported by reliable and trustworthy evidence.

[9] In particular, the RPD found that the Applicant had exaggerated his online role. It also found that the Applicant plagiarized an article he posted on his blog and lied about it under oath, calling into question other articles he claimed to have written. Further, the RPD considered the two-year delay by the Applicant to make a refugee claim to be troubling and his behaviour inconsistent with a genuine refugee. Finally, the RPD found that an internal flight alternative [IFA] existed for the Applicant in parts of Zimbabwe without serious possibility of persecution or risk of harm on a balance of probabilities.

[10] The Applicant appealed to the RAD, which reviewed the RPD's decision as well as conducted an independent assessment of the evidence and arguments. The RAD concluded that the RPD did not have any real advantage in assessing the Applicant's credibility that would lead

to deference for most of its findings. The RAD disagreed with the RPD's finding that the delay by the Applicant in making his refugee claim was determinative of his credibility, but found that there were other factors that weighed against it. The RAD agreed that the Applicant had exaggerated his role with political organizations that were critical of the government in Zimbabwe and that the cumulative effect of the Applicant's exaggerations and misrepresentations undermined his claim. The RAD also found that the Applicant failed to discharge the burden of proof to dispute the existence of an IFA and there would not be more than a mere risk of persecution should the Applicant return to Zimbabwe.

III. Standard of Review

[11] The standard of review to be applied in the review of the RAD's findings and assessment of the evidence is that of reasonableness (*Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93 at para 35).

IV. Analysis

[12] The Applicant alleges that numerous reviewable errors were committed by the RAD. After grouping related ones together, the alleged errors can neatly be listed as follows: (1) the record of the RPD was never disclosed to the Applicant, breaching his right to procedural fairness; (2) the RPD and RAD's credibility findings regarding the Applicant's social media activities and online presence were unreasonable; (3) the RAD was obliged to return the claim to the RPD for an oral hearing as the RAD disagreed with the RPD by finding that the Applicant's delay in making a refugee claim was not determinative of his credibility; and (4) the RPD and

RAD's findings on the existence of an IFA in Zimbabwe were unreasonable. I will deal with each one in turn.

A. *Disclosure of the Refugee Protection Division Record*

[13] First, the Applicant submits that the RAD has a duty to disclose to him the RPD record. No authority or case law is cited for this proposition. I note that Rule 21(2) of the *Refugee Appeal Division Rules*, SOR/2012-257, is silent in that regard and does not require the RPD to provide a copy of the record to the parties, presumably because they have copies of their own documents. Counsel for the Applicant conceded at the hearing of the application that a copy of the appeal record was not requested from the RPD or RAD, nor was the issue raised before the RAD. Counsel also acknowledged that any prejudice that may have arisen was cured by the production of the certified tribunal record. In the circumstances, no breach of procedural fairness has been established.

B. *Credibility Findings*

[14] Second, the Applicant claims that the RPD and RAD's credibility findings regarding his social media activities and online presence were unreasonable. However, other than disagreeing with the findings, the Applicant has not identified any specific error made by the RAD in its credibility assessments. Upon carefully reviewing the tribunal record and the RAD's decision, I conclude that the RAD's findings are properly supported by the evidence.

[15] Given that the facts were extensively reviewed by the RAD, it is not necessary to recite them in detail. I would simply make the following observations.

[16] The RAD found that the cumulative effect of the Applicant's exaggerations and misrepresentations undermined his claim. The RAD noted that some might not have been as serious as set out by the RPD, but they were present. The RAD explained that credibility findings must be considered in the context of other credibility concerns for the overall finding that there was not sufficient credible and trustworthy evidence.

[17] The RAD noted that some credibility findings of the RPD were serious, such as the misrepresentation that the Applicant authored an article on his blog when he did not and that he posted significant political information on Facebook. The RAD found that, for the most part, the RPD satisfactorily separated the allegations that were unfounded, such as Facebook activities, from those that were supported by the evidence, like the existence of a blog and his parents' political activities. The RAD's findings on credibility in this case are reasonable and adequate. Intelligible reasons for its findings have been provided.

[18] Both the RPD and RAD found that the Applicant had exaggerated or made misleading statements regarding his online role by describing himself as a "curator", a "strong advocate" or a "media activist". The Applicant submits that these descriptions of himself are simply matters of "appreciation" or "opinion", and different from matters of fact. He maintains that the RPD and RAD misused the concept of credibility to tie such differences to credibility concerns. I disagree. The very function the RPD and RAD is to assess the claim made by a refugee claimant. The

Applicant cannot avoid scrutiny of his own words by merely characterizing them as opinion. It was reasonably open to the RAD on the evidence before it, or the lack thereof, to conclude that the Applicant was exaggerating his stature and involvement in political activism. The same can be said about his description of his father's role in the Movement for Democratic Change [MDC] as a "founder". His father was no doubt a member of MDC from the beginning. However, there is significant difference between a founder of a political party and a simple member or supporter.

[19] The RPD and the RAD also took a dim view of the Applicant's characterization of Gweru, a city in Zimbabwe where his siblings were allegedly in hiding, as "remote and backward". The Applicant claims that the RAD erred in finding that "to call Gweru remote and backward is an exaggeration". The Applicant argues that it was simply meant in comparison to the capital Harare. However, the RAD rejected the explanation because the Applicant's choice of words was not comparative, but stated objectively. The Applicant has failed to establish that the finding was unreasonable.

[20] It was perfectly acceptable for the RPD and RAD to reject the Applicant's unfounded and self-serving statements that were intended to buttress his claim for refugee status. On the basis of the record before me, I am satisfied that due consideration was given to the evidence and that the RAD's findings regarding the Applicant's credibility were reasonable.

C. *Delay in Making the Claim*

[21] Third, as noted earlier, the RAD disagreed with the RPD's finding that the delay by the Applicant in making his refugee claim negatively impacted his credibility. The Applicant

submits that, in the circumstances, the RAD ought to have returned the matter back to the RPD for redetermination. I disagree. The RAD is not obliged to return a matter to the RPD where it concludes the RPD has erred in fact, law, or mixed fact and law even with respect to errors the RPD may have made in assessing credibility if the weight given to testimony or a document is not essential to determining whether the RPD's decision should be confirmed or set aside. In such case, the RAD may make its own decision without referring the matter back to the RPD (see *Liao v Canada (MCI)*, 2017 FC 1163 at para 39).

D. *Internal Flight Alternative*

[22] Fourth, the Applicant submits that the issue of an IFA is irrelevant when the state is the feared agent of persecution. The RPD found, based on the Applicant's parents' evidence and profiles, that the Applicant may face some risk if he returns to Zimbabwe, but also found that he had an IFA in Bulawayo. The Applicant questioned whether an IFA can be an issue where the state is the feared agent of persecution.

[23] The Applicant submits that the RAD failed to articulate clearly and consider accurately an IFA in combination with the feared agents of harm, in this case the state itself. However, the RAD did tackle this issue. It is common ground that the Applicant's parents did not have an IFA when their claim for refugee protection was accepted. However, the RAD reasonably concluded that a lack of an IFA for the Applicant's parents did not equate to a lack of an IFA for the Applicant as "these are different claims with different facts". The RAD noted that the Applicant did not provide any documentation to counter country conditions information indicating that returnees to Bulawayo will in general not suffer the adverse attention of ZANU-PF even if he or

she has a significant MDC profile. This is a reasonable finding based on the evidence before the RAD.

V. Conclusion

[24] Being substantially in agreement with the Respondent's written and oral submissions, which I adopt and make mine, I conclude that the application should be dismissed.

[25] The Applicant submitted a proposed question for certification for the Court's consideration: "Where the RPD decides that a factor is determinative of the credibility of a claimant and the RAD determines it is not, must the RAD refer the claim back to the RPD?" Given that the premise of the question has not been established on the facts of this case, certification is declined.

JUDGMENT IN IMM-4733-17

THIS COURT'S JUDGMENT is that:

The application is dismissed.

"Roger R. Lafrenière"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4733-17

STYLE OF CAUSE: MUNASHE JOSEPH GUDU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: MAY 14, 2018

JUDGMENT AND REASONS: LAFRENIÈRE J.

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