Federal Court  Cour fédérale

Date: 20190423

Docket: IMM-4741-18

Citation: 2019 FC 503

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, April 23, 2019

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

SERGE FAHAD BRAHIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated August 23, 2018, which dismissed the applicant's appeal from a decision of the Refugee Protection Division [RPD] dated October 13, 2016.

II. Facts

[2] Serge Fahad Brahim [the applicant] is a Chadian who was born on April 25, 1995, and who claimed refugee status in Canada in August 2016.

[3] On June, 3, 2016, the applicant learned from his mother that his father had decided marry him off against his will to the daughter of a certain Hassan Adoun, whom the applicant did not know. Since the applicant refused to marry this woman, the following day, his mother attempted in vain to convince his father to abandon the proposed marriage. The applicant's father was so enraged that he became violent. He struck the applicant's mother and beat the applicant with an electric cable. He then kicked the applicant and his mother out of the house, and they sought refuge at a maternal cousin's home.

[4] The applicant alleges that the Chadian authorities do not offer any protection to victims of forced marriages or domestic violence. Moreover, the applicant alleges that his father had the means at his disposal to ensure that nothing would come of his complaint, given his father's relationship with Chadian police.

[5] For these reasons, the applicant fled Chad on July 30, 2016, and after passing through the United States, he claimed refugee protection in Canada in August 2016.

[6] The applicant's claim for refugee protection was heard by the RPD on October 13, 2016. Although the RPD found the applicant to be credible, it denied his claim on the basis that there

was an internal flight alternative [IFA], particularly in the cities of Mongo, Bongor and Abéché, in Chad.

[7] The applicant appealed the decision to the RAD. The RAD dismissed the appeal on August 17, 2018.

III. Impugned decision

[8] The RAD first confirmed the RPD's finding with respect to the applicant's credibility, the RPD having rejected all the Minister's allegations raising credibility issues.

[9] The RAD then analyzed the RPD's IFA findings. The RAD found that the RPD had properly applied both prongs of the IFA test.

[10] First, the RPD correctly asked itself whether there was no serious possibility that the applicant would be persecuted in part of the country where there was an IFA. The RAD also noted that when the RPD interviewed the applicant about the flight alternative elsewhere in the country, he replied that his father would not be able to locate him. Thus, by his own admission, the father could not locate the applicant and bring him back home.

[11] Second, the RPD considered the conditions in the proposed IFA to determine whether it would be unreasonable to seek refuge there upon consideration of all the circumstances, including those of the applicant.

[12] The RAD took into account the applicant's argument that he would not have the financial means to break free of his father. However, the RAD noted that he went to a neighbouring country with his mother for health treatments, that he travelled to the United States and that he was very resourceful in travelling onwards from New York City to the Canadian border by a forest trail. The RAD considered the applicant's argument that he contemplated breaking away from his family, but that he could not because he did not have any means of transportation to do so. The RAD concluded that considering that the applicant has family elsewhere in the country, that he and his mother were able to hide for several weeks at a relative's house in another area of the capital, that his father never came for him, and that he is well educated, the applicant would be able to find a job and make a decent living elsewhere in the country, including in Abéché, the city where some of his relatives live.

IV. Issues

The applicant raises only one issue, namely, whether the RAD erred in finding that the applicant had an IFA in Chad.

V. Standard of review

[13] The RAD's IFA finding should be reviewed on a standard of reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 59; *Verma v Canada (Citizenship and Immigration)*, 2016 FC 404, at para 14; *Louis v Canada (Citizenship and Immigration)*, 2016 FC 923, at para 13).

VI. Analysis

A. *Applicant's submissions*

[14] The applicant argues that the RAD erred, as its finding that there was an IFA completely ignores the applicant's testimony that his father had acquaintances in the Chadian police who could easily locate him and bring him to his father, no matter where he moved to in Chad.

[15] During the hearing before the RPD, the applicant testified in detail about his father's contacts in the police force in his country of origin. Consequently, the proposition put forward by the RPD and adopted by the RAD that the applicant could find refuge in a city like Abéché or other is untenable because this proposition does not take into account the applicant's testimony that all it would take was for him to be located by one of his father's many contacts in the police and he would be brought back to his father.

[16] The applicant also submits that the disregard for the testimonial evidence warrants the Court's intervention as the ignored testimony was central to the IFA issue, especially since neither the RPD nor the RAD doubted the applicant's credibility when he testified about his father's relationship with Chadian police. He submits that by relying solely on certain passages of the applicant's testimony without taking into account other parts of his testimony as reported in the affidavit of Rosalie Caillé-Lévesque, the RAD committed a reviewable error of law, as it should have assessed all the evidence, both oral and documentary, that must be considered and assessed, not just selected portions.

[17] The applicant further submits that by ignoring his testimony about his father's relationship with Chadian police in its analysis of the IFA, the RAD overlooked the fact that in the case of conflict or an emergency, the applicant will not be able to at any time approach police authorities in Mongo, Bongor or Abéché or elsewhere, because he will always fear that this would allow his father, who has contacts in the police, to find him. Such an expectation is completely unreasonable and warrants the Court's intervention.

[18] Finally, the applicant submits that the RAD's analysis (and that of the RPD) in determining whether there was an IFA is also problematic in alleging that his persecutor (his father) would be unable to find him if he were to relocate to Mongo, Bongor or Abéché, as this implies that the applicant would have to constantly modify his behaviour, limit his activities/communications, remain discreet at all times and be constantly vigilant so as not to be detected by his persecutor and/or his father's contacts in the police or other areas. The RAD necessarily requires the applicant to refrain from posting and browsing the Internet for fear of being found by his father. The applicant alleges that the RAD's conclusion thus violates his right to express himself freely and make his ideas known by any means of expression.

[19] The applicant submits that it is not reasonable to require him to so limit his rights in order to avoid persecution.

B. *Respondent's submissions*

[20] The respondent submits that the RAD's decision is immune from the intervention of this Court, as it is reasonable and supported by clear and detailed reasons.

[21] The RAD conducted its own analysis of the evidence in the record, in accordance with the recent teachings of the Federal Court of Appeal in *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799, and concluded, as the SPR did, that the applicant had an IFA in his country of origin, specifically in Abéché. This finding by the RAD is based on the following elements:

- By the applicant's own admission during the hearing before the RPD that his father would be unable to find him outside the capital city of N'Djaména, such as one of the three following cities, Mongo, Bongor or Abéché (RAD's Reasons, para 28, AR at p 11);

- The applicant remained hidden with his mother for several weeks at a relative's house in another area of the capital, and his father never came for them. It must therefore be concluded that the applicant's father would not keep looking for him if he relocated to Abéché (RAD reasons, para 30, AR at p 11);

- The applicant is well educated and would therefore be able to find a job and make a decent living in Abéché, the city some of his relatives live.

[22] As a result, the RAD upheld the RPD's finding that there was an IFA available to the applicant.

[23] The respondent maintains that, in this case, by accepting the applicant's own admission that his father would be unable to find him outside of N'Djaména, the RAD was of the view, as

was the RPD, that if the applicant were to move outside the capital to Mongo, Bongor or Abéché, he would be able to live there safely.

[24] The RAD's finding is certainly reasonable in that it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" as dictated by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47.

[25] The respondent also submits that the applicant's claim that the RAD's finding ignored another part of his testimony, according to which he could be found by his father's contacts in the police no matter where he was, is not supported by the reasons of the RPD and the RAD. The reasons show that both courts took into account the testimony given by the applicant at the hearing, but rather accepted the response he provided spontaneously when asked whether he feared his father outside the capital: [TRANSLATION] "he cannot find me". Similarly, when asked about the possibility of moving to another city, the applicant did not respond that he would be found, but spontaneously replied that he had thought about it but did not do it [TRANSLATION] "for lack of means". As a result, the RPD noted as follows in paragraph 31 of its reasons: [TRANSLATION] "This is the main issue, as he states that his father would not be able to find him outside N'Djamena". Thus, it appears that neither the RPD nor the RAD accepted the applicant's assumption that if he were to go to another police station, it would be reported to his father.

[26] The applicant's submissions essentially ask the Court to substitute its opinion for that of the RAD. However, this is not the Court's role on judicial review (*Paradi v Canada (Citizenship*

and Immigration), 2013 FC 996, at para 40; *Cina v Canada (Citizenship and Immigration)*, 2011 FC 635, at para 67).

C. *Discussion*

[27] International protection is a measure of last resort. An applicant must first explore the option of relocating in his or her country before claiming refugee protection elsewhere. The burden of proof on an applicant is a heavy one, and the threshold is very high when an applicant alleges that it would be unreasonable to seek refuge in another part of the country. The applicant must prove actual and concrete evidence of conditions which would jeopardize his life at the place mentioned by the RPD and the RAD (*Ranganathan v Canada (Minister of Citizenship and Immigration)* [2001] 2 FC 164 (FCA), at para 15; *Campos Navarro v Canada (Citizenship and Immigration)*, 2008 FC 358, at para 20; *Olivares Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 443, at para 22).

[28] In this case, while the applicant testified that he feared his father in the capital, when the tribunal asked him whether he would have that same fear in Mongo, Bongor or Abéché, he replied: [TRANSLATION] “he cannot find me”. This declaration represents an admission against interest.

[29] Generally speaking, it is not advantageous for a person to say things that are not in his or her best interests. As such, it is reasonable to assume that when a person makes such a declaration, he or she is likely to be reliable, as a person would not wilfully make a false statement that is prejudicial to his or her interests. Consequently, a person’s written or oral

admissions that are contrary to his or her interest are admissible as evidence of the facts contained in the statements, and carry considerable weight providing that the person making the statement has full knowledge of the facts stated (*Thyssenkrupp v 1147335 Ontario Inc*, 2013 ONSC 485 (QL), at para 111; *Uyj Air Inc v Barnes*, 2011 ONSC 3847 (QL), at para 20; *St Hilaire v Kravacek* (1979) 26 OR (2e) 499, at pp 503-504; *Aventis Pharma Inc v Apotex Inc*, 2005 FC 1283, at para 202).

[30] Since the RAD decision is largely based on this admission against interest, it is not for the Court to reweigh the evidence. The role of the Court is limited in the context of judicial review of findings of fact: the Court may intervene only if the findings of fact are clearly wrong, or if they are capricious or without regard for the evidence.

[31] Indeed, as I noted in *Abiobun v Canada (Citizenship and Immigration)*, 2019 FC 299, at para 10, as long as there is evidence to support the RAD's finding of fact, the RAD has not made any reviewable error, and the Court cannot intervene to reassess the evidence that was before the RAD. In short, the Court ought not interfere with the finding of fact of a tribunal, absent palpable and overriding error (*Jean Pierre v Canada (Immigration and Refugee Board)*, 2018 FCA 97, at para 53; *Housen v Nikolaisen*, 2002 SCC 33, at para 113).

[32] In this case, there is no palpable and overriding error. The RPD and the RAD both concluded that the applicant would be able to find employment and make a decent living elsewhere in the country, including in Abéché, the city where some of his relatives live, and that there therefore was an IFA. Such a conclusion is entirely reasonable on the facts.

VII. Conclusion

[33] The application for judicial review is therefore dismissed.

[34] The parties have not submitted any questions of general importance for certification, and this case does not raise any.

JUDGMENT in IMM-4741-18

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The style of cause is amended to name the Minister Citizenship and Immigration as the respondent;

3. No question of general importance is certified.

"Peter Annis"
Judge

Certified true translation
This 14th day of May, 2019

Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4741-18
STYLE OF CAUSE:	SERGE FAHAD BRAHIM v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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