Federal Court  Cour fédérale

Date: 20190605

Docket: IMM-4762-18

Citation: 2019 FC 784

Ottawa, Ontario, June 5, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

DAWIT SOLOMON WORKU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a national of Ethiopia who seeks judicial review of a decision of the Refugee Appeal Division (RAD) dated September 5, 2018, which upheld the denial of his refugee claim by the Refugee Protection Division (RPD). This is the second reconsideration of the Applicant's appeal from the RPD decision. A judicial review of the first RAD decision was granted by this Court in *Worku v Canada (Citizenship and Immigration)*, 2017 FC 887 [*Worku*].

[2] On the second reconsideration, the Applicant's appeal was again denied. The determinative issues for the RAD were credibility and the trustworthiness of his evidence with regards to his allegations of persecution.

[3] For the reasons that follow, this judicial review is dismissed as the decision of the RAD is reasonable and the Applicant has not demonstrated any reviewable errors.

Background

[4] In September 2015, the Applicant, Dawit Solomon Worku, acquired a multiple entry visa to travel to Canada to visit family. He first traveled to Canada in October 2015 and then returned to Ethiopia. In May 2016, he again traveled back to Canada, and in June 2016 he filed a refugee claim alleging a fear of persecution by the Ethiopian People's Revolutionary Democratic Front (EPRDF) for being an opponent of the government and a member of the Semayawi Party (the "Blue Party").

[5] The Applicant claims that he is of Amharic ethnic background and studied at Addis Ababa University. He is an employee of Ethiopian Airlines as a customer service agent. He claims to have joined the Blue Party in 2013 after talking to a colleague who was also a party member. In September 2013, he was allegedly detained and beaten by authorities after attending a demonstration. He alleges that he was released only after signing a document that he would not mention being imprisoned and that he would not participate in future demonstrations.

[6] The Applicant claims that in May 2016 his mother was told by a friend that the government was planning to arrest him, which is why he fled to Canada. The Applicant produced two summonses allegedly issued by the police requiring him to attend at the police department for questioning.

[7] During his time in Canada, the Applicant claims to have participated in political events.

[8] The Applicant's refugee claim was heard by the RPD on September 21, 2016. The Minister of Immigration, Refugees and Citizenship Canada intervened in the refugee claim and raised credibility issues. On October 4, 2016, the RPD rejected the claim by finding the Applicant had not credibly established his claim. His judicial review of the first RAD decision was granted by Justice Locke of this Court in *Worku*.

[9] This is a judicial review of the second RAD decision dated September 5, 2018.

RAD Decision

[10] The RAD dismissed the appeal and confirmed the decision of the RPD in finding that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[11] On redetermination, the Applicant did not request an oral hearing but he did seek to introduce the following as new evidence:

- The Applicant's Affidavit dated November 16, 2017;

- Photographs of the Applicant attending two political events in Canada; and
- An article from the New York Times dated November 5, 2017.

[12] Subsection 110(4) of the *IRPA* and the *Refugee Appeal Division Rules*, SOR/2012-257 provides that only evidence that arose after the rejection of the claim or that was not reasonably available at the time of the rejection of the claim can be considered.

[13] Accordingly, the RAD accepted the Applicant's affidavit and the photographs as new evidence and relevant to his claim based upon his political activities in Canada. However, the RAD did not accept the New York Times article as "new evidence" because such information on general country conditions was before the RPD in the form of a National Documentation Package (NDP) on Ethiopia dated April 29, 2016.

[14] On the credibility findings, the RAD agreed with the RPD's negative credibility findings. The RPD noted that the Applicant traveled to various countries, after the alleged 2013 detention, but he failed to seek asylum, and instead returned to Ethiopia. The Applicant's explanations for not doing so were not credible, especially considering the NDP regarding Ethiopian political dissidents.

[15] With regard to his political involvement, the RPD found the Applicant's knowledge of the Blue Party's mandate and goals to be minimal and superficial. The RPD determined that the Applicant failed to establish that he was an active or influential member in the Blue Party such that his activities came to the attention of the EPRDF, especially as he had no particular role or

title. The RPD found that the letter purportedly from the Blue Party supporting the Applicant's membership was unreliable as it was inconsistent with how such letters are typically formatted and obtained based upon the information in the NDP. The RAD agreed with these findings and gave the letter from the Blue Party no weight as corroborating evidence and it added to the overall credibility concerns.

[16] The RAD found the two alleged summonses to be unreliable and they were given no weight. Their formatting was inconsistent with the NDP information and the RPD found it unusual that the EPRDF, which is known for arbitrary arrests and detention, would issue two police summonses against the Applicant and there be no consequences to the Applicant's family still in Ethiopia for his failure to comply.

[17] The RAD also found that the Applicant's description of the treatment of his family in Ethiopia was not consistent with the documentary evidence of how they would be treated if indeed the police were looking for the Applicant.

[18] Finally, the RAD determined that given the Applicant's limited political profile, he would not be someone who would be a target of the EPRDF. The RAD concluded that there was no evidence that the Ethiopian authorities or their agents had been monitoring the Applicant and noted that there was no credible evidence that the photographs of the Applicant in political events in Canada have or will come to the attention of Ethiopian authorities such that he may be targeted by authorities resulting in serious possibility of persecution should he return there.

Issues

[19] The Applicant raises the following issues:

a) On reconsideration did the RAD fail to follow the Federal Court decision?

b) Did the RAD make unreasonable inferences?

c) Did the RAD err in the *sur place* analysis?

Standard of Review

[20] The decision of the RAD is to be reviewed by this Court on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[21] The Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 confirmed that the RAD is to carry out its own analysis of the record and intervene when the RPD is wrong in law or in fact or both. In assessing the credibility of oral evidence, however, the RAD is to recognize that the RPD may have a meaningful advantage as the RPD has the opportunity to directly observe the Applicant.

[22] The RAD's interpretation of subsection 110(4) of the *IRPA* must also be reviewed in light of the reasonableness standard and with deference because of the presumptive expertise of the RAD on the interpretation of its home statute (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 74).

Analysis

On reconsideration did the RAD fail to follow the Federal Court decision?

[23] The Applicant argues that on redetermination the RAD made the same errors as the first RAD panel as noted by Justice Locke, as he then was, in *Worku* at paragraph 7, as follows:

> With regard to the second of the above-listed arguments by the applicant, the RAD stated that "[t]he treatment of [the applicant's] family is not consistent with the documentary evidence which indicates that family members of persons wanted for questioning are typically detained." In support of his statement, the RAD cites two documents: a US Department of State document and a Response to Information Request. However, from my reading of these documents, they do not support the RAD's statement. Though arrests of family members have occurred, I am not convinced that this is typical. I conclude that the RAD's statement was unsupported, and its inference therefrom concerning the applicant's credibility was unreasonable. [emphasis added.]

[24] The Applicant argues that on redetermination the RAD repeats these same errors in paragraphs 29 and 30 of its decision as follows:

> The RPD further noted the treatment of his family in Ethiopia was not consistent with the documentary evidence indicating that security forces detain family members of persons sought for questioning by the government. The RPD explained:
>
> > [g]iven the alleged interest in the claimant having been issued two summons, it is likely that the claimant's family members would be arrested and detained in an attempt to force the claimant to report as directed. Other than the authorities searching the home of the claimant, the claimant's family members remaining in Ethiopia did not indicate in their respective affidavits that they have been arrested or have been threatened with arrest by the authorities.

> The appellant has (again) not challenged the RPD on this point. The RAD finds no error in the RPD's analysis or finding. The RAD agrees with the RPD that the fact the appellant's family has not been detained despite his allegation that he is being sought for questioning detracts from the credibility of the appellant's alleged political profile and that he is in fact wanted by authorities.

[25] The Applicant relies upon upon the Federal Court of Appeal decision in *Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48 at paragraph 25 where the Court states: "…[I]t goes without saying that an administrative tribunal to which a case is referred back must always take into account the decision and findings of the reviewing court, unless new facts call for a different analysis."

[26] While I agree with the Applicant that on redetermination the RAD was required to take into account the *Worku* decision, I do not agree that the above analysis indicates a failure by the RAD to do so. Specifically, on redetermination the RAD did not find that family members wanted for questioning are *typically* detained but, rather, found the fact that the Applicant's family members had not been detained despite two summonses allegedly issued against the Applicant. This fact in conjunction with the country condition evidence detracted from the Applicant's credibility. The finding was also supported by the fact that the Applicant's documentary evidence was found to be unreliable, and he was found to have "minimal and superficial" knowledge of the Blue Party's objectives. These findings were based upon a consideration of the totality of the evidence. Accordingly, I do not agree with the Applicant's position that the redetermination was done without regard to the *Worku* decision.

[27] Furthermore, when considered in the fuller context of the RAD's findings which are supported by the negative credibility findings made by the RPD, and not challenged by the Applicant, this determination was reasonable.

Did the RAD make unreasonable inferences?

[28] The Applicant argues that the RAD made unreasonable inferences in relation to his risks because of his political activities. He argues that the RAD statement at paragraph 22 is later contradicted by the RAD. Paragraph 22 of the decision states as follows:

> The RAD had also carefully reviewed the country documents. The objective evidence indicates that the authorities harass and detain members and supporters of opposition parties; there are reports that the government regularly arrests political opponents and subjects them to intimidation, abuse, and torture, while dissidents are kept under surveillance. The Ethiopian government has prevented political opponents from traveling abroad.

[29] The RAD then goes on to conclude that, because the Applicant was not "active or influential" in the Blue Party, he would not be a target despite this country condition evidence.

[30] However, the RAD did not find that the Ethiopian government *only* persecutes "active and influential" government opponents. The Applicant's claim to be a member of the Blue Party was found to lack credibility, and the RAD therefore concluded that without more evidence, his limited profile would not put him at risk with the EPRDF. This finding was supported by the fact that the Applicant was able to travel to and from Ethiopia extensively without issue, and that he worked for Ethiopian Airlines, which is owned by the Ethiopian government. These factors indicate that he was not wanted by Ethiopian authorities. Further, the fact that he did not claim

protection in the other countries he traveled to following his alleged detention led the RAD to reasonably doubt his claim that he feared the Ethiopian government.

[31] The RAD found no error in the RPD's analysis or credibility findings. This is a reasonable finding and there is no basis for this Court to intervene.

Did the RAD Err In The Sur Place Analysis?

[32] The Applicant argues that the RAD erred by failing to consider the most recent information in the NDP to assess the *sur place* claim. The Applicant argues that, by ignoring the most up-to-date NDP evidence, the RAD inaccurately determined that he does not fit the profile of someone who would be targeted by the EPRDF. The Applicant relies on news articles that discuss how the Ethiopian government may be monitoring political dissidents in the Ethiopian diaspora, and that this was crucial evidence that should have been considered by the RAD.

[33] I disagree with the Applicant that the RAD was bound to consider the newest NDP information when there was no indication that the information was a significant departure from the 2016 information which was referenced by both the RPD and the Applicant when his claim was considered by the RPD (*Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14 at paras 19-16).

[34] In order to establish a *sur place* refugee claim, applicants must demonstrate that they have a well-founded fear of persecution. To do this, they must establish that there is a "reasonable chance" or a serious possibility as opposed to a minimal or mere possibility that they

will be persecuted (*Sebastiao v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 803 at para 13).

[35] Here the Applicant is relying solely upon the NDP evidence as the basis upon which to support his argument that there is a possibility of persecution on return to Ethiopia. However, such evidence on its own is insufficient to establish the Applicant's *sur place* claim, when there are underlying credibility and evidentiary issues as noted above. The Applicant failed to establish with credible evidence that his involvement with the Blue Party was of such significance that he would have the profile, or that he would be of interest, to the authorities in Ethiopia. There were significant inconsistencies and contradictions with the Applicant's evidence. As well, there were significant irregularities in the documents he offered into evidence, which led to the conclusion that there was no reliable evidence to demonstrate that there was a well-founded fear of persecution within the meaning of section 96 of the *IRPA*. Furthermore, there were no substantial grounds to believe that he would be exposed to a risk on his life or to a risk of cruel and unusual treatment or punishment within the meaning of section 97 of the *IRPA*.

[36] Overall, it was reasonable for the RAD to conclude that the Applicant did not have a well-founded fear of persecution given his extensive travel history without incident, the credibility issues surrounding the central 2013 event, as well as the lack of evidence that his political activities in Canada could have an impact on his or his family's safety in Ethiopia. This was a reasonable determination for the RAD to make which fell within a range of possible, acceptable outcomes.

JUDGMENT in IMM-4762-18

THIS COURT'S JUDGMENT is that this judicial review is dismissed. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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