Federal Court Cour fédérale

Date: 20190614

Docket: IMM-5548-18

Citation: 2019 FC 819

Ottawa, Ontario, June 14, 2019

PRESENT: Mr. Justice Roy

BETWEEN:

ADNAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application made pursuant to Section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the Act] concerning a decision of the Refugee Appeal Division [RAD] of October 12, 2018. The decision under review is with respect to an appeal from a decision of the Refugee Protection Division [RPD] (November 30, 2016). The decision under review found that Mr. Adnan is not a refugee or a person in need of protection (Sections 96 and 97 of the Act).

I. Facts

[2] The applicant is a citizen of Pakistan who claims a fear of retaliation by an extremist imam in his village for having helped organize a vaccination campaign against polio. Out of the two Mosques in the village, one is run by a religious extremist who also runs a madrassa (presented as a religious school) where ten teachers educate some 500 students.

[3] According to the applicant, about 20 to 30% of the villagers (out of around 10,000) support the Mosque where extremist views are held, which includes considering that vaccination against polio is against Islam: the vaccine contains "prohibited ingredients" and leads to infertility.

[4] One of Mr. Adnan's friends asked him in March 2016 to help with a vaccination campaign which was to take place with the assistance of three teams sent to the village. The applicant claims that the imam warned him through supporters not to participate in the campaign, yet he assisted by going door-to-door; some 2000 families were reached over a period of 20 days. The vaccination started on May 4, 2016 and continued for two more weeks. Tents were set up on the applicant's land and flags identifying where vaccination was taking place were floating. Mr. Adnan administered himself the vaccine to 40 children.

[5] Mr. Adnan came to Canada, later that month, for a business trip that was to last one week. Instead of returning to Pakistan, he claimed refugee status on August 3, 2016. The allegation is that, after his departure from Pakistan, the imam, with followers, attacked his father.

The police refused to intervene when the matter was reported to them. He heard of these developments from his mother on June 10. As for the friend who got the applicant involved in the vaccination campaign, the applicant claims that he disappeared shortly thereafter, according to a newspaper article (June 20). A religious edict (fatwa) was issued on July 10, calling for the killing of the applicant and his father.

II. Decision under review

[6] In its decision dated October 12, 2018, the RAD confirmed that Mr. Adnan is not a Convention refugee or a person in need of protection. Fundamentally, the RAD agreed with the RPD that the applicant's allegation is implausible.

[7] The RPD did not believe the applicant on a number of fronts:

- The RPD did not believe that the imam and his followers, who had already warned the applicant, would not have done anything to disrupt such a campaign which was public and conducted over a long time period;

- The conspiracy, alleged at some point by the applicant, between the police and the imam is not to be believed;

- The evidence about the father's beating and the fatwa is not convincing;

- The absence of specificity in the article reporting on the disappearance of the applicant's friend limited significantly its probative value.

In essence the RPD did not believe that the imam would not have been advised about a vaccination campaign of that magnitude: 2,000 children were vaccinated in a very public effort over a period of two weeks, following an information campaign that lasted four weeks.

[8] The grounds of appeal before the RAD were that the RPD's decision was based on speculations, that it was unreasonable to rely on the behaviour of third parties and that probative value ought to be given to the documentary evidence offered by the applicant.

[9] First, the RAD rejected Mr. Adnan's arguments that the RPD's conclusions were speculative and based on the behavior of third parties. The RAD believed that Mr. Adnan participated in a vaccination campaign, but found implausible that he was now persecuted because of this involvement (*Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155, at para 10; *Ansar v Canada (Citizenship and Immigration)*, 2011 FC 1152, at para 17). The RAD also noted the RPD's reasons mentioning that if the imam was an extremist with such a strong influence, people would have acted to stop the campaign in his absence; the other imams of the mosque and the madrassa, the parents of the children studying at the madrassa, people attending the mosque, people linked to the same extremist group as the imam or the policemen were all candidates for taking steps to stop the vaccination campaign that is presented as being so offensive to extremists.

[10] Regarding the evidence of persecution, the RAD noted the documented attacks on polio workers by extremist Islamic groups. However, given that the vaccination campaign lasted six weeks without any incident, the RAD concluded that the imam (if he existed) and his followers

had no issue with the vaccination. Fundamentally there would have been an intervention much earlier. There is no indication that the campaign was clandestine. In fact it appears that it was quite public.

[11] Finally, the RAD confirmed that the following documentary evidence should not have been given any probative value: (i) the father's police complaint, the father's affidavit, the medical certificate, a lawyer's letter declining to take a case, and the fatwa, because a general negative credibility finding can be extended to documents and there was no independent and credible documentary evidence capable of supporting a positive decision (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 [*Sellan*] at para 3; *Moriom v Canada (Citizenship and Immigration)*, 2015 FC 588 at paras 24-27), and (ii) the newspaper article about the applicant's friend, because there lacks information on its source. The RAD also noted, although it was not determinative, that there were contradictions in the spelling of the father's name, and that the online articles on polio vaccination were followed by suggested articles on loopholes to get money in Canada.

III. The issues

[12] Three issues are raised on the judicial review:

- Lack of independent analysis of the evidence;
- The decision is speculative and it ignores some facts;
- Ignorance of country conditions.

[13] I note that no new evidence was offered by the applicant to the RAD and no hearing took place. Furthermore, as instructed in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157, the RAD applies on appeal the standard of review of correctness, which means that the RAD does not have to show deference to the findings made by the RPD. This is in line with the finding of the Court of Appeal.

> [97] Rather than systematically holding a second hearing on appeal, which might delay the RAD's final decisions on refugee claims, the claimants' second "kick at the can" on appeal (see paragraph 89 above) was to be done on the basis of the record before the RPD, except in limited cases where new evidence would be admitted and the requirements of subsection 110(6) were fulfilled.

IV. <u>Standard of review and analysis</u>

[14] There is no doubt that the standard of review of the RAD on appeal from the RPD is correctness, the so-called "second kick at the can". However, on judicial review of the RAD'S decision, the standard is reasonableness. That implies deference towards the decision, reasonableness being "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47). That was the applicant's burden to satisfy the Court that the RAD's decision was not reasonable, a burden he was not successful in discharging.

[15] First, I fail to see why the agreement of the RAD concerning the conclusions reached by the RPD signals a lack of an independent analysis on appeal. This is not a case that had many

complexities. At the heart of this case, there is an imam, said to be a religious extremist, who warns the applicant, through followers, after he has been approached by a friend to assist in a campaign in favour of a polio vaccination on a grand scale in his village, not to support the campaign. The imam is said to be powerful and has the support of 30% of the population of the village. Nevertheless, the applicant is front and center in that campaign, which lasts six weeks, yet he is not threatened in any way by villagers, followers, teachers at the madrassa or the imam himself. The fact that the imam may have been outside the village does not explain how the campaign was ignored: it was anything but clandestine and polio vaccination is presented as being forbidden by some religious fanatics.

[16] The vaccination was barely completed that the applicant was leaving for Canada on a business trip, but on a visitor visa issued on April 18, 2016, which took him to Canada on May 31 (the vaccination *per se* started on May 4 and we are told lasted two weeks). The applicant, who is the youngest child of a family of seven children, did not provide many details about his business (leather goods) and the business trip that brought him to Montreal. The Basis of Claim form recounts the basic events. I note that the father's affidavit did not provide any granularity to the basic story.

[17] The applicant did not supply any evidence that would not have been considered and there is no merit to the allegation that the RAD did not apply the standard of correctness to which it is held. I accept the respondent's submission that the RAD member did conduct an independent analysis of the record. The fact that she arrived at the same conclusions than that reached by the RPD's is not in itself an indication that she did not perform an independent analysis. She may

have repeated a lot of the RPD’s conclusions, but in every case, she appears to have evaluated the evidence before agreeing with the RPD. She made her own findings concerning the implausibility of persecution given the village’s support for the vaccination campaign (RAD’s decision at paras 24-25), the lack of evidence of persecution by the imam and his religious group (RAD’s decision at paras 28-30), the lack of probative value to be given to documentary evidence (RAD’s decision at paras 36-38), contradictions in the spelling of the father’s name (RAD’s decision at para 39), and indications of past researches by the applicant on loopholes to gain access to easy money in Canada (RAD’s decision at para 40).

[18] The argument about the RAD having rendered a decision that is based on speculations does not fare any better. The argument never rises beyond a disagreement with the assessment of the evidence made by the RAD. The applicant seems to take issue in particular with the RAD finding that the imam had a very strong influence in the village.

[19] As I understand the argument, the RAD was wrong to conclude that the imam had that sort of influence. That is difficult to reconcile with the fact that the applicant himself asserted that influence in his Basis of Claim form, writing “the area police also never took any action against Qari Inoam and his religious group as he is powerful and bribes police to keep protect his interests in the region” (CTR, p. 21). The applicant seeks to argue now that the influence is very limited in view of the RAD’s finding that the imam would surely have been advised of the grand scale vaccination campaign. Instead, the argument is now that only 30% of the population (10,000 villagers and 2,000 vaccinations) supported the imam.

[20] The applicant sought to rely on an affidavit he submitted *ex post facto*, i.e. after both the RPD and the RAD decisions. That further testimony was ruled by the Court to be inadmissible (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263) as being outside the record before the boards. In effect, the applicant was attempting to recast his evidence toward a large support for vaccination and a limited support the imam had in the village. But the applicant cannot have it both ways: before the RPD (and the RAD), the Basis of Claim Form speaks of the power of the imam who bribes the police in order to show that the jeopardy is real and once the RAD finds that if the imam is that powerful that it is not plausible that the vaccination could take place without an intervention, the imam becomes suddenly without influence because he has the support of only 30% of the population. There is no speculation on the power and influence of the imam if the narrative offered by the applicant is to be believed. In fact, the speculation comes from the applicant in the judicial review where he speculates that it is the 70% majority supporting the polio vaccination campaign that “is exactly why the applicant was not bothered by the other imams of the madrassa, the students, the villagers and especially by the police” (Memorandum of fact and law, para 19). Not only is that assertion new and not supported by the narrative before the RPD and the RAD, but it does not account for the warning received by the applicant from the imam’s supporters and the two trips to the police station. Thus, even if considered in spite of the fact that the new approach is inadmissible, this new version carries no weight. The existence of speculations by the RAD has not been proven.

[21] Thirdly, the applicant claims a lack of understanding of the country conditions in Pakistan. This argument is based on some internet research conducted by the applicant from

Canada which confirms that there have been in the past attacks conducted against "polio workers".

[22] The country conditions the applicant refers to help to document tragic incidents involving "polio workers" over the years, but the existence of incidents does not give granularity to the narrative of the applicant which was found to lack internal coherence.

[23] In a last ditch effort, the applicant took issue with the conclusion that the documentary evidence was rejected because the RAD did not believe the applicant's narrative in view of its implausibility. The applicant put the issue thus: "The RAD member should have asked herself if, despite the "credibility" issues … the documentation in support of the claim can lead to a conclusion that the events occurred and that the claim can be accepted" (Memorandum of fact and law, para 39).

[24] It is difficult to see how a version of specific events that is not credible can be salvaged by generic documentary evidence which also lacks granularity. The RAD concluded that the said evidence (affidavit from father, letter from a lawyer merely refusing to take the case, fatwa, and medical certificate) had no probative value. The same was said of a five-line newspaper article. The evidence is ruled to be neither credible nor independent. In my view the Federal Court of Appeal decision in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, is dispositive of the issue:

> [2] The Judge also certified a question, namely: where there is relevant objective evidence that may support a claim for protection, but where the Refugee Protection Division does not find the claimant's subjective evidence credible except as to

> identity, is the Refugee Protection Division required to assess that objective evidence under s. 97 of the *Immigration and Refugee Protection Act*?
>
> [3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.
>
> [4] This leads to the question of whether there was in the record before the Board any evidence capable of supporting a determination in the respondent's favour. In our view, there was clearly no such evidence in the record. We are satisfied that had the Judge examined the record, as he was bound to, he would no doubt have so concluded. In those circumstances, returning the matter to the Board would serve no useful purpose.
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> [My emphasis.]

[25] I would not readily accept that any credibility issue trumps everything. Indeed that is not what the Court of Appeal states in *Sellan*. It is because of the inherent danger of excluding from consideration other discordant evidence on the basis that the decision maker has set her sights on the credibility of one witness judged, for instance, simply on his demeanour. The British Columbia Court of Appeal captured the issue in *Faryna v Chorny* [1952] 2 D.L.R. 354 when it wrote that "the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (para 11). That was the issue in the case at bar: it is not that the applicant's demeanour raised doubts about his credibility, but rather that the story lacked coherence. It was implausible. Furthermore, the circumstances which must be considered should include other evidence that would tend to support a witness story. To carry weight, that evidence has to be itself credible and have a measure of probative value through the

quality of the narrative because, for instance, details that were supplied which bring granularity, or other corroborative information is available on the record. With respect, there was not that evidence in this case. The internal inconsistency of the story, with, on one hand a powerful imam with a considerable following who considers polio vaccination so offensive that a fatwa is issued and, on the other hand, a polio vaccination campaign conducted openly over a period of 6 weeks without any incident or disruption, was fatal to the applicant. It was reasonable for the RAD to consider that the two parts cannot be reconciled. The applicant has not been able to discharge his burden to show that the RAD decision was unreasonable.

[26] As a result, the judicial review application must be dismissed. The Court shares the view of counsel that there is no serious question of general importance that ought to be certified.

JUDGMENT in IMM-5548-18

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed;

2. There is no serious question of general importance.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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