Federal Court  Cour fédérale

Date: 20121127

Docket: IMM-3586-12

Citation: 2012 FC 1373

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, November 27, 2012

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

SLEIMAN KAZAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA] of a decision by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the panel), dated March 20, 2012, regarding the applicant, Mr. Kazan. The panel determined that the applicant was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

[2] The panel refused Mr. Kazan's application on the basis that his allegations were not credible. In this application for judicial review, the applicant submits that the panel's finding to this effect is unreasonable. For the reasons that follow, I disagree, and this application for judicial review is therefore dismissed.

Background

[3] The applicant is a citizen of Lebanon and an Orthodox Christian. He claims to have been in an intimate relationship with Farial Yatema, a Shia Muslim woman. The applicant alleges that their relationship became serious in September 2008.

[4] On July 29, 2009, the applicant arrived in Canada with a temporary resident visa to attend the baptism of a nephew. The baptism was initially set for August 8, 2009, but was postponed until March 2010 because the child's mother was suffering from anaemia.

[5] The applicant claims to have received a telephone call from Ms. Yatema on September 1, 2009, during which he learned that she was four months pregnant. The applicant alleges that he advised Ms. Yatema to seek refuge in southern Lebanon, which she did, because they feared the anger of certain members of the Yatema family who had ties to the Hezbollah and would not have accepted the fact that Ms. Yatema had been in a relationship with a Christian man.

[6] On September 15, 2009, Ms. Yatema was allegedly assassinated by her brother, a police officer and member of the Hezbollah, in an honour killing. The assassination was supposedly

covered by the Lebanese media. The applicant claims to have been informed of the murder by a friend who saw the televised report. In his Personal Information Form [PIF], the applicant alleged that after Ms. Yatema's death, her family asked his neighbours and a cousin about him. The applicant claims that members of the Yatema family are still looking for him.

[7] On June 10, 2010, the applicant claimed refugee protection in Canada. He claims to be a Convention refugee under section 96 of the IRPA on the grounds that he fears persecution by the Yatema family because of his religious affiliation. He also claims to be a person in need of protection under subsection 97(1) of the IRPA because returning to Lebanon would expose him to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment at the hands of the Yatema family.

[8] In its decision, the panel noted that the applicant had adduced no evidence corroborating his version of the facts. The panel found that the applicant had established neither a well-founded fear under section 96 of the IRPA nor the existence of a serious possibility that he would be persecuted or face the type of hardship described in section 97 of the IRPA. The panel determined that the applicant's allegations were not credible on the grounds that there were three weaknesses in his evidence.

[9] First, the panel questioned the applicant about the televised report on the murder of Ms. Yatema. The applicant stated that he had attempted to obtain a copy of the report in question through his brother. However, when asked whether his brother had indeed obtained a copy, the applicant replied that he did not know, as his brother was in Beirut and he was in Canada. The

panel did not accept this explanation, as the applicant had stated that he was in contact with his brother on a weekly basis, and it concluded that it would have been reasonable for the applicant to have been aware of his brother's actions.

[10] Second, in his testimony before the panel, the applicant stated that the Yatema family had asked his neighbours about him. However, the panel noted that in his PIF, the applicant had written that the Yatema family had only spoken with his cousin. When questioned about this, the applicant explained that, in his testimony, he had used an Arabic word referring to [TRANSLATION] "the people close to one's family", which covers both [TRANSLATION] "neighbours" and [TRANSLATION] "cousins". However, the interpreter informed the panel that the word the applicant had used was [TRANSLATION] "neighbour" and that the Arabic language had specific words for [TRANSLATION] "cousin", as well as words distinguishing between maternal and paternal cousins. The applicant then added that he did not know why he had not mentioned his cousins and that it was merely a language issue. The panel did not accept these explanations and concluded that the applicant's credibility was undermined by these inconsistencies.

[11] Third, the panel drew a negative inference from the fact that the applicant had no evidence to corroborate Ms. Yatema's existence, her assassination or their intimate relationship. Given that, upon his arrival in Canada in July 2009, the applicant was allegedly so in love with Ms. Yatema that he intended to marry her, the panel found that it would have been reasonable to expect the applicant to have some kind of souvenir from Ms. Yatema, such as a photograph, letter or note, that he could even have [TRANSLATION] "secretly carried on his person".

Arguments of the parties

[12] The applicant submits that the panel's decision is unreasonable because its conclusions with respect to the three weaknesses in his evidence are utterly without merit. In particular, he alleges that his lack of awareness of the precise measures taken by his brother to attempt to obtain a copy of the televised report is irrelevant. He also argues that the panel did not properly summarize his testimony with respect to his own efforts with the assistance of his counsel to obtain evidence corroborating Ms. Yatema's assassination. He submits that it is not always possible to corroborate every allegation in the context of a claim for refugee protection and that this is not in itself evidence undermining the credibility of his allegations.

[13] Second, he submits that the difference between the words [TRANSLATION]"cousin" and [TRANSLATION] "neighbour" is not a major contradiction, but rather a minor language issue that should not be relied on to justify the refusal of his claim for refugee protection. He adds that in his testimony he had referred to those [TRANSLATION] "close" to his family, and that the Arabic word he used includes even distant cousins.

[14] Finally, he argues that [TRANSLATION] "the panel is not better placed than he is to decide what is reasonable or not in affairs of the heart" and that the panel had no reason to draw a negative inference from the fact that he had not kept a souvenir of Ms. Yatema.

[15] The respondent submits, first of all, that the applicant's affidavit in support of his application for leave is not compliant with the *Federal Courts Rules*, SOR/98-106 [Rules], because it is in French and does not contain the jurat of a translator as required by

subsection 80(2.1) of the Rules. The applicant had stated in his PIF that he required the services of a Lebanese Arabic interpreter. The respondent submits that it is therefore reasonable to believe that the applicant does not understand French well and that his affidavit should have been accompanied by the jurat of a translator, adding that pursuant to paragraph 10(2)(*d*) of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, an affidavit filed in support of an application for leave is an integral part thereof. Therefore, the respondent is of the view that the applicant's affidavit should be rejected by this Court, or, in the alternative, that it should be assigned no probative value.

[16] With respect to the reasonableness of the panel's decision, the respondent argues that the standard of reasonableness requires that this Court show considerable deference in reviewing findings relating to the applicant's credibility, adding that the panel's decision in this case must be upheld as justifiable given the complete lack of evidence corroborating the applicant's allegations. The respondent submits that the applicant's arguments are not sufficient to justify this Court's intervention and that the applicant's mere disagreement with the decision does not constitute grounds for review (*Reis v The Minister of Citizenship and Immigration*, 2012 FC 179 at paragraph 48; *Schut v The Attorney General*, 2003 FC 1323 at paragraph 46).

[17] With respect to the three weaknesses identified in the applicant's evidence, the respondent submits that the panel's findings were reasonable. It was open to the panel to draw a negative inference from the fact that the applicant was unaware of his brother's actions, given the absence of evidence corroborating his allegations and his admission that he had been communicating with his brother on a weekly basis. In the circumstances, it is inconceivable that

the applicant would have failed to question him about such an important element of his claim for refugee protection.

[18] Similarly, the respondent submits that the negative inference drawn by the panel regarding the lack of a souvenir of Ms. Yatema is reasonable because, when he left for Canada, the applicant was unaware of Ms. Yatema's pregnancy and faced no risk on Canadian soil. This inference is therefore grounded in the evidence before the panel. Finally, with respect to the confusion between the Arabic words for [TRANSLATION] "neighbour" and [TRANSLATION] "cousin", the respondent acknowledges that the distinction is somewhat semantic but notes that this point is not central to the panel's decision.

Analysis

[19] First, regarding the non-compliance of the applicant's affidavit on account of the missing jurat of translation, I adopt the words of my colleague Justice Snider: "I would allow the application to proceed in spite of the flawed Affidavit of the Applicant but would dismiss this application on its merits" (*Liu v The Minister of Citizenship and Immigration*, 2003 FCT 375 at paragraph 7).

[20] The sole issue is whether the panel's finding with respect to the applicant's credibility is reasonable. It is well established that questions relating to credibility are reviewed on a standard of reasonableness (*Cervenakova v Canada (Minister of Citizenship and Immigration)*, 2012 FC 525; *Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 519; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 732 (QL), 160 NR 315

(FCA) [*Aguebor*]; *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773; *Wu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 929).

[21] As the respondent has pointed out, this Court must show considerable deference in reviewing a panel's findings with respect to credibility (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paragraph 22 [*Rahal*]; *Singh v Canada (Minister of Citizenship and Immigration)*, 2006 FC 565 at paragraph 11). It is not open to this Court to reassess the evidence that was before the panel (*Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178 at paragraph 42).

[22] In this case, I am of the view that it all comes down to a lack of evidence. Under section 96 of the IRPA, the applicant was required to show that he had a well-founded fear of persecution, which meant establishing on a balance of probabilities that he had both subjective and objective fear and that no state protection was available to him (*Rajudeen v Canada (Minister of Employment and Immigration*), [1984] FCJ no 601 (QL); *Chan v Canada (Minister of Citizenship and Immigration)*, [1995] 3 SCR 593). Under section 97 of the IRPA, the applicant had to demonstrate that he faced a serious risk of torture, a threat to his life, or a risk of cruel and unusual treatment or punishment. The applicant has failed to satisfy any of these requirements. Furthermore, the applicant has not submitted any arguments that persuade me that the panel's decision is unreasonable.

[23] The applicant's first argument involves what the panel considered his incomplete response to the question of what his brother had done to obtain a copy of the media report of the

murder. The panel wrote that it [TRANSLATION] "would have been reasonable for the claimant to know the details about what his brother had done to obtain a copy of the media report on the honour killing" given that they were in contact with each other on a weekly basis.

[24] The relevant section of the hearing transcripts reads as follows:

> [TRANSLATION]
>
> Q: . . . What has your brother done to try to obtain a copy of the media report, sir?
>
> A: I asked him, I asked him and I don't know what he did, because he is over in Beirut and that's a question that one can't address directly like that, it is difficult to speak directly. So I don't know what he has done.
>
> Q: What do you mean, difficult to speak directly?
>
> A: Where can he, I mean where can he go to ask questions and make inquiries about the report in order to get it? He doesn't have connections, important connections in order to be able to get it.
>
> Q: OK. But I am asking you what he did between you and your brother, if you discussed it, you say that you don't know what he did because it is difficult to speak with him directly.
>
> A: He can't just ask for things like that. With whom could he talk about that? He was not able to get it.
>
> Q: OK. But I am asking you what steps he took to try to obtain it, and you say that you do not know. And I am asking you why you do not know the details of what he did to try to find this report, given that it is critical to your claim for refugee protection.
>
> A: When I spoke with him, I told him anything you have as evidence regarding that situation, but I do not want this to put you at risk, because you are my brother. If you are able to get anything, please, send it to me, give it to me.

[25] Even having reviewed the applicant's full response, it is clear that he does not know what steps were taken by his brother. I agree with the panel that this is a crucial element of his refugee

claim, and it is not credible that he would not have questioned his brother on something so important to his claim.

[26] As for the confusion between the words [TRANSLATION] "neighbour" and [TRANSLATION] "cousin", I find that this was not central to the panel's decision and that it reasonably concluded based on the evidence that this was not merely a language issue. In response to question 31 on his PIF, the applicant wrote the following: [TRANSLATION] "A few days later, members of her family came to ask about me. First they spoke with my cousin and then with my neighbours."

[27] At the hearing before the panel, the applicant denied any involvement of his [TRANSLATION] "cousins" and even stated: [TRANSLATION] "my cousins do not live near me. It was the people who live next door . . . the cousins do not live near us, it is just close family friends living next door to us, but not the cousins".

[28] According to *Kengkarasa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 714 at paragraph 9, the panel may make adverse findings with respect to an applicant's credibility if it identifies contradictions or inconsistencies in his story or between his story and other evidence (see also *Aguebor*, above; *Javadi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 297; *Vargas v Canada (Minister of Citizenship and Immigration)*, 2012 FC129; *Moncada v Canada (Minister of Citizenship and Immigration)*, 2012 FC 104). In this case, it is all the more flagrant in that there is no evidence at all corroborating the applicant's allegations.

[29] As for the applicant's argument that [TRANSLATION] "the panel is not better placed than he is to decide what is reasonable or not in affairs of the heart", I find that there was sufficient evidence before the panel to enable it to draw several negative inferences and make reasonable findings on that basis.

[30] In short, the panel has special and exclusive expertise in assessing the credibility of applicants, which is why "this Court should refrain from interfering with that assessment unless the Board's assessments are capricious or perverse, or patently unreasonable" (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1473 at paragraph 31, citing *Aguebor*, above). As I found in *Rahal*, above, at paragraph 42:

> . . . the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule. . . .

[31] No question of general importance was submitted by the parties under section 74 of the IRPA and none arises in this case.

Conclusion

[32] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT IS that:

1. This application for judicial review of the decision dated March 20, 2012, by the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

2. No question of general importance is certified.

3. No costs are awarded.

"Mary J.L. Gleason"
Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Rachel Benaroch	FOR THE APPLICANT
Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rachel Benaroch Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT