

Federal Court



Cour fédérale

Date: 20160708

Docket: IMM-182-16

Citation: 2016 FC 780

Ottawa, Ontario, July 8, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

MATTHEW YEBOAH

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 Immigration and Refugee Board of Canada, Refugee Appeal Division [RAD], dated December 17, 2015, which confirmed the finding of the Refugee Protection Division [RPD] that the Applicant is neither a Convention

Refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [the Act].

II. Background

[2] The Applicant is a 42 year old citizen of Ghana. He lived in Kumasi where he met his wife Judith Aduako Sarpong [Mrs Sarpong].

[3] Mrs Sarpong's grandmother was the "Queen Mother" of her village, Odumase. The position of Queen Mother allegedly passed between two families in the village, the Sarpongs and the Aduana family. The Applicant alleged that before passing away, the Queen Mother chose Mrs Sarpong to take her place. When Mrs Sarpong's grandmother died unexpectedly, the elders elected Mrs Sarpong to take her place as Queen Mother.

[4] Once Mrs Sarpong learnt that in order to become Queen Mother she would have to perform in a stool ritual, which involved female genital mutilation [FGM], she refused the position. Her family began threatening her for abdicating the position because the role would now pass onto the Aduana family, which would result in a loss of wealth and status for the Sarpong family. Faced with mounting threats from her family, including an attempted kidnapping, Mrs Sarpong was forced to flee Ghana. She was recognized as a refugee by the RPD in December 2013.

[5] The Applicant alleged that he suffered persecution from members of Mrs Sarpong's family who accused him of pressuring his wife to refuse the stool. The elders accused the Applicant of revealing the untold ritual and wanted to punish him by performing the ritual on him and then maybe kill him. The Applicant alleged that the elders and his wife's family are very upset since they do not wish to lose the reign of Queen Mother to the Aduana family.

[6] The Applicant also alleged that in order to keep the Queen Mother position within the Sarpong family, Mrs Sarpong's family now want the Applicant's eldest daughter, Larisa Sarpong (Larisa) to become the next Queen Mother.

[7] Fearing for his life, the Applicant left Ghana and arrived in Canada in November 2014 with false travel documents. When confronted about the false documents, the Applicant claimed refugee protection.

[8] In a decision dated February 13, 2015, the RPD denied the Applicant's claim because it found that the Applicant lacked credibility. The Applicant appealed that decision to the RAD.

[9] In discussing the standard of review to be employed, the RAD followed *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799, 461 FTR 241 [*Huruglica FC*] and *Njeukam v Canada (Citizenship and Immigration)*, 2014 FC 859, and concluded that since the appeal turns on questions of fact, it must show a degree of deference to the RPD's credibility findings. The RAD also recognized that it must provide its own assessment of the evidence to reach its own conclusions on appeal.

[10] The RAD then reviewed the documentary evidence and concluded that the Applicant was not credible since his allegations regarding the selection of the Queen Mother do not fit the profile of the general process of selecting a Queen Mother in Ghana.

[11] The RAD found that the RPD identified detailed and authoritative evidence that Mrs Sarpong would be an unlikely candidate to be a Queen Mother because of her age and lack of experience in the community. Moreover, while the Applicant alleged that his wife was chosen because she was the former Queen Mother's granddaughter, the RAD found that since Mrs Sarpong left the country, other female members of Mrs Sarpong's family could accept the title.

[12] The RAD found that the Applicant's credibility was also tarnished by the fact that he alleged that the elders seek to appoint the Applicant's 8 year old daughter as Queen Mother. The RAD found it implausible that the elders would set aside the now deceased Queen Mother's choice for Mrs Sarpong's daughter when the elders can choose from one of Mrs Sarpong's half-sisters or one of her maternal cousins who went through Queen Mother training with her.

[13] The RAD agreed with the RPD's finding that the Applicant had a burden to provide corroborating evidence of the passing of the Queen Mother and that the absence of this corroborating evidence is a major credibility issue.

[14] The RAD recognized that there are problems with Chiefs and that the police and security forces are often called on for protection. However, the RAD found that the Applicant did not provide the RPD with any examples of cases where the selection of the Queen Mother could be dangerous. However, the RAD recognized that the Applicant provided evidence that a “loss of power” might be dangerous.

[15] The RAD also found that the Applicant’s allegation that state protection is not available to him raises credibility concerns since the Applicant submitted evidence that wherever there are problems related to the Queen Mother system, there has been police involvement or an investigation.

[16] The Applicant contends that the RAD erred in its assessment of the Queen Mother’s profile and the likelihood of Mrs Sarpong’s and Larisa’s nominations and its assessment of the chieftaincy dispute. The Applicant also contends that the RAD erred in basing its reasons on general assumptions and general inferences. The RAD failed to explain why it preferred the documentary evidence over the Applicant’s testimony and the RPD’s decision granting Mrs Sarpong’s claim. In addition, the Applicant argues that the RAD did not give sufficient weight to the RPD’s decision which granted refugee status to Mrs Sarpong based on the same factual basis as the Applicant’s claim.

[17] The Applicant also argues that the RAD’s decision violates sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* and that the decision-maker did not assess the Applicant’s claim fairly or impartially.

III. Issue and Standard of Review

[18] The issue to be determined in this case is whether the RAD committed a reviewable error as contemplated by subsection 18.1(4) of the *Federal Courts Act*, RSC, 1985 c F-7.

[19] The reasonableness standard of review applies when reviewing the RAD's conclusions on its own decision-making process and the RAD's review of the RPD's decision (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93, at paras 32, 35 [*Huruglica FCA*]; *Ghauri v Canada (Citizenship and Immigration)*, 2016 FC 548, at para 22 [*Ghauri*]; *Ngandu v Canada (Citizenship and Immigration)*, 2015 FC 423, at para 12).

[20] Regarding the RAD's selection of the appropriate standard of review, the Respondent contends that the selection of the applicable standard of review by the RAD ought to be reviewed on the reasonableness standard. While the Applicant is silent on this issue, in *Ghauri*, Justice Gleeson found that the Federal Court of Appeal's decision in *Huruglica FCA* says that the RAD "must apply the correctness standard of review when reviewing findings of law, as well as findings of fact and mixed fact and law of the RPD that raise no issue of credibility of oral evidence" (*Ghauri*, at para 23). However, the RAD must take a "case-by-case approach to the level of deference it owes to the relative weight of testimony and their credibility or lack thereof" (*Ghauri*, at para 23; see *Huruglica FCA*, at paras 37, 69-71, 103).

[21] As stated previously, in reviewing the RPD's decision, the RAD followed *Huruglica FC* and gave deference to the RPD's credibility findings. Further to reading the RAD's decision, I am of the view that the RAD conducted a thorough and independent review of the Applicant's file. As stated by Justice Diner in *Gabila v Canada (Citizenship and Immigration)*, 2016 FC 574, "so long as the RAD conducted, in substance, a thorough, comprehensive, and independent review of the kind endorsed in *Huruglica FCA*" its selection of the *Huruglica FC* standard "does not mean that the RAD has committed a reviewable error" (at para 20). I therefore find that the RAD reasonably selected its standard of review of the RPD decision.

IV. Analysis

A. *Is the RAD Decision Reasonable?*

[22] As is well-established, a refugee claimant's testimony is generally presumed to be true (*Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302, 1 ACWS (3d) 167). However, "there are circumstances under which the Court may prefer the description of the situation in a country to that of the appellant's testimony" (*Grinbergs v Canada (Citizenship and Immigration)*, 2013 FC 826, at para 15). Yet, where a tribunal chooses to believe the documentary evidence instead of a claimant's oral testimony, it must provide reasons for doing so (*Agranovsky v Canada (Minister of Citizenship and Immigration)*, 68 ACWS (3d) 713, at para 12; *Sidhu v Canada (Minister of Employment and Immigration)* (1993), 70 FTR 104, 45 ACWS (3d) 516). The RAD must also provide explanations for failing to address prior decisions rendered by the Immigration and Refugee Board (IRB) or evidence contained therein (*Commer Mora v Canada (Citizenship and Immigration)*, 2010 FC 235, at para 23).

[23] In my view, the RAD committed a reviewable error by failing to properly consider the RPD's decision granting Mrs Sarpong refugee status.

[24] The RPD decision granting Mrs Sarpong's refugee claim found Mrs Sarpong to be credible since she testified in a straightforward and spontaneous manner. The RPD therefore believed her testimony that she was chosen to be the Queen Mother following the passing of her grandmother since her mother was her grandmother's first daughter. The RPD found that while the documentary evidence provided little indication that violence resulted from refusing the Queen Mother position, one source said that circumstances vary from situation to situation and from community to community. The RPD accepted that the fact that the Queen Mother position would now pass onto a rival family made Mrs Sarpong's situation different from normal circumstances and accepted that the loss of wealth to Mrs Sarpong's family explained why Mrs Sarpong faces a risk to her life in Ghana for refusing the Queen Mother position. The RPD also recognized that state protection was unavailable to Mrs Sarpong because the police in Ghana have a pattern of not wanting to get involved in family matters.

[25] It is correct to say, as the Respondent contends, that this Court has established in a large number of cases that the IRB is not bound by the result in another claim, even if the claim involves a relative. Refugee claims are determined on a case by case basis (*Noha v Canada (Citizenship and Immigration)*, 2009 FC 683 at para 103, 347 FTR 265).

[26] However, in a case such as the present, where the Applicant's narrative is exactly the same as his wife's, as are the agents of persecution, the RAD was required to provide sufficient reasons, grounded in the evidence, to support its conclusion that Mrs Sarpong was never chosen to be Queen Mother, which is a marked departure from the RPD's previous positive decision.

[27] I find that the RAD's explanations in this regard are superficial and based on mere speculations. The RAD stated that it did not find the Applicant's account to be credible since it found that the documentary evidence indicated that Mrs Sarpong was too young to be named Queen Mother. I have reviewed the evidence and I cannot agree with the RAD's conclusion in this regard. The documentary evidence submitted by the Applicant refers to a study in which only 25 Queen Mothers participated in. The paper indicates that of the 25 participants in the study, the ages of the Queen Mothers ranged from 38 to 76 years old and that the average age of the Queen Mothers participating in the study was 53 years old (Collins Adjei Mensah, Kwabena Marima Antwi & Suleman Dauda, "Female Traditional Leaders (Queen Mothers) and Community Planning and Development in Ghana" (2010) 3 *Envtl Mgmt & Sustainable Dev* 205 at 211). The claimant's wife was 32 years old when allegedly designated. In my view, this evidence provides a snap shot of the characteristics of 25 Queen Mothers with dramatically varying ages. I therefore find that the RAD's reasons in this regard are insufficient to depart from the RPD's previous finding that Mrs Sarpong was elected as Queen Mother.

[28] The same can be said of the RAD's concern regarding a lack of evidence corroborating the death of the previous Queen Mother. This Court reminds that an applicant's failure to file corroborating documentation "cannot be related to the applicant's credibility, in the absence of

evidence to contradict the allegations” (*Ahortor v Canada (Minister of Employment and Immigration)*, 65 FTR 137, at para 46, 41 ACWS (3d) 863).

[29] While the RAD raised some credibility concerns regarding the Applicant’s testimony, its rejection of the Applicant’s claims regarding his wife’s selection as Queen Mother, including the death of Mrs Sarpong’s grandmother, were key in the RAD’s rationale for dismissing the Applicant’s appeal. Had it reviewed the Applicant’s testimony in light of the RPD’s decision granting Mrs Sarpong refugee status, it may have come to a different conclusion. The matter will therefore be sent back to another member of the RAD for redetermination.

[30] Given my finding that the RAD’s decision is unreasonable, there is no need to determine the other grounds of review raised by the Applicant.

[31] No question of general importance has been proposed by the parties. None will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the Refugee Appeal Division, dated December 17, 2015, is set aside and the matter is remitted back to a different member for redetermination;
3. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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