

Federal Court



Cour fédérale

Date: 20170502

Docket: IMM-1321-16

Citation: 2017 FC 441

Toronto, Ontario May 2, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MOHAMAD NOUREDDINE AL MOUSSAWI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Mohamad Nouredine Al Moussawi (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”) dismissing his appeal from a decision of the Refugee Protection Division (the “RPD”), refusing his claim for protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The Applicant is a citizen of Lebanon. He entered Canada on November 29, 2013 and claimed protection on the grounds of his public criticism of Hezbollah. The RPD dismissed the claim on the basis of credibility, specifically the Applicant's failure to seek asylum in Europe.

[3] The RAD likewise dismissed the Applicant's claim on credibility grounds, saying that the evidence "suggests that the Appellant has a clear pattern of not being truthful or forthcoming to country officials".

[4] The Applicant now argues that the RAD erred in assessing the psychological report that was submitted to the RPD. That report addressed his inability to provide "coherent testimony". Neither the RPD nor the RAD made explicit credibility findings about that report.

[5] The Applicant submits that the RAD should have analyzed his credibility against the contents of the psychological report.

[6] The Applicant also argues that the RAD made an erroneous finding of fact when it referred to a non-existent spousal sponsorship application and submits that the result may have been different if this mistake had not been made.

[7] The Minister of Citizenship and Immigration (the "Respondent") argues that the RAD considered the psychological report and made no fatal error in the weight it gave to it.

[8] Although the RAD said the RPD erred in failing to consider the report, the Respondent submits that such error was corrected when the RAD considered the report.

[9] The Respondent objects to the inclusion of psychological reports by the Applicant about his mental status that were not before the RPD or the RAD.

[10] The first question to be addressed is the standard of review, beginning with the standard of review to be applied by this Court to the RAD.

[11] The Federal Court of Appeal dealt with that issue in its decision in *Canada (Minister of Citizenship and Immigration v. Huruglica* (2016), 396 D.L.R. (4th) 527 at paragraph 35, where it said that the appropriate standard of review for the Court to apply in reviewing a decision of the RAD is reasonableness. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, a decision meets that standard when it is intelligible, transparent, justifiable, and falls within a range of acceptable outcomes defensible in respect of the facts and the law.

[12] The second question for consideration is the standard of review to be applied by the RAD upon an appeal from the RPD.

[13] In a judicial review of a decision of the RAD, the reviewing court must look at the standard of review applied by the RAD to the RPD's decision. The Federal Court of Appeal in *Huruglica, supra* at paragraph 77 said:

... I find no indication in the wording of the IRPA, read in the context of the legislative scheme and its objectives, that supports the application of a standard of reasonableness or of palpable and overriding error to RPD findings of fact or mixed fact and law.

[14] According to the decision of the Supreme Court of Canada in *Dunsmuir, supra*, there are generally only two standards of review, that is reasonableness and correctness. If the standard of reasonableness does not apply, only the standard of correctness remains to be applied by the RAD in its review of certain issues before the RPD.

[15] At paragraph 103, of *Huruglica, supra*, the Federal Court of Appeal concluded:

I conclude from my statutory analysis that with respect to findings of fact (and mixed fact and law) such as the one involved here, which raised no issue of credibility of oral evidence, the RAD is to review RPD decisions applying the correctness standard. Thus, after carefully considering the RPD decision, the RAD carries out its own analysis of the record to determine whether, as submitted by the appellant, the RPD erred. Having done this, the RAD is to provide a final determination, either by confirming the RPD decision or setting it aside and substituting its own determination of the merits of the refugee claim. ...

[16] In my opinion, the paragraph quoted above means that the RAD must apply a correctness standard when reviewing decisions of the RPD which do not raise issues of the credibility of oral evidence. Credibility issues are subject to review on the standard of reasonableness.

[17] The dispositive issue in this application is the RAD's negative credibility findings.

[18] I have reviewed the Certified Tribunal Record and the submissions of the parties, both written and oral.

[19] The RAD's negative credibility finding was open to it. It falls within a range of "acceptable outcomes." The psychological report that was considered by the RAD did not supplant the other evidence, including the Applicant's testimony. The decision meets the applicable standard of review, that is reasonableness.

[20] Accordingly, this application for judicial review is dismissed and no question for certification arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question for certification arises.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1321-16

STYLE OF CAUSE: MOHAMAD NOUREDDINE AL MOUSSAWI v. MCI

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 23, 2016

JUDGMENT AND REASONS: HENEGHAN J.

DATED: MAY 2, 2017

APPEARANCES:

Jonathan Richard Lage FOR THE APPLICANT

Abigail Martinez FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jonathan Richard Lage FOR THE APPLICANT
Barrister & Solicitor
Manotick, Ontario

William F. Pentney, Q.C. FOR THE RESPONDENT
Deputy Attorney General of
Canada