

Federal Court



Cour fédérale

Date: 20170615

Docket: IMM-5201-16

Citation: 2017 FC 589

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 15, 2017

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

ABDOULAYE BARADJI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review of a decision rendered by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada, the Applicant is seeking to have the decision set aside. Based on a review of his memorandum of fact and law that the Applicant is allegedly arguing not only the decision on rejecting his claim for refugee protection or as a person in need of protection, but also the fact that the RPD found, under

subsection 107(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the IRPA]

that there is no credible basis for the claim. Subsection 107(2) reads as follows:

No credible basis

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

Preuve

(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[2] That determination is important as it prevented the Applicant from seeking remedy before the RPD Appeal Division. Thus, the application for judicial review before this Court was open to the Applicant.

[3] Essentially, the RPD did not believe the Applicant, outlining an impressive list of contradictions, inconsistencies and implausible statements.

I. Standard of review

[4] The standard of review for an administrative decision on the merits is the standard of reasonableness. In fact, few questions give rise to the standard of correctness; moreover, the Supreme Court of Canada decreed that a presumption exists to the effect that questions of fact and law are subject to the reasonableness standard, unless of course it involves a question of law as cited in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] (paragraphs 58–61). In this case, it is not disputed that the standard of review is that of reasonableness.

[5] However, significant consequences arise therefrom on the burden of discharge that falls on a triable individual who is complaining about an administrative decision, the review of which is based on the reasonableness standard. In fact, in the famous paragraph 47 of *Dunsmuir*, the Court found that the deferential aspect of the administrative tribunal's decision must prevail since reasonableness has clearly defined prerogatives. I cite the following text from the Supreme Court, at paragraph 47:

[47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is 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.

[6] The Applicant's burden is therefore to establish that the RPD's findings do not fall within the range of possible acceptable outcomes in respect of the facts and the law. Moreover, it may be demonstrated that reasonableness was not achieved given that the decision was sought through lack of justification, transparency or intelligibility within the decision-making process. However, this was not demonstrated by the Applicant. At most, he tried to offer explanations to some of the contradictions and inconsistencies which could allegedly ensure that there may be another possible acceptable outcome. That is not the test asked of the Applicant when he contests an administrative decision for lack of reasonableness. He must instead demonstrate that the decision does not fall within one of these possible acceptable outcomes.

II. Facts

[7] Although extraordinary, the facts of this case are relatively simple. The Applicant, a citizen of Mali, allegedly lost both his parents. Aged 8 at the time, in 1990, he was apparently taken in by an orphanage, presumably in Mali, by a person of Syrian citizenship. This person allegedly brought him to Syria. He remained there for the next 22 years.

[8] When the troubles began in Syria in 2011, the people who had taken in the Applicant in 1990 fled to Turkey. The Applicant, who had apparently never acquired Syrian citizenship, seems to have been refused entry to Turkey. The Applicant was 30 years old at the time.

[9] He thus decided to return to Mali, likely in early 2012. Upon his arrival in Mali, he claims that he was arrested at the airport and questioned about his presence in Syria. He was allegedly detained for one week and his passport was allegedly confiscated. When he was released, it seems he sought refuge with an Imam who then accommodated him for six (6) months.

[10] His life in Mali apparently became harrowing because he was allegedly arrested, specifically several times at highway control posts and because, for all practical purposes, he was considered a target under surveillance.

[11] The Applicant was married in 2013, which resulted in two children. It seems that in March 2016, the Applicant was the subject of a recent search by Mali authorities who allegedly

went to his residence and asked him to report to the police station. If we include the Applicant's testimony, he claims that he was a person of interest to authorities in his country because he was allegedly suspected of being a terrorist. When he returned to Mali, he could no longer express himself in French or in any of the languages spoken in Mali, and his only references seemed to be Arabic and Islamic. Following this visit in March 2016, he sought refuge at a friend's home from March 20 to April 10. He then apparently obtained a passport under a fictitious name. From Mali, he then apparently passed through Côte d'Ivoire via car, and came to Canada via Brussels. The file does not reveal how the Applicant ended up in Brussels from Côte d'Ivoire. In fact, the file is brief in many respects. When he arrived in Canada, the Applicant claimed refugee protection.

III. The decision for which judicial review is requested

[12] In its carefully rendered decision, the RPD listed a considerable number of challenges with the version provided by the Applicant at the hearing. In fact, the Applicant's stance in this case is that some of the challenges listed by the RPD can be interpreted differently than what was maintained. Moreover, the contradictions recorded between the Basis of Claim Form and the Applicant's version provided at the hearing can be explained, as the Applicant says, by problems encountered in translation of this document from the Arabic spoken by the Applicant and his French version.

IV. Analysis

A. *Reasonableness*

[13] Neither of these attempts at an explanation would hold water. The claim that problems in the interpretation are allegedly at the root of the contradictions and inconsistencies appears to be an *ex post facto* explanation. In any event, many of the elements between the Basis of Claim Form—for which he was responsible and which was completed with no government intervention—and the testimony match. Translation errors cannot stem solely from areas in which the Applicant is contradictory or inconsistent, yet not in the rest of the translation. If the Applicant had problems with the translation, he should have raised them for this claim to have some credibility. Even better, he had the option of using another translator.

[14] What is more, as the respondent noted, the documentary evidence presented by this Applicant was particularly flawed. It is no trivial matter that:

- (a) His passport and his marriage certificate listed two different residences where the Applicant asserts he never lived.
- (b) His passport, his marriage certificate and his daughters' birth certificates indicate that the Applicant held different jobs, whereas, according to the Applicant, this information was completely false.
- (c) the place of marriage indicated on the marriage certificate was incorrect; the Applicant could not explain this error.
- (d) The Applicant could not provide the name of two witnesses to his marriage and the only person he identified as a witness was not recorded as such on the marriage certificate.
- (e) The Applicant could not explain the discrepancies in dates when he entered and left Mali, and the date stamps in his passport.

Respondent's additional memorandum, paragraph 8

[15] In other words, the translation was not shown to be flawed and, on reflection, is almost certainly an *ex post facto* explanation. In fact, even the documentary evidence contained no inconsistencies.

[16] As regards the contradictions and inconsistencies at the hearing, the Applicant tried to explain some of them. However, none of these explanations can successfully argue that the RPD's findings are unreasonable, within the meaning of *Dunsmuir*.

[17] It would be burdensome to raise all of the questions presented to the RPD, some of which the Applicant attempted to explain, while others were simply not explained. By way of illustration, some paragraphs in the decision read as follows:

[TRANSLATION]

[24] The panel also has no evidence of the Applicant's return date to Mali. The Applicant entered into evidence his Al Fath Institute student card. This card was issued on February 20, 2012, whereas the Applicant stated that, given the instability in the country in 2011, the final exams for the 2011–2012 academic year were held in December 2011 so that the students could go home, especially the foreign ones. Thus, the Applicant returned to Mali in January 2012. Under these conditions, the panel found it difficult to explain why the Al Fath Institute would issue student cards once the final exams were done and the school was essentially closed. The Applicant also stated that he did not know why that date appears on his student card. The panel then asked him how he obtained that card. He said that he obtained it in the summer; then when asked to clarify, he said it was in summer 2010 or 2011. This makes no sense. Lastly, in his Appendix A form, the Applicant allegedly indicated to the immigration officer that from September 1999 to August 2011, he apparently studied in Damas at a high school, the name of which he apparently does not know. Confronted by the difference in the study end date and the fact that he allegedly did not know the name of the two institutes where he allegedly studied, more specifically, the name of the Al Fath Institute, the Applicant replied that he knows he studied there and that he does not know why the immigration officer did not write it

down, that maybe he misunderstood. This further undermines the Applicant's credibility with respect to his studies and whereabouts in 2012.

[25] Moreover, his whereabouts also call into question his presence in Mali. In fact, no two Mali documents submitted by the Applicant indicate the same information, more specifically, about his address.

...

[28] The Applicant was then confronted about his national identity card issued in Tambacara during a period in [sic] the Applicant indicated that he lived in Bamako. He explained that he had to go "sell some things there" and that, in Bamako, it is very difficult to have such a card issued. The Applicant was then asked why this card indicated the following address: "Gory, at his father's home" on July 28, 2015, if the Applicant is an orphan. The Applicant replied that that address clearly needed to appear on the documents he submitted to obtain that card. The Applicant added that he did not fill out any forms to request that card and that he was not asked any question [sic]. The panel then asked him how the officer could have known that he was a commercial employee; the Applicant replied that he was asked the question. This undermines his credibility. In addition, the panel does not see how the Applicant, given his purported history, was allegedly in possession in 2015 of documents stating that he lived at his father's home. Moreover, this instead led the panel to question whether the Applicant was indeed an orphan.

[18] In fact, the inconsistencies and contradictions raised by the RPD could fall under three categories:

- 1) Problems with the documentation: The claimant claimed he never went to school in Syria because he could not be enrolled as he had no valid passport. The panel questioned the possibility that this was the case and that his adoptive father was unable to obtain such a passport. When a Mali passport was allegedly obtained in 2010 before he left Syria, its origin was unexplained. A new passport seemingly obtained without difficulty in 2015 caused suspicion because, according to the Applicant, he was constantly harassed and he says he was suspected of terrorism. Furthermore, that passport was allegedly a replacement for the one that was apparently confiscated by Mali authorities upon the Applicant's return in 2012 (the Court noted that it seems that the Applicant left Mali in 2016 after obtaining a false passport—decision, paragraphs 12 and 20). The birth

certificates of the Applicant's wife and children also pose a problem. Thus, for example, the Applicant was unable to provide the date of birth of his children when he was asked this during the hearing. There was also no explanation as to why his wife's birth allegedly appears as being recorded twice (upon her birth and again in 2016). The marriage certificate is also problematic because a marriage that was allegedly celebrated at a specific location is not the one that appears on the certificate. Moreover, only one of the four witnesses was identified.

- 2) Inconsistent evidence regarding this Applicant's whereabouts: This refers to the Applicant's history, which is described as "rather unusual." The Applicant could not explain how he happened to be in Syria in 1990, but, even more striking, is that nothing is known of his situation in Syria between 1990 and 2012. However, in 2012, the Applicant was 29 or 30 years old. One is entitled to obtain explanations regarding the 21 years spent in Syria. The child became an adult. Besides the issue of the student card referred to in one of the above paragraphs, and the inability to identify the high school attended in Damas between 1999 and 2011, one can note the fact that the Applicant completely did not recognize one address appearing on his passport. The RPD also questioned the Applicant's different addresses following his return from Mali, while the information provided on the forms differs from that which the Applicant was able to provide at the hearing.
- 3) Applicant's training and job history: The RPD questioned the Applicant's claim to the effect that, in 2006, he was studying "texts and expressions, grammar, dictation, conversation, reading, research". He was 24 at the time. His employment history in Mali is also rather obscure, even though different jobs and professions are presented by the Applicant on the various documents.

[19] The Applicant's attempts to explain in no way demonstrate that the findings drawn by the RPD are unreasonable because they are allegedly not one of the possible acceptable outcomes. At best, he suggested explanations without convincing that the RPD's findings fall outside of the range of possible acceptable outcomes. These findings all boil down to one single conclusion: the witness is not credible. I fail to see how this finding could have been questioned and the Applicant's demonstration does not come close to convincing that there is a lack of reasonableness.

B. *No credible basis*

[20] As indicated above, the RPD also found [TRANSLATION] "that no credible or trustworthy evidence was presented on which it could have based a positive decision" (paragraph 34). In my opinion, this finding by the panel is beyond reproach. In fact, all of the evidence presented makes this finding possible. The RPD phrased it unequivocally:

[TRANSLATION]

[34] All of the elements raised thus far, especially the core elements of his allegations, lead to the panel's finding that the Applicant is not a credible witness. Thus, the panel does not believe the Applicant's allegations. Moreover, the panel felt that he did not present any credible or trustworthy evidence on which one could base a positive decision. The panel therefore found that there was no credible basis for this claim.

[21] The Applicant is not incorrect in recalling that whenever there is a lack of credibility, it does not always imply that there is no credible basis (*Ouedraogo v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 21), but this in no way excludes the possibility that a general lack of credibility generates no credible basis.

[22] If I understand the Applicant's argument correctly, the existence of objective documentary evidence regarding the situation in Mali would be sufficient to prevent a finding under subsection 107(2) of the IRPA. In the Applicant's opinion, this claim is supported by the Federal Court of Appeal decision in *Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89; [2002] 3 FC 537 [*Rahaman*].

[23] The Applicant turned to paragraph 19 of that decision for support. In that paragraph, the Court examined the effects of statutory changes regarding the use of the no credible basis concept. Reference was made to the decision by Mr. Justice Denault in *Foyet v. Canada (Minister of Citizenship and Immigration)*, (2000) 187 F.T.R. 181 [*Foyet*] in which he stated that "In cases where there is independent and credible documentary evidence, however, the panel may not make a no credible basis finding." The Federal Court of Appeal was in agreement with this passage but added an important reservation. The passage in *Rahaman* to which the Applicant refers reads as follows:

[19] . . . In my view, this is an accurate statement of the law as it has been understood to date, subject to one qualification: in order to preclude a "no credible basis" finding, the "independent and credible documentary evidence" to which Denault J. refers must have been capable of supporting a positive determination of the refugee claim.

[My emphasis]

[24] The finding drawn by the Applicant was that the existence of objective documentary evidence means the possibility of supporting a positive determination of the refugee claim. This finding could probably have been drawn from *Foyet* alone, but was no longer possible following *Rahaman*. In fact, *Rahaman* actually provides for the contrary when one reads further and the Court of Appeal explains how documentary evidence is capable of supporting a positive determination of a [refugee] claim. Not just any documentary evidence will suffice. The Court actually refuted such a finding in paragraph 29, which is reproduced below:

[29] However, as MacGuigan J.A. acknowledged in *Sheikh*, supra, in fact the claimant's oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in

such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim.

[25] The Court also explained that "the existence of some credible or trustworthy evidence will not preclude a 'no credible basis' finding if that evidence is insufficient in law to sustain a positive determination of the claim" (paragraph 30). Therefore, the documentary evidence alone does not normally constitute that which might support a positive determination of the refugee claim because it does not address the person's situation. What is more, even certain elements of credible or trustworthy evidence will not be sufficient to avoid the status of "no credible basis," if these elements are insufficient to support a positive determination of the refugee claim.

[26] The only evidence of the situation in Mali is insufficient to grant refugee status. As a result, the Court can only conclude that the RPD finding regarding "no credible basis" was not demonstrated to be unreasonable.

[27] Consequently, the application for judicial review is dismissed.

[28] There are no questions of importance to certify.

JUDGMENT in file IMM-5201-16

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No questions of general importance are proposed or certified.

"Yvan Roy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5201-16

STYLE OF CAUSE: ABDOULAYE BARADJI v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 8, 2017

JUDGMENT AND REASONS: ROY J.

DATED: JUNE 15, 2017

APPEARANCES:

Luciano Mascaro

FOR THE APPLICANT

Émilie Tremblay

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Arpin, Mascaro & Associés
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT