

Federal Court



Cour fédérale

Date: 20180604

Docket: IMM-5025-17

Citation: 2018 FC 580

Ottawa, Ontario, June 4, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

ABDOULAZIZ ABDI HOCH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns a refugee protection claim that was denied by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB]. The basis of the Applicant's claim is that he is a member of a minority clan in Djibouti and politically active with an opposition party, which led to his arrest and mistreatment at the hands of authorities tantamount to persecution, and that he would be subject to the same upon his return.

[2] The Applicant appealed to the Refugee Appeal Division [RAD] of the IRB. The RAD dismissed the appeal and confirmed the determination of the RPD that the Applicant is neither a Convention refugee pursuant to section 96 nor a person in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] The Applicant seeks judicial review of the RAD decision.

[4] For the following reasons, I am not satisfied that the RAD committed any reviewable error. This application is accordingly dismissed.

II. Facts

A. *Facts Alleged in the Basis of Claim Form*

[5] The following is a summary of the facts alleged by the Applicant in his Basis of Claim Form [BOC]. The Applicant claims as follows:

1. The Applicant is a citizen of Djibouti born in 1995. The Applicant is from a tribe called Yibir Gudud who is discriminated against by Djiboutians in Djibouti. Two other clans rule the government, trades, and society.
2. The Applicant was politically active against the regime in Djibouti. He has been arrested and jailed several times, more specifically in 2011, 2013, 2015, and 2016, and severely punished by the authorities. The Applicant was influenced to join the protesters by his father and elder brother, who were in charge of organizing against the rulers. The

Applicant's role was to distribute papers, such as pictures, brochures, and speeches, to help mobilize and increase opposition to Ismail Omar Guelle's regime.

3. On February 18, 2011, the Applicant was one of the students in front of the Stadium Gouled protesting the regime. The military came and arrested them. The Applicant was among those who were punished or tortured, including with electric shocks, so authorities could find out who organized the gathering.
4. On March 7, 2013, the Applicant was at a meeting of the UDJ, "Union Democratic of the Youth", when officers came and started beating him until he fainted. He woke up in jail and was tortured and detained for 16 hours.
5. The Applicant added to his narrative that on May 5, 2015, he was at work and officers from the 3rd Brigade arrested him for three days.
6. On December 21, 2015, the massacre of Bouldougho happened while the Applicant, his father, and his brother were there participating in a cultural celebration. Around 4 a.m. that day, a group of military arrived at the celebration and started shooting with real bullets. The Applicant's knee was injured. He was imprisoned for three days without meals. The Applicant went into a coma and stayed there for a week and was then dropped off near a hospital. The Applicant could not locate his father and brother after that incident and he cannot tell if they are still alive or dead.
7. At 6 a.m. on March 10, 2016, gendarme officers came into the Applicant's house, took him to their compound and held him there for two days without telling him the reason. He was then transferred to Gabode Prison for 30 days without a court's intervention.

8. Fearing for his life, the Applicant applied for an American visa and was accepted. He went to Ethiopia secretly and flew to North America from there on September 26, 2016. He did not claim refugee protection in the United States because he was scared of Donald Trump. The Djiboutian community in Baltimore supported him financially to come to Canada. He flew to Minneapolis, Minnesota and ultimately arrived at Emerson, Manitoba, on February 3, 2017.

B. *Decision of the Refugee Protection Division*

[6] The RPD held a hearing where the Applicant was represented by counsel and an interpreter was present. In its decision dated October 30, 2017, the RPD did not find the Applicant to be credible for a number of reasons, which are canvassed in detail at paragraphs 10 to 45. It concluded that the credibility issues were so extensive and persuasive as to be fatal to the Applicant's claim. It concluded that the Applicant did not establish, on a balance of probabilities, that he experienced acts of discrimination that amounted to persecution because of his ethnicity or was personally targeted for the reasons he alleged.

C. *Decision of the Refugee Appeal Division*

[7] The Applicant appealed to the RAD. His former counsel argued in his memorandum that the RPD erred in the assessment of the Applicant's credibility and evidence, but did not identify any particular error or submit any documentary evidence in support of the appeal. Counsel asserted that the RPD erred in ignoring the reasonable explanations of the Applicant, which he maintained were not inconsistent with each other but rather "built upon the other in response to

the RPD member's repeated questioning". Counsel submitted that the tribunal is under a duty to consider the explanation before drawing an adverse inference, but he did not indicate where the RPD failed to do so.

[8] The RAD found, after listening to the recording of the hearing, that it was in the same position as the RPD in assessing credibility and therefore it did not owe deference to the RPD's credibility findings. The RAD noted that it is not its role to piece together the Applicant's arguments. Notwithstanding, as part of the independent assessment of the evidence, the RAD proceeded to consider if there was sufficient credible evidence for the Applicant's claim.

[9] The RAD found that the Applicant's account of the arrest of December 21, 2015 was not consistent. The RAD explained that the Applicant was given an opportunity to explain why the medical letter he produced does not state that the Applicant was in a coma and only mentions a sprained ankle and fractured ribs. The Applicant did not explain why the letter did not state that he was in a coma. The RAD found that this undermined his credibility.

[10] The RAD found that the Applicant's political knowledge was not consistent with his statement that he participated in protests. The RAD stated that according to the documentary evidence, the leader of the UDJ, Ahmed Hoche Guedi, was convicted in May 2013 and served 25 days in jail. When asked about the leader's name, Ahmed Hoche Guedi, the Applicant did not know who he was. The RAD found that this lack of knowledge was a significant and relevant inconsistency that undermined the credibility of the evidence of the Applicant's political activism and the alleged arrests.

[11] The RAD further explained that these inconsistencies were in the context of other inconsistencies. It noted that the differences between the Applicant's statements and the BOC were significant and material. The RAD found it to be incomprehensible how the Applicant could leave out important information in his BOC that he was a student leader and detained for six days back in 2011 or that his wife was beaten in July 2016. Similarly, he testified that he was arrested many times but did not mention other times in the BOC. The RAD was not satisfied that the inconsistencies were the result of human error. The RAD also found his vagueness when asked about his attempts to find his brother and father undermined the likelihood that they were the casualties of an oppressive state.

[12] The RAD considered the evidence which it thought is the most credible of this claim. However, the RAD found even it had significant problems. While the Applicant may have been a student in Djibouti, the RAD found there was insufficient evidence to conclude that he faced any consequences for his alleged political activities.

[13] The RAD concluded that the RPD had sufficient reasons to come to the conclusion that the Applicant's answers were at times evasive, or that he was adjusting his responses when confronted with a contradiction. The RAD also noted that the Applicant did not call anyone as a witness to explain how they erred in assisting the Applicant when completing the BOC Form.

[14] The RAD also found that the Applicant demonstrated English language skills and did not need the submissions translated for him. The RPD provided him with an opportunity to explain

the inconsistencies and gave him the opportunity and considerable latitude to converse with the interpreter to clarify answers during the hearing.

[15] The RAD analyzed the Applicant's claim that he suffered discrimination that was tantamount to persecution. The RAD found there is insufficient evidence to conclude that the Applicant would face harassment that was sufficient to constitute persecution. While he is a member of the minority Yibir Gudud clan, the RAD found there is insufficient evidence about the degree and nature of discrimination that the clan would face. Indeed, the Applicant attended university or college and had a job and travelled outside of the country. The RAD found there was insufficient evidence that he would face serious harm upon his return to Djibouti. The RAD noted that the Applicant raised state protection in his arguments, but that it was not necessary to comment on it as there was no finding that there is more than a mere possibility of persecution or that the Applicant is a person in need of protection.

III. Standard of Review

[16] The standard of review to be applied in the review of the RAD's findings and assessment of the evidence is that of reasonableness (*Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93 at para 35).

IV. Analysis

[17] The Applicant alleges that numerous reviewable errors were committed by the RAD. They can be summarized as follows: (1) the RAD was overzealous in analyzing the evidence

microscopically and focussing on minor matters concerning the Applicant's arrests, injuries, hospitalization, and his attempts to find his father and brother; (2) the RAD erroneously stated the level of knowledge of the Applicant was not consistent with his participation in the protests, namely there was an error in the National Documentation Package, that Ahmed Hoche Guedi was president of the UDJ and both the RPD and RAD repeated this error improperly leading to an adverse finding of credibility; (3) the RPD and RAD improperly presumed the Applicant knew English sufficiently to function without an interpreter when he asked for one and used it; and (4) the RAD failed to have regard for all the evidence, in particular the UDJ membership card of the Applicant.

[18] Rule 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257, requires an appellant to submit a record containing a memorandum that includes full and detailed submissions regarding: (i) the errors that are the grounds of the appeal, and (ii) where those errors are located in the RPD's decision, or in the transcript recording of its hearing. The RAD cannot be faulted for failing to consider arguments that were never raised.

[19] As was stated by Mr. Justice Patrick Gleeson in *Ghauri v Canada (Citizenship and Immigration)*, 2016 FC 548 at para 34: "appellants before the RAD that fail to specify where and how the RPD erred do so at their own peril". If the Court on judicial review were prepared to condone such practice, it would effectively allow an appellant to circumvent and neuter the appeal route provided by statute while ignoring the deference owed to the tribunal (see *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54).

[20] The Applicant is essentially asking this Court to reweigh evidence that was considered by the RPD and the RAD. He also seeks to fault the RAD in relation to matters that were not raised on appeal, relying on submissions that are made without an evidentiary basis. Judicial review is not the forum to engage in such debate. Nonetheless, the Applicant has raised two issues regarding the RAD's credibility findings which bear comment.

[21] First, the RAD confirmed the RDP's finding that the Applicant's lack of knowledge of Ahmed Hoche Guedi, a known opponent in Djibouti who was jailed for 25 days for his political opinion, brought into question the Applicant's claim that he was an active member of the opposition. There was admittedly some confusion in the country information with respect to Mr. Guedi's political role in the country. In an IRB document, Mr. Guedi was referred to both as the president of the UDJ (the political group of which the Applicant claimed to be a member) and as a member of parliament for the USN (a coalition comprised of opposition parties, including the UDJ). However, elsewhere in the document, the president of the UDJ was identified as Ismael Guedi Hared.

[22] The RAD referred to Mr. Guedi in its decision as the leader of the UDJ, while the RPD referred to him as a member of parliament for the USN and a member of the UDJ. Although Mr. Guedi's political role in the country was mischaracterized, it remains that the Applicant was unable to identify a prominent political opposition figure in Djibouti, whatever his role. The Applicant submits before this Court that Ismael Guedi Hared was always the UDJ president; however this is simply an assertion. It was reasonable for the RAD to conclude that the

credibility of the Applicant's claim as a politically-active UDJ member was undermined by his inability to identify Mr. Guedi.

[23] Second, there was also some confusion about the alleged arrest, injury and hospitalization of the Applicant on December 21, 2015. The Applicant submits that the RAD was over zealous, regarding the evidence microscopically and focusing on minor matters. I disagree. I am satisfied that if there was any misunderstanding, it was because of the Applicant's failure to provide cogent explanations for apparent discrepancies in his BOC, his testimony, and documents produced in support of his claim.

[24] The Applicant states in his BOC as follows, in his spelling: “[p]ersonally I was injured on my knee the officers took me and imprisoned me inside the Jail for three days without meals. I was between lives and dead. I went to Coma and stayed insouciantly there for a week and they dropped me off near a hospital without the acknowledgment of my family.”

[25] The Applicant was questioned about his claim that he was arrested on December 21, 2015, that his knee was injured and that he spent three days in detention, followed by a week in a coma. The Applicant produced a medical letter before the RPD, with no header or doctor's name, stating that the Applicant was hospitalized on December 25, 2015 and treated for [translation] “ankle sprain and fracture of the vertebrosteral ribs”. When asked to explain the inconsistencies, the Applicant stated that he had erred in his written account. The RPD noted that the letter does not mention any comatose state or knee injury. When asked to explain the discrepancies between this letter and his written account, the Applicant stated that his knee injury

had extended to his ankle. Given the major differences between his written account and the medical letter submitted, the RPD granted no probative value to this evidence. It was reasonable for RAD to reach the same conclusion.

[26] The RAD flagged numerous other issues as significant credibility issues which are completely ignored and unchallenged. The Applicant fails to address the credibility findings as a whole, but cherry-picking instead selected aspects of the decision with which he disagrees. However, in the end, it was not one or two issues, but rather a series of issues that operated cumulatively to undermine the Applicant's credibility.

V. Conclusion

[27] For the above reasons, and for the reasons set out in the Respondent's written submissions, which I adopt and make mine, I am not satisfied that any reviewable error was made by the RAD. The basis for the determination by the RAD, while not perfect, is transparent, intelligible and justified. The application is accordingly dismissed.

JUDGMENT IN IMM-5025-17

THIS COURT'S JUDGMENT is that:

The application is dismissed.

"Roger R. Lafrenière"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5025-17

STYLE OF CAUSE: ABDOULAZIZ ABDI HOCH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

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