

Federal Court



Cour fédérale

Date: 20190107

Docket: IMM-1913-18

Citation: 2019 FC 11

Ottawa, Ontario, January 7, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

NOOR AHMAD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Noor Ahmad, is a citizen of Afghanistan. He reports that having supported American forces in Afghanistan as a contractor he fears being targeted by the Taliban. The Refugee Protection Division [RPD] refused his claim, finding it to be manifestly unfounded pursuant to section 107.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Ahmad seeks judicial review of the RPD decision. He submits that the RPD's negative credibility and plausibility findings were not grounded in the evidence and that the analysis of his *sur place* claim was deficient. He further submits that the RPD's failure to obtain original documents in the possession of the Canada Border Services Agency [CBSA] was a breach of procedural fairness.

[3] The respondent submits that the RPD's manifestly unfounded finding was reasonable in light of the RPD's many adverse credibility findings, that no error was committed in conducting the *sur place* analysis, and that there was no breach of procedural fairness.

[4] The application is dismissed for the reasons that follow.

II. Background

[5] Mr. Ahmad states in his Personal Information Form that he was the Vice President and CEO of Revival Construction and Supplies, a contractor providing logistical support to the United States Army in Afghanistan. Due to his connections to American forces, he received threatening phone calls from individuals speaking Pashtun who he believes were members of the Taliban. He reports a bomb exploded at his house in early April 2012.

[6] Leaving his wife and three children in the care of his father, he fled Afghanistan using a British passport. He arrived in Canada on April 30, 2012. He reports that in 2013, the home where his wife and children were staying was attacked. His family then moved to Pakistan and in

November 2014 entered Germany, where their claim for refugee protection was denied. An appeal of that decision is underway.

III. Style of Cause

[7] The applicant has named the Minister of Immigration, Refugees and Citizenship Canada as the respondent in this matter. The correct respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and IRPA, s 4(1)). Accordingly, the respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

IV. The Decision under Review

[8] The RPD identified the primary issues raised by the claim as being identity and credibility. The RPD noted that the fear alleged was based solely upon Mr. Ahmad's profile as an individual working with American forces.

[9] The RPD reviewed credibility concerns set out by the CBSA stemming from: (1) a substantial change to the basis of claim; (2) potentially fraudulent information; and (3) other information that the claimant may be directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

[10] The RPD noted the concerns raised by the Minister relating to identity, credibility, and program integrity: (1) Mr. Ahmad had arrived in Canada undocumented; (2) he had used a

foreign passport under a false name; (3) his documents showed different birth dates; (4) several documents showed different names; (5) there were changes in events and accounts; (6) he had returned to Afghanistan after the alleged threats were made; and (7) there were questions about his company.

[11] In addressing credibility, the RPD first considered concerns with Mr. Ahmad's reported profile, noting his limited education and experience, and wondered "how the claimant could be the CEO of a Company handling several million dollars of contracts." The RPD noted that answers to questions relating to his business partner were vague and failed to demonstrate the partner had the skills, including the language and computer skills, to conduct business with Americans. The RPD also noted that evidence relating to the registration of the company was inconsistent. The RPD then reviewed what it described as serious flaws in a company registration document, including anomalies in colour, background, and photos, and noted the date of validity preceded the date of issuance. The RPD did not accept the document as valid and gave it no weight, noting it also shed further doubt on Mr. Ahmad's assertion of having founded the company and been CEO.

[12] The RPD found Mr. Ahmad had not demonstrated he was the co-founder or CEO of the company and concluded he was not credible.

[13] In considering business documents, including solicitation sheets and contracts, the RPD found them not to be reliable, noting they had no US identification, headings, or features. The

RPD noted problems with the font and the applicant's signatures on the documents. The RPD found the documents to have no probative value.

[14] Having found the crux of the applicant's claim not to be credible, the RPD noted that this impacted the rest of Mr. Ahmad's allegations and evidence. The cumulative effect of the credibility and authenticity concerns showed that none of the material adduced was reliable.

[15] The RPD also identified several areas of concern in examining a copy of an identity badge reportedly needed to access American bases. The RPD noted that it was unclear as to why the original badge was not before the panel but found the badge to be of little assistance as the evidence had failed to credibly establish Mr. Ahmad's profile. In considering the copy of the badge, the RPD noted that it did not necessarily attest to the applicant's presence on US bases and noted several inconsistencies on the face of the document.

[16] In considering the applicant's identity, the RPD noted inconsistencies relating to his name and birth date in the various identity documents before it. It noted conflicting information between point of entry statements and other information and statements provided by Mr. Ahmad. The RPD concluded the applicant's identity could not be established.

[17] In addressing the *sur place* claim, the RPD noted that Mr. Ahmad's family still lived in Kabul. It found that the risk of him being perceived to be a westerner after six years in Canada presented less than a serious possibility of persecution in Kabul, where his family continued to reside and the Taliban did not exercise control.

[18] The RPD concluded that Mr. Ahmad was an untrustworthy witness who had withheld information, waited for clues on how to answer questions, and had not produced reliable documents. The claim was found to be manifestly unfounded.

V. Issues and Standard of Review

[19] I have framed the issues raised as follows:

- A. Were the RPD's credibility and plausibility findings capricious and based on no evidence?
- B. Did the RPD err in finding the claim was manifestly unfounded?
- C. Did the RPD err in its *sur place* analysis by failing to consider relevant evidence?
- D. Did the RPD breach principles of natural justice and procedural fairness by relying on photocopies of the applicant's documents?

[20] In considering alleged breaches of procedural fairness, the Federal Court of Appeal recently considered what a court is being asked to assess in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*]. The Court of Appeal held that where fairness is in issue, a reviewing court is being asked to consider whether the process was "fair having regard to all the circumstances" and that "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond." The Court of Appeal acknowledged that there is an awkwardness in using standard of review terminology when addressing fairness questions and held that "strictly speaking, no standard of review is being applied" but found that the correctness standard best reflects the court's role (*Canadian Pacific Railway Company* at paras 52–56).

[21] The parties agree that the RPD's findings of fact and mixed fact and law are to be reviewed against a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 53, 55 and 62; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 52–62).

VI. Analysis

A. *Were the RPD's credibility and plausibility findings capricious and based on no evidence?*

[22] Mr. Ahmad argues that the RPD's numerous negative credibility findings were not supported by objective evidence and were based on unfounded speculation. He submits that the CBSA's concerns with his credibility were not previously disclosed to him and that the RPD's credibility findings simply mirrored these concerns. He submits that in making negative credibility findings relating to his profile and his involvement in and the role of his company the RPD ignored evidence and his explanations, applying a "Canadian paradigm" in assessing circumstances in Afghanistan.

[23] He submits that the RPD failed to respect and apply the principles that plausibility findings are only to be made in the clearest of cases, based on evidence, and that an applicant is to be presumed truthful absent reasons to doubt his or her truthfulness. He submits the RPD did not properly assess the most important and relevant documents in support of his claim.

[24] I am unpersuaded by Mr. Ahmad's submissions. The RPD's credibility and plausibility findings were linked to inconsistencies identified between Mr. Ahmad's narrative and the

documents relied upon in support of the claim or concerns visible on the face of the documentary evidence. Each of these inconsistencies was identified and Mr. Ahmad was given the opportunity to explain them. In the case of the RPD's concerns relating to the business documents submitted in support of the claim, Mr. Ahmad had the opportunity to submit additional documentation. His explanations were considered and the RPD's concerns with those explanations are set out in the decision.

[25] For example, Mr. Ahmad argues the RPD erred by finding his business registration certificate was not authentic. The RPD identified its concerns with the document, which included gaps around the pictures and discrepancies between the validity and issuance dates set out on the document. The RPD raised these and other concerns and acknowledged Mr. Ahmad's evidence, including his explanation that unpaid taxes explained the date discrepancies. The RPD stated why this explanation was not persuasive. In doing so, the RPD also described Mr. Ahmad as "visibly baffled" by the question, noted that his reply was hesitant, and found the explanation was equivocal. The RPD's finding in regard to this evidence is transparent, justified, and intelligible. The RPD engages in a similar analysis in support of the majority of its credibility findings.

[26] It was not unreasonable for the RPD to conclude the business registration certificate, a document that underpins the core of Mr. Ahmad's claim, was fraudulent.

[27] Mr. Ahmad also takes issue with the RPD's failure to address some documentation, including a letter from the US Department of Defence. While a reviewing court might prefer that

a decision maker address and comment upon all evidence, no such burden is placed on a decision maker. The RPD is presumed to have assessed all the evidence. In this case, a finding of a general lack of credibility had been made. Further, and as the respondent noted, the letter in issue pre-dated the commencement of the company's operations and referred only to the applicant, not his company. I find no error arises from the RPD's failure to expressly address the letter.

[28] I agree with Mr. Ahmad that there are some instances where the RPD did engage in improper speculation. For example, the finding that the Afghan officer issuing a passport would have checked the birth registry if there were doubts relating to the applicant's birth date is not based on any objective evidence. The conclusion is speculative. However, in light of the many negative and reasonably available findings that had been made relating to the credibility of Mr. Ahmad and the authenticity of the documentation, the errors made do not render the RPD's decision unreasonable.

[29] The RPD is entitled to considerable deference in making credibility findings (*Hohol v Canada (Citizenship and Immigration)*, 2017 FC 870 at para 18 [*Hohol*]; *Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at para 34). In this case, the RPD's findings were based on the evidence and were reasonably available to it.

B. *Did the RPD err in finding the claim was manifestly unfounded?*

[30] The threshold for a finding that a claim is "manifestly unfounded" is high (*Yuan v Canada (Citizenship and Immigration)*, 2018 FC 755 at para 45; *Bushati v Canada (Citizenship and Immigration)*, 2018 FC 803 at para 45 [*Bushati*]).

[31] Section 107.1 of the IRPA states:

107.1 If the Refugee Protection Division rejects a claim for refugee protection, it must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent.	107.1 La Section de la protection des réfugiés fait état dans sa décision du fait que la demande est manifestement infondée si elle estime que celle-ci est clairement frauduleuse.
---	---

[32] In *Warsame v Canada (Minister of Citizenship and Immigration)*, 2016 FC 596

[*Warsame*], Justice Yvan Roy considered section 107.1. He noted that the RPD should proceed in two stages: it must first be of the opinion that the claim is clearly fraudulent, and then it must state the claim is manifestly unfounded and give reasons (*Warsame* at para 23). There must be evidence showing the claim is clearly fraudulent (*Warsame* at para 24). Such evidence can be in the form of numerous discrepancies and difficulties with the evidence (*Warsame* at para 24).

[33] Section 107.1 specifies that the RPD must be of the opinion that the claim is “clearly fraudulent.” Justice Roy explained this requirement as follows:

Parliament chose to require that the claim be “clearly fraudulent” for particular consequences to flow. That would entail that it is the claim itself that is assessed as being fraudulent, and not the fact that the applicant would have used, for instance, fraudulent documents to get out of the country of origin or to gain access to Canada. However, once making a claim for refugee protection, the applicant would have to operate with clean hands and statements in support of the claim have to be accurate or they could be held against the claimant. In other words, the claimant would be attempting to gain refugee protection through falsehoods that may make the claim fraudulent. It is the claim that must be fraudulent.

(*Warsame* at para 27)

[34] Justice Roy went on to explain that the essential element of fraud is dishonesty, which can – but need not – manifest itself in deceit or falsehood (*Warsame* at para 28 and 29). Under section 107.1, the dishonesty, deceit, or falsehood must relate to an “important part of the refugee claim...such that the determination of the claim would be influenced in a material way” [emphasis added] (*Warsame* at para 30; also see *Hohol* at para 32; *Bushati* at para 45).

[35] Recognizing that the threshold for a “manifestly unfounded” finding is high, I have no doubt that it has been met in this case. I have found that the RPD’s credibility findings and document authenticity findings were reasonable. Many of the concerns identified related to key and material aspects of the claim, including the existence of the company the applicant claimed to lead and whether there was any connection to the US military in Afghanistan. This information went to the core of the refugee claim, and the negative credibility findings in these areas opened the door to the RPD concluding the claim was “clearly fraudulent.” The RPD did not err in finding the claim was manifestly unfounded.

C. *Did the RPD err in its “sur place” analysis by failing to consider relevant evidence?*

[36] Mr. Ahmad submits the RPD erred in addressing his *sur place* claim by failing to consider whether his life would be in danger due to his “long residence in Canada and his westernized way of living.” He submits the RPD failed to consider the difference between his circumstances and those of his parents. He also argues that the RPD failed to consider photographic evidence showing a relationship with American forces, and evidence indicating the absence of confidence in police. Finally, he argues the RPD failed to conduct an assessment of

his risk based on the objective evidence notwithstanding the rejection of his claim on credibility grounds.

[37] The RPD's *sur place* analysis is limited. As Mr. Ahmad submits, the documentary evidence does indicate that those perceived as westernized or having adopted values and/or appearances associated with the West or those who have cooperated with Afghanistan National Security Forces or the international community may be at risk. The evidence indicating Mr. Ahmad meets this profile is his connection to American forces in Afghanistan and his six years in Canada.

[38] The RPD had previously determined that Mr. Ahmad's narrative was not credible and that it was not established that he had any connection to American military forces in Afghanistan. The RPD was not required to revisit this issue in conducting its *sur place* analysis.

[39] Mr. Ahmad's evidence of actual or perceived westernization was limited to his six years in Canada. Despite the limited evidence, it may have been preferable had the RPD expressly addressed the applicant's period of time in Canada. However, in considering the RPD's decision, I am required to pay "respectful attention" to the decision maker's reasons and to be cautious about substituting my view by designating certain omissions in the reasons to be fateful (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 17).

[40] Within the context of the evidentiary record, I am unable to conclude that the RPD erred in its *sur place* analysis. There was precious little credible evidence to suggest Mr. Ahmad fit the profile of those at risk and as such there was no obligation to engage in a detailed assessment of that risk based on the objective documentary evidence.

D. *Did the RPD breach principles of natural justice and procedural fairness by relying on photocopies of the applicant's documents?*

[41] Mr. Ahmad argues the RPD breached procedural fairness by failing to obtain original documents, despite acknowledging it was relying on unclear copies and stating that it would seek the originals. The RPD decision also indicates that a CBSA expert report analyzing three documents was missing even-numbered pages, as only one side of the double-sided report had been copied.

[42] It is concerning that the RPD was not provided with original documentation that appeared to be available to the CBSA; however, I am not persuaded that the shortcomings in the record amount to a breach of procedural fairness in this case.

[43] It is recognized that the scope and content of the duty of fairness is flexible and variable and depends on context (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 22). In this case, the record indicates the RPD made numerous attempts to obtain original documents both prior to and subsequent to the hearing. It appears that it then proceeded to finalize its decision on the basis of the record before it to avoid further delay in a matter that had been ongoing for many years. In determining if in doing so the RPD rendered the

process unfair, I have considered what the original or missing documentation might have added to the record.

[44] I am not convinced that the originals would have had any impact on the RPD's analysis in light of the types of concerns the RPD identified and addressed. The RPD, for example, noted that while it had not had the benefit of examining the original identification badge, the original would not have addressed its concerns with the information entered on the badge and clearly visible on the copy. With respect to the business certificate, an original may have assisted in the consideration of the RPD's concerns with apparent gaps around the pictures, but again it would not have assisted in addressing the RPD's concerns relating to the inconsistent content of the document.

[45] In submissions, Mr. Ahmad argued that the breach of natural justice arises as a result of the RPD not seeking originals after indicating this would be done. In this regard, the record indicates that the RPD did seek out the originals but was unsuccessful. As such, it appears the RPD did what it advised Mr. Ahmad would be done. Mr. Ahmad does not identify any specific prejudice or unfairness that arises beyond that set out above.

[46] In these specific circumstances, I am unable to conclude that there was a breach of procedural fairness.

VII. Conclusion

[47] The application is dismissed. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-1913-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. The respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1913-18

STYLE OF CAUSE: NOOR AHMAD v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 31, 2018

JUDGMENT AND REASONS: GLEESON J.

DATED: JANUARY 7, 2019

APPEARANCES:

Zahra Khedri FOR THE APPLICANT

Melissa Mathieu FOR THE RESPONDENT

SOLICITORS OF RECORD:

Zahra Khedri FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario