Federal Court  Cour fédérale

Date: 20190116

Docket: IMM-566-18

Citation: 2019 FC 54

Ottawa, Ontario, January 16, 2019

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

SEGNI FEYERA ABDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Segni Feyera Abdi, is a 24-year-old citizen of Ethiopia of Oromo ethnicity. He arrived in Canada in October 2015 on a student visa. After participating in a demonstration in Toronto and another in Ottawa relating to the Oromo's struggles in Ethiopia, he claimed refugee protection in November 2016 on the basis that these activities protesting the Ethiopian government placed him at risk if he were to return to Ethiopia. In a decision dated

May 23, 2017, the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected his claim, the determinative issue being credibility.

[2] The Applicant appealed the RPD's decision to the Refugee Appeal Division [RAD] of the IRB. The RAD dismissed the appeal in a decision dated January 24, 2018 and, pursuant to paragraph 111(1) (a) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], confirmed the RPD's decision. The Applicant has now applied under subsection 72(1) of the *IRPA* for judicial review of the RAD's decision. He asks the Court to set aside the decision and return the matter for redetermination by another member of the RAD.

I. Background

[3] The Applicant claims he has been affiliated with the Oromo Federalist Congress [OFC], a legal opposition party in Ethiopia, since September 2013 when he started his college studies at the United States International University in Nairobi, Kenya. In April 2015, when returning to Ethiopia during a school break, airport security officers at Bole International Airport interrogated and detained the Applicant for three hours. During the interrogation, he was accused of associating with the Oromo Liberation Front, an organization banned in Ethiopia, and the officers threatened that he would be killed if he got involved in any anti-government activities.

[4] The Applicant never returned to Nairobi after being interrogated at the airport. He refrained from further political involvement and, fearing for his safety, looked to pursue his education outside of Ethiopia. He applied for and received a temporary resident visa to attend an educational institution in Canada where he arrived in October 2015.

[5] After his arrival in Canada, the Applicant says he participated in two demonstrations in October 2016 relating to the Oromo's struggles in Ethiopia: one was by Oromo students at Ryerson University in Toronto relating to the "Bishoftu tragedy", and the other in Ottawa. He also says he participated in Oromo Media Network meetings. The Applicant claims that these activities in Canada against the Ethiopian government place him at risk if he were to return to Ethiopia.

[6] The RPD rejected the Applicant's claim for refugee protection. It found that, while there was violence against individuals of Oromo ethnicity in Ethiopia, the objective documentary evidence established that the Applicant would not be at risk simply by virtue of his Oromo ethnicity. It also found that the Applicant had not established with credible evidence either that the Ethiopian government was aware of his activities in Canada, or that it would perceive him as an anti-government activist should he return to Ethiopia.

II. The RAD's Decision

[7] In his appeal to the RAD, the Applicant submitted several documents as new evidence and requested an oral hearing. The RAD rejected these documents and did not grant an oral hearing.

[8] The RAD began its assessment of the documents submitted by the Applicant by noting that subsection 110(4) of the *IRPA* provides that an appellant "may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person

could not reasonably have been expected in the circumstances to have presented, at the time of the rejection."

[9] The RAD did not accept an affidavit dated June 30, 2017 from Binyam Zewdie Gebeyehu, a friend of the Applicant, which stated that security agents had visited the Applicant's family home looking for him sometime in April 2017 as they were aware of his political activities in Canada. The RAD noted the Applicant's explanation that this evidence was not available at the RPD hearing since the affiant was in Ethiopia at the time. The RAD rejected this explanation, noting that subsection 110(4) of the *IRPA* permits an appellant to present only evidence that arose after the rejection of their claim, and that the RPD rendered its decision on May 23, 2017.

[10] The RAD did not consider a second affidavit, also by a friend, which included photographs and generally corroborated the Applicant's political activities in Canada, because the events were not new, one of the photographs was already before the RPD, and the others could reasonably have been put before the RPD.

[11] The RAD also rejected a third affidavit, from another friend of the Applicant, which described their political involvement because it was not new, and the Applicant had provided no explanation as to why this evidence could not have reasonably been presented to the RPD.

[12] The RAD did not consider the certified translations of identity cards, flight itineraries, and a travel itinerary for 2013 to 2015 because they were not new, were part of the RPD record

and, in the case of the travel itinerary, it was reasonably available prior to the rejection of the claim.

[13] After addressing the documents that the Applicant had submitted as new evidence, the RAD reviewed whether he had been threatened by Ethiopian security agents. The RAD stated that it had listened to the Applicant's oral testimony before the RPD and reviewed the documentation provided by the Applicant. The RAD supported the RPD's findings that the Applicant was not credible on this issue since there was an inconsistency between the date he testified to and the date in his passport, despite him saying that he had relied on his passport for the dates he submitted in his basis of claim form, had over a year to review his passport before he submitted his refugee application, and had amended his narrative at the first and the second hearing before the RPD. The RAD found it was not credible that the Applicant had been interrogated at the airport in April 2015.

[14] The RAD then proceeded to assess whether the Applicant was a member of the OFC, noting that he had tied his completion or resumption of college with his OFC activities. Since it was unclear when the Applicant went to college due to numerous inconsistencies and contradictions in his evidence, the RAD agreed with the RPD that his testimony as to when he joined the OFC could be given little weight. The RAD found the Applicant's lack of knowledge about the OFC, such as basic information when the OFC was formed, indicative of his lack of credibility. The RAD further found the Applicant's testimony that he was a member of the OFC was not credible and afforded his OFC card little weight.

[15] In its analysis of whether the Applicant's profile and activities put him at risk should he return to Ethiopia, the RAD found the evidence did not suggest that merely being Oromo placed the Applicant at risk. The RAD noted that the Applicant had testified before the RPD that he was in contact with his family in Ethiopia and there was no evidence that the authorities were aware of his activities in Canada.

[16] While there was evidence that the Ethiopian government has conducted surveillance and monitoring of diaspora citizens, the RAD found it unlikely the Applicant had come to the attention of the Ethiopian authorities. The RAD further found there was no credible evidence that the Applicant had been identified as participating in the protests. In the RAD's view, the Applicant had not adduced enough evidence to suggest that his political profile was such that he would be of interest to the Ethiopian government should he return to Ethiopia.

III. Analysis

A. *Standard of Review*

[17] The standard of review for the RAD's decision is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35, [2016] 4 FCR 157 [*Huruglica*]).

[18] The standard of review for reviewing a decision of the RAD involving the admissibility of new evidence under subsection 110(4) of the *IRPA* is also reasonableness (*Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29, [2016] 4 FCR 230 [*Singh*]).

[19] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

B. *Was the RAD's assessment of the newly submitted documents reasonable?*

[20] The Applicant takes issue with the rejection of the affidavit of Binyam Zewdie Gebeyehu, who had visited Ethiopia in April 2017 and returned to Canada on April 29, 2017. The Applicant notes that Mr. Gebeyehu returned to Canada after the RPD hearing and after final written submissions by the Applicant on April 23, 2017.

[21] In the Applicant's view, due to the short time span between when Mr. Gebeyehu communicated the information contained in the affidavit to the Applicant and when the RPD's decision was rendered on May 23, 2017, it cannot be said that this information was reasonably available to the Applicant prior to the rejection of his claim. According to the Applicant, by rejecting this evidence the RAD failed to take a forward-looking perspective since it showed that he may be persecuted if he returns to Ethiopia.

[22] The Respondent says it was open to the RAD to find Mr. Gebeyehu's affidavit was not new evidence since there was approximately one month between when Mr. Gebeyehu returned from Ethiopia and when the RPD rejected the Applicant's claim. The Respondent notes that the Applicant failed to explain why he was unable to produce this affidavit during this time period.

[23] According to the Respondent, the Applicant's argument that the RAD failed to assess the issue of persecution on a forward-looking basis is unsupported. In the Respondent's view, the RAD considered whether the Applicant's profile and activities put him at risk if he should return to Ethiopia, and reasonably found that they did not.

[24] Subsection 110(4) of the *IRPA* provides that an appellant "may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection." The Applicant bears the onus of showing how the new evidence meets the requirements of subsection 110(4) and how that evidence relates to him (*Singh* paras 34 to 38).

[25] The Applicant's submissions do not address or explain why there was an approximately one-month delay in providing Mr. Gebeyehu's affidavit. His claim that this short time period meant that the information in this affidavit was not reasonably available to him, prior to the rejection of his claim, is unfounded. In my view, absent any explanation whatsoever as to why the information in Mr. Gebeyehu's affidavit was not provided to the RPD before it rendered its decision, it was reasonable for the RAD to determine that it did not fall within the parameters of subsection 110(4) of the *IRPA*.

[26] With respect to the other documentation submitted by the Applicant for purposes of his appeal to the RAD, in my view the RAD reasonably assessed and rejected this evidence. There is no basis for the Court's intervention in this regard.

C. *Was it reasonable for the RAD not to convoke an oral hearing?*

[27] The Applicant acknowledges that new evidence must be admitted before subsection 110(6) of the *IRPA* is engaged. The Respondent says there is no obligation to hold an oral hearing if the requirements of subsection 110(6) are not met, one of which is that there must be new evidence accepted pursuant to subsection 110(4).

[28] Subsection 110(6) of the *IRPA* provides that:

110 (6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	**110 (6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	**a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[29] The RAD has no obligation to hold an oral hearing if the requirements of subsection 110(6) of the *IRPA* are not met; there must be new documentary evidence that falls within the parameters of subsection 110(4). In this case, the RAD reasonably rejected the documentation submitted by the Applicant as new evidence. And in the absence of any new evidence, an oral hearing was neither required nor possible in view of the statutory requirements.

[30] Even if the RAD had accepted some of the documentation submitted by the Applicant, it warrants note that the RAD is not required to hold an oral hearing simply because it admits new evidence. The three criteria listed in subsection 110(6) must still be met (*Singh* at para 71).

[31] This case may be contrasted with *Ajaj v Canada (Citizenship and Immigration)*, 2016 FC 674, 268 ACWS (3d) 179, where the applicant feared persecution due to his conversion from Islam to Christianity. An arrest warrant and circular letter issued after the RPD's decision raised a new credibility issue unconnected to the negative credibility findings about the genuineness of Mr. Ajaj's conversion from Islam to Christianity. This new evidence was central to the decision regarding his *sur place* claim. If the documents had been accepted by the RAD as authentic, they would have substantiated Mr. Ajaj's fear of persecution by the authorities in Yemen and his *sur place* claim could potentially succeed. The Court found that, since the criteria of subsection 110(6) of the *IRPA* were met, the RAD had erred in failing to convene an oral hearing.

D. *Did the RAD fail to conduct an independent assessment of the Applicant's claim?*

[32] The Applicant contends that the RAD simply endorsed the RPD's findings and applied a standard of reasonableness versus one of correctness.

[33] The Respondent says the RAD conducted an independent assessment of the evidence, and that it was reasonable for the RAD to look to the RPD's credibility analysis.

[34] In *Huruglica*, the Federal Court of Appeal determined (at para 103) that with respect to findings of fact and of mixed fact and law which raise no issue of the credibility of oral evidence, the RAD is to review RPD decisions applying a correctness standard. The RAD must carry out its own analysis of the record to determine whether the RPD erred and 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. It is only when the RAD is of the opinion that it cannot provide such a final determination without hearing the oral evidence presented to the RPD that the matter can be referred to the RPD for redetermination.

[35] In this case, the RAD reasonably carried out its own independent analysis of the record to determine whether the RPD had erred. It extensively reviewed the RPD's findings and the Applicant's written submissions as well as the RPD record, including the documentary evidence and oral testimony, to support its ultimate determination to confirm the RPD's decision pursuant to paragraph 111(1) (a) of the *IRPA*.

IV. Conclusion

[36] In conclusion, I find the RAD reasonably conducted its own independent analysis of the record before it. The RAD's reasons provide an intelligible and transparent explanation for its decision to dismiss the Applicant's appeal, and the outcome is defensible in respect of the facts and the law.

[37] Neither party proposed a question of general importance for certification; so, no such question is certified.

[38] At the outset of the hearing of this matter, it was determined that the Respondent had been incorrectly named as the Minister of Immigration, Refugees and Citizenship Canada. According to the federal Registry of Applied Titles, the applied title for the Department of Citizenship and Immigration is Immigration, Refugees and Citizenship Canada. The correct Respondent to this application for judicial review is the Minister of Citizenship and Immigration by virtue of subsection 4(1) of the *IRPA*. Accordingly, the style of cause will be amended, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent in lieu of the Minister of Immigration, Refugees and Citizenship Canada.

JUDGMENT in IMM-566-18

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; no question of general importance is certified; and the style of cause is amended, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent in lieu of the Minister of Immigration, Refugees and Citizenship Canada.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-566-18
STYLE OF CAUSE:	SEGNI FEYERA ABDI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 11, 2018
JUDGMENT AND REASONS:	BOSWELL J.
DATED:	JANUARY 16, 2019

APPEARANCES:

Oluwakemi Oduwole	FOR THE APPLICANT
Meva Motwani	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Topmarké Attorneys Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT