

Federal Court



Cour fédérale

Date: 20190410

Docket: IMM-3604-18

Citation: 2019 FC 438

Ottawa, Ontario, April 10, 2019

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

ASTERA AZAD JALAL JALAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a citizen of Iraq who claimed refugee protection in Canada following a threat by the terrorist group known as the Islamic State of Iraq and Syria (ISIS). The Applicant seeks judicial review of the denial by the Refugee Protection Division (RPD) of her request for refugee status. The determinative issue for the RPD was credibility. On consent, her refugee claim was reconsidered by a second panel of the RPD. The second panel also denied her claim on the basis of credibility.

[2] For the reasons that follow, this judicial review is dismissed as the Applicant has not established any breach of natural justice. Furthermore, the RPD decision is reasonable and based upon the evidence.

Background

[3] In Iraq, the Applicant was employed with an airline in Erbil in the Kurdistan Region. She claims that in August 2015 suspected ISIS members attempted to purchase airline tickets. The Applicant advised her manager who called security and the suspected ISIS members were arrested. She claims that after this event she was threatened by ISIS. She left Iraq, travelled to the United States and then entered Canada where she made a refugee claim.

[4] The Applicant's refugee claim was refused by the RPD on November 9, 2015. An application for judicial review of this decision was granted on consent and her refugee claim was reheard by the RPD on June 11, 2018.

RPD Decision Under Review

[5] In its decision communicated on July 13, 2018, the second RPD panel again rejected the Applicant's refugee claim. The main issue was credibility and in particular the date surrounding the alleged ISIS incident. The event which the Applicant claims made her an ISIS target was the arrest of the suspected ISIS members who attempted to purchase airline tickets. She stated that this happened on August 5, 2015 and that she continued to work at the airline following the arrest. On August 8, 2015, she says she received a telephone call and was threatened. She says

that this is why she left her job. However, in support of her claim, the Applicant provided an employment letter that stated she worked at the airline from January 10, 2013 until August 5, 2015. This is in direct contradiction to her testimony that she worked there until August 8, 2015.

[6] The Applicant had the original employment letter with her at her first RPD hearing, but failed to bring it with her to the rehearing of her claim. As such, the RPD was unable to examine the document for any distinguishing features that could help determine its authenticity. The RPD rejected her explanations on the discrepancy in her dates of employment. The RPD found that it was much more likely that she did not attempt to correct the letter either because the letter is accurate and thereby contradicts her oral testimony, or because the letter is fraudulent. Regardless, the RPD concluded that the Applicant's credibility in this regard was undermined.

[7] The Applicant also provided a letter from her previous manager, which the RPD deemed to be unreliable as it was written in English which is not the language spoken by the manager. The RPD found that a letter written in a language that is not the language of the purported affiant and with no indication of how it was translated lacked reliability.

[8] These two documents were the only relevant pieces of evidence that the Applicant provided in support of the alleged events in Iraq. Having found that the documentation was unreliable and having found that her testimony regarding the documentation was inconsistent and incoherent, the RPD doubted the Applicant's overall credibility. The RPD therefore determined that she was not at risk in Iraq.

[9] In the alternative, the RPD found that if the Applicant is at risk, she has an internal flight alternative (IFA) in the City of Sulamaniyah. Her family had returned to Sulamaniyah and moved into a home they own. While the Applicant stated she would still be at risk from ISIS in Sulamaniyah, the RPD found that the evidence did not support this contention. Her family had not been contacted by ISIS, and her former manager, who was the person who made the call to security services, had also not faced any ISIS related problems. The RPD found that, even if there was a risk, the evidence did not suggest an ongoing risk to anyone involved in this incident, particularly in another city.

[10] The Applicant claimed that she was still at risk because, on August 11, 2015, a neighbour, who was mistaken for the Applicant, was killed. Although she claimed that ISIS would have learned of its mistake and would pursue her, the RPD noted that there was no evidence to support this. The RPD found that it would be reasonable for her to relocate to Sulamaniyah where her family currently lives in order to find the safety she seeks.

Issues

[11] The Applicant raises the following issues:

- a) Was there a breach of natural justice?
- b) Did the RPD err in the credibility findings?
- c) Is the IFA analysis faulty?

Standard of Review

[12] The standard of review for a breach of natural justice or procedural fairness is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79).

[13] On findings of credibility, the standard of review is reasonableness which means a decision is characterized by “justification, transparency, and intelligibility” and falls into a range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47).

[14] The RPD finding on an IFA is a factual finding for which the standard of review is also reasonableness (*Trevino Zavala v Canada*, 2009 FC 370 at para 5).

Analysis

A. *Was there a breach of natural justice?*

[15] The Applicant’s breach of natural justice argument focuses on the approach taken by the RPD panel that reconsidered her refugee claim. The Applicant argues that, in reconsidering her refugee claim, the RPD should not have referenced any of the findings of the previous RPD panel. She points to paragraphs 7 and 10 of the decision to demonstrate that the RPD unfairly relied upon the earlier decision:

This was an issue that was noted by the previous member, who found that her explanation for the inconsistency (that she had not seen the letter) to be unreasonable.

...The panel notes that the claimant has had multiple professional counsel and had previously appeared before the division, and was

aware that this document was of concern given the previous panel's findings.

[16] The Applicant argues that the previous RPD decision was quashed by the Order that her claim would be reconsidered. Therefore, she argues, any reference by the newly constituted RPD panel to the earlier RPD decision is an error of law and a breach of natural justice.

[17] Decision-makers have an obligation to act in a fair manner in undertaking their analysis. A failure to do so can result in a breach of natural justice or procedural fairness (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 82).

[18] The Respondent argues that the previous RPD decision was not voided by the consent Order to have the Applicant's claim reconsidered, therefore the prior proceedings were open for consideration, especially the transcript of the proceedings and the evidence considered. The Respondent submits that any references to the previous decision were only in regards to the documentary deficiencies and credibility concerns about which the Applicant was already aware. The Respondent submits that despite being aware of these deficiencies the Applicant took no steps to address these issues at the new hearing. Furthermore, the Respondent argues that the Applicant had been aware of the prior hearing's transcripts being admitted into evidence but did not previously raise any objections to this.

[19] In the circumstances, I agree with the Respondent that the RPD in the second hearing did not rely upon the previous decision to impugn the Applicant's credibility. Rather, the RPD noted

the same credibility concerns and lack of documentary evidence. Without taking any steps to cure the deficiencies in the evidence, it is not reasonable for the Applicant to suggest that the second RPD panel would not reach the same conclusions. Further it is reasonable for the RPD to comment that the Applicant had the opportunity to cure the deficiencies given the time that had elapsed between the hearings.

[20] Further, I note Justice Noël's comment at paragraph 25 of *Cheema v Canada (Citizenship and Immigration)*, 2014 FC 1082 that, "It is settled law that it is acceptable for a new panel to use the transcripts from a refugee claimant's original hearing in a de novo hearing before the RPD".

[21] Moreover, as stated in *Diamanama v Canada (Minister of Citizenship and Immigration)*, [1996] 61 ACWS (3d) 160 (FC) at 9, "The second panel must be free to conduct the hearing as it sees fit and to make its decision by reference to the evidence adduced before it. The second panel can, of course, use the transcript of the first hearing for whatever purposes it wishes but no order, from me, conditioning that use is either required or appropriate."

[22] In re-hearing the claim, the second RPD panel indicated that, "The original transcript was considered, along with the original contents of the file and new evidence submitted." This is proper. It would have been problematic had the second RPD panel simply relied upon the previous finding of the RPD to make its decision. However, a review of the record shows that is not what occurred here. The second RPD panel reviewed the evidence and conducted its own analysis of the evidence as required. The fact that both panels of the RPD reached the same

conclusion speaks to the lack of reliable evidence, and does not suggest that the second panel did not independently assess the evidence.

[23] In the circumstances, I do not find that the approach of the second RPD panel resulted in any breach of natural justice.

B. *Did the RPD err in the credibility findings?*

[24] The Applicant argues that the RPD's credibility findings were unreasonable and that the RPD should not have made a credibility finding against her for failing to obtain a corrected letter to reflect her actual employment dates. She testified that she made attempts by contacting her former manager who told her that the general manager refused to issue a second letter. The Applicant further testified that the protocol in the company was that an employee could not contact the general manager directly. The Applicant argues that there was no basis for the RPD to doubt her credibility on this issue and she relies on it being settled law that sworn testimony of a refugee claimant is presumed to be true unless there is a good reason to doubt it (*Maldonado v Canada (Minister of Employer and Immigration)*, [1980] 2 FC 302 at para 5).

[25] The finding of the RPD on this issue is outlined at paragraph 13 as follows:

The panel finds it much more likely that the claimant did not attempt to correct the letter by contacting the company either because the letter is accurate, and so there is nothing to correct, or the letter is fraudulent. In either regard, the original error and the unbelievable testimony regarding why no correction was made seriously undermines the credibility of the claimant. Her own documentary evidence is inconsistent with her testimony on a key issue – that she received a threat at work on August 8, versus having left the job on August 5. And her confused, inconsistent,

and issue-ridden testimony regarding not only the lack of a correction but the lack of any serious efforts to obtain a correction further undermines the credibility of both the document and the claimant herself.

[26] The RPD did not accept as reasonable the Applicant's assertions that, in light of the fact that the former manager was no longer at the company, she had to go through a past supervisor to verify her employment dates. That this past supervisor refused was not an acceptable rationale for not obtaining the correct documentation, as she could have contacted other company personnel. The RPD was within its discretion to make this determination.

[27] The Applicant relies upon *Venegas Beltran v Canada (Citizenship and Immigration)*, 2011 FC 1475 [*Venegas*] to argue that the RPD finding on the date discrepancy is unreasonable. However, *Venegas* can be distinguished because the credibility of the applicant there was incorrectly assessed due to a one-day discrepancy between the date of the reported events underlying his claim and his testimony on the same issue. In *Venegas* the judicial review was granted because nothing turned on the one-day discrepancy. Here however, the date discrepancy goes to the very core of the Applicant's claim being the date of the threat from ISIS.

[28] The RPD provided justified, transparent, and intelligible reasons for finding the Applicant not credible in this regard. It is not the role of this Court to reweigh the evidence properly considered by the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 60).

C. *Is the IFA analysis faulty?*

[29] The Applicant argues that the RPD engaged in mere speculation by determining that there was an IFA and that the Applicant would not face any risk in Sulamaniyah.

[30] In the refugee context the finding of an IFA describes a situation where a person may be in danger of persecution in one part of a country but not in another (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at para 2). The idea of an IFA is inherent in the definition of a Convention refugee and if a claimant is able to seek safe refuge within their own country, there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country (see *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at para 9).

[31] Although the RPD had already determined that the Applicant's claim was not credible and it could have stopped its analysis there, the RPD nonetheless considered if the Applicant had an IFA. The RPD noted that the Applicant's former manager who made the implicating phone call, and her family members had all moved to Sulamaniyah and were residing there safely.

[32] In the absence of any evidence from the Applicant to the contrary, it was reasonable for the RPD to conclude that she could also relocate to Sulamaniyah safely.

[33] The RPD did not find credible the Applicant's submissions that ISIS had killed someone else mistakenly believing it was her. The RPD noted a complete lack of evidence to support this submission and appropriately gave it no weight.

[34] In the circumstances, the RPD did not err in its IFA analysis and there is no basis for this Court to intervene.

JUDGMENT in IMM-3604-18

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

There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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