Federal Court  Cour fédérale

Date: 20190906

Docket: IMM-3266-18

Citation: 2019 FC 1145

Ottawa, Ontario, September 6, 2019

PRESENT: Mr. Justice Norris

BETWEEN:

HOMAYOON AHMADI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Afghanistan who was born in December 1990. He claims that in April 2015 he was kidnapped by the Taliban and beaten because he was working as a driver for a telecommunications company that had a contract with the Afghan army. He was able to escape his captors and then, with the assistance of smugglers, fled Afghanistan a few months later and made his way to Germany. The applicant made a claim for asylum there but it was refused in April 2017. The applicant also applied to immigrate to Canada as a member of

the Convention refugee abroad class. The application was sponsored by members of his extended family who live in Quebec. In documents submitted in support of the application, the applicant claimed that he was at risk from the Taliban because of his past employment with the telecommunications company.

[2] The applicant was interviewed by a Visa Officer at the Canadian Consulate in Dusseldorf, Germany, on March 13, 2018. Following the interview, the Officer concluded that the applicant did not meet the definition of Convention refugee and refused the application. The decision was communicated to the applicant in a letter dated April 30, 2018.

[3] The applicant now applies for judicial review of this decision under section 74(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], on the basis that it is unreasonable.

[4] For the reasons that follow, I do not agree with the applicant. The application for judicial review will, therefore, be dismissed.

[5] There is no dispute that the Visa Officer's decision, which turns on determinations of mixed fact and law, is reviewed on a reasonableness standard (*Gebrewldi v Canada (Citizenship and Immigration)*, 2017 FC 621 at para 14 [*Gebrewldi*]). The sole issue here is whether the Officer's determination that the applicant did not meet the definition of Convention refugee is unreasonable.

[6] Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "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 [*Dunsmuir*]). These 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). On judicial review under the reasonableness standard, it is not the role of the court to reweigh the evidence or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

[7] In the letter of April 30, 2018, the Visa Officer informed the applicant that his application had been refused on credibility grounds. The Officer states that during the interview the applicant had "provided conflicting and inconsistent statements, especially relating to events leading to [his] departure from Afghanistan." In the Officer's view, these inconsistencies were "significant" and affected the credibility of the applicant's claim. The Officer notes that the applicant was "confronted" with these inconsistencies during the interview and his responses were taken into account in making the decision. The Officer then states his conclusion as follows: "Having taken into consideration the totality of the evidence before me, based on a balance of probabilities, I find that your declarations are more likely false than true and that your

declarations are not credible." The Officer goes on to explain that, since the applicant did not meet the requirements of the program under which he had applied, his application was refused.

[8] It is settled law that a Visa Officer's Global Case Management System [GCMS] notes form part of the reasons for the decision and must be considered by a reviewing court (*Gebrewldi* at para 29). It is evident from these notes that the Officer had what he called "concerns" about five things:

a) In his narrative of the events that led to his departure from Afghanistan, the applicant stated that his father was killed by the Taliban in April 2015, during the same incident when he (the applicant) was kidnapped. However, the Schedule A Background/Declaration form signed by the applicant on May 10, 2016, stated that the applicant's father died on July 10, 2003.

b) In that same narrative, the applicant claimed to have been kidnapped from his parents' home by members of the Taliban because of his employment but he also claimed that his kidnappers kept asking him who he worked for.

c) The applicant claimed that his shoulder was broken during the kidnapping yet he was able to break down a door with a rock and escape by clambering over a high wall.

d) The amount the applicant claimed to have paid to smugglers to leave Afghanistan exceeded what the applicant would have earned from his employment.

e) The applicant did not possess any documentation to corroborate his account (e.g. employment records).

[9] The applicant takes issue with each of these factors, arguing that, individually or cumulatively, they do not reasonably support the Visa Officer's decision. I do not agree. Having regard to the Officer's reasons in the letter of April 30, 2018, the GCMS notes of the interview, and the record as a whole, I am satisfied that the decision meets the *Dunsmuir* reasonableness test.

[10] Looking first at the last factor set out above – the absence of corroborative documentation – it is far from clear to me that the Visa Officer actually relied on this as a reason for refusing the application. As the April 30, 2018, letter states, the Officer drew an adverse conclusion about the applicant's credibility from the "conflicting and inconsistent statements" the applicant had given. The Officer does not mention the absence of corroborative documentation as a reason for disbelieving the applicant. While he did put this "concern" to the applicant in the interview, it was only fair of him to do so. There is nothing to suggest that the Officer disbelieved the applicant's explanations for why he no longer had corroborative documents (they had been taken from him when he was detained in the Ukraine and were not returned to him) or why he could not obtain replacements (he no longer had any family in Afghanistan).

[11] The other "concerns" raised by the Visa Officer are, indeed, inconsistencies or contradictions and, presumably, were relied on in refusing the application. In my view, it was not unreasonable for the Officer to find the applicant's responses when confronted with these concerns unpersuasive and to draw an adverse conclusion about the applicant's credibility from the considerations the Officer identified.

[12] The applicant contends that it was unreasonable for the Officer to draw an adverse conclusion from the discrepancy over a date. While in some cases this might well be so, in the present case it was not. The applicant's father's death was a key event in the narrative supporting the applicant's claim to be a Convention refugee. According to the applicant, it occurred in April 2015. On Schedule A, however, his father's date of death is given as 2003-07-10 (in year/month/day format). This discrepancy cannot reasonably be explained away as a mere typographical error. The applicant stated at the interview that it was his uncle (his father's brother) who filled out Schedule A for him but he could not explain why his uncle would have put down the wrong date. As the Officer pointed out to the applicant, the uncle would have known when his brother died.

[13] The significance of this discrepancy is also apparent if one considers the applicant's Schedule 2 form, which his relatives in Canada also completed for him but which the applicant signed on May 10, 2016. The applicant was asked to set out in chronological order "all the significant incidents that caused [him] to seek protection outside [his] home country," including actions taken against family members. There is no mention of his father's death at the hands of the Taliban (or his own kidnapping by the Taliban, for that matter). The applicant simply stated: "I was working as a driver in a telecommunication company by the name of Roshan. The company had a contract [with] the Afghan army. The Taliban were against people who worked for such companies. They often kidnapped and killed these individuals. I was afraid for my life and therefore, I left the country."

[14] I take the same view of the other inconsistencies or contradictions identified by the Visa Officer. They were all put to the applicant in the interview. The Officer noted the applicant's responses. The applicant did not have an explanation for how his kidnappers knew to target him or why, having allegedly targeted him because of who he worked for, they continued to ask him about this. The applicant simply said he was telling the truth. The applicant said he was able to escape despite a broken shoulder because it was a matter of life or death. He said his brother gave him the money to pay the smugglers. The Officer took these answers into account in making his decision. It was not unreasonable for him to have the concerns he did or to conclude that the applicant's answers did not alleviate these concerns. Further, even if none of the inconsistencies or contradictions identified by the Officer would have been sufficient on their own to warrant refusing the application, taking them together, it was not unreasonable for the Officer to find that the applicant's narrative was not credible. The Officer was in the best position to assess the applicant's credibility. His determination warrants deference. There is no basis for me to interfere with it.

[15] Finally, the applicant contends that it was unreasonable for the Visa Officer not to consider the risks the applicant faced in Afghanistan as a member of the Hazara ethnic group in determining whether he met the definition of Convention refugee. I disagree.

[16] Unlike *Safdari v Canada (Citizenship and Immigration)*, 2016 FC 1357 [*Safdari*], upon which the applicant relies, in the present case there was no basis for the Officer to have thought that the applicant held a subjective fear of persecution on this ground (see, in particular, *Safdari* at paras 34-39). The applicant did not mention his Hazara ethnicity anywhere in his original

application completed in May 2016. As expressed there, his fear related exclusively to his work. Similarly, the applicant's narrative at the interview in March 2018 related solely to what had happened to him in Afghanistan because of his work. The applicant never volunteered that his fears of returning to Afghanistan were also grounded in his ethnicity. After questioning the applicant about the kidnapping incident and his flight from Afghanistan, the Officer asked: "Were there any other instances of threats, violence, targeting or anything like that?" The applicant replied: "No." The applicant mentioned his Hazara ethnicity only after the Officer then asked: "Did anyone ever target you because of the groups you belong to, religion, race?" The applicant responded: "I don't care about [*sic*]. I always hear that 'you are Hazara.'" It is regrettable that the record of the applicant's response to this last question is not clearer or more complete. However, considering the record as a whole, it was not unreasonable for the Officer not to have pursued this issue further.

[17] For these reasons, the application for judicial review will be dismissed.

[18] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-3266-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3266-18
STYLE OF CAUSE:	HOMAYOON AHMADI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 28, 2019
JUDGMENT AND REASONS:	NORRIS J.
DATED:	SEPTEMBER 6, 2019

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