Federal Court Cour fédérale

Date: 20191115

Docket: IMM-1455-19

Citation: 2019 FC 1441

Ottawa, Ontario, November 15, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

DUH HASSAN BARUD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Duh Hassan Barud is a Somali national living in South Africa. He applied for permanent residence in Canada as a member of the Convention refugee abroad class and the humanitarian protected persons abroad class.

[2] A visa officer denied his application, on the basis that the Applicant had not been truthful on his application and during his interview. The officer concluded this undermined his credibility with respect to his entire claim, and therefore dismissed the Applicant's claim under sections 11 and 16 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[3] The Applicant seeks judicial review of this decision.

[4] The only issue in this case is whether the officer’s decision is reasonable. The Applicant submits that the decision should be overturned, because it was based on an irrelevant consideration, namely a credibility finding on a matter that was not relevant to the Applicant’s refugee claim. This is the crux of the argument that the decision is unreasonable.

[5] The standard of review for whether the Applicant is a member of the Convention refugee abroad class or the country of asylum class is reasonableness: *Tesfamichael v Canada (Citizenship and Immigration)*, 2017 FC 337 at para 8.

[6] The basic facts are not disputed. The Applicant left Somalia at a young age and lived in Ethiopia. In his application forms, and during the initial part of his interview with the visa officer, he claimed to have arrived in South Africa in 2004. During the interview, the officer pointed out that he had submitted other documents which contradicted this, including a school certificate from Ethiopia which indicated that he graduated in 2008, as well as a document from the Department of Home Affairs in South Africa which indicated he arrived there in 2011. The Applicant maintained his story that he had arrived in 2004. The Applicant eventually admitted that he had been untruthful and that he had actually arrived in South Africa in 2011. He explained that he had been trying to follow what was written on his form.

[7] In the decision letter, the officer recounts these facts and states that: “[t]hese inconsistencies are significant and affect the credibility of your claim.” The officer notes that the Applicant was provided an opportunity to address these issues but his answers did not alleviate

the concerns. The officer states: "[a]s such, I am not satisfied that you fulfilled the requirement put upon you by section 16(1) of the *Immigration and Refugee Protection Act*, which states that a person who makes an application must answer truthfully all questions put to them…" The officer concludes: "[a]fter carefully assessing all factors relevant to your application, I am not satisfied that you are a member of any of the classes prescribed because I am not satisfied that you are credible."

[8] The Applicant argues that the officer's decision is unreasonable because the negative credibility finding is based solely on the discrepancies on the date when he arrived in South Africa, but this is not relevant to his underlying claim that he faces risk upon return to Somalia. It is unreasonable to base an overall credibility finding on a fact which is not "central to his claim" (*Biokeite v Canada (Citizenship and Immigration)*, 2001 FCT 478 at para 40). The Applicant contends that the officer erred in not considering his risks upon return. The Applicant also argues that the officer fell into error in not basing the rejection on a finding that the officer was unable to determine whether the Applicant was inadmissible.

[9] The Respondent submits that the officer's credibility assessment is owed great deference, and on the facts of this case the admission by the Applicant that he had been untruthful in his application forms and during the interview provides a clear basis for the officer's conclusions. The Respondent points out that the Applicant did not simply mix up the date in a few places in the application forms. The deception was more elaborate than that, because the forms also incorrectly state what the Applicant allegedly did and where he lived in South Africa during a period he was not actually there. The officer was justified in finding that this affected the overall credibility of the claim.

[10] The Respondent submits that the jurisprudence establishes that a negative credibility finding can cast such doubt on the veracity of an applicant's claim that it renders it impossible for the officer to assess whether the person is inadmissible. In such a circumstance, the officer is not obliged to assess the risks alleged by the applicant. I agree.

[11] This is the specific finding in a number of decisions, most recently summarized and applied by Justice Henry Brown in *Samandar v Canada (Citizenship and Immigration)*, 2019 FC 1117 [*Samandar*]. In that case, the applicant was found to have provided inconsistent information in several applications, and he failed to disclose his prior history of living abroad and that Canadian immigration officials had previously refused him admission. The officer refused his application for permanent residence under the Convention refugee abroad class, because the applicant had failed to be truthful as required by subsection 16(1) of *IPRA* and the officer was unable to determine he was inadmissible as required by subsection 11(1).

[12] Justice Brown summarized the jurisprudence (essentially much of the same case-law cited in this case), and concluded that where a negative credibility finding "calls into question the veracity of the totality of the [Applicant's] answers… there was no requirement to analyze the Applicant's assertions regarding their risk…" (*Samandar*, at para 22).

[13] This decision is directly applicable to this case. The officer found that the Applicant's admission that he had repeatedly and deliberately not been truthful, both in his application forms and in his interview, called into question the veracity of his entire claim. Because of the Applicant's failure to tell the truth, as required by subsection 16(1) of *IRPA*, the officer was

unable to fulfill the legislated duty under subsection 11(1) to determine whether he was inadmissible.

[14] I find the officer’s conclusion to be reasonable, and that it that falls within the range of reasonable outcomes in light of the facts and the law. The reasoning is clear and transparent, and supported by the evidence. That is all that reasonableness review requires.

[15] The Respondent argued that the facts of this case are strikingly similar to those in *Garcia Porfirio v Canada (Citizenship and Immigration)*, 2011 FC 794, in which the applicant had admitted that he had been untruthful about how he had learned about the job opportunity for which he was seeking a skilled worker permit. His application was rejected because he had not answered truthfully the questions put to him, as required by subsection 16(1) of *IRPA*. His application for judicial review of the refusal was dismissed.

[16] I agree that the cases are similar, and in conclusion I will simply adopt the following passage from the decision of Justice David Near, at paragraph 46:

> The Applicant effectively shot himself in the foot when he lied in the interview. Clearly, there was a reasonable basis for the Officer’s decision. The Canadian immigration system relies on all persons applying under the Act to provide truthful and complete information (*Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450, 367 FTR 153) and so I am unable to find that the Officer erred.

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

[18] No question of general importance was proposed for certification, and none arises.

JUDGMENT in IMM-1455-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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