

Federal Court



Cour fédérale

Date: 20191218

Docket: IMM-2358-19

Citation: 2019 FC 1619

Ottawa, Ontario, December 18, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

LEVIS ANKENE AWUH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario on November 26, 2019 and edited for structure, grammar, syntax, language, quotations, citations and insertion of relevant case law where appropriate.)

I. Nature of the Matter

[1] This is an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a decision made by the Refugee Appeal Division [RAD] dated March 18, 2019. The applicant, Mr. Awuh, sought protection on the basis of his

political opinion as a member and participant in the activities of the Southern Cameroons National Council (SCNC). The RAD dismissed the appeal, confirmed the Refugee Protection Division's ["RPD"] finding that the claimant lacked credibility, and concluded he was not a Convention refugee nor a person in need of protection.

II. Facts Alleged by the Applicant and Decision under Review

[2] The Applicant contends he joined the SCNC on January 3, 2008 and that on two occasions, in February 2008 and in October 2010, he was arrested, tortured and later released.

[3] For my purposes, I need not consider all of the evidence heard by the RPD or the RAD.

[4] In rendering its decision, the RAD made negative credibility findings regarding the Applicant's alleged arrests, torture and detentions in 2008 and 2010. It also made negative credibility findings against the Applicant regarding his purported hospitalization in 2010, following his release from jail. Those negative credibility findings, standing alone, would normally withstand the test of reasonableness. However, the Court's task is not to determine whether individual isolated conclusions on the evidence are reasonable; rather, the Court's task is to determine whether the decision as a whole meets the test of reasonableness as enunciated in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]. That is, does the decision fall within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law, and was the decision-making process employed to arrive at that decision justified, transparent, and intelligible?

III. Analysis

[5] I conclude the decision does not meet the test of reasonableness as set out in *Dunsmuir* for the following reasons.

[6] As a preface, I note the commendable conduct and representations of counsel for the Respondent, Ms. Mok, which reflect the greatest traditions of the common law and her fulfilment of the duties of an officer of the Court, all the while ably representing her client's interest. In her oral submissions, Ms. Mok opined that the RAD erred when it made a negative credibility finding against the Applicant with respect to an apparent conflict regarding his arrest and detention in February 2008 and October 2010. In the 2008 incident, the Applicant contended he was detained at the Bamenda Public Security Police Station. In the 2010 incident, he claimed he was held at the Bamenda National Gendarmerie Brigade. The RAD found the identity of these two police agencies conflictual and made a negative credibility finding. Ms. Mok properly pointed out that there are three security apparatus operating in Cameroon: the local police, the Gendarmerie Brigade and the military. According to Ms. Mok, the RAD erred in concluding a conflict arose in the Applicant's testimony when he contended he was detained at the local police station in 2008 and at the Gendarmerie in 2010. I agree.

[7] Second, the RAD made negative credibility findings because of perceived omissions in the affidavits from the applicant's mother, and letters from the chairperson of the SCNC and the applicant's lawyer. Unlike material omissions in the Basis of Claim form (*Asfew v Canada (Citizenship and Immigration)*, 2017 FC 800 at para 15; *Huseynov v Canada (Citizenship and*

Immigration), 2019 FC 1392 at para 16), the current jurisprudence does not permit the RAD to draw a negative credibility finding based upon omissions in documents such as affidavits and letters from third parties (*Plaisimond v Canada (Citizenship and Immigration)*, 2010 FC 998 at para 82, 91 Imm LR (3d) 275; *Basbaydar v Canada (Citizenship and Immigration)*, 2019 FC 387 at para 71).

[8] The fact that these omissions were used to detract from the credibility of not only the authors, but also the applicant, is evident from reading paragraphs 40 and 42 of the RAD decision. Those excerpts read, in part: “I find that there are material omissions in the BOC, mother’s and SCNC member’s affidavits, and the lawyer’s and the SCNC Chairman’s letters because they do not reference the Appellant’s hospitalization.” Further, at paragraph 42, the RAD concluded: “For all these reasons, I agree with the findings of the RPD and that the Appellant’s testimony and evidence about his detentions, torture and hospitalization was not credible due to material omissions, inconsistencies and contradictions.” Credibility findings based upon material omissions, inconsistencies, and contradictions were not, in the circumstances, limited to omissions in the Applicant’s Basis of Claim form.

[9] Third, I am satisfied the RAD’s errors regarding credibility, which included the erroneous conclusion about a perceived conflict in the evidence regarding the Applicant’s places of detention in 2008 and 2010 and the references to omissions in documents prepared by third parties, had a negative impact on the *sur place* analysis. The RAD concluded unequivocally the applicant was not an SCNC member. This conclusion stands in stark contrast to the letter from the SCNC Chairperson, upon which the RAD did not comment. It is trite law that a decision-

maker need not refer to all of the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL) at para 1 (CA)). However, in the circumstances, I am satisfied the rejection of the letter from the Chairperson, which confirmed the Applicant is a member of the SCNC, is directly the result of negative credibility findings based upon perceived omissions in the letter.

[10] Furthermore, still on the issue of the *sur place* claim, the mother's affidavit states "[t]hat the family back in Bamenda in the North West region has suffered a series of surprise visits by the gendarmes at odd hours of the night to intimidate and threaten us to produce [the applicant]." Again, while the RAD need not comment on all the evidence, I once again reach the conclusion that the failure to comment upon this evidence, which would have had a serious impact upon the *sur place* analysis, flows directly from the negative credibility findings against the mother, as a result of perceived omissions in her affidavit.

[11] For these reasons, I am satisfied that the decision does not meet the test of reasonableness as outlined in *Dunsmuir*. I allow the application for judicial review and remit the matter to another RAD member for redetermination.

[12] Neither party proposed a question for certification, and none arises on the facts. There will therefore be no question certified for consideration by the Federal Court of Appeal.

JUDGMENT in IMM-2359-19

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is remitted to another RAD member for redetermination. No question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2358-19

STYLE OF CAUSE: LEVIS ANKENE AWUH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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