Federal Court  Cour fédérale

Date: 20150505

Docket: IMM-3607-14

Citation: 2015 FC 588

Toronto, Ontario, May 5, 2015

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

SANJIDA MORIOM
(A.K.A. SONIA AKTER)

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Summary

[1] This is an application for judicial review by Sanjida Moriom [the Applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Immigration and Refugee Board of Canada, Refugee Protection Division [RPD], dated April 7, 2014, wherein the RPD found that the Applicant's claim was manifestly

unfounded and determined that the Applicant was not a Convention refugee or a person in need of protection. The application is dismissed for the reasons that follow.

II. Facts

[2] The Applicant was born on April 29, 1992. She is a citizen of Bangladesh. She alleged to have been an opposition political activist with the women's wing of the Bangladesh Nationalist Party [BNP]. She alleged that a goon of the governing Awami League Party targeted her because of her political involvement and her refusal to marry him. She also alleged having been targeted by the Bangladesh police and other authorities.

[3] In Canada, the Applicant initiated a refugee protection claim under a false name and presented false information in support of her claim. She claimed to be at risk in Bangladesh due to her gender and due to her opposition political activities with the BNP.

[4] The RPD rejected the Applicant's claim for refugee protection on April 7, 2014. She filed an application for leave and judicial review of the RPD's decision with this Court on May 1, 2014. Leave was granted on January 28, 2015.

III. Decision under Review

[5] The determinative issue was the Applicant's credibility. The RPD found that her evidence was fraudulent and not trustworthy.

[6] The RPD noted that while the Applicant indicated that her name was "Sonia Akter" and that she was born on April 14, 1991 in her Port of Entry [POE] documents and in her original Personal Information Form [PIF], she admitted at the hearing that her birth certificate was fraudulently obtained from a friend in Bangladesh.

[7] The RPD noted that neither the Applicant's POE nor her PIF provided information on her residency in the United Kingdom [UK] and in the United States of America [US] for the purpose of education. Instead she indicated she came directly to Canada from Bangladesh, that she had no aliases and that she had a valid Bangladesh passport in her possession. The RPD noted that in both these documents, the Applicant declared that the information she provided was complete, true and correct.

[8] The Canada Border Services Agency [CBSA] provided a Five Country Conference [FCC] report dated December 12, 2012, which is based on fingerprint comparisons between Canada and the UK and which revealed an exact biometric match for the Applicant. This report stated that the Applicant's name was "Sanjida Moriom" and that she was born on April 29, 1992. CBSA also provided a FCC report dated December 27, 2010, which is based on fingerprint comparisons between Canada and the US and which revealed an exact biometric match for the Applicant. This report also indicated that the Applicant's name is "Sanjida Moriom" and that she was born on April 29, 1992.

[9] The RPD noted that the Applicant admitted in her revised PIF, submitted after the Minister's disclosures, that she used a fraudulent name and birthdate in her POE documents and

in her original PIF. She also admitted that she was in possession of a Bangladesh passport that indicated her real identity and information disclosed by the Minister. She admitted that she obtained a temporary visa to Canada using that passport, she entered Canada from the US using that visa, and that she resided in the UK for one year and in the US for six month before coming to Canada.

[10] The RPD found that the Applicant's evidence differed substantially from the biometric results in respect of her name, date of birth, her passport, her stay in the UK and in the US, as well as the route she had taken to come to Canada. The RPD found that the Applicant's revised PIF confirmed that she had also given false information in her original PIF regarding her travel history, residency history, previous applications for visa and travel route to Canada. The RPD noted that the Applicant consistently advised the Canadian immigration authorities in her POE documents and in her original PIF that she does not have any other aliases. The RPD noted that the Applicant admitted at the hearing that she lied about her identity because her community in Toronto advised her to do so to enable her to succeed in obtaining refugee status in Canada.

[11] The RPD found that the Applicant deliberately provided a fraudulent identity as well as other substantial information to mislead the RPD and Immigration at the POE, and that she did so to advance a fraudulent refugee claim in Canada. The RPD further found that the Applicant had knowingly made a false declaration about her name, her birthdate, her passport, and omitted evidence about her travels to the UK and the US in her original PIF and her POE documents to advance her refugee claim in Canada and had, as a result, seriously undermined her credibility as well as the merit of her claim.

[12] The RPD noted that the Applicant acknowledged misrepresenting herself from the outset of the refugee claim process. The RPD reiterated that the false declarations were made with the deliberate intention of duping the Immigration and Refugee Board to secure a positive decision on her refugee claim.

[13] The RPD found that the Applicant's claim was clearly fraudulent, not trustworthy and "manifestly unfounded" pursuant to section 107.1 of the IRPA. The RPD consequently rejected the Applicant's claim for refugee protection. In this case it is important to set out the RPD conclusions in their entirety. It stated:

> [15] Based on the evidence adduced, the panel finds that the evidence the claimant had given her POE documents and in her original PIF differs substantially from the biometric results provided by the FCC with respect to her name, date of birth, her passport, her stay in the UK/USA, the route she had taken to come to Canada. Her revised PIF and her oral testimony confirms that she had also given false information in her original PIF, with respect to her travel history, residency history, previous applications for visa and travel route to Canada.
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> [16] Moreover, the claimant consistently advised the Canadian immigration authorities in her POE documents and in her original PIF that she does not have any other aliases. Despite having retained a legal counsel at the time she prepared her original PIF, she provided false information to the RPD and the panel. At the hearing, she admitted that she lied about her identity because her community in Toronto advised her to do so to enable her to succeed in obtaining refugee status in Canada.
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> [17] Since the claimant was seeking protection in Canada, it is reasonable to expect from a reasonably-educated person, represented by a counsel, to provide trustworthy evidence in her original PIF in which she declared that the information she had given was complete, true and correct. Based on the evidence adduced, the panel finds that the claimant deliberately provided a fraudulent identity as well as other substantial information to mislead the RPD and Immigration at the Port of Entry. The panel finds that she did that to advance a fraudulent refugee claim in Canada.

> [18] Based on the totality of the evidence adduced, the panel finds that the claimant, a.k.a. Sanjida Moriom, has knowingly made false declarations about her name, her birthdate her passport, omitting evidence about her travels to the UK and USA in her original PIF and her POE documents to advance her refugee claim in Canada. As a result, the panel finds that the claimant has seriously undermined her credibility as well as the merits of her claim.
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> [19] In this case, the claimant has acknowledged misrepresenting herself from the outset of the refugee claim process she applied for. The FCC Reports had demonstrated that the claimant's claim is based on false declaration of substantive nature. Also the false declarations were made with the deliberate intention of duping the Immigration and Refugee Board to secure a positive decision on her refugee claim. The claimant deliberately elected to hide her real name, birthdate and her possession of a valid Bangladesh passport, in her original PIF and in her POE documents.
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> [20] Therefore, based on the evidence adduced, the panel finds that the claimant's claim is clearly fraudulent, not trustworthy and manifestly unfounded. As a result, the panel rejects the claimant's claim for refugee protection. [Footnotes deleted]

IV. Issues

[14] At issue is whether the RPD erred in failing to properly consider the evidence of corroboration.

V. Standard of Review

[15] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." It is well established that reasonableness is the

applicable standard of review with respect to credibility findings of the RPD: *Sun v Canada (Minister of Citizenship and Immigration)*, 2015 FC 387 at para 17. In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[16] The Federal Court of Appeal has held that credibility findings are the "heartland of the discretion of triers of fact": *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 at 239 (FCA) [*Giron*]. The tribunal is uniquely situated to assess the credibility of a refugee claimant and is entitled to considerable deference upon judicial review.

VI. Submissions of the Parties and Analysis

[17] The Applicant argues that the RPD erred by rejecting her claim on the sole basis of her numerous misrepresentations. In doing so, the Applicant argues, the RPD failed to consider all the evidence relevant to her case. She relies on case law including *Tahmoursati v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1278 at paras 40-41 [*Tahmoursati*] which held that the RPD is required to make it clear that it acknowledges contradictory evidence that appeared to corroborate the Applicant's lies and for her finally revealing the truth:

> [40] In assessing credibility, the Board should have dealt with the evidence offered by the Applicant that he was now coming clean and telling the truth. The evidence he offered does address

> abuse by his father. The Board simply says that because the Applicant has told lies in the past, he is continuing to tell lies and cannot be believed.
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> [41] This may be true, and it may not be a patently unreasonable conclusion to reach on the evidence. But the Board does need to make it clear that it acknowledges and has reviewed the contradictory evidence that appears to corroborate the Applicant's explanation for his lies and his finally revealing the truth. That evidence was too important to leave to a blanket and perfunctory assertion that all of the evidence had been considered. The inference is that such evidence was disregarded because the Board found the Applicant's lies so repugnant (and they were) that it wasn't prepared to believe anything he said or consider any evidence he brought forward that might support his claim to be finally telling the truth.

[18] In my opinion, the Applicant's argument fails for several reasons.

[19] To begin with, the RPD is presumed to have considered the entire record before it: *Herrera Andrade v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1490 at para 11. The Applicant is obliged to and in my view has failed to rebut this presumption. I am not convinced that the RPD rejected her claim without considering the full record. What the RPD meant when it said that the Applicant, as a result of her fraudulent misrepresentations, had "seriously undermined her credibility as well as the merit of her claim" [emphasis added] is that the rest of her evidence was indeed considered and found not credible in light of the false evidence she gave. This finding alone disposes of this application.

[20] In addition however, the RPD expressly and repeatedly stated that it had reviewed the "totality of the evidence" and emphasized that its decision was "based on the evidence". I have no reason to believe the panel did not.

[21] This Court must also apply the Supreme Court of Canada's decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 22 [*Newfoundland Nurses*]. There, the Supreme Court of Canada held that the adequacy of reasons is not a stand-alone basis for quashing a decision and that any challenge to the reasoning/result of a decision should therefore be made within the reasonableness standard of review. The Supreme Court explained what is required of a tribunal's reasons in order to meet the *Dunsmuir* criteria:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, 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, the *Dunsmuir* criteria are met. [*Newfoundland Nurses* at para 16. See also *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3.]

[22] In my opinion, the RPD was under no obligation to refer to any additional evidence in its reasons because its reasons are very clear. They allow this Court to understand why the RPD made its decision. They permit me to determine whether the RPD's conclusions are within the range of acceptable outcomes, and in my opinion they are. This finding also disposes of this case.

[23] On these bases I have determined there is no merit to the Applicant's allegation that the RPD failed to adequately consider potentially corroborative evidence. I am reinforced in this

conclusion in that the Federal Court of Appeal has dealt with this issue, notwithstanding it may continue to arise in this Court.

[24] There appear to be two lines of authority. On the one hand, *Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 and other cases hold that an Applicant's lack of credibility may be extended to "all documentary evidence submitted to corroborate" an Applicant's version of events with the result that the RPD does not have to consider all the documentary evidence in support of an applicant's story:

> [22] Given all the inconsistencies and implausibilities listed above, it was reasonable for the Board to make a general finding of lack of credibility in this case. Such a general finding of lack of credibility extends to all relevant evidence emanating from the Applicant's version: *Sheikh v. Canada (Ministry of Employment and Immigration)*, [1990] 3 F.C. 238 at para. 8 (F.C.A.). The Applicant's lack of credibility can also be extended to all documentary evidence that he submitted to corroborate his version of the facts. As a result, the Board did not have to consider all of the documentary evidence in support of the Applicant's story: *Nijjer v. Canada (Ministry of Citizenship and Immigration)*, 2009 FC 1259, [2009] F.C.J. No. 1696 at para. 26 [emphasis added].

[25] On the other hand, *Karayel v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1305 at paras 15-17, *Tahmoursati* and other cases hold that despite an adverse credibility finding, the RPD must show that it considered corroborative evidence, if only briefly:

> [17] The Board is free to weigh evidence as it sees fit. However, the Applicant must be assured when reading the decision that the evidence was considered. There is nothing in the present decision to show that the Board member turned his mind to the evidence – even if only by one line of text to assign it no weight (*Mladenov v. Canada (Minister of Employment and Immigration)*, 74 FTR 161, 46 ACWS (3d) 302 at para 10). This is unfortunate.

[26] In my view, these lines of reasoning were resolved by the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Sellan*, 2008 FCA 381 [*Sellan*], where an issue was certified for the Court of Appeal's decision, and where it concluded:

> [2] The Judge also certified a question, namely: where there is relevant objective evidence that may support a claim for protection, but where the Refugee Protection Division does not find the claimant's subjective evidence credible except as to identity, is the Refugee Protection Division required to assess that objective evidence under s. 97 of the *Immigration and Refugee Protection Act*?
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> [3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.
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> [4] This leads to the question of whether there was in the record before the Board any evidence capable of supporting a determination in the respondent's favour. In our view, there was clearly no such evidence in the record. We are satisfied that had the Judge examined the record, as he was bound to, he would no doubt have so concluded. In those circumstances, returning the matter to the Board would serve no useful purpose.
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> [Emphasis added].

[27] Therefore and given *Sellan*, the issue becomes whether there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. In *Sellan*, the Federal Court of Appeal reviewed the evidence, found there was none, set aside the judge's decision and dismissed judicial review. That is my conclusion in this case as well. While there were letters from the Applicant's father, brother and former neighbour plus letters from senior members of the Applicant's political party in Bangladesh and certain photographs of the

Applicant with other members of her political party, I am unable to find these are independent as required by *Sellan*.

[28] In the result I find that the RPD's finding on credibility is reasonable, and that its finding that the Applicant's claim is "manifestly unfounded" is within the range of reasonable outcomes permitted by *Dunsmuir*. Accordingly the RPD did not err in its treatment of the evidence.

[29] Neither party proposed a question to certify, and none arises.

VII. Conclusions

[30] The application for judicial review should be dismissed and no question certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, no question is certified and there is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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