Federal Court  Cour fédérale

Date: 20150709

Docket: IMM-4803-14

Citation: 2015 FC 844

Ottawa, Ontario, July 9, 2015

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MOHAMMAD J A JUMA
(a.k.a MOHAMMAD JUMA)

Applicant

and

THE MINISTER OF IMMIGRATION AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mohammad J. A. Juma has brought an application for judicial review pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA]. Mr. Juma challenges a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board]

which determined that he is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97(1) of the IRPA.

[2] Mr. Juma is a Palestinian Muslim. He formerly resided in Bureen, a village in the West Bank. The West Bank and the Gaza Strip form the occupied Palestinian territories in Israel [the Occupied Territories]. Mr. Juma alleges that he is unable to return to the Occupied Territories because he has a well-founded fear of risk based on his nationality and political opinion.

[3] In my view, the Board reasonably drew adverse inferences regarding Mr. Juma's credibility based on inconsistencies in his testimony, a lack of supporting documentation and the delay in making his claim. I also agree with the Board that any risk Mr. Juma faces in the Occupied Territories is generalized in nature. The Board did not breach his right to procedural fairness. The application for judicial review therefore is dismissed.

II. Background

[4] Mr. Juma's refugee claim was based on the following contentions:

- Bureen is located in close proximity to three Israeli settlements. Residents of those settlements regularly attack Bureen as part of the ongoing Israeli-Palestinian conflict. Those who live in Bureen are also subject to arbitrary detention, indiscriminate abuse and even murder at the hands of the Israeli army.

- In 2005, Mr. Juma was detained by members of the Israeli army while travelling between his village and the town of Nablus, where he was attending university. Mr. Juma was held for a number of hours and was told not to return to the area. He was then released.

- Because he would fail his exams if he was unable to attend university, Mr. Juma attempted the same journey the next day and was once again detained by the Israeli army. The army abused him and threatened to kill him. When Mr. Juma's mother went in search of him, she too was assaulted by Israeli soldiers and was hospitalized as a result. Mr. Juma abandoned his studies shortly afterwards and rarely left his house due to concern for his personal safety.

- Mr. Juma's relatives in the United States applied for a student visa to enable him to leave the Occupied Territories temporarily. However, upon arriving in the U.S. in September, 2005, Mr. Juma was told that it was too late for him to register for classes and he would have to return to the Occupied Territories and apply for a new study permit. Mr. Juma decided to stay in the U.S. illegally until it was safe for him to return to the Occupied Territories.

- In September, 2006, Mr. Juma was arrested by immigration officials in the United States. He spent two months in custody due to his illegal status. He was released on a bond which was paid for by his family. In 2008, while he was still subject to the bond and awaiting a court date, Mr. Juma married a U.S. citizen. His new wife applied to sponsor him. Immigration officials in the U.S. questioned the authenticity of the marriage. Mr. Juma spent the next four years disputing the case until he and his wife separated in 2012.

- Having no status in the United States, and following his discovery that he was barred from making a refugee claim in that country because more than one year had elapsed since his arrival, Mr. Juma came to Canada.

[5] Mr. Juma filed a refugee claim on May 10, 2012. The Board rejected the claim on May 20, 2014. Mr. Juma applied for leave and for judicial review to this Court on June 13, 2014, and leave was granted on February 25, 2015.

[6] Mr. Juma says that he fears returning to his country of origin because he is a young Palestinian male from a volatile part of the region. He states that he has a well-founded fear of persecution due to his nationality and political opinion. Having lived abroad for 10 years, Mr. Juma says that he will be regarded with suspicion by both Israeli and Palestinian authorities. The Israeli authorities will suspect him of involvement with hostile groups abroad and will likely detain and interrogate him. Conversely, the Palestinian authorities will suspect him of supporting Israel or factional Palestinian groups due to the time he has spent in North America.

III. The Board's Decision

[7] The Board rejected Mr. Juma's claim on the ground that he lacked credibility. The Board drew a negative inference from Mr. Juma's failure to make a refugee claim in the United States between September, 2005 and May, 2012. The Board also found that Mr. Juma's Personal Information Form [PIF] did not include sufficient detail or documentation pertaining to his time in the U.S.

[8] The Board concluded that Mr. Juma's actions were indicative of someone who was "shopping" for the best opportunity to obtain refugee protection. According to the Board, "genuine Convention refugees would seek protection as soon as practical once out of reach of their oppressors."

[9] In assessing Mr. Juma's claim under s 97 of the IRPA, the Board found that Mr. Juma was not a person in need of protection because his removal to Israel and the Occupied Territories would not subject him personally to a risk to life or a risk of cruel and unusual treatment or punishment. The Board also found that there was insufficient evidence to conclude that Mr. Juma would be subjected to torture.

[10] With respect to Mr. Juma's claim that his 10 year absence from the Occupied Territories would cause both Israeli and Palestinian authorities to think that he was associated with hostile groups, the Board found that Mr. Juma's fears were general in nature and any risk he might face would not be personalized. The Board held that Mr. Juma's ability to renew his Palestinian passport demonstrated that the Palestinian authorities likely did not suspect him of posing a threat; otherwise, they would not have re-issued a document that would permit him to return to the Occupied Territories.

IV. Issues

[11] The following issues are raised by this application for judicial review:

A. Was the Board's decision reasonable?

B. Was the Board's decision procedurally fair?

V. Analysis

[12] The Board's findings of credibility are subject to review by this Court against the standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) at para 4; *Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12 at para 58 [*Khosa*]; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22).

[13] A reasonable decision is one that is justified, transparent and intelligible, and that falls within the 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; *Khosa* at para 59).

[14] Questions of procedural fairness implicate the principles of natural justice and are reviewable against the standard of correctness (*Khosa* at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79). While correctness is the appropriate standard, recent jurisprudence from the Federal Court of Appeal holds that this Court should adopt a "hybrid standard" which permits some deference to the RPD's procedural choices (*Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 245 at paras 70-72, 81; *Jones v Canada (Minister of Citizenship and Immigration)*, 2015 FC 419 at para 17; see also *Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paras 34-42; *Maritime Broadcasting System Ltd. v Canadian Media Guild*, 2014 FCA 59 at paras 50-56). This does not alter the standard of review, but it may affect this Court's assessment of the scope of the Board's duty and whether it was

breached (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2015 FC 281 at para 31; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21, 27).

A. *Was the Board's decision reasonable?*

[15] Mr. Juma says that the Board's decision was unreasonable for two reasons: (a) the Board erred in its assessment of Mr. Juma's credibility; and (b) the Board erred in finding that the risk faced by Mr. Juma was general in nature.

[16] In order to establish a fear of persecution under s 96 of the Act, the claimant must have a subjective fear and that fear must be objectively well-founded (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689). In this case, the Board concluded that Mr. Juma did not have a subjective fear of persecution.

[17] Mr. Juma argues that the delay in making his refugee claim is not determinative, while the Minister says that it was open to the Board to make such a determination given its adverse findings regarding Mr. Juma's credibility.

[18] The Board is entitled to take into consideration the applicant's delay in claiming refugee protection when conducting its assessment (*Huerta v Canada (Minister of Employment and Immigratio*n), [1993] FCJ No 271 (FCA) at para 4). There is a presumption that a person having a well-founded fear of persecution will claim refugee protection at the earliest opportunity. Where they fail to do so, the legitimacy of the subjective fear that they allege may be called into question (*Singh c Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2007 FC 62 [*Singh*]

at para 24). While delay is not in itself determinative, it "may, in the right circumstances, constitute sufficient grounds upon which to dismiss a claim" (*Duarte v Canada (Minister of Citizenship and Immigration)*, 2003 FC 988 at para 14). Absent a satisfactory explanation for the delay, it "can be fatal to such claim, even where the credibility of an applicant's claims has not otherwise been challenged" (*Velez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 923 at para 28; *Garcia v Canada (Minister of Citizenship and Immigration)*, 2012 FC 412 at para 20; *Licao v Canada (Minister of Citizenship and Immigration*), 2014 FC 89 at para 49, 53; see also *Espinosa v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1324 at para 17).

[19] Whether or not the Board is persuaded by a claimant's explanation for any delay in making a claim is a question of fact, not a question of law. Considerable deference is owed to the Board by virtue of its expertise and its special position as trier of fact *(Huseynova v Canada (Minister of Citizenship and Immigration)*, 2011 FC 408 at para 6; *Hassan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1136 at para 11; *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 698 at para 11). This Court will intervene only if the assessment of an applicant's credibility is based on an erroneous finding of fact that was made in a perverse or capricious manner, or without regard for the material before it (*Camara v Canada (Minister of Citizenship and Immigration*), 2008 FC 362 para 12).

[20] In this case, Mr. Juma waited almost seven years after leaving Palestine before he made a claim for refugee protection. When he was asked about the reasons for this delay, Mr. Juma gave answers that the Board found to be evasive and unconvincing. The Board also drew a negative inference from Mr. Juma's failure to provide documents confirming the details of his seven years

of interaction with United States immigration authorities, making it impossible for the Board to assess whether Mr. Juma's claims in the U.S. were consistent with those he was making in Canada.

[21] In my view, it was reasonable for the Board to draw a negative inference from Mr. Juma's delay in seeking refugee status and to conclude that Mr. Juma lacked a subjective fear of persecution (*Jeune v Canada (Minister of Citizenship and Immigration*), 2009 FC 835 at para 15). While Mr. Juma may have had a valid study visa when he first entered the United States, this does not detract from the reasonableness of the Board's assessment (*Peti v Canada (Minister of Citizenship and Immigration*), 2012 FC 82 at para 42).

[22] I also find that it was open to the Board to draw negative inferences from inconsistencies in Mr. Juma's PIF and his inability to provide supporting documentation with respect to certain aspects of his claim, as required by Rule 11 of the Refugee Protection Division Rules, SOR/2012-256. It is well established that a failure to supply adequate supporting documentation may adversely affect a claimant's credibility (*Mercado v Canada (Minister of Citizenship and Immigration*, 2010 FC 289 at para 32).

[23] Mr. Juma also complains that the Board failed to properly assess his claim under s 97 of the IRPA. He says that the Board's analysis was flawed because it did not consider his allegation that he faced a heightened risk in the Occupied Territories because he is a young male from Bureen, a particularly volatile area of the West Bank in close proximity to three Israeli settlements. According to Mr. Juma, the Board considered the risk he faced at the hands of the

Israeli and Palestinian authorities, but it did not address the risk that might come from the Israeli settlers in the West Bank.

[24] For a claim to succeed under s 97 of the IRPA, a claimant must establish on a balance of probabilities that he would be personally subjected to a risk to life or a risk of cruel and unusual treatment or punishment should he be returned to his country of origin. The risk must not be indiscriminate or random, and it cannot be one faced by the population at large. States are presumed to be capable of protecting their citizens. This presumption is rebutted only by clear and convincing evidence that state protection is inadequate or non-existent (*Carrillo v Canada (Minister of Citizenship and Immigration*), 2008 FCA 94 [*Carrillo*] at para 38). The evidence must be reliable and it must have probative value (*Carrillo* at para 30).

[25] I accept that the risk presented by the settlers was squarely raised before the Board by counsel for Mr. Juma. It was alluded to in the revised PIF that was prepared with the assistance of counsel, and it was addressed in some detail in counsel's submissions following the hearing. However, Mr. Juma's testimony before the Board did not substantiate the submissions made by counsel on his behalf. The Minister notes that Mr. Juma identified "a litany of risks" from different sources, including the Israeli authorities, the Palestinian authorities, and the West Bank settlers.

[26] When asked whether he faced an increased risk due to his age and gender, Mr. Juma said only that everyone is at risk, even four-year olds, even babies. The Board concluded that Mr. Juma's responses were rambling, and he had presented nothing to indicate that he was personally

at risk. In light of this finding, it was unnecessary for the Board to separately evaluate the risk from different sources with any greater specificity than it did. The documentary evidence considered by the Board confirmed the possibility of a heightened risk faced by those who share some characteristics with Mr. Juma, but it also identified their activities (e.g., protest and activism) as the primary cause of this risk.

[27] Based on the evidence presented by Mr. Juma, I find that it was reasonable for the Board to conclude that the risk he faced was generalized in nature. Even if one accepts the existence of a higher risk for those with Mr. Juma's profile, this Court has held that a risk may still be generalized when it is faced by a particular sub-group with greater frequency (*De Parada v Canada (Minister of Citizenship and Immigration)*, 2009 FC 845 at paras 21-22; *Paz Guifarro v Canada (Minister of Citizenship and Immigration*), 2011 FC 182 at paras 30, 32-33; see also *Avila Diaz v Canada (Minister of Citizenship and Immigration*), 2010 FC 797 at paras 38-40).

B. *Was the Board's decision procedurally fair?*

[28] Mr. Juma argues that the Board did not respect the principles of natural justice because it relied on specialized knowledge to reach its conclusion that he is not a person of interest to the Palestinian authorities given that he was able to renew his passport without incident. Mr. Juma says that the Board must have relied on specialized knowledge because it did not refer to any documentary evidence regarding the nature and extent of Palestinian entry/exit controls.

[29] Mr. Juma acknowledges that the Board may take notice of facts, but he says that a claimant must be given notice and an opportunity to respond. Subsection 170(i) of the IRPA

permits the Board to take notice of "any other generally recognized facts and any information or opinion that is within [the Board's] specialized knowledge."

[30] I disagree with Mr. Juma that the finding of the Board regarding his ability to renew his Palestinian passport should be attributed to specialized knowledge. Rather, I find that the Board's conclusion was based on rationality and common sense. The Board's finding is couched in terms of rationality, not specialized knowledge:

> The panel finds it reasonable to expect that if the Palestinian Authority [PA] had any suspicion that the claimant posed any risk to the PA they would not have reissued a document that would assist him in returning to the PA.

[31] The Board is entitled to rely on rationality and common sense in assessing a claimant's credibility and subjective fear (*Singh* at para 1; *Shahamati v Canada (Minister of Employment and Immigration*) [1994] FCJ No 415). Moreover, I note that Mr. Juma's claim that the Palestinian authorities will know that he has been absent for more than 10 years, and will therefore regard him with suspicion, is similarly premised on an assumption that the authorities have access to record systems that are capable of preserving and retrieving this information.

[32] I am therefore satisfied that the Board's conclusions were based on the evidence before it, and it did not rely on specialized or personal knowledge, or extrinsic evidence, without notice. Accordingly, I find that s 170(i) of the IRPA has no relevance in the present case and that the principles of procedural fairness were properly observed.

VI. Conclusion

[33] For the foregoing reasons, the application for judicial review is dismissed. No question is certified for appeal.

JUDGMENT

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

No question is certified for appeal.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4803-14
STYLE OF CAUSE:	MOHAMMAD J. A. JUMA v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 26, 2015
JUDGMENT AND REASONS:	FOTHERGILL J.
DATED:	JULY 9, 2015

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