Federal Court  Cour fédérale

Date: 20161021

Docket: IMM-1757-16

Citation: 2016 FC 1175

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 21, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALY TOURE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

> When a narrative in its entirety lacks inherent logic and is not consistent, unravelling the crux of such an account leads to a finding of lack of credibility; and, the hopes of reassembling the account becomes a mere illusion of the applicant accompanied by a cacophony of the applicant's refrains.
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> (*Villanueva v. Canada (Citizenship and Immigration)*, 2013 FC 52 at para 1)

II. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision rendered by a member of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. On April 4, 2016, the RAD dismissed the applicant's appeal, confirming the Refugee Protection Division's (RPD) decision that the applicant would not have status as a Convention refugee or a person in need of protection under Sections 96 and 97 of the IRPA.

III. Facts

[2] The applicant, age 30, is a citizen of Guinea. He belongs to the Mandingo ethnic group. After having fled to Côte d'Ivoire from Guinea, he came to Canada on February 11, 2015 and claimed refugee protection on March 4, 2015. The applicant's wife and their children did not accompany him; they stayed in Abidjan, Côte d'Ivoire.

[3] The applicant is originally from the village of Zogota, in the prefecture of Nzérékoré, and he completed his studies in Conakry, the capital of Guinea. He later returned to his native village where he was in the rice and palm oil business from 2010 to 2012.

[4] The applicant met his wife in the Nzérékoré area and married her in 2009. Three daughters were born from this union in 2008, 2012 and 2014. The applicant's older brother died. As a result, he and his wife adopted his son who was born in 2008. The applicant's parents are also deceased. The applicant has a sister living in Nigeria and two brothers in Sierra Leone.

[5] At the time of the alleged incidents, in the village of Zogota located in the Guinée forestière region, Vale, a Brazilian mining company, was prospecting and mining a hill. The presence of the mining company caused tension within the population, especially among the indigenous people of Zogota who were demanding jobs and better infrastructure. On the night of July 31, 2012, violent demonstrations organized by the indigenous population led to the vandalization of the mining facilities and attacks on villagers in Zogota. On the night of August 3, 2012, the Guinean security forces intervened and retaliated by massacring the indigenous population, which resulted in the violent death of five individuals. On August 7, 2012, in response to the public outcry and the intervention of the Office of the United Nations High Commissioner for Human Rights and non-governmental organizations, the Government of Guinea officially opened an investigation into these events.

[6] According to his account, on July 31, 2012, the applicant witnessed what he described as a massacre perpetrated by members of the indigenous community of Zogota. On August 1, 2012, he apparently collaborated with the security forces and denounced the instigators of these riots. Subsequently, the applicant was allegedly the victim of reprisals: on the night of August 3 to 4, 2012, armed individuals apparently forced their way into his home with the intention of killing him and his family. He allegedly fled to Conakry with his family to escape the persistent threats he was receiving, but in vain. Still sought by indigenous leaders wanting to punish him for his denunciation, he apparently moved in with his in-laws in Abidjan in 2014, and then returned briefly to Guinea. Apparently, both Guinean and Ivorian authorities failed to protect him.

[7] On February 11, 2015, the applicant allegedly left Côte d'Ivoire for Morocco and travelled to Canada with false documents. He filed a claim for refugee protection on March 4, 2015. This claim was heard by the RPD on May 4, 2015, and May 13, 2015.

IV. Decisions

A. *The RPD's May 13, 2015 decision*

[8] The applicant's refugee protection claim was rejected by the RPD due to lack of credibility. The applicant's testimony was evasive, and he managed to provide the RPD with only a very generalized account, which the RPD did not believe. The RPD deduced that he had not witnessed the events of July 31, 2012, as he claimed. It found that the applicant had not discharged his burden of establishing that there was a serious possibility that he would be persecuted if he returned to Guinea, or that he would likely be exposed to torture, a risk to his life or cruel treatment or punishment. Consequently, the RPD concluded that the applicant did not meet the criteria of Sections 96 and 97 of the IRPA.

B. *The RAD's April 4, 2016 decision*

[9] The matter before our Court is the RAD's decision dismissing the applicant's appeal, confirming the RPD's decision and finding that he did not have status as a Convention refugee or a person in need of protection under Sections 96 and 97 of the IRPA.

[10] The RAD admitted new evidence that the applicant presumably resided in Zogota at the time of the events at the heart of his claim for refugee protection, but it considered this fact to be

secondary in assessing his credibility and did not change the outcome of his claim. It rejected some other new evidence on the basis that it was irrelevant to the outcome of the appeal.

[11] The RAD took into account the RPD's errors regarding the facts supporting the applicant's account: the RPD confused the incidents and protagonists involved in the July 31 and August 3, 2012 confrontations. Nevertheless, the RAD found that the errors were not fatal to the decision rendered, because they did not affect the basis of the claim for refugee protection, i.e. what the applicant witnessed on July 31, 2012, his denunciations to the police the next day and the threats to which he was subsequently subjected.

[12] According to the RAD, the essence of the RPD's decision was based on the applicant's lack of credibility due to his vague, evasive and general testimony. After reviewing the case and listening to the recording of the hearing, the RAD found that the applicant did not answer the questions, that he had not been able to describe what he had seen on July 31, 2012, explain how his denunciations to the security forces could have resulted in reprisals on the part of the indigenous community and then why he was persecuted and threatened all the way to Conakry and Abidjan. The RAD therefore found that he had failed to support his allegations of fear.

[13] Consequently, the RAD dismissed the applicant's appeal and upheld the decision of the RPD, which had not erred and had rendered the right decision.

V. Issues

[14] The issues raised in this case are:

1) Did the RAD err in rejecting new evidence?

2) Did the RAD err in its assessment of the applicant's credibility?

[15] The first issue, involving the RAD's interpretation of the IRPA provisions regarding the admissibility of new evidence is reviewable on the standard of reasonableness (*Canada (Citizenship and Immigration) v. Singh*, FCA 96 (*Singh*)).

[16] The second issue is a question of fact, also reviewable on the standard of reasonableness. As the undersigned noted in *Cortes v. Canada (Citizenship and Immigration)*, 2015 FC 1325, the Court has a high duty of deference in determining the reasonableness of the RAD's findings of credibility (*Ling Du v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1094 at para 55; *Elhassan v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 1247). Only imprecise and vague conclusions without particulars will justify the intervention of the Court (*Rahal v. Canada (Citizenship and Immigration)*, 2012 FC 319 at para 46).

VI. Relevant provisions

[17] The issue of the admissibility of the evidence before the RAD is governed by subsection 110(4) of the IRPA.

Evidence that may be presented	**Éléments de preuve admissibles**
110 (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not	**110 (4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou,

reasonably have been expected in the circumstances to have presented, at the time of the rejection.	s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

VII. Submissions of the parties

A. *Submissions of the applicant*

[18] In the applicant's opinion, the RAD erred in rejecting new evidence deemed inadmissible because it would not affect the outcome of the appeal. In his factum, the applicant did not, however, specify which evidence was erroneously set aside and did not explain how it could affect the outcome of the appeal. The applicant simply argued that the new evidence supported his credibility and refuted the RPD's findings.

[19] As to the RAD's assessment of his credibility, the applicant believed that the decision was based on unreasonable findings of fact. According to him, his account was logical. He lived in Zogota and witnessed the July 31, 2012 riots. He was known in the village and belonged to the Mandingo ethnic group. In the eyes of the indigenous leaders, his denunciation to the security forces made him responsible for the reprisals that followed his testimony a few days later. This explains why he is still being persecuted. According to the applicant, his account was not vague, as suggested. On the contrary, the identity of the police officers to whom he reported the incidents is secondary to his account, as is the identity of the indigenous people that he allegedly denounced.

B. *Submissions of the respondent*

[20] The respondent believes that the RAD's decision to reject the new evidence complies with subsection 110(4) of the IRPA as well as the teachings of the Federal Court of Appeal in *Singh*, supra. I emphasize that the applicant did not convince the RAD that he had been unable to file the Lawyers Without Borders report into evidence (Exhibit P-8) with the RPD, although the document was published on August 4, 2012. Also, the kind of information it contained would not change the RAD's overall assessment of the RPD's decision. Next, the two certificates (Exhibits P-9 and P-10) were not admitted because they were simply not relevant.

[21] The respondent also argues that the RAD's decision confirming the RPD's decision is reasonable, in that the applicant did not provide a credible account. Although it noted the RPD's errors, the RAD found that they were not material or of the type that would taint the RPD's decision. In its independent review of the evidence presented, the RAD aligned itself with the RPD's decision as a result of the applicant's hesitant and general testimony, the difficulty he had in answering questions, his inability to detail what he allegedly witnessed and the absence of documents to corroborate his statements. It was reasonable that the RAD find that the applicant was not credible and that it dismiss the appeal.

VIII. Analysis

[22] The Court reviewed the file, including the recording of the May 4, 2015 RPD hearing.

A. *Admissibility of new evidence*

[23] Subsection 110(4) was the subject of the Federal Court of Appeal's recent *Singh* decision, supra, which qualified the scope of *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385 with respect to new evidence:

> […] In the context of a PRRA, the requirement that new evidence be of such significance that it would have allowed the RPD to reach a different conclusion can be explained to the extent that the PRRA officer must show deference to a negative decision by the RPD and may only depart from that principle on the basis of different circumstances or a new risk. The RAD, on the other hand, has a much broader mandate and may intervene to correct any error of fact, of law, or of mixed fact and law. As a result, it may be that although the new evidence is not determinative in and of itself, it may have an impact on the RAD's overall assessment of the RPD's decision. [Emphasis of the Court]
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> (*Singh*, supra, at para 47)

[24] In this case, the Court is of the opinion that the RAD reasonably decided not to admit the three new pieces of evidence submitted by the applicant. It was reasonable for the RAD not to admit a joint report from Lawyers Without Borders dated August 4, 2012. The applicant failed to show that this report was not accessible to him on a timely basis. Moreover, the admission of this report into evidence would have been of no help to the applicant; it does not contain information likely to provide the RAD with greater insight into what the applicant allegedly witnessed. The clarifications that were submitted in pleadings at the hearing did not cast further light on the applicant's account regarding the personal peril he feared.

[25] The other two exhibits submitted were not material because they did not relate to the facts underlying the claim for refugee protection.

B. *Credibility*

[26] Based on the press clippings and reports submitted in evidence, the Court understands and summarizes the sequence of events as follows. The indigenous population of Zogota expressed its dissatisfaction with Vale's employment practices by vandalizing the mining company's facilities, which led to a riot and injuries on July 31, 2012. The applicant, and perhaps other witnesses, allegedly went to the authorities and identified members of the indigenous population as the perpetrators. The security forces retaliated on August 3, 2012, killing five members of the indigenous population. The government has opened an investigation to clarify the circumstances of these deaths in order to punish the perpetrators.

[27] While the Court concedes that a complainant or witness may not recall the identity of the officer who allegedly took his testimony, and although the Court also agrees that the identity of the indigenous leaders is not essential to the applicant's account, it is clear that his testimony was incoherent and vague. The applicant was unable to testify to what he saw on the night of July 31, 2012 or what he may have told the authorities regarding this matter. The generalities he related were not compelling.

[28] These flaws have, with good reason, greatly undermined the applicant's credibility. Consequently, after having independently assessed the evidence, the RAD came to the same conclusion as the RPD. The Court believes that the RAD did not err in its findings and that its decision is reasonable.

IX. Conclusion

[29] For the reasons stated above, the application for judicial review is dismissed.

JUDGMENT

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

There is no question of importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1757-16
STYLE OF CAUSE:	ALY TOURE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 20, 2016
JUDGMENT AND REASONS:	SHORE J.
DATED:	OCTOBER 21, 2016

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