

Federal Court



Cour fédérale

**Date: 20170113**

**Docket: IMM-2869-16**

**Citation: 2017 FC 49**

**Ottawa, Ontario, January 13, 2017**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**YOUSOUF ALI WALITE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Youssouf Ali Walite, seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of the decision of the Refugee Appeal Division [RAD] dated May 25, 2016, which upheld the finding of the Refugee Protection Division [RPD] that he was not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Applicant is a citizen of Chad and a member of the Gorane ethnic group. He recounts that on November 11, 2014, he helped organize and participated in a protest by students against the discrimination faced by the Gorane and other minority groups in accessing higher education. He recounts that the police violently dispersed the protesters and he went into hiding. His brother and father were arrested for refusing to tell the police where he was.

[4] The Applicant left Chad on December 22, 2014 and travelled to the United States (US) with a US Visa. He entered Canada on January 24, 2015 and sought refugee protection shortly thereafter.

*The RPD Decision*

[5] The RPD found that the determinative issue was credibility. The RPD found that the Applicant's evidence regarding the basis for, and his role in, the November 11, 2014 protests was not credible.

[6] The RPD also drew a negative credibility inference from the Applicant's failure to mention in his Basis of Claim [BOC] that Ibrahim Nour, the president of a student group, had been arrested at the November 11, 2014 protest and allegedly reported the Applicant to the police.

[7] The RPD also found that the Applicant was not a student in the fall of 2014 as he alleged. The RPD noted his extensive travel during the same period, the defects in the student card he presented and the lack of other documents to show that he actually attended school at the relevant time.

[8] The RPD rejected the Applicant's claim that he was discriminated against as a Gorane seeking access to education. The RPD noted that the Applicant hesitated in his responses to questions regarding what he was studying and wished to study. The RPD also noted that the documentary evidence did not mention that the Gorane faced discrimination in education or that this was the reason for the protests. The documentary evidence indicated that the protests were sparked by the non-payment of teachers and a spike in fuel prices due to fuel shortages.

## II. The RAD Decision Under Review

[9] The RAD first considered two documents that the Applicant sought to submit as new evidence: the Applicant's original student card and, a letter of support written by his friend, Issa Ali Oumar.

[10] The RAD found that the documents did not constitute new evidence in accordance with subsection 110(4) of the Act.

[11] The RAD found that the student card was not trustworthy for several reasons: a portion of it was not translated into English or French; there was no identification number or issue date on

the card; and, the card contained spelling errors. The RAD also noted that a copy of the same student card, which had been partly translated into French, was part of the RPD record.

[12] The RAD found that the letter from Issa Ali Oumar did not refer to an event that occurred after the rejection of the Applicant's claim by the RPD. The RAD also found that the letter was submitted without verifying the identity of the author. The RAD noted that the information in the letter was the same as another letter which was on the RPD record and considered by the RPD.

[13] With respect to the merits of the appeal, the RAD found that the RPD did not err in its assessment of the evidence and that there were several reasons to doubt the Applicant's credibility.

[14] The RAD noted that the Applicant failed to mention in his BOC that Ibrahim Nour, who he claimed most likely reported him to the police, had been arrested. The RAD found that this omission impugned his credibility given that it dealt directly with the basis of his claim for refugee protection.

[15] The RAD agreed with the RPD that the Applicant was not a student at the Lycée Roi Fayçal in September of 2014. The RAD noted additional reasons for this finding: the Applicant's passport issued in January 2014 indicates that he was employed as a sales representative; his travels did not correspond to the lifestyle of a secondary school student; he was already 25 years of age and engaged to be married; and, the photocopy of his student card lacked a date of issue, lacked an identification number, and included spelling mistakes in the document's title and in the

school's name. The RAD concluded that the RPD did not err in finding that, on a balance of probabilities, the Applicant had not returned to school in September 2014 and could not have participated as a student in the November 2014 protests.

[16] The RAD noted the Applicant's submissions that the RPD erred in failing to consider all the evidence and that the RPD erred in making a credibility finding based on his failure to mention the arrest of Ibrahim Nour in his refugee claim. The RAD rejected both arguments.

### III. The Issues

[17] The applicant raises two issues with respect to the reasonableness of the decision:

- Whether the RAD erred in refusing to admit new evidence; and;
- Whether the RAD erred in its credibility assessment.

### IV. The Standard of Review

[18] In reviewing a decision of the RAD this Court applies the reasonableness standard with respect to the RAD's determinations of factual issues, including credibility, and issues of mixed fact and law (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] FCJ No 313 (QL) [*Huruglica*]). This includes determinations regarding the admissibility of new evidence (*Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29, [2016] FCJ No 315 (QL) [*Singh*]).

[19] The reasonableness standard focuses on "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls

within a 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, [2008] 1 SCR 190).

V. Did the RAD err in refusing to admit the new evidence?

*The Applicant’s submissions*

[20] The Applicant submits that he satisfied the criteria for new evidence pursuant to subsection 110(4) of the Act as clarified by the Federal Court of Appeal in *Singh*.

[21] He argues that his original student card should have been admitted. He submits that his explanation for not providing his original student card to the RPD – because he did not anticipate that his student status would be such an issue – was reasonable. He also submits that the original student card is worn and stained, which supports his claim that he was a student since 2010 at the Lycée in Ndjamen. He adds that the card contains information consistent with his personal information, and includes an official school stamp and his photo.

[22] The Applicant argues that the support letter from Issa Ali Oumar is new evidence which supports his testimony that Ibrahim Nour was arrested by police after participating in the student protests of November 11, 2014. He explained that this letter was provided to respond to an issue which was only raised at the RPD hearing (i.e., the omission of Ibrahim Nour’s name and his arrest). The Applicant also notes that the RAD erred in stating that the author of the letter was not identified by an independent document, noting that copies of both Oumar’s national ID card and passport were attached.

*The Respondent's Submissions*

[23] The Respondent notes that although the RAD did not accept the Applicant's original student card as new evidence it considered the document but reasonably gave it no weight.

[24] The RAD reasonably found that the student card did not establish that the Applicant was a student in November 2014. Whether the card should have been accepted as "new" is not relevant because the RAD specifically considered the card in its assessment of the Applicant's credibility.

[25] The Respondent submits that the Applicant's explanations about why he did not provide the letter of support from Mr. Oumar earlier were not reasonable, as the RAD found.

[26] The Respondent also submits that it was reasonable for the RAD to conclude that the Applicant could or should have anticipated the concerns of the RPD regarding his student status and the basis of his claim.

[27] The Respondent notes that the role of the RAD is not to provide the opportunity to supplement a deficient record submitted before the RPD, but to allow for errors of fact, errors in law, or mixed errors of fact and law to be corrected.

*The RAD did not err in refusing to admit the “new” evidence*

[28] Subsection 110(4) of the Act provides:

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 reasonably have been expected in the circumstances to have presented, at the time of the rejection.

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, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[29] In *Singh*, Justice de Montigny noted that the RAD cannot disregard the clear statutory criteria of subsection 110(4). In addition, the factors established in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] FCJ No 1632 (QL)[*Raza*] (credibility, relevance, newness, and materiality) remain applicable to determinations by the RAD to admit new evidence. The Federal Court of Appeal added that only evidence that meets the criteria set out in subsection 110(4) is admissible.

[30] With this guidance in mind, the role of the Court is not to re-determine whether the new evidence should have been accepted, but to determine whether the RAD's findings are reasonable.

[31] The RAD found that the student card contained errors which cast doubt on its authenticity. A copy of the card was available to and considered by the RPD and remained on the record, so the original card was not new evidence. It is reasonable to expect that the Applicant's



original student card was available at the time of the RPD hearing. His explanation, that he did not anticipate that his student card would be a key issue or that the original would be required, is not reasonable. His claim was based on his alleged role in a student protest and he claimed to be a student who faced discrimination in accessing education due to his ethnicity. Establishing that he was a student would certainly be a key issue.

[32] The RAD also reasonably found that the letter of support by Issa Ali Oumar was not new evidence, despite mistakenly stating that it was not accompanied by identity information. The letter does not refer to an event that occurred after the RPD's rejection of the Applicant's claim. As noted by the RAD, the content of the letter was similar to another letter of support that was before the RPD (which was the letter from Cherif Adjber). The RAD also found that the Applicant failed to establish that the letter was not reasonably available or that he could not reasonably have been expected in the circumstances to have presented it to the RPD before his claim was rejected by the RPD. The Applicant's argument that the letter was tendered to respond to an issue that only arose at the hearing is not a reasonable explanation. The issue was the omission in his BOC to mention the arrest of Ibrahim Nour. The letter does not explain why his BOC failed to mention Ibrahim Nour by name or that he was arrested. In addition, the other letter on the record included similar information.

[33] The RAD's rejection of the "new" evidence reflects the statutory criteria in subsection 110(4) of the Act and the application of the *Raza* factors.

VI. Did the RAD err in its credibility assessment and findings?

*The Applicant's Submissions*

[34] The Applicant submits that the RAD erred in focussing on his failure to mention the arrest of Ibrahim Nour in his BOC narrative. He argues that omissions are only serious or material where they are central to the claim and should not be exaggerated by the RAD.

[35] He submits that the central element of his claim is that he was part of a protest at a school in Ndjamena, Chad and, as a result, was targeted by authorities. His testimony regarding the role of Ibrahim Nour was simply a detail he elaborated on at his hearing.

[36] The Applicant also argues that the RAD erred in finding that he was not a student. He submits that he provided credible and trustworthy evidence to demonstrate that, on a balance of probabilities, he was a student in November 2014. He notes that although his passport, issued in January 2014, stated he was a “sales rep”, this is not inconsistent with his claim that he was a student from October 2010 until November 2014. He indicated in his BOC that he was both a student *and* worked in commerce. He also submits that his travels, his engagement and his age are not inconsistent with being a student. The Applicant argues that the RAD erred in making an implausibility finding based on speculation about the lifestyle of a student without regard to supporting evidence.

[37] The Applicant also relies on the presumption of validity of foreign identification documents. He submits that the RAD did not point to any evidence, apart from its own

observations, regarding the authenticity of student cards or other documents. The RAD's assessment of his student card was microscopic as there were other characteristics that pointed to the card's authenticity.

[38] The Applicant also argues that the RPD should have considered the support letter from Cherif Adjber. The RAD erred in not identifying and correcting the RPD's error and in not independently assessing this letter.

[39] Cherif Adjber stated in his letter that he housed the Applicant for one month, helped him obtain a US visa and contributed to his airline ticket to the USA. The letter also stated that the Applicant was in danger, was being pursued by Chadian authorities, and that because of this, the applicant's father and brother disappeared.

[40] The Applicant also submits that his claims of discrimination and protests are plausible. He argues that both the RAD and the RPD ignored the objective, documentary evidence regarding discrimination against the Gorane. He points to the documentary evidence which refers to the protests arising from concerns about human dignity generally and notes protests by teachers, lawyers, and judicial workers. He adds that there was no evidence that discrimination against the Gorane in education was *not* an issue in the November 2014 protest. He argues that it was, therefore, plausible that he helped organize and participated in the protest on November 11, 2014.

*The Respondent's Submissions*

[41] The Respondent submits that it was open to the RPD and then to the RAD to find that the Applicant's testimony at the RPD hearing regarding the role of Ibrahim Nour was not merely an elaboration or further minor details of his BOC.

[42] The Respondent notes the Applicant never mentioned Ibrahim Nour by name in his BOC or narrative and did not mention that the president was arrested or that the president gave the Applicant's name to the police.

[43] The Respondent submits that both the RPD and the RAD reasonably concluded that the Applicant had not established that he was a student in November 2014. The RPD concluded that the Applicant had left school at the beginning of January 2014. This is consistent with the evidence in his passport which was issued in January 2014 and listed his occupation as "sales rep". Even though the Applicant claimed that he returned to school full time in September 2014, he failed to produce any evidence to establish this, such as a letter of admission or report cards, as the RPD noted. The only evidence was a student card that both the RPD and RAD reasonably rejected.

VII. The RAD's credibility assessment and findings were reasonable

[44] In *Huruglica*, Justice Gauthier clarified the uncertainty that previously existed regarding the standard of review to be applied by the RAD; the RAD should fulfill its appellate role and apply the standard of correctness when reviewing an RPD decision. With respect to whether

deference is owed to the RPD, Justice Gauthier noted at para 70: “In each case, the RAD ought to determine whether the RPD truly benefited from an advantageous position, and if so, whether the RAD can nevertheless make a final decision in respect of the refugee claim.” Justice Gauthier noted that the RAD would develop its own jurisprudence over time.

[45] In the present case, the RAD independently assessed the Applicant’s testimony and found that it lacked credibility. Although the RAD reached the same conclusion as the RPD, the RAD provided additional reasons to support its credibility findings.

[46] I disagree with the Applicant’s submission that the RAD erred in finding it implausible that he was a student and that the protests were about discrimination against the Gorane in accessing education because the RAD did not point to any evidence in support of their implausibility findings.

[47] The RAD supported all of its findings with reference to the evidence, or to the lack of evidence. The RAD did not rely on speculation with respect to the Applicant’s failure to establish his status as a student nor did it make unfounded implausibility findings.

[48] The RAD reasonably found, as did the RPD, that the Applicant was not a student at the Lycée Roi Fayçal in November 2014. As the RAD noted, the Applicant’s passport, issued on January 23, 2014 indicates that he was a sales representative. The record shows a number of visas in his passport indicating extensive travel during 2014. While this does not rule out that the Applicant was a student, it reasonably caused the RPD and RAD to probe this issue.

[49] The Applicant's student card contained a number of anomalies, including the misspelling of the name of the school and the French word "Scolaire". Importantly, the student card, whether the photocopy or the original, did not include the date of its issuance or expiration. In other words, it did not establish the school year for which it applied and it did not confirm that the Applicant returned to school in September 2014.

[50] The Applicant's reference to his response to a question in a Schedule to his BOC which indicates his activities as "etude/ commerce" from April 2007 to the date of the BOC, is not contradictory evidence that the RPD or RAD ignored. That cryptic notation does not establish that the Applicant returned to school full time in September 2014 or was a student at the time of the protests in November 2014.

[51] With respect to the plausibility of the Applicant's claim of discrimination, nothing on the record establishes that the protests he claims to have been involved in had anything to do with discrimination against the Gorane in education. The Applicant suggests the objective evidence confirms that there were protests, that people were arrested and that minorities are discriminated against and that these elements are sufficient to support his claims. I do not agree. The record, which includes the US Department of State Report and extensive media reports about the protests, says nothing to support the Applicant's contention that the protest he participated in in the city of Ndjamena was about discrimination of the Gorane in education.

[52] The Applicant's argument that nothing in the record suggests that the protests were *not* about education suggests that the onus of proof regarding the underlying discrimination and

nexus to a Convention ground should be on the Minister, which is clearly not the law. The Applicant must establish his claim. He did not do so. The RPD and the RAD reasonably found that there was insufficient evidence to support his claim that there is discrimination in education and that he was subject to such discrimination or that his participation in the alleged protest put him at risk.

[53] With respect to the omission in the Applicant's BOC, as the Respondent notes, the role of Mr. Nour is an important element in the Applicant's claim. Mr. Nour allegedly reported the Applicant to the police in Chad. This would set the Applicant apart from the many other protesters and explain why he was targeted by the police. It was not an elaborative detail regarding his claim; this was central to his claim. Why would the Applicant state in his BOC that he and the president organized the protests yet not indicate the name of the president, that the president was arrested or that the president likely gave his name to the police? Contrary to the Applicant's submission, this was not a detail about a third party. The role of Ibrahim Nour was linked to his alleged participation in the protest, his need to go into hiding and the alleged arrest of his father and brother for not revealing his whereabouts.

[54] The RAD's finding that this omission justified an adverse credibility finding is reasonable.

[55] Nor did the RAD err by not specifically referring to the letter from Cherif Adjber. The RAD addressed the Applicant's argument that the letter had been ignored by the RPD, noting that the RPD is presumed to have considered all the evidence and need not refer to each piece.

The RAD did not err in finding that the RPD's statement that it considered all the evidence could be relied on.

[56] Moreover, the RAD did not err in not specifically referring to the letter from Cherif Adjber. The RAD acknowledged that this letter was on the record before the RPD and that its content was similar to the letter from Issa Ali Oumar, which it did not accept as new evidence. Therefore, the RAD was aware of the content of the letter and cannot be said to have ignored it.

[57] The RAD referred to *Moriom v Canada*, 2015 FC 588 at para 24, [2015] FCJ No 553. In that case, Justice Brown considered the principle that a general finding of lack of credibility may extend to all relevant evidence emanating from an applicant's account. He considered the jurisprudence and noted at para 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 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*?

[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.



[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.

[58] The issue is, therefore, whether there is independent and credible documentary evidence on the record capable of supporting a positive disposition of the Applicant's claim, despite the general finding of lack of credibility. More specifically, the issue here is whether the letter from Cherif Adjber was capable of supporting a positive determination in the Applicant's favour. Clearly it would not do so. The information in the letter did not overcome the concerns the RAD had regarding the Applicant's credibility; for example, that he was in fact a student in November 2014, or that there was discrimination against the Gorane in accessing education.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed. There is no question for certification.

"Catherine M. Kane"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2869-16

**STYLE OF CAUSE:** YOUSOUF ALI WALITE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 8, 2016

**JUDGMENT AND REASONS:** KANE J.

**DATED:** JANUARY 13, 2017

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