



Date: 20170302

Docket: IMM-2047-16

Citation: 2017 FC 256

Montréal, Quebec, March 2, 2017

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

TSEGAY SOBOLLI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Tsegay Sobolli [Mr. Sobolli] seeks judicial review of a decision by the Immigration and Refugee Board's Refugee Protection Division [RPD], in which the RPD found that his refugee claim did not have a credible basis. As a result, Mr. Sobolli was found not to be a Convention refugee or a person in need of protection, as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons herein, I would dismiss the application for judicial review.

II. Brief Overview

[3] Mr. Sobolli contends he is a citizen of Eritrea. In 2004, he testified he left Eritrea and travelled to the United Kingdom via Libya, Italy, and France. At the time of his arrival in the United Kingdom in April 2006, he made an asylum claim, which was rejected. His appeal was also rejected in 2007.

[4] Mr. Sobolli testified that he remained unlawfully in the United Kingdom until his arrival in Canada on August 31, 2015. His testimony in this regard (as will be seen in the analysis below) contradicts that which he stated in his Basis of Claim form. In this form, he claimed he arrived in Canada directly from Eritrea on August 31, 2015. Mr. Sobolli claims he fears persecution and mandatory military service in Eritrea.

[5] Among other findings, on its path to concluding there was no credible basis to Mr. Sobolli's claim, the RPD concluded Mr. Sobolli failed to establish his identity or that he was a citizen of Eritrea. The finding of "no credible basis" by the RPD denied Mr. Sobolli access to the appeal process before the Refugee Appeal Division (see: paragraph 110(2)(c) of the IRPA).

III. Issue and Standard of Review

[6] A finding that the "no credible basis" conclusion was reasonable in the circumstances would fully dispose of the within judicial review. As a result, I intend to deal only with that

issue. It is well established that reasonableness is the standard of review applicable to credibility findings: *Aguilar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 843 at para 34, [2013] FCJ no 887. This Court must determine whether the RPD's decision in that regard is justified, transparent and intelligible and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

IV. Analysis

[7] In an exhaustive analysis, the RPD touched upon each piece of evidence advanced by Mr. Sobolli to support his claim as a Convention refugee or a person in need of protection. The RPD carefully assessed oral testimony and documentary evidence, much of which was contradictory, in its finding that there was "no credible basis" to the claim. Given that this Court's role is not to re-weigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61, [2009] 1 SCR 339; *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 673 at para 10, [2008] FCJ no 864), I intend to briefly touch upon each of the points raised by the RPD and explain why I conclude its findings are reasonable in the circumstances.

A. *Time Spent in the United Kingdom*

[8] Mr. Sobolli first takes issue with the RPD's credibility findings regarding his time spent in the United Kingdom. In his Basis of Claim form, he stated that he left Eritrea on August 31, 2015, had a stopover in the United Kingdom, and entered Canada on that very same day. However, he admitted during his oral testimony that he arrived in the United Kingdom in 2006

and only departed for Canada in 2015. The RPD contrasted that testimony with the declaration found in the Basis of Claim form wherein Mr. Sobolli declared that “the information I have given in the application is truthful, complete and correct, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath”. Mr. Sobolli contends that his voluntary admission renders unreasonable the RPD’s negative credibility finding on this issue. I disagree. His voluntary admission does not alter the fact that he lied on his Basis of Claim form to obtain entry into Canada.

[9] Mr. Sobolli claimed he was represented by counsel at his various hearings in the United Kingdom. However, he made no effort to contact his counsel or the United Kingdom authorities to obtain his United Kingdom biometrics. He failed to produce any document from the United Kingdom which would confirm his identity. It is Mr. Sobolli’s responsibility to take the appropriate measures to obtain these documents, or to provide the RPD with clear and convincing evidence as to why these documents would not be readily available (*Bagire v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 816 at para 29, [2013] FCJ no 866). I find that it was reasonable for the RPD to draw a negative inference from the fact that Mr. Sobolli provided no documentation to corroborate his testimony regarding the time spent in the United Kingdom.

[10] With respect to his work and support system while in the UK, Mr. Sobolli testified that he received help from his church. However, in a letter Mr. Sobolli presented to the RPD from his church, there was no reference to the fact the church supported him, financially or otherwise. In addition, Mr. Sobolli’s testimony was evasive with regards to how he supported himself during

nine years while being “idle”. I find that it was reasonable for the RPD to draw a negative inference regarding Mr. Sobolli’s credibility based upon his failure to explain how he supported himself during nine years in the United Kingdom.

[11] Based upon all of the above, I find that the RPD’s determination that Mr. Sobolli lacked credibility with respect to his time in the United Kingdom to be reasonable.

V. The Witness

[12] Mr. Sobolli presented a witness who he contends confirms his (Mr. Sobolli’s) identity and Eritrean nationality. The witness claimed he grew up with Mr. Sobolli in Eritrea. While the RPD did not challenge the witness’s assertion he knew Mr. Sobolli, it noted that the witness had not been in contact with Mr. Sobolli since 2004 and was unable to testify regarding his whereabouts since that time. Mr. Sobolli and the witness had only rekindled their friendship upon Mr. Sobolli’s arrival in Canada. Furthermore, the witness could not testify as to Mr. Sobolli’s purported nationality.

[13] Mr. Sobolli relies on *Husain v Canada (Minister of Citizenship and Immigration)*, 2016 FC 462, [2016] FCJ no 505 [*Husain*] in asking this Court to re-weigh the probative value of the witness’s testimony. However, the facts in *Husain* are distinguishable from those with which the RPD was faced in this case. In *Husain*, the appellants produced two persuasive affidavits which this Court found established their identity. I am of the view the RPD acted reasonably when it gave the witness’s testimony limited weight with respect to Mr. Sobolli’s nationality.

VI. Documents from Eritrea

[14] Mr. Sobolli presented a number of documents which apparently originated in Eritrea to help confirm his identity. These included his baptismal certificate, his parents' national identity cards, and his mother's passport.

[15] The baptismal certificate shows that it was issued in 1987 on the day of baptism. At the hearing, Mr. Sobolli testified that the certificate was issued one month before the hearing. In his submissions, Mr. Sobolli submits that he simply used the wrong verb, claiming that the contradictory evidence was an "honest mistake". However, the RPD found that he "did not give a straightforward answer and evaded the question". The RPD observed Mr. Sobolli testify and it was open to it to find that the inconsistent testimony undermined his credibility.

[16] The parents' national identity cards state that Mr. Sobolli's mother and father were born in 1956 and on October 26, 1943 respectively. In Mr. Sobolli's Basis of Claim form, he stated they were born on January 1, 1955 and January 1, 1943 respectively. When confronted with this inconsistency at the hearing, Mr. Sobolli testified that he had guessed these dates. Again, this testimony was given after Mr. Sobolli confirmed that his Basis of Claim form was complete, true and accurate. Mr. Sobolli may have been trying to estimate his parents' ages; however, it was open to the RPD to draw a negative inference from the inconsistencies regarding the birth dates. Also, I would note, as did the RPD, that the form provides for claimants to estimate the age of others. Mr. Sobolli did not take advantage of that opportunity; rather, he provided exact dates that were false.

[17] Mr. Sobolli also offered what he contended was his mother's passport, as evidence corroborative of his own identity. That document indicated that the name of the bearer is Letekidan Sium Tesfa and her date of birth is January 1, 1956. In the Applicant's Basis of Claim form, her name appears as Letekidan Seyoum. While two of the names are phonetically similar to one another, the Basis of Claim form does not disclose the mother's surname. After weighing Mr. Sobolli's testimony and considering the inconsistencies in the documentary evidence, the RPD was not persuaded that the passport belonged to Mr. Sobolli's mother. I cannot find its decision in this regard to be unreasonable.

VII. Conclusion

[18] I am of the view the RPD considered all the evidence before it, including Mr. Sobolli's knowledge of Eritrea and his fluency in the local language, in its effort to determine whether he had established his identity and that he was an Eritrean national. Based upon the overwhelming inconsistencies and the lack of any evidence accounting for nine years of life in the United Kingdom, where he claims he was represented by counsel and advanced an asylum claim and an appeal, it was reasonable for the RPD to conclude that Mr. Sobolli lacked credibility and that his claim demonstrated "no credible basis".

[19] I therefore dismiss the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. There is no certified question.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2047-16

STYLE OF CAUSE: TSEGAY SOBOLLI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 17, 2016

JUDGMENT AND REASONS : BELL J.

DATED: MARCH 2, 2017

APPEARANCES:

Micheal Crane FOR THE APPLICANT

Tessa Cheer FOR THE RESPONDENT

SOLICITORS OF RECORD:

Micheal Crane FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario