

Federal Court



Cour fédérale

Date: 20171006

Docket: IMM-1282-17

Citation: 2017 FC 887

Ottawa, Ontario, October 6, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

DAWIT SOLOMON WORKU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB). The RAD's decision dismissed the applicant's appeal from a decision by the IRB's Refugee Protection Division (RPD) denying his claim for asylum.

I. FACTS

[2] The applicant is an Ethiopian citizen who claims to have been a member of the opposition Blue Party in that country. He fled Ethiopia for Canada after allegedly learning that the government planned to arrest him in connection with his political activities. He claims that, on two occasions, his mother received notices from the police (summonses) asking him to appear for questioning.

[3] The RPD concluded that the applicant was not credible after drawing a number of negative inferences from the evidence.

[4] The RAD agreed with some of the RPD's negative credibility conclusions, but disagreed with others.

II. ISSUES

[5] The applicant argues that the RAD erred in the following key respects:

1. It was unreasonable for the RAD to conclude that the police summonses were not authentic.
2. It was unreasonable for the RAD to draw a negative inference from the fact that family members of the applicant were not detained after the applicant failed to appear for questioning.
3. The applicant's sur place claim should not have been dismissed for the reasons cited by the RAD.

III. ANALYSIS

[6] With regard to the authenticity of the police summonses, the applicant argues that it is incorrect to refer to the notices from the police as summonses (he argues that they are actually informal notices), and therefore it was unreasonable for the RAD to compare them to documentary evidence concerning the form of summonses. But the applicant himself referred initially to these documents as summonses. Also, the documents themselves indicate that they “summon” the applicant. I do not agree that the RAD erred in treating these documents as alleged summonses. Moreover, I see no error in the RAD’s analysis comparing these documents to sample summonses in the documentary evidence. In my view, it was not unreasonable for the RAD to conclude that the police summonses were not authentic.

[7] With regard to the second of the above-listed arguments by the applicant, the RAD stated that “[t]he treatment of [the applicant’s] family is not consistent with the documentary evidence which indicates that family members of persons wanted for questioning are typically detained.” In support of his statement, the RAD cites two documents: a US Department of State document and a Response to Information Request. However, from my reading of these documents, they do not support the RAD’s statement. Though arrests of family members have occurred, I am not convinced that this is typical. I conclude that the RAD’s statement was unsupported, and its inference therefrom concerning the applicant’s credibility was unreasonable.

[8] I turn now to the issue of the applicant’s sur place claim. This claim is based on photographs of the applicant with the leader of the Blue Party at a meeting in Canada, as well as a news article about the meeting that is available on the internet. The applicant’s argument on this issue is that the RAD’s analysis is inconsistent with its discussion of the RPD’s analysis.

Specifically, the RAD concluded that the RPD had erred by “diminishing the importance of the evidence because it was not addressed in the [applicant’s] BoC [Basis of Claim].” But in considering the significance of the evidence in the very next paragraph of its decision, the RAD concluded that “[i]f the [applicant] and his counsel had felt that the posting of the article on the internet would have posed a significant risk to the [applicant], it would be reasonable to expect that they would have amended the BoC narrative to include the information.” By my reading, this conclusion appears to diminish the importance of the applicant’s evidence because it was not addressed in the BoC. Despite the respondent’s arguments, I am unable to reconcile the RAD’s own analysis of the evidence concerning the applicant’s sur place claim, with its treatment of the RPD’s analysis. I conclude that the RAD’s analysis in this respect is unreasonable.

IV. CONCLUSIONS

[9] Having concluded that the RAD erred in at least two respects discussed above, I must consider whether the surviving negative credibility findings by the RAD are sufficient to overcome its errors. In my view, they are not. Firstly, I must recognize that the accumulation of errors must be considered just as the accumulation of negative credibility findings must be considered. Moreover, at least with respect to the sur place issue, this claim is sufficiently distinct from the rest of the applicant’s claim to justify proper consideration despite the credibility issues.

[10] For the foregoing reasons, I conclude that the present application should be granted. The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-1282-17

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended with immediate effect to reflect the correct respondent, the Minister of Citizenship and Immigration;
2. The present application for judicial review is granted.
3. The decision of the Refugee Appeal Division is set aside and the matter is remitted for redetermination by a differently-constituted panel.
4. No serious question of general importance is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1282-17

STYLE OF CAUSE: DAWIT SOLOMON WORKU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2017

JUDGMENT AND REASONS: LOCKE J.

DATED: OCTOBER 6, 2017

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