Federal Court  Cour fédérale

Date: 20190711

Docket: IMM-5697-18

Citation: 2019 FC 928

Vancouver, British Columbia, July 11, 2019

PRESENT: Madam Justice Strickland

BETWEEN:

SAID ABDUKADIR FARAH

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the September 27, 2018 decision of a Senior Immigration Officer [Officer] refusing the Applicant's Pre-Removal Risk Assessment [PRRA] application which was made pursuant to s 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicant, Said Abdukadir Farah, is a Sufi Muslim and a citizen of Somalia. He claims that he is at risk of persecution from Al Shabaab in Somalia and also in Uganda, which country recognized him as a refugee in 2010.

[3] The Applicant claims that when he was a child his family left Mogadishu, Somalia due to civil war, relocating in Belet Hawa, Somalia. He returned to Mogadishu with his brother in 1998, as the situation there had improved, and they began studying at a religious school. In 2007, his brother was killed by Al Shabaab when he refused to join that group. A few months later, the Applicant was shot in the leg by Al Shabaab members. He subsequently fled to Uganda. There he married a Somali woman and they settled in a refugee camp. In March 2010, the Ugandan government accepted them as refugees. In that same year, he heard it was safe to return to Belet Hawa in Somalia. As he was not able to earn an income at the refugee camp, in October 2010 he returned to Belet Hawa, where his parents and siblings were living, hoping to find a job. However, he was captured there by Al Shabaab and accused of being an informer and a spy. He was beaten, and on October 15, 2017, he was taken to a religious court where he was convicted and sentenced to death. Two days later, Belet Hawa was captured by Ethiopian soldiers and Sufi Somalis. The Applicant was released from detention and returned to Uganda, where he and his family then moved to Kampala.

[4] According to the Applicant, he was very active in the Somali community in Uganda, and specifically with the Somali Community Association. He worked to motivate Somali youth not to join Al Shabaab, and he became well known in the Somalian community as a person who was against Al Shabaab.

[5] In December 2014, he began to receive phone calls from unknown numbers accusing him of being a Sufi spy and threatening to kill him. The callers spoke in Somali and, in one call, told the Applicant that the judgment against him still stood. From this, the Applicant understood that the threats were from Al Shabaab. Although he went to the police three times, he did not receive assistance. He received about nine calls from December 2014 until he left the country. One night, while walking through a dark street near his home, he was chased by a group of men. He tried to move within Uganda, away from Kampala, but claims he was unable to rent accommodations because of discrimination against Somalians. He also decided that he would not be safe from Al Shabaab in Uganda, or in another African country. With the help of a human smuggler, the Applicant left Uganda. After making his way through a number of other countries, he entered Canada on or about December 10, 2015. He applied for refugee protection but his claim was found to be ineligible because he had been granted refugee status in Uganda. On December 10, 2015, an exclusion order was issued against him.

[6] The Applicant submitted a PRRA application dated May 25, 2016, which was refused by a decision dated January 23, 2017. The Applicant filed an application for leave and judicial review of his negative PRRA decision and, on consent, the matter was sent back for redetermination by a different officer. On September 27, 2018, the redetermination was also refused. That is the decision now under review.

Decision under review

[7] The Officer found that the determinative issue was state protection. The Officer stated that he or she had considered whether or not there was adequate state protection in Uganda, whether or not the Applicant took all reasonable steps to avail himself of that

protection, and whether the Applicant had provided clear and convincing evidence of the state's inability to protect him.

[8] The Officer referenced a police report submitted by the Applicant and found that this indicated that the police did take the Applicant's concerns seriously and that they were investigating. And, based on country conditions documentary evidence, the Officer found that Uganda has a functioning government and that the Applicant could seek protection from state authorities should he encounter harm at the hands of Al Shabaab or others.

[9] The Officer concluded that the Applicant failed to rebut the presumption of state protection with sufficient objective evidence. The Officer then found that "she" (the Applicant) had provided insufficient objective evidence to indicate that "she" would be unable to assess (*sic*) the government for assistance, should the need arise. The Applicant had failed to demonstrate that "she" exhausted all avenues of recourse available to her in "Mexico". Nor did the incidents described by the Applicant prove that state protection would not be forthcoming as local failures by the authorities to provide protection do not mean that the state as a whole fails to protect its residents unless the failures form part of a broader pattern of the state's inability or refusal to provide protection. The Officer was not satisfied that the Applicant had a well-founded fear of persecution if he were to return to Uganda because there were avenues of recourse and redress available to him.

[10] The Officer also rejected the Applicant's submission that he would face discrimination amounting to persecution as a Somalian living in Uganda, or that there would be a serious risk of harm if he were to return to Uganda based on his Somalian ethnicity. Although the Applicant feared for his safety in Uganda, for the reasons already given, the Officer found that

the evidence before him did not support that the Applicant faced a risk of persecution or harm in Uganda.

[11] As the Applicant would not be at risk in Uganda and could return to that country, the Officer did not conduct an assessment of Somalia.

Issues and Standard of Review

[12] In my view, the only issue raised in this application is whether the Officer's decision is reasonable. It is well-recognized that PRRA applications involve questions of mixed fact and law, and that the standard of review applicable in such cases is that of reasonableness (*Benko v Canada (Citizenship and Immigration)*, 2017 FC 1032 at para 15; *Huang v Canada (Citizenship and Immigration*), 2018 FC 940 at para 10 [*Huang*]).

Analysis

[13] The Applicant submits that the Officer's decision was unreasonable because, in finding that the Applicant had not rebutted the presumption of state protection, the Officer made a veiled credibility finding and did not hold a hearing, and, failed to engage in a personalized state protection analysis.

i. Veiled Credibility Finding

[14] The Applicant submits that, in his statutory declaration made in support of his PRRA, he stated that he had unsuccessfully approached police three times. However, that the Officer took the police report at face value and preferred it over the Applicant's evidence. In so doing, the Officer made a veiled credibility finding. That is, the Officer did not believe the

Applicant. This was an error because credibility conclusions have to be made in clear terms and cannot be veiled (*Hilo v Canada (Employment and Immigration)* (1991), 15 IMM LR (2d) 199 (FCA); *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at paras 17–18; *Hurtado Prieto v Canada (Citizenship and Immigration)*, 2010 FC 253 at para 33; *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 16; *Majali v Canada (Citizenship and Immigration)*, 2017 FC 275).

[15] His statutory declaration filed in support of the re-consideration of his PRRA states as follows:

> I went to the police with a friend who could translate. I told them about this call and that I believed it was from Al Shabab. They said they would look into it.
>
> The calls continued and I returned to the police a week later, on December 21, 2014. They told me that these kinds of cases take time and money. They made it clear that they wanted a bribe. I told them I did not have money but I needed help. They said that the case would take a long time then. They also told me, on both occasions, that if I was having trouble in Uganda, I should just go back to my country.
>
> I asked for some kind of confirmation that I had gone to the police. I wanted this mostly as a record for my family, because if anything happened to me, I wanted people to know that Al Shabab had done it. Though the police would not write that I suspected Al Shabab on paper, saying that they could not write this unless it was proven, I told many people in my community about the threats so that if I was killed, it would not be a mystery.
>
> […]
>
> I went back to the police a third time, but they did not take me seriously and again insulted me and told me to go back to my country.

[16] The Applicant submits that the Officer identified state protection as the only issue, and accordingly, the Officer is presumed to have accepted the Applicant as credible. However, the Officer unilaterally discounted his evidence.

[17] The Respondent submits that the Applicant is asking the Court to reweigh the evidence, which is not grounds for judicial review (*Brar v Canada (Employment and Immigration)*, [1986] FCJ No 346 (CA); *Meneses Arias v Canada (Citizenship and Immigration)*, 2009 FC 604 at para 21). Further, the Officer could have believed the Applicant while still finding that the evidence was not sufficient to establish the Applicant's claim (Huang at paras 42-44).

[18] I note that the Officer referred to the package of materials that the Applicant filed in support of his PRRA application, which reference specifically included the Applicant's statutory declarations. The Officer also acknowledged the Applicant's submission that he had approached the police on three separate occasions and was not provided with assistance; he was instead insulted and told to go back to his country.

[19] The Officer also acknowledged that he or she had been provided with a police report from the Kampala police station in support of the PRRA. I note that review of that document indicates that it is dated December 21, 2014 and is on letterhead of the Criminal Investigations Directorate, Old Kampala Police Station, Kampala. It is brief and states that the office is investigating the threats that the Applicant had reported to that office, a case of threatening violence on him by unknown people, that inquiries were instituted to establish the culprits, and that the Applicant would be informed of the progress in the case in due course. In his or her

reasons, the Officer states that this evidence indicated that the police did take the Applicant's incident seriously and were investigating the matter.

[20] It is this last sentence that the Applicant alleges contains the Officer's negative credibility finding. Specifically, he asserts that this demonstrates that the Officer did not believe the Applicant's evidence that the police sought a bribe, did not assist him and told him to return to Somalia. However, read in context, the Officer at this stage of the reasons was primarily providing an overview of the Applicant's submissions and the police letter and, in essence, took the letter at face value. The Officer then went on to discuss state protection and found that "the incidents described by the applicant in his PRRA application and submissions do not prove that state protection would not be forthcoming for the applicant. Local failures by authorities to provide protection do not mean that the state as a whole fails to provide protection." This suggests that the Officer accepted the Applicant's version of events.

[21] In my view, nothing in the Officer's reasons support the Applicant's assertion that the Officer did not believe the Applicant's version of events surrounding his efforts to obtain state protection. Indeed, the Officer's finding was not based on any conclusion pertaining to the content of the police report. Rather, because the Applicant's evidence only spoke to local failures by police to provide protection, the Officer concluded that his evidence was not sufficient to rebut the presumption of state protection. This was not a veiled credibility finding.

[22] Section 113(b) of the IRPA provides that a hearing may be held if the Minister, on the basis of the specific factors prescribed by s 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, is of the opinion that a hearing is required. A hearing will generally be held if there is a serious credibility issue regarding evidence that is central to the decision and

which, if accepted, would justify allowing the application. Given my conclusion that the Officer did not make a veiled negative credibility finding, I need not address the Applicant's submission that Officer erred in failing to provide him with an oral interview.

ii. State protection

[23] The Applicant also submits that the Officer failed to conduct a personalized state protection analysis and ignored almost all of the state protection evidence. The Officer was required to assess the availability of state protection for a Somali refugee in Uganda against the terrorist organization, Al Shabaab. However, the Officer entirely failed to do so, instead conducting only a generic and superficial analysis relying only on a block quote from United States Department of State, Bureau of Democracy, Human Rights and Labour, "Country Reports on Human Rights Practices for 2017: Uganda" [US DOS Report], which does not address Somali refugees. Further, the Officer ignored specific evidence concerning Uganda's ability to protect against Al Shabaab and police discrimination in Uganda against Somali refugees.

[24] The Respondent submits that the Applicant merely disagrees with the Officer's weighing of the evidence and fails to reconcile his argument with the Officer's finding that the Applicant received assistance from the police and thus did not fit the profile of the individuals described in the documentary evidence.

[25] The Officer included in his or her reasons a quote from the US DOS Report. This spoke to the general state of Uganda as a constitutional republic, that civil authorities have maintained effective control over security forces, and summarized the most significant human right abuses. A portion of the report concerned with the role of the police and security apparatus

was also quoted. This included a description of an incident in which a police disciplinary court convicted nine police officers of unlawful or unnecessary exercise of authority related to 2016 public beatings of unarmed supporters of the opposition. The Court effected demotions, reprimands and fines. The US DOS Report also states, however, that due to corruption, political interests and weak rule of law, the government's mechanisms to investigate and punish abuse were ineffective and impunity was pervasive.

[26] The Officer stated that while the documentary research indicated that conditions may not be all favorable, Uganda has a functioning government, there is a police force that maintained effective control in times of political and social unrest and there is a mechanism in place to investigate and punish police abuse and corruption. The Officer concluded that should the Applicant encounter harm at the hands of Al Shabaab or anyone else, he could seek or approach state authorities for assistance in Uganda and that the Applicant had failed to discharge his onus to rebut the presumption of state protection. It was during this analysis that the Officer referred to the Applicant as "she" finding that the onus is on the applicant to show she has exhausted all avenues of redress available to her in her country of nationality and that in the case before the Officer, the Applicant had failed to demonstrate that she had exhausted all avenues of recourse available to her in Mexico and failed to rebut the presumption of state protection.

[27] A "cut and paste" error alone will not necessary result in a reviewable error (*Somasundaram v Canada (Citizenship and Immigration)*, 2014 FC 1166 at para 46). Here, the Officer went on to find that the incidents described by the Applicant did not prove that state protection would not be forthcoming for him in Uganda. This finding was made on the basis that local failures by the authorities to provide protection do not mean that the state as a whole fails to

protect its residents, unless the failures form part of a broader pattern of the state's inability or refusal to provide protection. This principle is correct.

[28] The Applicant submits that he put forward specific evidence of Uganda's inability to protect against Al Shabaab as well as specific evidence that the Ugandan police discriminate against refugees in that country and tend to view Somali refugees as terrorists, but that this was not addressed by the Officer.

[29] The Respondent submits that the Officer was not required to refer to all of the documentary evidence filed by the Applicant as long as the decision reflects that the evidence was considered. In that regard, I note that in his or her reasons the Officer stated that he or she had considered the documentary evidence submitted by the Applicant regarding Al Shabaab's presence in Uganda and Somalia and the treatment of refugees in Uganda which affects their access to state protection and an internal flight alternative. The Officer also stated that he or she had considered whether or not there is adequate state protection in Uganda, whether the Applicant took all reasonable steps to avail himself of that protection and whether he had provided clear and convincing evidence of the state's inability to protect him.

[30] And while it is true that when an important piece of evidence which contradicts a decision maker's finding is not mentioned, a court may infer that the decision-maker made an erroneous finding of fact without regard to the evidence (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, 1998 CarswellNat 1981 at para 17; *Huang* at para 27), the evidence that the Applicant asserts that the Officer overlooked does not specifically address Uganda's inability to protect refugees against Al Shabaab, and does not suggest that a refugee with the Applicant's profile would be at risk. Nor does it tie the increase in refugee numbers to a

lack state protection, either generally or specifically in regards to Somali refugees and Al Shabaab. And, contrary to the Applicant's assertion, it does not contain specific evidence that the Ugandan police tend to view Somali refugees in particular as terrorists.

[31] Viewed in whole, the country conditions documents speak largely to the potential risk of terrorist attacks by Al Shabaab in Uganda and are concerned with attacks on public sites or other geographical targets. Actual attacks reported in the evidence are few in number. The documentary evidence also does not suggest that Al Shabaab is carrying out attacks on Somali refugees and that the state is unable to protect them from such attacks. The only reference to a personal attack was one which occurred in 2015 and resulted in the death of the prosecutor of Al Shabaab members, however, her profile is not similar to the Applicant's. Thus, this evidence is not critical and, in my view, it does not contradict the Officer's finding that the Applicant failed to rebut the presumption of state protection.

[32] While it is true that the documentary evidence did include a 2010 report that indicated that the Ugandan police may not be responsive to complaints by refugees, the Officer acknowledged the documentary evidence concerning the treatment of refugees in Uganda which affects their access to state protection. In essence, the Applicant is disputing the Officer's weighing of the country conditions evidence. However, it is not the role of this Court to reweigh the evidence.

[33] Ultimately, the Officer was not persuaded that the local failure of the police to respond to the Applicant's request for assistance established that Uganda as a whole could not protect its residents nor that his evidence in that regard rebutted the presumption of state protection. And while the US DOS Report contained mixed information as to the effectiveness of

government in investigating police abuse, I note that the Applicant provided no evidence that he had raised with a higher authority the failure of the local police to respond, or that he had made a complaint in that regard. Nor does the Applicant point to any evidence to establish that it would have been unreasonable to expect him to do so.

[34] In conclusion, while the Officer's reasons were far from perfect, perfection is not he standard that had to be achieved. As long as the Court can understand, upon review of the reasons and the record, why the decision was reached, and the decision falls within the range of reasonable outcomes based on the evidence and the law, then the Court will not intervene. In this case, I am satisfied that the decision meets these requirements.

[35] As to the Applicant's submission that he should be awarded costs, Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, precludes an award of costs in an application for judicial review in an immigration matter. This is not a circumstances where there are special reasons justifying costs against the Minister (*Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208).

JUDGMENT in IMM-5697-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance for certification was proposed or arises.

3. There shall be no order as to costs.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Leigh Salsberg	FOR THE APPLICANT
Monmi Goswami	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Leigh Salsberg Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT