

Federal Court



Cour fédérale

Date: 20200327

Docket: IMM-3751-19

Citation: 2020 FC 437

Ottawa, Ontario, March 27, 2020

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

REKAR OMAR MOHAMMED MOHAMMED

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Refugee Protection Division [RPD] refused Mr. Mohammed's refugee claim on the basis of a negative credibility finding. The RPD found a material and significant conflict between Mr. Mohammed's testimony at the hearing and his statement in his Basis of Claim form [BOC] regarding the date he went into hiding from the agent of persecution, the Asayish. Specifically, the RPD held that "the claimant would have taken greater steps to hide from the Asayish if in fact his allegations were true."

[2] I find the decision of the RPD is not reasonable based on the facts before it and thus this application must be allowed.

[3] Mr. Mohammed is Muslim and a citizen of Iraq from the Kurdistan region. In September 2014, he was a university assistant lecturer at Salahaddin University in Erbil, Iraq. While proctoring a final exam at the university on June 2, 2018, he caught a student, an Asayish member, cheating. He reported the student for cheating and the student was expelled.

[4] The core of the issue in this matter is one relating to the chronology and specific dates of relevant events, and for this reason, they are detailed below.

- June 2, 2018: Mr. Mohammed caught the Asayish officer cheating;
- June 3, 2018: The Asayish officer called approximately five times asking Mr. Mohammed to withdraw the complaint;
- June 22, 2018: Mr. Mohammed received messages containing general threats via text message;
- June 24, 2018: Mr. Mohammed was beaten by two men, who injured his left wrist. He was then sent text messages and photos showing him and his Christian girlfriend at a park, as well as photos that suggest he and his girlfriend were engaging in sexual relations in a car. He was also sent photos of himself in front of his family home, indicating his residence was known;

- June 25, 2018: Mr. Mohammed arranged for a security driver to pick him up to drive him to work;
- June 26, 2018: Another call and further messages were sent, all of which threatened to kill Mr. Mohammed and disclose the above-noted photos;
- June 30, 2018: Mr. Mohammed reached out to a university colleague to gather more information about the Asayish student; his colleague confirmed that the student was Asayish and that he came from a powerful family;
- July 4, 2018: Mr. Mohammed had his nephew pick him up and he saw a man who appeared to be the Asayish student following them in another car; they got away, but Mr. Mohammed received a text telling him he would not escape forever;
- July 11, 2018: Mr. Mohammed entered the United States of America on a visitor visa he had obtained prior to these events to attend a conference in New Jersey;
- July 18, 2018: Mr. Mohammed arrived in Canada and claimed refugee protection.

[5] Prior to leaving Iraq, Mr. Mohammed went into hiding. It is the evidence regarding this event that forms the foundation of the negative credibility finding of the RPD.

[6] In his oral testimony, Mr. Mohammed stated that he went to a friend's house on June 27, 2018, and stayed there "as he was afraid to be in his home." The BOC, however, does not state that he moved out of his family home on June 27, 2018. The reference in the BOC to hiding is the following:

I stayed with my friend Zhero at his home in Italian Village 1, a secured community about forty [sic] minutes drive from my home.

[7] The RPD concluded that these two statements are contradictory, not for what they say, but based on an inference made by the RPD. The RPD infers from the BOC that the move to his friend's house happened on July 5, 2018, based on its observation that the BOC is set out in chronological order:

The whole BOC narrative of 76 paragraphs is in chronological order and the move to his friend's home listed in paragraph 74 follows his allegations of July 5 that he changed his flight on July 5 and that is before he left Iraq on July 11, 2018. This is paragraph 75 of the BOC narrative. This is the reason I concluded that on or about July 5 and I don't have the precise date he moved to his friend Zhero's home and then thereafter travelled to Canada. To be quite clear, the date is not listed in that paragraph of when he moved to his friend's home but it chronologically follows between July 5 and the July 11th allegation.

[8] When confronted by this alleged contradiction, the explanation provided by Mr. Mohammed was that his BOC was drafted from questions his lawyer had asked him. The response of the RPD to this explanation is perplexing: "I find this explanation is inadequate as if it were true it would have confirmed from his own lawyer that he moved out somewhere between July 5 and July 11, the time he left the country."

[9] The RPD also stated that the BOC is clear in its written instruction to list the important events relating to the fear of persecution in chronological order, and with dates, where available. It noted that Mr. Mohammed was highly educated and in a field that required "utter precision" thus leading to the conclusion that he would have displayed the same precision in his BOC.

Further, it was noted that Mr. Mohammed's telling of events had been unchanged since he was first interviewed in Canada on July 18, 2019, that he had been very detailed in his statement to the immigration officer, and that at no point prior to the RPD hearing did he mention he went into hiding at his friend's house on June 27, 2018.

[10] For these reasons, the RPD determined that Mr. Mohammed had materially contradicted his BOC allegations, and made a negative credibility inference on this basis.

[11] I find the conclusion reached by the RPD, that there were contradictory statements made by Mr. Mohammed, is unreasonable. The RPD compares the sworn evidence of Mr. Mohammed with an inference it makes. Inferences are not evidence. This Court has observed that discrepancies relied on by the RPD in making credibility determinations must be real and not speculative. One of the earlier statements in this respect is that of Justice Campbell in *Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 729 (QL) at paragraph 9, 167 FTR 309:

In *Maldonado v. Canada (MEI)*, [1980] 2 F.C. 302, the Federal Court of Appeal held that when an applicant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there is reason to doubt their truthfulness. The Court held that a Board acts arbitrarily in choosing to disbelieve an applicant's testimony where there exists no valid reason to doubt the truthfulness of it. Thus, while it is open to the CRDD as the trier of fact to evaluate the evidence and accord weight, any inconsistencies it finds must be supported by the evidence.

[12] The reliance on the instruction in the BOC form to "explain everything in order" may offer some support for the inference made by the RPD, but it does not change it from a mere inference to evidence sufficient to overcome sworn testimony.

[13] It is also not reasonable for the RPD to support its observation that prior to the hearing Mr. Mohammed never stated that he sought refuge with a friend, by relying on the statement made to the officer on July 19, 2018. On its face, that statement is incomplete.

[14] For these reasons, it is unsafe to rely on the decision to deny the claim for refugee protection.

[15] Neither party proposed a question for certification.

JUDGMENT IN IMM-3751-19

THIS COURT'S JUDGMENT is that the application is allowed, the decision of the Refugee Protection Division denying the claim for refugee protection is set aside, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3751-19

STYLE OF CAUSE: REKAR OMAR MOHAMMED MOHAMMED v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 12, 2020

JUDGMENT AND REASONS: ZINN J.

DATED: MARCH 27, 2020

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