

Date: 20090211

Docket: IMM-2179-08

Citation: 2009 FC 143

Montréal, Quebec, February 11, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

JHOTAN KAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated November 30, 2007, to reject the applicant's refugee claim because the applicant was neither a Convention refugee nor a person in need of protection under section 96 or 97 of the Act.

II. Facts

[2] The applicant, who is a citizen of Bangladesh and a Hindu, and who is married and the father of two children whom he left in Bangladesh with his family, claims to fear a gang of Islamist terrorists affiliated with the Jamat and BNP parties.

[3] The applicant claims that a group of three Islamists, who go by the names of Haider, Jubair and Didar (HJD), seized his deceased father's residential and non-residential lands in 2003-2004 by registering them in the land registry in the name of the HJD group. Although the non-residential part of these lands had been occupied by the HJD for some time before the death of the applicant's father in 2004, the latter took no steps to reclaim possession while he was alive.

[4] In March 2006, the applicant checked on the titles of the lands at the registry office, and found out that his father's property was registered in the name of the HJD.

[5] After consulting with his brother, a U.S. resident since 1996, and certain members of the local community, the applicant, out of fear of reprisals, decided not to take legal action against the HJD to reclaim his father's property. Nonetheless, he did approach a local elected official and certain leaders of the Awami League to ask that they open discussions with the HJD on his behalf to help him recover his father's property. These talks proved unsuccessful.

[6] On April 7 and May 16, 2006, unidentified Islamists apparently went to the applicant's business and robbed and assaulted him, stole his equipment, and threatened to kill him and his family unless he left the country.

[7] At that same time the applicant says that he was declared an *enemy of Islam* for having complained to the Awami League about the usurpation of his father's property by the HJD.

[8] On May 28, 2006, Islamist terrorists allegedly attacked and threatened the applicant's two sons and his wife as they left the Kalibari Hindu temple, warning them to leave the country if they wanted to live in peace.

[9] On June 10, 2006, Islamist terrorists allegedly showed up at the above-mentioned temple during prayers, and told the congregation to terminate its meeting and religious songs. The applicant then intervened with a comment about Muslim religious practices, which provoked an altercation with the assailants, who once again threatened to kill him and warned him to leave the country.

[10] After this incident, with his assailants after him, the applicant apparently went into hiding with his family in another location before leaving for Canada to seek refuge.

III. Issue

[11] Did the RPD commit an error that would warrant the intervention of this Court in weighing the evidence that led to its finding that the applicant is neither a refugee nor a person in need of protection?

IV. Analysis

Standard of review

[12] The courts must show deference to specialized administrative tribunals that, as in this case, have expertise in matters under their jurisdiction (*Dunsmuir v. New Brunswick*, 2008 SCC 9; *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (QL); *Yurteri v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 478, at paragraphs 12-13).

[13] The RPD's findings of fact, and more specifically those related to the applicant's credibility, are subject to the standard of reasonableness, which means that, in order to justify its intervention the Court must ask itself whether the impugned decision was reasonable in light of its "justification" and "whether the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law" (*Dunsmuir, supra*, paragraph 47; *Yurteri, supra*, paragraph 13).

Applicant's claim

[14] The issue of credibility is necessarily tied to the very facts that the applicant is relying on in his application. In assessing the reasonableness of the RPD's general finding on the applicant's

credibility, it is important to look at the facts on which the applicant's claim is based and to identify its key elements.

[15] The applicant claims that the panel improperly interpreted his refugee claim because, despite the fact that the issue of the seizure of his father's property is the event that triggered the ensuing incidents, this in his opinion had nothing to do with the incidents that prompted his escape. In other words, he claims that [TRANSLATION] "...the claim was based on two factors: the religious issue on the one hand and the issue of persecution over the property's ownership on the other..." (paragraph 1 of the applicant's second supplemental memorandum).

[16] Let us look at whether the issues of property and religion can be dissociated in this matter or whether they are indissociable.

[17] The fact that the applicant is Hindu has not been challenged. But in its decision, the RPD questions his claims that his father's lands were appropriated by Islamists, just as many other Hindu properties have been in the past to the benefit of Islamists.

[18] From the applicant's testimony, it appears that the HJD usurped the title to his deceased father's property and took possession of it. The HJD even took over the non-residential part of this property before his father's death, without the latter making any effort to have the HJD removed.

[19] The applicant is now seeking to link the problems related to his claims to his father's property to the problems that started on June 10, 2006, during prayers at the Kalibari temple. In essence, he is challenging the RPD's finding that the family property issue is the core factor in his claim.

[20] The evidence and the applicant's admission clearly disclose that his claim to his father's property is and remains the factor that triggered his problems with the HJD. The applicant's narrative in the Personal Information Form (PIF) indicates this, as do the immigration officer's notes and the applicant's testimony at the hearing. However, just because the HJD are Islamists and because Islamist friends of the HJD are trying to intimidate the applicant into giving up his claims to his father's property, this does not mean that the applicant was being persecuted on religious grounds.

[21] Based on the totality of the evidence, the Court must recognize that it was reasonable for the RPD to find that the applicant's problems were intimately tied to his attempts to reclaim his father's property and never stopped being central to his claim, and that his difficulties stem from that even if the HJD were Islamists and had Islamist friends to support their actions. From that point on, it was up to the applicant to prove his claims and convince the RPD of their merit (*Kante v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 525 (F.C.T.D.) (QL), at paragraph 8).

[22] Thus, it was up to the applicant to dispel any inconsistency in his narrative with sufficient evidence for the RPD to weigh within its decision-making authority. The RPD could therefore

assess both the authenticity and the probative value of the documents submitted by the applicant in support of his refugee claim, including the probative value and authenticity of the documentary evidence (*Mahendran v. Canada (Minister of Citizenship and Immigration)*, [1991] F.C.J. No. 549 (F.C.A.) (QL); *Chaudhary v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 961 (F.C.T.D.) (QL)).

[23] However, the documentary evidence does not clearly establish that the property in dispute was registered in the name of the HJD, nor is it clear which property was usurped or if the property claimed to have been taken includes his father's residence. The RPD was required to assess the value of the documentary evidence filed by the applicant. However, the applicant failed to meet the burden of proving to the RPD that the property in dispute was owned by his deceased father and had been usurped by the HJD.

Applicant's credibility

[24] The Board was entitled to draw reasonable findings about the applicant's credibility based on various items of evidence (*Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 (F.C.A.) (QL)). In this case, the decision-maker's findings of lack of credibility are reasonable because they are based on the evidence or absence thereof, on contradictions, implausibilities and the applicant's behaviour.

[25] Given that the RPD found a general lack of credibility on the applicant's part, it was justified in not attaching any probative value to the other evidence that he claims it did not consider

(Sheikh v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 238 (F.C.A.); *Perjaku v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 496; *Songue v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 1020 (F.C.T.D.) (Q.L.)).

[26] In attempting to convince the Court that the RPD had erred in the negative inferences regarding the credibility of his account that it drew from the evidence, the applicant is seeking to justify the evidence that the RPD set aside because it considered it to be unreliable, unsatisfactory, implausible, incomplete or uncorroborated. Yet, it should be remembered that the applicant had every opportunity to fully present his account to the RPD to convince it of the validity of his claims; unfortunately, he did not manage to satisfactorily meet his burden of proof.

[27] This Court has on numerous occasions indicated that “a tribunal can conclude that there is lack of credibility by basing itself on improbabilities in the refugee status claimant’s account, on common sense and on reason” (*Garcia v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 206, at paragraph 9). Moreover, the absence of documentation corroborating the applicant’s allegations may negatively affect his credibility (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 62).

[28] Nonetheless, based on the fact that the RPD did not accept or comment in its decision on certain evidence that the applicant considers more important than that which was relied on by the RPD in its finding, the applicant claims that it did not consider all of the evidence provided, and therefore characterizes its decision as being unreasonable.

[29] However, this argument by the applicant ignores the fact that it must be presumed that the RPD considered all of the evidence presented (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL)), and that when it finds and explains why the applicant is not credible, it is not required to address every item of evidence supporting allegations to the contrary, either because it has not considered them or because it deemed them not credible, not reliable, not corroborated or not necessary to its findings (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471, at paragraph 26).

[30] It is not up to this Court to redo the exercise and weigh the evidence once again or to substitute its opinion for that of the RPD, particularly since it does not have the benefit of the latter's expertise, not to mention the unique advantage of having heard the applicant's account of the true grounds for his claim. All in all, the RPD is still certainly more qualified than this Court to assess the credibility of the applicant's account.

[31] This Court's review is limited to ascertaining whether the RPD's decision is justified and reasonable in light of the criteria indicated in *Dunsmuir, supra*. The decisions concerning the credibility of one of the parties is the "heartland of the discretion of triers of fact", and consequently their decisions must receive considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence (*Siad v. Canada (Secretary of State)* (C.A.), [1997] 1 F.C. 608, at paragraph 24; *Dunsmuir, supra*).

[32] The RPD's decision, far from being perverse or capricious, is largely based on the evidence in finding the applicant's narrative not credible and explaining why. Of course, some inaccuracies or errors may have made their way into the understanding of the evidence that the RPD was required to weigh. But seen and analyzed in their entirety, the reasons for the decision that is being impugned through this proceeding do not contain any sufficiently important error to warrant intervention by this Court. On the contrary, the findings of the RPD regarding the credibility of the applicant's narrative are entitled to this Court's deference.

[33] In essence, the applicant has not been able to demonstrate that the impugned decision is based on findings of fact made in a perverse or capricious manner, or that the panel rendered its decision without regard to the evidence before it (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698).

V. Conclusion

[34] After hearing the arguments and analyzing the evidence and the decision addressed by this proceeding, the Court can only observe that it is a justified decision, that it falls within the range of possible outcomes based on the facts and the law, in essence making the decision a reasonable one that does not warrant intervention by this Court.

[35] Given that no serious question of general importance was raised, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

“Maurice E. Lagacé”

Deputy Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

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