

Federal Court



Cour fédérale

Date: 20140227

Docket: IMM-3701-13

Citation: 2014 FC 186

Ottawa, Ontario, this 27th day of February 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MOHAMMED NABAL SALIFU

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”) of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the “Board”) which rejected the claim for refugee protection made by the applicant.

[2] The Board concluded that the applicant is not a credible witness as to the persecution he may suffer if sent back to his country of citizenship, Ghana, because of his sexual orientation. I have come to the conclusion that the matter has to be sent back to the Board for a re-determination.

[3] In this case, the applicant has lied to the authorities about his circumstances. However, the decision that was made by the Board on April 12, 2013 does not have, in my view, the qualities that make a decision reasonable, in accordance with the seminal decision of the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]. As put by the Court at paragraph 47 of the decision:

[47] . . . In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[4] There is in this case the fundamental tension between the versions of the story given by the applicant and the adequacy of the reasons that were given by the decision-maker. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, [*Newfoundland and Labrador Nurses' Union*] the Supreme Court makes it clear at paragraph 14 that the adequacy of reasons, or lack thereof, will not suffice in and of itself to quash a decision. However, at the end of the day, an examination of the reasons and the evidence must be conducted in order to satisfy the test which was put in the following terms:

[16] . . . In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[5] In my estimation, there are significant issues with the credibility of this applicant. In blunt terms, he lied. Indeed, the manner in which that story came to be told leaves a lot to be desired. Furthermore, there is no corroboration of the story he finally told the authorities.

[6] However, the reasons that are given to reject the claim altogether are also, in my view, deficient. The Board seems to have put significant weight on what it thought was a 14-month gap between the applicant leaving Finland where he was allegedly a student and the fact, as presented by the applicant, that his homosexuality was revealed in Ghana. That 14-month delay is held against the applicant because it does not show the kind of subjective fear of persecution that makes the claim credible. The same delay is used again to be critical of the applicant for not having done some preliminary research in order to understand better the procedures to follow in order to regularize his status permanently in Canada. Indeed, the Board says that “[I]t is important to remember that Mr. Salifu had approximately 14 months in Finland to reflect and find a solution to his fear of returning to Ghana.” As was acknowledged by the respondent, this was a mistake. It was not a period of 14 months that elapsed between the revelation of this applicant’s homosexuality and his departure from Finland, but rather two months.

[7] A close examination of the Board’s decision reveals that the way the “true” version of the events emerged caused the Board to conclude that the credibility of the applicant is negatively affected. It is certainly understandable why the Board comes to that conclusion. But then what? The reluctance to tell the truth will of course tarnish a witness’ credibility. However, it is not clear what use is made of the discrepancies and the difficulty in getting to a final version by the Board. For instance, the Board is puzzled by a lie as it does not benefit the applicant. It is one thing to conclude

that one's credibility is put in jeopardy. It is another to decide what impact, if any, a lack of credibility has on the outcome of the case. The reviewing court should not be left guessing.

[8] Rather, the Board focuses on the 14-month delay for the failure to claim refugee protection in Finland and that period spent in Finland without claiming asylum there at a time when the applicant says he was afraid to be sent back to his country of nationality. The same focus is put on that delay in that the Board faults the applicant for having taken "approximately 14 months in Finland to reflect and find a solution to his fear of returning to Ghana".

[9] As indicated in *Newfoundland and Labrador Nurses' Union*, above, perfection in the reasons given is not the standard. Indeed, the role to be played by a reviewing court is to consider the evidence and the nature of the statutory task of the administrative tribunal in order to decide if the reasons adequately explain the basis of its decision (at paragraph 18). In the case at hand, it may very well be that, once properly considered, the evidence, in view of the lack of credibility the applicant may have displayed, would not support an application of sections 96 and 97 of the Act. However, such was not done in this case and substituting a reviewing court's own view is not the role to be properly played by a reviewing court.

[10] It is for the Board to consider the evidence, with its implausibilities and the credibility that should be given to all of its elements, as the basis of its decision. The credibility of the applicant is one element. But the evidence as a whole must still be considered. It is for the Board to make its findings clearly and to draw the conclusions that are warranted. Where much reliance is put on the period of time taken to make a refugee claim, and that period is not the one that was actually in play,

this renders, in my view, the decision suspect and unreliable. It would be safer to conduct a new determination with attention paid to details with a view to satisfying the test for reasonableness, as described in *Dunsmuir*.

[47] . . . In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process.

[11] As a result, the judicial review application is allowed. The matter will be sent back to a different panel of the Refugee Protection Division for re-determination. There is no question for certification.

JUDGMENT

The application for judicial review is allowed. The decision rendered by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the “Board”) on April 12, 2013 is quashed and the matter is sent back for re-determination by a different panel of the Board. There is no question for certification.

“Yvan Roy”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3701-13

STYLE OF CAUSE: MOHAMMED NABAL SALIFU And THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 10, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:** ROY J.

DATED: FEBRUARY 27, 2014

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