Federal Court  Cour fédérale

Date: 20230406

Docket: IMM-6576-21

Citation: 2023 FC 493

Ottawa, Ontario, April 6, 2023

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

MESUE NGOME EBONGOLE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a Pre-Removal Risk Assessment [PRRA] decision by a senior immigration officer in Vancouver, B.C., dated July 28, 2021, which found the Applicant would not be subject to a risk of persecution, be in danger of torture, or face a risk to your life or a risk of cruel and unusual treatment or punishment if returned to Cameroon.

II. Facts

[2] The Applicant is a 42-year-old male citizen of Cameroon. The Applicant arrived in Canada in March 2015 and made a claim for refugee protection.

[3] The Applicant states he became a member of the Southern Cameroons National Council [SCNC] in June 2006. Since then, the Applicant asserts he has been "detained, arrested, and tortured" for his political opinions and activities in support of liberating English Cameroonians from the rule of French Cameroon. In October 2014, the Applicant states he went into hiding upon breaching an undertaking to not participate in SCNC activities. There is also a reported warrant out for his arrest.

[4] On June 26, 2015, the Refugee Protection Division [RPD] refused the Applicant's claim for protection, expressing concerns relating to fraudulent documents he submitted, his credibility, his subjective fear in unreasonably delaying his departure, and his identity as a member of the Southern Cameroon National Council [SCNC]. The RPD did not believe the claimant was ever detained due to his political involvement or that he would be at risk for that reason.

[5] The Refugee Appeal Division [RAD] affirmed these findings on October 13, 2015. Specifically, the RAD noted that the Applicant's allegations regarding his previous arrest, detention and continued pursuit by the police were not credible. While the Applicant submitted the RPD relied excessively on spelling errors, the RAD found the errors significant and

extensive, finding the documents held fraudulent by the RPD "depart from the sample to such a degree that they cannot be genuine documents."

III. Decision under review

[6] The Applicant had filed documents too late for them to be considered by the RAD. That said the Officer accepted and considered the three affidavits from individuals in Cameroon. In summary the affidavits indicated that spelling and grammatical errors are a common occurrence on official government documents in the country. The affiants also submitted examples of official government documents bearing such mistakes. The RPD and RAD had found certain documents fraudulent because of their extensive and significant departure from objective evidence including spelling errors.

[7] In the Officer's view, the newly submitted documents, issued to other people by other issuing authorities, was insufficient to assuage the findings of the RPD and RAD that the client's own documents were not genuine. The Officer was not satisfied the new materials contradicted the RPD and RAD's findings. Neither did the Officer find they assuaged findings that the purported warrant for arrest was fraudulent.

[8] The Applicant provided other documents to the PRRA officer as well, including the Applicant's father's pending refugee claim in Ghana, additional letters and affidavits, an SCNC registration list, and a personal affidavit outlining his apparent political activities in Canada.

[9] Firstly, the Officer found the Applicant's father's refugee claim to be insufficient evidence to make any conclusions regarding the claim or the allegations found therein. Neither was the evidence sufficient for the Officer in corroborating the Applicant's allegations in the present case.

[10] Secondly, regarding the additional letters and affidavits, the Officer found none of the materials sufficient to establish the Applicant's membership in the SCNC or that authorities have a continued personalized interest in the Applicant that persists into the present day. Moreover, the Officer noted limited evidence to establish the Applicant's claim that soldiers interrogated his mother during a visit to his family home in April 2020.

[11] Furthermore, the Officer ascribed limited probative value to the Applicant's submitted registration list for the SCNC. The Officer describes the list as being comprised of a spreadsheet with four columns that indicated a sequence from 1 to 564, name, gender, and registration date. The Officer took issue with the fact that the list was not accompanied by corroborating documentation from which to assess its origin or source.

[12] Finally, the Officer considered the material concerning the Applicant's activities in Canada but did not find sufficient evidence to conclude that the Cameroonian government has been made aware of the client's activities in Canada or that they have an interest in the Applicant on this basis.

[13] Ultimately, the Officer found there was not more than a mere possibility of risk of persecution to the Applicant under any *Convention* grounds, and no risk of torture, life or cruel and unusual punishment as described in the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA].

IV. Issues

[14] The Applicant submits the following issues:

1. Did the Officer assess the Applicant's new evidence?
2. Did the Officer err in failing Fto hold an oral hearing?

[15] The Respondent submits the following issues:

1. What is the applicable standard of review?
2. Is the PRRA Officer's decision reasonable?

[16] Respectfully, the primary issue on this application is whether the Officer's decision is reasonable.

V. Standard of Review

[17] The Applicable standard of review for assessing the Officer's decision is reasonableness.

A. *Reasonableness*

[18] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[19] That said, the Supreme Court of Canada in *Vavilov* makes it clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". No such circumstances exist in the case at bar. The Supreme Court of Canada instructs as follows:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[20] In addition, the Federal Court of Appeal recently held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.
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> [Emphasis added]

B. *Procedural fairness*

[21] Questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at para 43. That said, I note in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, per Stratas JA at para 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': Re: *Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42." But see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [per Rennie JA]. In this connection I also note the Federal Court of Appeal's recent decision holding judicial review of procedural fairness issues is conducted on the correctness standard: see *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 per de Montigny JA [Near and LeBlanc JJA concurring]:

> [35] Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.

[22] I also understand from the Supreme Court of Canada's teaching in *Vavilov* at paragraph 23 that the standard of review for procedural fairness is correctness:

> [23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions <u>other than a review related to a breach of natural justice and/or the duty of procedural fairness</u>), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the

> rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.
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> [Emphasis added]

[23] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VI. Analysis

A. *Assessment of new evidence*

[24] The Applicant submits the Officer failed to undertake an independent assessment of the newly submitted evidence, instead deferring to the RPD and RAD's credibility findings. The Applicant asserts the Officer failed to provide reasons for rejecting the Applicant's father's refugee claim in Ghana. In the Applicant's view, the Officer's limited explanation as to why the claim is insufficient is not reasonable.

[25] As noted above, however, this Court is not generally to engage in reweighing and reassessing the evidence as requested in this submission. In addition, the Applicant's premise that father's Ghanian claim was not assessed is simply correct as seen from my summary above.

[26] Similarly, the Applicant takes issue with the Officer's determination of a letter from the Applicant's mother as failing to "explain the nature, scope, or extent of the alleged interactions with police". In the Applicant's view, the letter "clearly" outlined serious threats from the police due to the Applicant's membership with the SCNC. This is a matter of weight which the Court will not revisit.

[27] The Applicant submits the Officer failed to access a letter from the Applicant's sister. The Applicant notes the Officer provides no analysis or reasons as to how the letter's content does not contradict the RAD or RPD's findings. The Applicant also takes issue with the Officer's concern regarding the date at which the sister's medical certificate was obtained, noting that drafting a certificate after an incident is standard practice. The Applicant notes that reasons were also not provided by the Officer in that regard. With respect, this is another request to reweigh and reassess the letter and medical evidence. In addition, it is well established that PRRA officers are not required to deal with every detail of every submission.

[28] The Applicant makes similar submissions on the remaining letters and affidavit, noting that the Officer did not make any reference to them and, as such, were not properly assessed. While I agree the Officer did not identify and review each document, there is no obligation to do so.

[29] The Applicant further submits the Officer's findings regarding the SCNC registration list misconstrued the evidence. The Officer stated the list lacked background as to its origin and source, which the Applicant argues was provided in his affidavit. However, the affidavit

indicates that the copy of the list was damaged by water because it is kept away from easy accessibility (in this case, close too animals). More generally this submission confuses credibility with sufficiency. The additional details were in my view reasonably required by the Officer for their assessment of the weight and sufficiency of this evidence.

[30] The Applicant submits the RPD and RAD findings concerning fraudulent documents were unreasonable relying of affidavits saying such mistakes are commonplace. The Applicant cites to this Court's decision in *Efosi v Canada (Citizenship and Immigration)*, 2021 FC 580 per Annis J., which however is not applicable in the present case. As noted both the RPD and RAD made concurrent findings of fraudulent documentation because of their extensive and significant departure from objective evidence including the spelling errors.

[31] The Applicant further submits the Officer simply deferred to the findings of the RAD and RPD. There is no merit in this submission. First of all, the RPD and RAD decisions are entitled to deference by the PRRA Officer because they form the background of the case against which the Officer is looking for new or unassessed evidence of risk. PRRA Officers are not obliged to reformulate the findings of either panel, and may choose to adopt them as their own. Once adopted they become the reasons of the PRRA Officer and must be assessed as such.

[32] In this case, I agree with the Respondents that the new evidence was simply found insufficient to overcome the RPD and RAD's findings and establish that he is at risk. The Officer is deemed to have considered each piece of new evidence, and in this case chose to explain in

detail why each document was given little to no probative value in establishing the Applicant's allegations. There is no unreasonableness or reviewable error in these considerations.

[33] I am invited, but decline to reweigh and reassess the evidence and inferences from the Applicant's father's refugee claim, and the letters tendered by the Applicant's mother and sister, which simply raise sufficiency issues. The same might be said of the SCNC registration list and corresponding member affidavit. In the weighing and assessing documentary evidence, the Officer found they provided little information about who is threatening the Applicant, the purpose of such threats and the risks that he faces.

B. *Oral hearing*

[34] The Applicant requested an oral hearing as per section 167 of the *Immigration and Refugee Protection Regulations* [IRPR]. The Applicant submits that the Officer failed to provide any reasons as to why an oral hearing was not convened. The Applicant cites to this Court's decision in *Avril v Canada (Citizenship and Immigration)*, 2019 FC 1512, where Justice Kane stated:

> [37] Ms. Avril did not argue that the Officer erred by not convening an oral hearing. Ms. Avril accepted that the Officer based his findings on insufficient reliable evidence and that the credibility findings related to the evidence of third parties. Ms. Avril acknowledged that findings about the credibility of documents do not exactly fit the criteria for consideration of whether an oral hearing should be conducted, in accordance with paragraph 113(b) of the Act and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[35] However, the Respondent notes as per established case law that PRRA officers may weigh the evidence before them and make findings regarding probative value and sufficiency without being required to hold an oral hearing, unless they make credibility findings. I agree no credibility findings were made by the PRRA Officer. There is no merit in this aspect of the Applicant's case.

VII. Conclusion

[36] For the reasons set out above, I am not persuaded of reviewable error in the PRRA Officer's decision. Therefore judicial review will be dismissed.

VIII. Certified Question

[37] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-6576-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified and there is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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