Federal Court  Cour fédérale

Date: 20230801

Docket: IMM-7523-22

Citation: 2023 FC 1055

Toronto, Ontario, August 1, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SADIQUE ALI MUGISHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Sadique Ali Mugisha, seeks judicial review of a decision of the Refugee Appeal Division [RAD] confirming a refusal of his refugee claim [Decision]. The RAD agreed with the Refugee Protection Division [RPD] that the Applicant was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD found that there were serious reasons for considering that the Applicant was complicit in the commission of crimes against humanity

and excluded him under Article 1F(a) of the *1951 Convention Relating to the Status of Refugees* [Convention] and section 98 of the IRPA.

[2] For the reasons set out below, it is my view that the application should be dismissed. The Applicant has not demonstrated that the RAD made a reviewable error that would render the Decision unreasonable.

I. Background

[3] The Applicant is a citizen of Uganda who was a voluntary informant for the Ugandan President and top security agents in Uganda for 17 years, between 1994 and 2011. He informed on radical Islamic leaders in Uganda for a variety of security bodies, including the Internal Security Organisation [ISO], the Joint Anti-Terrorism Taskforce [JATT] and the Police and Terrorism Unit of the Ugandan Police Force [UPF].

[4] He claims that in 2006, he became aware of abuses carried out by the Ugandan security forces and that he feared remaining associated with them until he stopped providing information in or around 2011. He alleges a fear of persecution at the hands of the Allied Democratic Forces [ADF], a Ugandan rebel movement based in the Democratic Republic of Congo.

[5] The RPD dismissed the Applicant's claim for refugee protection on August 31, 2021 on the basis of Article 1F(a) of the Convention and section 98 of the IRPA. An appeal of the RPD decision was dismissed by the RAD in its Decision dated July 22, 2022. Applying the factors set out in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*], the RAD found

that the Applicant was complicit in crimes against humanity as he had made a contribution to the criminal purpose of the Ugandan security forces that was knowing, significant and voluntary.

II. Issues and Standard of Review

[6] The sole issue raised by this application is whether the RAD erred by not considering the totality of the evidence.

[7] The Applicant asserts that the standard of review of the RAD's interpretation of Article IF(a) is correctness. He relies on *Habibi v Minister of Citizenship and Immigration*, 2016 FC 253 [*Habibi*]. However, *Habibi* was decided before *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Respondent asserts and I agree that *Vavilov* established that the presumptive standard of review of administrative decisions is reasonableness. None of the situations that rebut the presumption of reasonableness review is present here: *Vavilov* at paras 16-17, 23, 25.

[8] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

[9] Section 98 of the IRPA excludes a person described in Article 1F(a) of the Convention from refugee protection in Canada.

[10] Article 1F(a) of the Convention, incorporated as a schedule to the IRPA, provides:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; …	a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes; …

[11] Subsection 6(3) of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, defines a crime against humanity as:

crime against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law	***crime contre l'humanité*** Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le

or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.	droit international conventionnel, ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

[12] To be complicit under Article 1F(a), an applicant must have made a contribution to a crime or criminal purpose that is knowing, significant and voluntary: *Ezokola* at paras 36, 86-90. In *Ezokola* at paragraph 91, the Supreme Court of Canada set out factors that should be considered when assessing whether a claimant has made a knowing, significant and voluntary contribution, namely:

a. the size and nature of the organization;

b. the part of the organization with which the Claimant was most directly concerned;

c. the claimant's duties and activities within the organization;

d. the claimant's position or rank in the organization;

e. the length of time the claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and

f. the method of recruitment and opportunity to leave the organization.

[13] The Applicant asserts that the RAD erred in taking too generalized an approach to the *Ezokola* factors. He submits that the Decision was made without regard to the totality of evidence and was based on guilt by association.

[14] The Applicant relies on the *Habibi* decision where the Court made such a finding. However, the facts set out in *Habibi* are distinguishable. As noted by the RAD, the applicant in

Habibi was a police officer who had no role in working with enforcement organizations that committed crimes against humanity. Further, in *Habibi*, the decision-maker erred by failing to set out and consider the factors set out in *Ezokola* and their respective relevance or weight. In this case, the RAD has made no such error. The RAD set out the *Ezokola* framework and then reasonably applied the framework to the evidence.

[15] The Applicant raises the same arguments that he made before the RAD with respect to the RPD decision. He asserts that the RAD erred by ignoring the nature of his informant work, that he was a volunteer who was not under the payroll of any Ugandan agency, that he did not have any decision-making powers, and that he allegedly only provided information on a limited number of people who he asserts were not tortured. However, a fair reading of the Decision indicates that the RAD conducted a clear and transparent assessment and analysis of the *Ezokola* factors that considered all of these arguments when arriving at its conclusion that the Applicant's contribution was knowing, significant and voluntary.

[16] In the Decision, the RAD acknowledged that the objective evidence about the size of the Ugandan intelligence and security apparatus was limited, but that extensive country documentation was available about the crimes against humanity committed by the Ugandan security apparatus since at least 2001, including the ISO, JATT and UPF. The RAD considered the Applicant's argument that the Ugandan security apparatus was set up for a legitimate purpose but found that it had a multifaceted structure, that included a routine and widespread criminal purpose of using illegal detention and torture of detainees.

[17] The RAD considered the circumstances under which the Applicant became an informant, including his claimed purpose to weed out radical Islamists and protect the image of Islam. However, it noted a crucial link between the Applicant's contributions to the agencies and their criminal purpose. As held by the RAD:

> His duties – following up with Islamic leaders, identifying their residences, their meeting places, their contacts in other districts, and reporting on them to security agencies – are directly connected to the criminal purpose of the Ugandan security apparatus – and the arbitrary detention and torture of persons of interest. Without reports provided by informant, the Ugandan security apparatus would be unable to carry out is crimes and criminal intent.

[18] The RAD considered the Applicant's connection to individuals at the highest levels of the Ugandan government, including two individuals who were specifically mentioned in the objective evidence as having engaged in serious human rights abuses. It reasonably concluded that by informing on persons of interest to these high-level individuals, the Applicant's actions furthered the regime's campaign of arbitrary arrest, detention, and torture.

[19] The RAD acknowledged that the Applicant did not have any decision-making power and was not directly involved in any abuses but found that this was not determinative of whether there was complicity. As noted by the RAD, "complicity does not require that the individual personally commit the criminal act, but rather that they contribute to it, either directly, or through their role in an organization's criminal purpose": *Sarwary v Canada (Citizenship and Immigration)*, 2018 FC 437 at para 47; *Ezokola* at paras 7-8. An applicant's contribution need only be "significant" not substantial: *Ezokola* at para 56. In this case, by providing vital information necessary for the criminal purpose to be achieved to those that were responsible for the criminal acts, the RAD found the Applicant's involvement met this threshold.

[20] Further, as stated by the RAD, knowledge exists where there is awareness that a circumstance exists or a consequence will occur in the ordinary course of events: *Ezokola* at para 90. The objective evidence indicated that beginning in 2001, the Ugandan intelligence and security apparatus routinely engaged in arbitrary detention and torture of detainees that was covered by the media. The crimes against humanity were widely known as of at least 2002. While the Applicant alleged he was not paying so much attention to the media before 2006, as noted by the RAD, he acknowledged during testimony to being aware of problems at safe houses and to abuse of detainees before 2006. Thus, it concluded, the Applicant would have been aware that his contribution could bring about a criminal result, but continued in his role despite the risk.

[21] The RAD noted that the Applicant was unpaid but did not consider this to be material for assessing the voluntariness or the significance of his contribution. I see no error in this aspect of the analysis. The Applicant has not pointed to any authority that suggests otherwise. The RAD noted that the Applicant was recruited voluntarily and provided his services as an informant for 17 years, including from 2002 to 2006 when crimes against humanity of the security apparatus was widely known and he made no efforts to leave the organization.

[22] The RAD considered the Applicant's submission that he had only provided information on ten people, none of whom were subsequently tortured, but found that this characterization was not supported by the Applicant's testimony. I have reviewed the testimony cited by the RAD and do not find the RAD's interpretation of this evidence unreasonable. When asked if the number was more than 10, the Applicant responded: "Yes, correct." Further, when asked what happened to the individuals, the Applicant indicated that, "[they] were not brutally tortured much", "[t]hey

were not put in detention, they confessed. They were released, given amnesty, and but later, later, some of them are still died. They were shot maybe by ADF". This is not the same as saying that they were not tortured or abused. When considered together with the objective evidence that coerced confessions were used as the basis for detention, it was not unreasonable for the RAD to conclude that there were serious reasons for considering that the Applicant contributed to the criminal purpose of the Ugandan intelligence and security apparatus.

[23] The Applicant's arguments amount to a disagreement with the RAD's findings and a request for the Court to reconsider the evidence, which falls outside the scope of reasonableness review. In my view, the RAD exercised a rational chain of analysis. Its reasons are intelligible and transparent and there is no reviewable error.

[24] For all of these reasons, the application is dismissed.

[25] There was no question for certification proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-7523-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Daniel Etoh	FOR THE APPLICANT
Nicole Paduraru	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Daniel Etoh Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT