

Federal Court



Cour fédérale

Date: 20240219

Docket: IMM-7331-22

Citation: 2024 FC 269

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 19, 2024

PRESENT: Mr. Justice Régimbald

BETWEEN:

ELHADJI MOR GUEYE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Senegal. He seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated June 29, 2022, dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD], dated November 12, 2021, rejecting his claim for refugee protection. The RAD found that he is neither a Convention refugee nor a

person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA].

[2] For the reasons that follow, the application for judicial review is dismissed. The RAD's decision is clear, justified and intelligible in relation to the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 8; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99). The applicant has not discharged his burden of demonstrating that the RAD's decision was unreasonable.

I. Factual background

[3] Elhadji Mor Gueye [applicant] is Senegalese. He made a claim for refugee protection in Canada because he fears returning to Senegal because of his sexual orientation, as a bisexual man.

[4] The applicant had been married to a woman since September 2017, with whom he had a daughter. In the meantime, the applicant also had a relationship with a lover from 2001 until his departure from Senegal in May 2018.

[5] Sometime after he married his wife, she caught him having sex with his lover. Following this incident, his wife began threatening to reveal his sexual orientation to his family. The applicant also faced the wrath of his lover, and of his own parents, who eventually learned what had happened.

[6] In July 2018, the applicant filed a claim for refugee protection, saying he feared his wife, his lover, and his own family. The RPD heard his refugee protection claim on July 28, 2021, and October 29, 2021, rejecting it in a decision dated November 12, 2021, on the basis of his testimony lacking credibility. The applicant appealed to the RAD, which upheld the RPD's decision and rejected his refugee protection claim in a decision dated June 29, 2022.

[7] The RAD's decision is the subject of this application for judicial review.

II. Standard of review and issue

[8] The sole issue before the Court is whether the RAD's decision that the applicant is neither a refugee nor a person in need of protection, by reason of his lack of credibility, is reasonable.

[9] The applicable standard of review is that of reasonableness (*Vavilov* at paras 10, 25; *Mason* at paras 7, 39–44). 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; *Mason* at para 8); and that is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). Reasonableness review is not a “‘rubber-stamping’ process”; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable where the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at paras 125–26; *Mason* at para 73). Finally, the burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

III. Analysis

[10] The RAD found that the applicant's testimony about his sexual orientation was not credible, as it contained significant omissions and contradictions based on his Basis of Claim Form [BOC Form].

[11] The RAD held that the following elements of the applicant's testimony undermined his credibility: his failure to mention that his lover had threatened his life twice; his contradictory accounts of the attack on his wife; his delay in leaving Senegal after obtaining a Canadian visa; and his inability to answer basic questions about an alleged relationship with a man in Canada. In short, all his evidence led the RAD to conclude that the applicant was not credible.

[12] The applicant argues that the RAD's decision is unreasonable, as it did not consider the applicant's explanations of his omissions. The applicant says that it is normal to forget certain details during a hearing, and that the RAD should not treat the hearing as a memory test, as human memory is not infallible. The applicant also maintains that he failed to mention the death threats received from his lover as he is poorly educated and could not properly structure his ideas.

[13] Subsequently, according to the applicant, the RAD should not have given so much weight to the time elapsed between his obtaining the Canadian visa and leaving Senegal. Indeed, he explains that this delay was caused by factors that the RAD should have considered in its analysis,

such as the applicant's financial difficulties in obtaining money to leave the country. The RAD therefore erred in giving determinative weight to this delay in its credibility analysis.

[14] Finally, the applicant criticizes the RAD for giving too much weight to the RPD's findings, and for essentially reiterating the RPD's decision rather than making its own assessment of the case.

[15] In my opinion, the applicant's arguments are without merit. First, the omissions of which he has been accused are not minor and inconsequential omissions; on the contrary, they are omissions of essential elements from his BOC Form (*Irivbogbe v Canada (Citizenship and Immigration)*, 2016 FC 710 at para 32; *Badr Dabaa v Canada (Citizenship and Immigration)*, 2014 FC 907 at para 42). In other words, his lover's death threats were central to the applicant's fear of persecution should he return to Senegal. The RAD's finding that the omission of this contradiction in the BOC Form cannot be explained by the faulty nature of human memory, and its refusal to give the applicant the benefit of the doubt, is reasonable (*Hidalgo Carranza v Canada (Citizenship and Immigration)*, 2010 FC 914 at para 22).

[16] In addition, the applicant presented two distinct and contradictory accounts of the attack on his wife. Once again, the facts concerning this attack are central to the applicant's claim, and concern the applicant's agents of persecution as well as the prospective risk he would potentially face in the event of his return to Senegal. It is not unreasonable that the RAD relied on these major contradictions and inconsistencies in finding that the applicant was not credible (*Tovar v Canada*

(*Citizenship and Immigration*), 2016 FC 598 at para 19; *Linares Morales v Canada (Citizenship and Immigration)*, 2011 FC 1496 at para 21).

[17] The applicant also claims that the delay between obtaining his visa and his departure from Senegal should not have been a determinative factor in his credibility. I disagree with this interpretation of the RAD's analysis. The RAD did not treat the delay in and of itself as a determinative factor in rejecting his claim; on the contrary, the alleged delay was one of many reasons that led the RAD to its finding about the applicant's credibility (*Osinowo v Canada (Citizenship and Immigration)*, 2018 FC 284 at paras 21–23; *Gebremichael v Canada (Minister of Citizenship and Immigration)*, 2006 FC 547 at para 44). The weighing of evidence is “at the heart of the RAD's expertise” (*Csoka v Canada (Citizenship and Immigration)*, 2016 FC 1220 at para 12), and I cannot pinpoint one reason why the Court should intervene in the weighing of this evidence.

[18] Second, the applicant claims that the RAD did not adequately consider his participation in the activities of an LGBTQ+ community centre. In my view, the RAD did consider this evidence, but it was not sufficient to overcome the major deficiencies in the credibility of the applicant's evidence as a whole. The Court has repeatedly indicated that participation in activities with LGBTQ+ groups, in and of itself, may not be sufficient to discharge an applicant's burden of proof (*Oviawe v Canada (Citizenship and Immigration)*, 2021 FC 204 at para 38; *Obalade v Canada (Citizenship and Immigration)*, 2021 FC 1030 at para 23; *Jayaraman v Canada (Citizenship and Immigration)*, 2022 FC 458 at paras 59–60).

[19] Finally, the applicant relied on his psychological report to justify his omissions and his difficulty in presenting clear and precise testimony at the hearing before the RPD. I note that this argument was not raised in the applicant's memorandum supporting the application for judicial review before this Court. In any event, as the RAD noted, the psychological report cannot justify the major omissions in the applicant's BOC Form, which explain his lack of credibility.

[20] In sum, the main issue raised in this case is one of credibility, and the RAD's findings in this regard are entitled to significant deference (*Zhao v Canada (Citizenship and Immigration)*, 2019 FC 1593 at para 33; *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at para 25). The applicant is essentially asking the Court to reweigh and reassess the evidence before the RPD. However, this is not the Court's role on judicial review (*Ossomo Ngandzigui v Canada (Citizenship and Immigration)*, 2024 FC 121 at para 22).

[21] Based on the whole of the record before it, the RAD's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law, and is reasonable (*Vavilov* at paras 86, 304). Accordingly, the intervention of this Court is not justified in this case.

IV. Conclusion

[22] The RAD's decision as a whole is reasonable and justified in relation to the relevant factual and legal constraints of the case (*Vavilov* at para 99).

[23] For these reasons, the application for judicial review is dismissed.

[24] No question of general importance was submitted for certification, and the Court is of the view that none arises in this case.

JUDGMENT in IMM-7331-22

THE COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Guy Régimbald”

Judge

Certified true translation
Daniela Guglietta

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7331-22

STYLE OF CAUSE: ELHADJI MOR GUEYE v MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP
CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 8, 2024

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