

Federal Court



Cour fédérale

Date: 20240319

Docket: IMM-11698-22

Citation: 2024 FC 429

Ottawa, Ontario, March 19, 2024

PRESENT: Mr. Justice O'Reilly

BETWEEN:

**Mawrseio GEORGE
Santina ANTONY
Christian MAWRSEIO
Nikolas MAWRSEIO
Maya MAWRSEIO**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

I. Overview

[1] The applicants are a family of five who arrived in Canada in November 2012 and requested refugee protection. They claimed to be citizens of Eritrea who faced religious persecution there. They said that they traveled with fraudulent Portuguese passports bearing the family name “Agostino.” The applicants obtained refugee status in 2017.

[2] In 2022, an investigation by the Canada Border Services Agency (CBSA) showed that no Portuguese citizens with the family name “Agostino” had entered Canada at the relevant time. However, another family of five with similar given names, similar dates of birth and an Italian family name had entered Canada on November 2, 2012. Italian officials confirmed that the applicants are, indeed, citizens of Italy.

[3] The Minister applied to the Refugee Protection Division to vacate the applicants’ refugee status on the basis that it had been obtained through misrepresentation of their identities, citizenship, and country of residence. The RPD granted the Minister’s application, finding that the applicants had misrepresented material facts, and concluding that there was insufficient other evidence to justify maintaining their refugee status. The applicants brought this application for judicial review.

[4] The applicants submit that the RPD’s decision was unreasonable because it failed to take account of evidence of their Eritrean citizenship that had been submitted at their original refugee hearing. Instead, the RPD relied merely on photographic evidence to conclude that the applicants were the same family shown in photographs provided by Italian officials. Further, the applicants contend that the RPD should not have vacated the minor children’s refugee status because they were not responsible for any misrepresentation. They ask me to quash the RPD’s decision and order another panel to reconsider the Minister’s application.

[5] The sole issue is whether the RPD’s decision was unreasonable.

[6] I can find no basis for overturning the RPD's decision and must, therefore, dismiss this application for judicial review.

II. The RPD's Decision

[7] After summarizing the alleged facts, the RPD observed that the burden fell on the Minister to prove that the applicants had directly or indirectly misrepresented themselves or withheld material facts and had achieved refugee status as a result.

[8] The RPD concluded that the applicants had misrepresented their identities and their citizenship. It found that the applicants' true identities were those disclosed in the evidence from Italian authorities and that their citizenship was Italian. The applicants had been unable to explain how it was that there was no record of their arrival in Canada on Portuguese passports with the family name of "Agostino" nor could they provide any evidence to support that assertion.

[9] The RPD found it implausible that an Italian family composed of persons of similar ages and with similar names had arrived in Canada at roughly the same time as the applicants. After comparing the applicants' facial features with the photographic evidence provided by Italian officials, the RPD concluded that the persons in the photos were the applicants. It noted that expert evidence on this point was not necessary (citing *Liu v Canada (Citizenship and Immigration)*, 2012 FC 377 at para 10).

[10] The applicants also tendered family photographs and argued that their appearance in these pictures was different from the appearance of the persons shown in the photos from Italian authorities. The RPD disagreed, finding that the persons in the two sets of photos bore a striking resemblance to one another.

[11] The applicants submitted three letters from persons who confirmed that the applicants were citizens of Eritrea. However, the RPD found that the letters lacked detail, two of them were identical, and the applicants gave vague explanations of how they knew the authors of the letters.

[12] The RPD concluded that if the true facts had been known to the panel that considered the applicants' refugee claims, the panel would have had to determine whether the applicants had a valid claim against Italy, not Eritrea. Accordingly, the applicants' misrepresentations were material.

[13] Finally, the RPD found that there was insufficient evidence remaining to justify granting the applicants refugee status. Their misrepresentations cast a doubt on the entirety of their claims.

[14] The RPD granted the Minister's application to vacate the applicants' refugee status.

III. Was the RPD's Decision Unreasonable?

[15] The applicants submit that the RPD should have applied the factors set out in the Federal Court of Appeal's decision in *Canada (Citizenship and Immigration) v Camayo*, 2022 FCA 50 at

para 84. There, the Court stated that a panel must, among other things, consider the severity of the consequences of its decision, engage meaningfully with the parties' submissions, and take account of the personal attributes of the persons involved.

[16] The applicants also maintain that their identities had already been proved by their documentary evidence and oral testimony and their evidence was accepted by the panel that heard their refugee claims. The only evidence to the contrary was the photographic evidence provided by Italian authorities, which the RPD had no expertise in evaluating. The applicants suggest that if they were truly citizens of Italy, the Minister could have provided more compelling evidence. Given the factors set out in *Camayo*, particularly the serious consequences of vacating the applicants' refugee status, they say that the RPD should have given them the benefit of the doubt.

[17] The applicants also submit that the RPD erred by unreasonably vacating the refugee status of the minor applicants, as they had no role in any misrepresentation. Finally, the applicants contend that the RPD should have exercised its discretion to reject the Minister's application on the basis that there was sufficient other evidence supporting their refugee claim.

[18] I disagree with the applicants' submissions. The case of *Camayo* dealt with cessation of refugee status, not vacation. The Court clearly identified factors relating to the former, not the latter.

[19] In addition, the RPD's finding that the applicants were citizens of Italy, not Eritrea, put in doubt the credibility of all of the evidence that had been tendered at their original refugee hearing, including their documentary evidence of citizenship. There was no additional evidence that would have supported their refugee claim. The RPD carefully scrutinized the photographic evidence and provided reasons for its conclusion that the persons in the two sets of photos were the same, as it was entitled to do (see *Liu*, above). Finally, while the minor applicants were surely innocent of any misrepresentation, there was no longer any basis on which their refugee status could be sustained (see *Mella v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1587 at paras 34-35).

[20] Accordingly, I cannot conclude that the RPD's decision was unreasonable.

IV. Conclusion and Disposition

[21] The RAD's treatment of the evidence relating to the applicants' identities was not unreasonable. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-11698-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11698-22

STYLE OF CAUSE: MAWRSEIO GEORGE, SANTINA ANTONY,
CHRISTIAN MAWRSEIO, NIKOLAS MAWRSEIO
AND MAYA MAWRSEIO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ON

DATE OF HEARING: FEBRUARY 21, 2024

AMENDED JUDGMENT AND O'REILLY J
REASONS:

DATED: MARCH 19, 2024

APPEARANCES:

Linda Kassim FOR THE APPLICANTS

Catherine Vasilaros FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANTS
Barristers & Solicitors
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT
Toronto, ON