Federal Court  Cour fédérale

Date: 20250120

Docket: IMM-6955-22

Citation: 2025 FC 108

Ottawa, Ontario, January 20, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

DESMOND OPPONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] requires refugee claimants to present available evidence and documents establishing their identity, as well as the basis for their claim, before the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB]. While the *IRPA* provides for appeals to the Refugee Appeal Division [RAD] of the IRB, appeals to the RAD are not generally an opportunity for a claimant

to file additional evidence to support their claim or to supplement a deficient evidentiary record. Rather, a claimant may only present new evidence to the RAD if it arose after the rejection of their claim by the RPD, was not reasonably available at the time of the rejection, or could not have been expected to have been presented at the time of the rejection. Evidence that arises after a claimant's hearing before the RPD, but before the RPD renders its decision rejecting the claim does not arise "after the rejection" of the claim.

[2] In the present case, the applicant obtained a new Ghanaian birth certificate to address credibility issues the RPD had raised about the first birth certificate he had submitted to establish his identity. He obtained the new birth certificate, along with other new identity evidence, after his hearing at the RPD but before the RPD rendered its decision rejecting his claim. He did not present or seek to present this new evidence with the RPD, but sought to file it with the RAD after the RPD rejected his claim.

[3] The RAD found that the evidence predated the rejection of the applicant's claim and that he had presented no explanation why it was not presented to the RPD. It therefore concluded the evidence did not meet the statutory requirements for admission of new evidence and rejected it.

[4] Contrary to the applicant's submissions, the RAD's rejection of his new identity evidence was reasonable. The RAD's analysis of the credibility of the identity evidence the applicant presented to the RPD, including his first birth certificate, was also reasonable, as was its resulting conclusion that the applicant had not established his identity. The application for judicial review must therefore be dismissed.

II. Issues and Standard of Review

[5] The applicant raises the following two issues on this application:

A. Did the RAD err in refusing to accept the new identity evidence filed on appeal?

B. Did the RAD err in its analysis of the identity evidence presented to the RPD?

[6] Each of these questions is subject to the reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 23–29; *Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903 at para 15.

[7] When reviewing an administrative decision on the reasonableness standard, the Court does not attempt to reweigh or reassess the evidence, or to substitute its own decision for that of the decision maker. Rather, it must uphold the decision unless the applicant shows that it is unreasonable, that is, that it is incoherent; does not show the necessary qualities of justification, transparency, and intelligibility; or is not justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paras 15, 85, 99–101, 105–107, 125–126.

III. Analysis

A. *The RAD's rejection of the new identity evidence was reasonable*

(1) General principles regarding identity and new evidence on appeal

[8] As this Court has frequently recognized, identity is a "preliminary and fundamental issue" in any refugee claim, and a claimant's failure to establish their identity is fatal to their claim for refugee protection: *Terganus* at paras 22–25; *Ayele v Canada (Citizenship and Immigration)*, 2021 FC 11 at para 26; *Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064 at para 8; *Albates v Canada (Citizenship and Immigration)*, 2024 FC 1332 at para 19. The *IRPA* underscores the importance of identity, providing that the RPD must take into account, with respect to a claimant's credibility, whether they have acceptable documentation establishing identity or, if not, whether they have a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain it: *IRPA*, s 106.

[9] The time for an applicant to present their identity evidence (and all other evidence of their claim) is at their hearing before the RPD, which is tasked with determining eligible claims: *IRPA*, ss 100, 107, 170. The *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*], which govern the conduct of refugee hearings, provide that a claimant must provide acceptable documents establishing their identity and other elements of their claim, or explain why they did not do so and what steps they took to obtain them: *RPD Rules*, Rule 11. The *RPD Rules* also provide for the timing of presentation of documents, both before and, if permitted, after the hearing: *RPD Rules*, Rules 34, 43.

[10] Section 110 of the *IRPA* provides for an administrative appeal mechanism to the RAD. While most applicants whose refugee claim has been rejected by the RPD are entitled to appeal to the RAD, an appeal is not simply another opportunity for a refugee hearing. In particular, it is not an opportunity for an applicant to file evidence that could have been, but was not, filed with the RPD, *i.e.*, to complete a deficient record submitted before the RPD: *Singh* at para 54. Subsection 110(3) of the *IRPA* makes this clear, providing that the RAD must generally proceed "on the basis of the record of the proceedings of the [RPD]." Subsection 110(4) of the *IRPA* provides for limited exceptions to this rule:

Evidence that may be presented	**Éléments de preuve admissibles**
110 (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	**110 (4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.
[Emphasis added.]	[Je souligne.]

[11] As can be seen, subsection 110(4) permits new evidence to be filed on appeal in one of three circumstances: (i) where it arose after the rejection of the claim; (ii) where it was not reasonably available at the time of the rejection of the claim; or (iii) where the claimant could not reasonably have been expected in the circumstances to have presented it at the time of the rejection: *Singh* at paras 34–35. As the Federal Court of Appeal noted in *Singh*, evidence that

does not meet one of these explicit statutory conditions is excluded, without discretion on the part of the RAD: *Singh* at para 35.

(2) The applicant's new evidence

[12] The applicant claims to be Desmond Oppong, a Ghanaian citizen. His refugee claim, filed in 2018, is based on his sexual orientation, which he asserts puts him at risk of persecution in Ghana. To establish his identity, he filed with the RPD, among other documents, a birth certificate that raised a number of credibility issues. The RPD raised those issues at the hearing of the applicant's refugee claim on November 8, 2021.

[13] Given the concerns raised by the RPD at the hearing, it appears that the applicant made efforts to obtain further evidence of his identity. In particular, according to an affidavit sworn by the applicant and filed with the RAD, as soon as the hearing was over, he asked his mother to go to the authorities in Ghana to have a purported administrative error on his first birth certificate corrected. The authorities produced what is said to be a new authentic birth certificate on November 18, 2021, ten days after the hearing. The mother swore an affidavit dated November 24, 2021 referring to the birth certificate. She apparently also found the applicant's health insurance membership card, which the applicant had believed was lost.

[14] For reasons that are not explained, the applicant took no steps, under Rule 43 of the *RPD Rules* or otherwise, to file the new birth certificate, the affidavit, and/or the health insurance membership card with the RPD.

[15] The RPD issued its decision two months later, on January 17, 2022. The RPD concluded the first birth certificate that had been filed was fraudulent, and rejected the other identity evidence submitted by the applicant in the form of a student card and affidavits.

[16] On appeal to the RAD, the applicant sought to file the new birth certificate, his mother's affidavit from November 2021, the health insurance membership card, and an affidavit he swore in March 2022 for the purposes of the appeal. Neither the applicant's affidavit nor his counsel's submissions gave any explanation to the RAD why this evidence was not presented to the RPD before it rendered its decision. Counsel's submissions noted that the birth certificate was dated after the RPD hearing and that the health insurance membership card had been located after the hearing.

(3) The RAD's decision is reasonable

[17] The RAD noted that the applicant had made no submissions why the new evidence was not submitted to the RPD before it rejected his claim. It observed that there were 2.5 months between the hearing, where the issue of identity and the problems with the identity documents were raised, and the RPD's decision. The RAD concluded that all of the new evidence predated the RPD's rejection of the claim, and was reasonably available prior to the rejection of the claim. The RAD concluded that none of the new evidence met the statutory test for admission of new evidence and therefore rejected it.

[18] The applicant argues that the RAD's decision is unreasonable, arguing that there was a valid explanation as to why it was not presented to the RPD, namely that it was obtained after the

RPD's hearing. Indeed, the applicant's written submissions mistakenly assert that the new birth certificate was obtained after his case was rejected, *i.e.*, after the RPD's decision. This is clearly not so, as both the birth certificate and the mother's affidavit are plainly dated in November 2021, months before the RPD's decision in January 2022.

[19] Subsection 110(4) of the *IRPA* provides a clear date for the determination of whether evidence can be presented on appeal: the date of rejection of the claim. Evidence that arose and could reasonably have been presented to the RPD after the hearing but before the RPD issues its decision rejecting the claim is not evidence that "arose after the rejection of the claim" for purposes of subsection 110(4) of the *IRPA*. This Court has confirmed this on a number of occasions: *Brzezinski v Canada (Citizenship and Immigration)*, 2023 FC 936 at paras 32–36; *Bakare v Canada (Citizenship and Immigration)*, 2021 FC 967 at paras 17–18; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 336 at paras 16–17.

[20] The applicant contends that his situation is akin to that in *Dirieh v Canada (Citizenship and Immigration)*, 2018 FC 939. There, Justice Ahmed found unreasonable the RAD's rejection of new evidence based on a purported lack of detail about why it could not have been provided earlier: *Dirieh* at paras 26–29. However, in *Dirieh*, the applicant had provided sworn evidence to the RAD explaining why the document was not previously available, and the unreasonableness of the RAD's decision lay in its failure to accept or adequately consider that evidence: *Dirieh* at paras 27, 29. Here, the applicant filed no evidence explaining why the new birth certificate, affidavit, and health insurance membership card could not have been presented to the RPD when they were obtained before the RPD's decision.

[21] The RAD's decision refusing to admit the new evidence was consistent with subsection 110(4) of the *IRPA* and this Court's jurisprudence with respect to that provision. In other words, it was justified in relation to the relevant factual and legal constraints that bore on it: *Vavilov* at paras 99, 108, 112. The decision was reasonable.

B. *The RAD's analysis of the identity evidence before the RPD was reasonable*

[22] The RAD reviewed the identity evidence that was before the RPD in light of the applicant's submissions to assess the correctness of the RPD's conclusions. This consisted primarily of the applicant's first birth certificate, together with a student card.

[23] The RAD rejected the applicant's argument that the first birth certificate had only an "administrative error," namely a missing birth year. Rather, the RAD adopted the RPD's findings that the birth certificate had numerous anomalies, including notably that the document states that the date of registration was May 2, 2005, but it bears a registration number with the last four digits "2013," which is explained in the objective evidence to mean a 2013 registration. The birth certificate also states that it was issued "this 27 day of APRIL," without a year being given. Without any reasonable explanation for these anomalies, the RAD found that the RPD had correctly rejected the first birth certificate as lacking in credibility.

[24] The RAD also agreed with the RPD that the applicant was inconsistent in his testimony regarding a sister. He told the RPD that he had one sister and one brother, but his Basis of Claim form indicates he has a second sister, with a different last name. His explanation to the RPD was that the second sister was his "mother's sister's daughter" (*i.e.*, his cousin) who the applicant's

mother “took in as her own” after the death of her mother (*i.e.*, the applicant’s aunt). The RAD found this was inconsistent with the explanation given at the port of entry, where he said he had two sisters, the different last name being explained because “she was named by [his] grandma.”

[25] Finally, the RAD rejected the applicant’s argument that the RPD should have considered his student identification in conjunction with the birth certificate, since the birth certificate was not found credible.

[26] The applicant raises no challenge to the first and third of these findings, focused on the credibility of the birth certificate. In his written submissions, the applicant challenged the second finding related to the sister, although this was not pressed in oral argument.

[27] I agree that it is somewhat difficult to view the applicant’s statement that his mother took in his cousin as her own as being inconsistent with the earlier statement that she was named by the applicant’s (and, presumably, the cousin’s) grandmother. However, I cannot conclude that any unreasonableness in this finding can have had any effect on the RAD’s decision as a whole. The RAD’s decision was based on the applicant’s failure to credibly establish his own identity on a balance of probabilities. The RAD itself recognized that the issue related to the testimony regarding the cousin said to have been treated as a sister was not central and that “one cannot draw full conclusions from this one aspect of his personal history.” The finding related to this testimony in no way undermines the central basis for rejection of the applicant’s claim, namely that the main evidence presented of his identity was a birth certificate that wholly lacked credibility and appears to have been effectively fraudulent. This Court will not overturn a

decision based on alleged flaws or shortcomings that are “merely superficial or peripheral to the merits of a decision” or exhibits a “minor misstep”: *Vavilov* at para 100. I am not satisfied that any such flaw in respect of the RAD’s discussion of the evidence regarding the cousin are sufficiently central or significant to render the decision unreasonable.

[28] I note for the sake of completeness that the applicant also raised in his written submissions an argument based on evidence given by family members and the importance of not rejecting such evidence based solely on the fact that the witnesses are family members with an interest in the refugee claim. However, there is no indication that the RAD made any such error. The applicant had raised no ground of appeal to the RAD regarding the RPD’s treatment of the evidence given by family members, and the RAD therefore did not address this as an issue.

[29] The applicant has therefore not satisfied me that the RAD’s analysis of the identity evidence presented before the RPD was unreasonable.

IV. Conclusion

[30] As the RAD’s refusal to admit new evidence and its assessment of the remaining identity evidence before it were each reasonable, this application for judicial review must be dismissed.

[31] During the course of the hearing, counsel for the applicant proposed that a question be certified regarding whether evidence that arose after the RPD hearing but before the RPD’s decision falls within the exceptions in subsection 110(4) of the *IRPA*. I decline to certify such a question, both because it was not presented by the applicant in accordance with paragraph 36 of

the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings,* and because it does not raise a "serious question of general importance" as required by paragraph 74(d) of the *IRPA*, but simply one relating to an established interpretation of a clear statutory provision. No serious question is therefore certified.

JUDGMENT IN IMM-6955-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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