Federal Court  Cour fédérale

Date: 20250120

Docket: IMM-7185-23

Citation: 2025 FC 113

Ottawa, Ontario, January 20, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

ABDULHAKIM HASSAN HAJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 53-year-old citizen of Tanzania. He entered Canada as a visitor in September 2019. Previously, in March 2019, the applicant had attempted to enter Canada on the same visitor visa but was refused admission. He returned to Tanzania.

[2] In January 2020, the applicant submitted a claim for refugee protection. The claim was based on the applicant's fear of persecution due to his sexual orientation. The applicant claimed

he is bisexual and that he had been identified by the authorities in Tanzania as someone who is sexually attracted to men. According to the applicant, after he had returned to Tanzania the previous year, he attended a “gay party” that was raided by the authorities. The applicant managed to escape through an emergency exit but he learned subsequently that the police were looking for him. He left for Canada again shortly thereafter, using the same visitor visa he had obtained earlier.

[3] In a decision dated September 6, 2022, the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) rejected the applicant’s claim on credibility grounds.

[4] The applicant appealed the RPD’s decision to the Refugee Appeal Division (RAD) of the IRB, submitting that the RPD erred in finding that his claim lacked credibility.

[5] While the appeal was pending, the RAD provided the applicant with an opportunity to address certain apparent inconsistencies between his narrative and information included in a psychotherapist’s report the applicant had submitted to the RPD. (The applicant had not been asked about these apparent inconsistencies during the RPD hearing.) Counsel for the applicant responded by way of written submissions. Counsel argued that, having raised this issue, the RAD was required to hold a hearing. Counsel also submitted that the apparent inconsistencies could be explained by the applicant’s poor memory and/or poor translation during the interview with the psychotherapist. No evidence to support these assertions was provided.

[6] In a decision dated May 17, 2023, the RAD dismissed the appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection. The RAD agreed with the RPD that the applicant's claim lacked credibility. Specifically, the RAD found that the applicant's credibility was undermined by his having made misrepresentations in his application for a Canadian visitor visa, by inconsistencies in his account of the incident that allegedly caused him to flee Tanzania in September 2019, and by inconsistencies in accounts of his same sex experiences and relationships. The RAD also rejected the submission that, having raised concerns with respect to information in the psychotherapist's report, it was required to hold a hearing.

[7] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). He submits that the RAD erred in failing to hold a hearing. He also submits that the RAD's adverse credibility findings are unreasonable.

[8] For the reasons that follow, I am not persuaded that there is any basis to interfere with the RAD's decision. This application for judicial review will, therefore, be dismissed.

[9] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid*.). It

is not the role of a court applying a reasonableness standard of review to reweigh or reassess the evidence or interfere with the decision maker's factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). To establish that the decision should be set aside because it is unreasonable, the applicant must demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[10] Looking first at the RAD's refusal to hold a hearing, this was an altogether reasonable determination given the statutory constraints on that tribunal; indeed, it was correct.

[11] As the RAD pointed out in its decision, the applicant's request for a hearing was inconsistent with the statutory scheme given that there was no new evidence before that tribunal. Pursuant to section 110 of the *IRPA*, the RAD must proceed without a hearing unless new evidence is admitted under subsection 110(4) and, under subsection 110(6), the RAD is of the opinion that the new evidence raises a serious issue with respect to the applicant's credibility, that it is central to the decision with respect to the refugee protection claim, and that, if accepted, the evidence would justify allowing or rejecting the refugee protection claim. As I discussed in *Eweka v Canada (Citizenship and Immigration)*, 2023 FC 141 at paras 18-20, a request for further submissions to address a new issue does not preclude an application under Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257, to provide evidence that is responsive to the request. Here, however, the applicant brought no such application; instead, his counsel simply responded to the RAD's request by way of written submissions.

[12] I cannot agree with the applicant that, in fact, the RAD did admit new evidence because at one point it refers to counsel's submissions as evidence. The RAD wrote:

> In the response, counsel takes issue with dealing with these issues of concern for the RAD through "submissions". However, it has been held in *Eweka v Canada* [cited above] that a notice requesting "submissions" does not preclude the Appellant from providing evidence in response to the notice. In fact, it appears that counsel for the Appellant did provide evidence themselves in relation to the question the RAD raised in the notice related to the psychotherapist assessment report and reference to a 10-year relationship. The response speculates that the Appellant may have meant "relationships" rather than "relationship" and blames the interpreter for the error. This is evidence coming from counsel and not from the Appellant.

[13] While it could certainly have been expressed more clearly, as I understand it, the RAD's point was that any evidence on this issue had to come from the applicant, not from counsel. Far from admitting counsel's submissions as new evidence, the RAD held the opposite (albeit implicitly). In the absence of any new evidence, the RAD did not have the jurisdiction to hold a hearing.

[14] Turning to the RAD's adverse assessment of the applicant's credibility, the applicant submits that it is unreasonable in several respects. Again, I am unable to agree.

[15] The applicant challenges the reasonableness of the RAD's assessment of the evidence in four specific respects: (1) the significance of inconsistencies between the personal information provided in connection with the 2018 visa application and the personal information the applicant provided in connection with his refugee claim; (2) the applicant's account of his first same-sex sexual experience; (3) inconsistencies in the applicant's accounts of prior relationships; and

(4) inconsistencies in the applicant's account of the event that led him to flee Tanzania, his discovery at the "gay party."

[16] The applicant has not established any basis to interfere with the RAD's findings. The RAD analyzes the relevant evidence in detail and provides transparent and intelligible reasons for the adverse inferences it draws. Its analysis was fully responsive to the issues raised on appeal. Each of the factors the RAD relied on reasonably supported an adverse finding with respect to the applicant's credibility. Further, the finding that the applicant's account lacked credibility reasonably supported the ultimate conclusion that the applicant had not credibly established his sexual identity on a balance of probabilities. On this application for judicial review, the applicant's submissions effectively ask this Court to reassess the evidence and substitute its views for those of the RAD. As already stated, this is not a reviewing court's proper role when applying a reasonableness standard.

[17] For these reasons, the application for judicial review will be dismissed.

[18] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-7185-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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