

Federal Court



Cour fédérale

Date: 20200103

Docket: IMM-6486-18

Citation: 2020 FC 12

Ottawa, Ontario, January 3, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

**YOUSSEF SOULTANI KANAWATI
MAYSAA SAAD
MALAKE SULTANI KANAWATI
YAACOUB SOULTANI KANAWATI
ROLA SULTANI KANAWATI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Lebanon. They sought refugee protection in Canada on the basis of their fear of persecution by members the Saraya Resistance, a faction of Hezbollah that is active in Lebanon.

[2] The principal applicant, Youssef Soultani Kanawati, claims that in April 2016 he was approached by Bilal Akar, a well-known member of the group, who encouraged him to join the group. Mr. Kanawati declined. Bilal said he would give him some time to reconsider. A few weeks later, Bilal and his friends approached Mr. Kanawati's wife on the street and harassed her. When Mr. Kanawati confronted them, Bilal and his friends assaulted him and his wife. Bilal took out a pocket knife and threatened to break Mr. Kanawati's legs if he reported him to the police. Mr. Kanawati filed a complaint with the police despite the threat. Bilal and his friends approached Mr. Kanawati yet again a few weeks later and, once again, threatened him and his family if he did not join the Saraya Resistance. They also assaulted him again. Mr. Kanawati was taken to the hospital and he reported the incident to the police. He claims that the police also fear the Saraya Resistance and, as a result, they refused to prosecute his assailants. Fearing continued persecution by this group, Mr. Kanawati, his wife and their minor children left Lebanon for Canada. They entered Canada at Pearson International Airport on August 17, 2016, on visitor visas.

[3] The applicants submitted an inland claim for refugee protection on October 21, 2016. Their claim was prepared with the assistance of a lawyer (Mr. Kaminker) and an Arabic interpreter.

[4] The applicants' hearing before the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] took place on December 6, 2017. The applicants were represented by Mr. Kaminker at that hearing.

[5] For reasons dated December 19, 2017, the RPD rejected the claims. The member made negative credibility findings against the applicants on the basis of material differences between the original narrative provided by Mr. Kanawati in support of the claim and his testimony at the hearing. In short: “The testimony regarding Bilal and his actions against the claimants is not credible.” The RPD member acknowledged that the applicants had provided a copy of a police report to corroborate their allegations. However, since the report relied entirely on information provided by Mr. Kanawati, the member gave it no weight because Mr. Kanawati had been found not to be credible with respect to key aspects of his allegations.

[6] Representing themselves, the applicants appealed this decision to the Refugee Appeal Division [RAD] of the IRB. In a decision dated November 28, 2018, the RAD dismissed the appeal and confirmed the RPD’s determination that the applicants are neither Convention refugees nor persons in need of protection.

[7] The applicants then retained Mr. Kaminker again and brought this application for judicial review of the RAD’s decision under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[8] For the reasons that follow, the application will be dismissed.

[9] It is well-established that the substance of the RAD’s decision is reviewed on a reasonableness standard (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). That this is the appropriate standard is reinforced by *Canada (Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*], where the majority of the Court set out a revised framework for determining the standard of review with respect to the merits of an administrative decision (at para 10). Applying *Vavilov*, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review of the RAD's decision.

[10] The majority in *Vavilov* also sought to clarify the proper application of the reasonableness standard (at para 143). The principles the majority emphasizes were drawn in large measure from prior jurisprudence, including *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9. Even though the present application was argued prior to the release of *Vavilov*, the footing upon which the parties advanced their respective positions concerning the reasonableness of the RAD's decision is consistent with these principles.

[11] As discussed in *Vavilov*, the exercise of public power “must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it” (*Vavilov* at para 95). For this reason, an administrative decision maker has a responsibility “to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion” (*Vavilov* at para 96). 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). The onus is on the applicants to demonstrate that the RAD's decision is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied 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).

[12] The applicants contend that it was unreasonable for the RAD to uphold the RPD's negative credibility findings and to fail to consider the potentially corroborative documents (i.e. police and medical reports). I do not agree in either respect.

[13] As the majority emphasized in *Vavilov*, a reviewing court must "read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered" (at para 94). In the present case, a crucial part of the context of the RAD's decision is how the applicants framed their appeal.

[14] In a letter from Mr. Kanawati to the RAD dated February 22, 2018, in effect the applicants raised three related errors by the RPD: first, the differences between the original narrative and the testimony before the RPD were not material; second, Mr. Kanawati stated that he was under a lot of stress and very nervous when he provided the information for the original narrative; and third, he was "perhaps, wrongly advised, to be as brief & to the point in my application as possible." While not exactly a ground of appeal, Mr. Kanawati also claimed in his letter that the tactics of the Saraya Resistance, including the use of spies, are well known.

[15] The errors alleged by the applicants were reiterated in substance and without further elaboration in the Applicants' Memorandum to the RAD prepared pursuant to the requirements of Rule 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257.

[16] The RAD member rejected these grounds of appeal. The member confirmed that she had reviewed the record in its entirety. She found the omissions in Mr. Kanawati's narrative were

central to the claim and warranted the negative credibility findings, especially considering that the applicants had had the assistance of able and experienced counsel when preparing the Basis of Claim [BOC]. The member also noted that Mr. Kanawati did not raise the issue of stress or anxiety at the RPD hearing and provided no medical evidence of an impairment that would have prevented him from completing his BOC properly. She noted that it was insufficient simply to claim that “everyone knows” that the Saraya Resistance relies on a network of spies.

[17] Further, the member noted that the applicants had failed to identify clearly who allegedly gave them incorrect advice in the preparation of their BOC. As well, “[w]hether it was the translator or legal counsel, no notice was provided in either case to allow them to respond to the allegations of professional incompetence.” The member therefore concluded that “there is insufficient evidence to support the Appellants’ speculation that ‘perhaps’ they were given wrong advice.”

[18] The applicants have failed to demonstrate that these determinations are unreasonable. The importance of providing a complete account in a BOC has been emphasized many times. As Justice McDonald stated recently in *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 [*Ogaulu*], this Court “has confirmed on numerous occasions that all the important facts and details of a claim must be included, and failing to do so can affect the credibility of all or part of a claimant’s testimony” (at para 18). When a BOC omits significant or material details, such omissions can form a reasonable basis for doubting a claimant’s credibility (*Ogaulu* at para 20; *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at para 50).

[19] In the present case, the RAD upheld the RPD's determination that Mr. Kanawati had omitted material information from his BOC and that this had an adverse impact on his credibility. This conclusion is altogether reasonable. For example, while Mr. Kanawati stated in his BOC that he worked as a plumber and that his job "exposes him to many people," he failed to mention that he often worked for high placed civilian and military officials in Lebanon and that this was why Bilal was specifically trying to recruit him as a spy (as he claimed at the hearing). The RPD member stated: "[i]f it were true that it [being a plumber] exposed him to government officials, it is reasonable to expect this would have been mentioned." The RPD member concluded that Mr. Kanawati had "added this detail at his hearing to bolster his testimony."

[20] It was not unreasonable for the RAD member to conclude that the RPD's findings regarding the omissions from the BOC "were well-founded and central to the key allegations of the Appellants' risk of persecution." There is no basis for me to interfere.

[21] Understandably, the applicants do not challenge the RAD's determination with respect to their allegation that they were ill-advised in the preparation of their BOC.

[22] The applicants do, however, contend that it was unreasonable for the RAD not to consider the potentially corroborative documents and whether the RPD had erred in that respect. I do not agree.

[23] Once again, the RAD's decision must be assessed in the context of how the applicants framed their appeal. The applicants did not raise any alleged error in relation to the RPD's

assessment of the police or medical reports. It is well-established that the RAD is not required to consider potential errors that an appellant did not raise: see *Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 18-20; *Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 at para 39; *Broni v Canada (Citizenship and Immigration)*, 2019 FC 365 at para 15; and *Canada (Citizenship and Immigration) v Chamanpreet Kaur Kaler*, 2019 FC 883 at paras 11-13 (IMM-57-19).

[24] The RAD member was required to address the specific errors alleged by the applicants (*Dahal v Canada (Citizenship and Immigration)*, 2017 FC 1102 at para 30). This is exactly what she did. She was not required to go beyond the applicants' grounds of appeal and consider other potential errors. As a result, it was not unreasonable for her to dispose of the appeal as she did.

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

[26] The parties did not suggest any serious questions of general importance for certification under section 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-6486-18

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

DOCKET: IMM-6486-18

STYLE OF CAUSE: YOUSSEF SOULTANI KANAWATI ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 18, 2019

JUDGMENT AND REASONS: NORRIS J.

DATED: JANUARY 3, 2020

APPEARANCES:

Hart A. Kaminker FOR THE APPLICANTS

Laoura Christodoulides FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kaminker and Associates FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario