Federal Court  Cour fédérale

Date: 20211012

Docket: IMM-5228-20

Citation: 2021 FC 1055

Ottawa, Ontario, October 12, 2021

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

GU

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the decision of a Senior Immigration Officer's [Officer] refusing her pre-removal risk assessment application [PRRA] on February 18, 2020 [Decision]. The Applicant alleged that she fears (a) her family because she converted to Christianity, (b) being forced to marry a soldier, and (c) being perceived as having political opinions and/or opposition views.

I. Background

[2] The Applicant is a female citizen of Rwanda. The Applicant, along with her father, mother and siblings, obtained a visitor visa for Canada on October 15, 2009. The Applicant, her mother, and her siblings, arrived in Canada without her father in December of 2009 and claimed refugee protection. The Applicant and her family claimed that her mother, the principal applicant, was the victim of longstanding domestic violence, with the latest incident taking place in October 2009. In addition, it was claimed that her mother, who was a lawyer, was attacked by unidentified assailants on November 25, 2009. The Applicant's mother alleged that the attack was linked to her having assisted the authorities in an investigation of certain Rwandan Patriotic Front [RPF] soldiers. Following the attack, the Applicant's mother, used the Canadian visas obtained by herself and her estranged husband for a previously-planned vacation and fled Rwanda along with her children on December 6, 2009.

[3] In 2012, the Refugee Protection Division [RPD] found that the principal applicant, the Applicant's mother, was not a Convention refugee under section 96 or a person in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Judicial review was sought of the RPD's decision. In a decision dated January 24, 2013, the Federal Court dismissed the application, finding that the RPD's findings on state protection, adverse credibility, and the lack of establishment of a link between the November 25, 2009 attack and RFP soldiers, were reasonable. The Applicant included a copy of the Federal Court's 2013 decision in her application for judicial review.

[4] A PRRA was then offered to the Applicant and her family. The PRRA was refused on May 28, 2014, and the Applicant and her family left Canada for Rwanda on July 2, 2014. In October 2014, the Applicant arrived in the United Kingdom where she studied law for four years. She completed her studies and returned to Rwanda in October 2018.

[5] The Applicant arrived back in Canada, via Roxham road at the border between Quebec and New York State, on November 29, 2018. She claimed asylum upon arrival. The request for asylum was deemed ineligible on the grounds that she had sought asylum in the past. A deportation order was issued on November 29, 2018. A PRRA was offered to the Applicant, and her application was submitted on December 26, 2018. Further submissions were filed on January 15, 2019. In parallel, the Applicant filed a request to re-open her prior claim for asylum. The request to re-open her claim with the RPD was denied on January 21, 2019.

[6] The Applicant's PRRA application, which led to the Decision under review, alleges new fears of persecution against her that differ from those claimed in the 2009 claim and the 2014 PRRA. Notably, that she fears (i) her Muslim family because she converted to Christianity without their knowledge, (ii) being perceived as supporting the opposition and endangering her family because her cousin caught her listening to an opposition radio station, and she has not participated in RPF meetings, and (iii) that her family, a wealthy and well-known Muslim family, has accepted a request for her marriage to a prominent Muslim soldier. The PRRA application contained an affidavit from the Applicant, submissions from her counsel, copies of her identification, and a number of reports and news articles on Rwanda.

[7] On February 18, 2020, the Officer rejected the Applicant's PRRA application. The Officer summarized the Applicant's narrative contained in her affidavit and the risks she identified at length. The Officer identified that the burden of demonstrating that there is a risk among those described in sections 96 and 97 of the IRPA rests with the Applicant. The Officer concluded that the Applicant had failed to submit sufficient evidence to support her claims of persecution or the existence of a personal and objectively identifiable risk in Rwanda.

[8] The Applicant claims that the Officer "erred in law" by failing to consider and/or ignoring evidence, misapprehending evidence, taking into account irrelevant evidence, and failing to properly understand the evidence. The Applicant further submits that the Officer erred by not conducting a *Ward* analysis (*Canada v Ward* [1993] 2 SCR 689), which, in the Applicant's submission, would have focused on all the alleged violations of human rights, namely the alleged risks of persecution, punishment or death, when the Applicant's family is made aware of the conversion to Christianity, the risk of a forced marriage, the risk of political persecution, and the alleged rampant corruption in Rwanda and lack of state protection. At the hearing, the Applicant reiterated this point and alleged that the Decision was unreasonable on the basis that the Officer failed to undertake a holistic analysis of the evidence and the above-mentioned alleged violations.

[9] The Applicant submits three pieces of evidence that post-date the Decision, namely a lengthy affidavit from the Applicant [New Affidavit] and two letters of support [collectively, New Evidence]. One letter of support is from the Applicant's maternal grandfather. The second letter of support is from the cousin of the Applicant's father. The week prior to the hearing of

this matter, counsel for the Applicant wrote a letter to the Court stating that his client, the Applicant, “has requested that we file an Anonymity Order Notice so she may be protected from possible future persecution by the Rwandan army and government; and to protect her family members who are still living in Rwanda.”

[10] The Respondent asserts that the Applicant’s arguments amount to mere disagreements with the Officer’s assessment of the evidence, and constitute a request for this Court to reweigh the evidence. The Respondent further asserts that the applicable standard of review is reasonableness, and that the Decision was reasonable. The Respondent states that the *Ward* principles cannot be used to override a lack of evidence. The Respondent states that the New Affidavit was not before the Officer, and in any event contains argument and opinion which should be regarded as irrelevant. The Respondent submits that the Applicant cannot rely on evidence that was not before the Officer, and requests that the New Affidavit, along with the two letters, be disregarded.

[11] Prior to the hearing, the Respondent took no position on whether the Court should grant the request for the Order of Anonymity, but stated that the allegations upon which the Applicant’s requests were being made were found not to be credible by the RPD. At the hearing, the Respondent pled that there was no evidence of a risk of harm, and therefore the request for anonymity should not be granted. The Respondent pled, in the alternative, that the request was overbroad, and if nevertheless granted, should be restricted to the style of cause.

II. Issues Raised and Standard of Review

[12] I formulate the issues as follows:

> A. Should an Anonymity Order be granted, and if so, of what scope?
>
> B. Is the New Evidence admissible?
>
> C. Did the Officer render an unreasonable decision with respect to the Applicant's fear of:
>
> > i. religious persecution;
> >
> > ii. perceived political beliefs; and/or
> >
> > iii. forced marriage?

[13] As described by Justice Alan Diner in *Valencia Martinez v Canada (Citizenship and Immigration)*, 2019 FC 1 at para 1, a PRRA is:

> the last formal risk assessment given to qualifying individuals before they are removed from Canada. The PRRA process seeks to ensure that those individuals are not sent to a country where their lives would be in danger or where they would be at risk of persecution, torture, or other cruel and unusual treatment or punishment, consistent with Canada's obligations under international law.

[14] Nevertheless, it is the Applicant that bears the burden of proving that the PRRA application should be granted (*Qosaj v Canada (Citizenship and Immigration), 2021 FC 565 at para 30*).

[15] The Applicant's submissions refer to "errors in law" without specifying the standard of review. The Respondent submits that the applicable standard of review is that of reasonableness,

as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 *[Vavilov]*. I agree with the Respondent.

[16] For the reviewing court to intervene, the challenging party must satisfy the court 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" and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100). *Vavilov* further instructs that the reviewing court should not approach the underlying decision with the intention of conducting a "line-by-line treasure hunt for error" (at para 102), but rather concern itself with whether "the decision as a whole is transparent, intelligible and justified" (at para 15). 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). A reasonableness review is concerned with, among other things, whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Vavilov* at para 86).

[17] A reviewing court should refrain from reweighing or reassessing the evidence considered by the decision maker and must not, absent exceptional circumstances, interfere with factual findings (*Vavilov* at para 85). The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision-maker's place. My colleague Justice McHaffie explains that this Court's role in judicial review "is to review the PRRA officer's assessment of the evidence for

reasonableness, rather than to impose its own assessment of that evidence" (*Newland v Canada (Citizenship and Immigration)*, 2019 FC 1418 at para 33).

[18] Nevertheless, *Vavilov* at para 126 instructs that a decision maker "must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them". When a decision maker has failed "to meaningfully grapple with key issues or central arguments raised by the parties [this] may call into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128).

III. Analysis

A. *Should an Anonymity Order be granted, and if so, of what scope?*

[19] As mentioned above, shortly before the hearing of this matter, the Applicant submitted an informal request for an Anonymity Order, along with an Anonymity Order Notice on Form IR-5, pursuant to Rule 8.1(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* (SOR/93-22) [Rules]. The Anonymity Order Notice requested that all documents that are prepared by the Court and which may be made available to the public be amended and redacted to render the identity of the Applicant anonymous. The Applicant lists the grounds for the request being the backlash that may be faced by her father and persecution or arrest that may be faced by herself and her mother from the Rwandan government and the army if these proceedings were to be public.

[20] Rule 8.1 of the Rules states:

8.1 (1) A party to an application for leave may make a written request, in Form IR-5 as set out in the schedule, that the court make an order that all documents that are prepared by the Court and that may be made available to the public be amended and redacted to the extent necessary to make the party's identity anonymous.	**8.1 (1)** Toute partie à une demande d'autorisation peut demander par écrit à la Cour, selon la formule IR-5 figurant à l'annexe, d'ordonner que tous les documents préparés par la Cour qui pourraient être mis à la disposition du public soient modifiés et caviardés dans la mesure nécessaire pour assurer son anonymat.
(2) A party who opposes the request may, in that Form IR-5, make a written objection to the request.	**(2)** Toute partie qui s'oppose à la demande peut, selon la formule IR-5, s'y opposer par écrit.
(3) A request or an objection to a request, as the case may be, shall be served and filed and set out the grounds for the request or objection.	**(3)** La demande ou l'opposition à une demande est signifiée et déposée et indique les motifs sur lesquels elle se fonde.
(4) A request shall be determined at the same time, and on the basis of the same materials, as the application for leave.	**(4)** Il est statué sur la demande en même temps que sur la demande d'autorisation et à la lumière des mêmes documents.
(5) The Court may make an order under subrule (1) if, after taking the public interest in open and accessible court proceedings into account, the Court is satisfied that the party's identity should be made anonymous.	**(5)** La Cour peut rendre l'ordonnance visée au paragraphe (1) si, compte tenu de l'intérêt du public à la publicité des débats judiciaires, elle est convaincue de la nécessité d'assurer l'anonymat de la partie en cause.
(6) An order under this rule continues in effect until the Court orders otherwise, including for the duration of any appeal of the proceeding and after final judgment.	**(6)** L'ordonnance rendue en vertu du présent article demeure en vigueur jusqu'à ce que la Cour en ordonne autrement, y compris pendant la durée de toute procédure d'appel et après le jugement définitif.

[21] Rule 8.1 of the Rules is a comparatively new provision. It was enacted on June 17, 2021 (*Rules Amending the Federal Courts Citizenship, Immigration and Refugee Protection Rules*

(SOR/2021-149)). Rule 8.1(3) provides that the request for an Anonymity Order shall be determined at the same time, and on the basis of the same materials, as the application for leave.

[22] While Rule 8.1 of the Rules was in force at the time the Applicant's request for anonymity was made, it was not in force on October 19, 2020, the date this application for judicial review was commenced. The request for an Anonymity Order therefore did not accompany the application for judicial review. At the time the application for judicial review was filed, a pilot project entitled "Simplified Motion Procedure – Anonymity Order" [Pilot Project] was in effect, having been published as part of the *Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings* dated November 5, 2018. Among the aims of the Pilot Project was to establish a simplified and informal procedure permitting the parties to seek a limited form of confidentiality (anonymity) without sealing the Court record. This enabled the applicants to address privacy and security concerns, while reducing costs by permitting the applicants to avoid preparing and filing a separate motion record.

[23] The Pilot Project provides that a cover letter is to accompany the leave application, and refers to the request being determined at the same time as the application for leave. For the purposes of the Pilot Project, I am not prepared to find that the language used is sufficiently strong so as to preclude a request for an Anonymity Order at a later stage. As to the question of whether Rule 8.1(3) precludes such a request at a later stage, given that the provision came into force after the Applicant's application was filed, it is unnecessary for me to rule on the question.

[24] As per the request for anonymity, the Applicant's fears of persecution for herself and her family, stem from the Rwandan government and the army, and in particular being sought after by a high-ranking soldier. The name of the soldier is disclosed in the Applicant's application and her request for anonymity, but I have declined to disclose it in these Reasons thereby addressing at least a portion of her concern.

[25] As to the scope of the Applicant's request for anonymity, I find it to be overbroad. Nevertheless, this Court has adopted a generous approach to the granting of anonymity requests in the context of immigration and refugee claims, even noting that the rejection of an asylum claim is not a bar to granting an anonymity request (*Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 681 at paras 19 and 21). Bearing this in mind, and noting that the anonymization of the style of cause is generally considered to be a minor restriction on the open court principle, I allow the Applicant's request in part. The style of cause shall be amended to identify the Applicant as GU in this Judgment and Reasons.

B. *Is the New Evidence admissible?*

[26] The New Evidence submitted by the Applicant was not before the Officer. The general rule is that evidentiary record before this Court on judicial review of an administrative decision is restricted to the evidentiary record that was before the administrative decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]). While there are exceptions to the general rule (*Access Copyright* at para 20), I do not find that they apply to the New Evidence.

[27] Placing aside the Applicant's comments on the Officer's decision, the New Affidavit and the two support letters speak to the issues that were raised in the original affidavit before the Officer but in greater detail. The alleged events all took place prior to the Decision. The Applicant states that the two support letters, one from her maternal grandfather and another from her father's cousin, were provided at this stage because of the Applicant's possible deportation. The deportation order, however, was issued prior to the filing of the PRRA Application and over fourteen months prior to the Decision.

[28] The New Affidavit states that the support letters speak to "persecution, forced marriage, and violence due to my religious and political beliefs". While the support letters do speak to the issue of forced marriage, they do not address the Applicant's Christianity or perceived political beliefs. In any event, the information contained in the two support letters does not post-date the Decision.

[29] The New Affidavit also contains argumentation, additional information, and efforts to draw legal conclusions. The New Affidavit purports to review the Officer's decision and determine that it was "unreasonable". This is not an acceptable use of an affidavit on judicial review.

[30] For these reasons, I find the New Affidavit and its associated exhibits are not admissible.

C. *(i) Did the Officer render an unreasonable decision with respect to the Applicant's fear of religious persecution?*

[31] At the hearing and in her written submission, the Applicant argued that she will most likely face incarceration or death because she has converted to Christianity. In the Applicant's affidavit, however, she states: "je suis chrétienne, mais ma famille est musulmane et elle ne sait pas que je me suis convertie." She also states, in her Affidavit, that she fears her family because of her conversion. Other than the foregoing two sentences, the Applicant provided no further details or evidence about her Christianity or her family's views thereon.

[32] The Officer considered documentary evidence on religions in Rwanda noting that, among other things, freedom of religion is protected by enforced rules and regulations, and the population of Rwanda is, based on a 2018 United States State Department Report, 44 percent Catholic; 38 percent Protestant; 12 percent Seventh-day Adventist; 2 percent Muslim, and 0.7 percent Jehovah's Witness. The Officer found that the Applicant did not demonstrate how she would not be able to practice her religion freely in Rwanda.

[33] The Applicant relies on *Zabeba v Canada (Citizenship and Immigration)*, 2011 FC 1404, a decision concerning a Christian applicant from Yemen, for the proposition that apostates face serious penalties such as annulment of marriage, termination of citizenship, confiscation of identity papers and the loss of social and economic rights. The Applicant, however, bears the burden of demonstrating that she herself would face a risk of persecution. Save for the two sentences in the Applicant's affidavit, and a short article on the closure of 714 of the 1,300 churches in Kigali for alleged hygiene and noise violation reasons, there is no other evidence adduced by the Applicant concerning her Christianity or Christianity in general in Rwanda.

[34] I am not persuaded that the Officer's finding was unreasonable. The determination that the Applicant had not met her burden to show how she could not practice her religion freely was reasonable based on the evidentiary record and the factual matrix before the Officer.

C. (ii) Did the Officer render an unreasonable decision with respect to the Applicant's fear of perceived political beliefs?

[35] The Applicant alleges that the Officer erred in dismissing the Applicant's fear of political persecution. The evidence before the Officer consisted of the Applicant's affidavit and two country reports, one by the Immigration and Refugee Board [IRB] and one by the US Department of State. In her affidavit, the Applicant states that while she was not a member of the opposition, she was perceived as such because she did not attend RPF meetings or Ingando camp, and because she was caught once by her cousin listening to opposition radio. The Applicant states that these events took place while she was in Rwanda from October to November 2018.

[36] The Officer reviewed and summarized the risks relating to perceived political persecution identified by the Applicant in detail. The Officer cited a 2018 US Department of State report and acknowledged that the "situation in Rwanda is not perfect". The Officer found however that the Applicant had not met her burden of proof by submitting sufficient personal documents to demonstrate that she was personally at risk.

[37] The Applicant is effectively inviting this Court to reweigh the evidence. I decline to do so. The Officer conducted an assessment of the evidence before him and I find that the Decision

falls within the range of possible, acceptable outcomes that are defensible in light of the facts and the law.

C. (iii) Did the Officer render an unreasonable decision with respect to the Applicant's fear of a forced marriage?

[38] The Applicant describes in her affidavit how certain members of her family have accepted a request for her marriage to a prominent soldier in the Rwandan army and how she became aware of this on November 19, 2018. She explains that she fled the family home in Rwanda the next day. The Applicant further states in her affidavit that she has been in a relationship with a French citizen named Kevin, whom she met while studying law in the United Kingdom. She states that she cannot go to France because her parents are against the union and would look for her there. She further states that the prominent soldier could track her not only in Rwanda, but in the surrounding countries as well.

[39] Once again, the Officer reviewed and summarized in detail the risks relating to forced marriage identified by the Applicant in her application. The Officer states that the Applicant claims that she is at risk because her family wishes to forcefully marry her to a soldier, but "does not bring proof to demonstrate it". The Officer considered a 2018 report of the United States Department of State, before concluding that while the situation is not perfect for women, various actions have been taken to end gender-based violence.

[40] Applicant submits that the Officer failed to consider the totality of the evidence before them. The Respondent submits that the Applicant has not demonstrated that the Officer did not consider all the evidence.

[41] There is a presumption that a decision-maker has weighed and considered all the evidence brought before them (*Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 38). In the matter at hand, it is clear that the Officer considered the contents of the Applicant's affidavit on the issue of the forced marriage, as they were summarized in detail by the Officer. Having considered the evidentiary record, it was open to the Officer to conclude that the Applicant had not discharged her burden.

[42] The Applicant pleads that the contents of her affidavit are indeed evidence. I agree. The fact that the Officer used the language "does not bring proof" in relation to the forced marriage does not constitute a sufficiently serious shortcoming so as to warrant the intervention of this Court. In other words, the language used by the Officer does not impact on the reasonableness of the Decision as a whole given that the Officer considered and summarized the contents of the Applicant's affidavit in the Decision.

[43] The Applicant submits that she ought to have been cross-examined if there were issues of evidence. The Respondent submits that there was no need for cross-examination in order for the Officer to determine that there was insufficient proof.

[44] A claimant benefits from a presumption that his or her sworn testimony is true (*MalDonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) at p 305; *Gabor v Canada (Citizenship and Immigration)*, 2010 FC 383 at para 23). A failure to cross-examine, however, does not improve the sufficiency of the evidence. Justice Denis Gascon in *SSE Holdings, LLC v Le Chic Shack Inc*, 2020 FC 983 at para 58 states the following:

> I accept that a party's failure to cross-examine a witness may prevent that party from trying to impugn the credibility of such witness. This is what the *Manoukian* decision cited by Shake Shack stands for. However, a failure to cross-examine does not mean that the Court has to accept a witness' evidence without any reservation and does not magically confer additional or irrefutable probative value to this witness' evidence. Nor does it improve or magnify the sufficiency of the testimonial evidence offered. The Court must still assess the affidavit evidence to determine its probative value and weigh it in the context of the balance of the evidence on the record (*Bath v Canada (Minister of Citizenship and Immigration*), 1999 CanLII 8549 (FC) at para 12).

[45] I agree with the Respondent. The Officer considered the evidence, including its sufficiency, regarding the forced marriage and I am satisfied that this consideration, while brief, falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law. While this Court may not have necessarily come to the same conclusion, the Officer's decision was reasonable, and it was open to the Officer on the basis of the evidentiary record to determine that the Applicant had not demonstrated that she is a person in need of protection pursuant to section 96 and 97 of the IPRA.

IV. Conclusion

[46] The Applicant has not established that the Officer's Decision is unreasonable due to a reviewable error in analyzing the risk of religious persecution, perceived political beliefs and/or a

forced marriage, by the Applicant's family, the Rwandan army or the Rwandan government. Accordingly, this application for judicial review is dismissed. I need not address the Applicant's argument on the *Ward* analysis given my conclusions above.

[47] Neither party proposes a question to certify, and in my view, no such question arises in this case.

JUDGMENT in IMM-5228-20

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Applicant as GU;

2. This application for judicial review is dismissed;

3. There is no question for certification.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5228-20
STYLE OF CAUSE:	GU v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC BY VIDEOCONFERENCE
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APPEARANCES:

Abdalla Ali Al-Baalawy	FOR THE APPLICANT
Asha Gafar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

AAA Law Toronto (Ontario)	FOR THE APPLICANT
Attorney General of Canada Toronto (Ontario)	FOR THE RESPONDENT