Federal Court  Cour fédérale

Date: 20220210

Docket: IMM-6061-20

Citation: 2022 FC 173

Ottawa, Ontario, February 10, 2022

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ABUBAKARI ABDULAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a November 4, 2020 decision [Decision] of the Refugee Appeal Division [RAD]. The RAD agreed with the Refugee Protection Division [RPD] that Mr. Abdulai [Applicant] was not a Convention refugee or a person in need of protection. The determinative issue for the RAD was the Applicant's identity.

[2] The application for judicial review is dismissed.

II. Background

[3] The Applicant claims to be a citizen of Ghana. He seeks refugee protection in Canada because he identifies as bisexual. He fears his family, with the exception of his mother, as well as Ghana's homophobic laws and social norms. He fears that if returned to Ghana, his family will kill him. If returned to another part of Ghana, he fears that others will kill him upon finding out about his sexuality or he will be imprisoned.

[4] In January 2016, the Applicant's family found a nude photo of him with his male partner. His brother threatened to kill him then beat him with a piece of wood, injuring both his shoulder and knee. The Applicant's family and a mob subsequently chased him. He escaped because a friend was driving by. The friend took him to a nearby town to seek medical treatment. The Applicant stayed there for a few weeks. The friend went back to the Applicant's hometown to visit family. The Applicant's family approached him and said that if he did not tell them where the Applicant was, they would hold him responsible for any disgrace they suffered due to the Applicant's homosexuality. The friend returned to where the Applicant was staying and told the Applicant that he could no longer assist him. The Applicant's mother provided the friend with the Applicant's passport and the friend provided the Applicant with money, a plane ticket, and hotel accommodations so that he could escape to Ecuador.

[5] In February 2016, the Applicant landed in Ecuador. He travelled north until he reached the United States [US] on June 10, 2016. He was detained at a US immigration detention facility

until December 16, 2016. With the assistance of counsel, he initiated an asylum claim in the US and a hearing was set for September 20, 2018. He lost faith in counsel so he came to Canada in March 2018.

III. The Decisions

A. *The RPD Decision*

[6] The RPD rejected the Applicants' claim on March 1, 2019. The determinative issues for the RPD were the Applicant's identity and credibility.

[7] To establish his identity at the RPD, the Applicant submitted a computer generated copy of his birth certificate [the 2011 Birth Certificate], a 2008 driver's licence [Driver's Licence], and a school record. He claimed to have lost his passport. The Applicant also claimed that the Immigration Court in New York had the original 2011 Birth Certificate. The Applicant's very first birth certificate [the First Birth Certificate], issued when he was born in 1983, was lost sometime ago. The Applicant obtained the 2011 Birth Certificate from a hospital in Ghana when he registered for health insurance.

[8] The RPD made a number of findings with respect to this evidence:

a. A hospital issued the 2011 Birth Certificate, which has March 14, 2011 as the date of registration. The 2011 Birth Certificate is suspect because (a) the Applicant testified that his birth was registered when he was much younger and (b) the 2011 Birth

Certificate lists the Applicant's father as the informant, but the Applicant said that his father had passed away in 2002;

b. In 2008, when the Applicant started working for a taxi company in Ghana, he stated that he provided them with his Original Birth Certificate. For the refugee claim, the Applicant's friend contacted this taxi company for a copy of the Original Birth Certificate, but this was never provided;

c. The driver's licence, issued in 2008, was allegedly issued on the strength of the Applicant's Original Birth Certificate. However, only the copy of the 2011 Birth Certificate was before the RPD;

d. The school record has a QR code to "cross-check" candidate results. The RPD did not have an android phone to scan the QR code, so they could not see if the record exists.

[9] The RPD concluded that these documents did not establish the Applicant's identity, which is the basis of every refugee claim.

B. *The RAD Decision*

[10] In dismissing the Applicant's appeal, the determinative issue for the RAD was the Applicant's identity. The RAD did not assess the Applicant's credibility because the case could be disposed of on the issue of identity alone.

[11] The Applicant never requested a hearing at the RAD. After the Applicant filed his Appellant's Record, he filed additional evidence, which the RAD accepted. The most pertinent of the new evidence includes a birth certificate issued in 2019 [the 2019 Birth Certificate] and an affidavit of the Applicant's mother swearing that she was the informant on the 2019 Birth Certificate [the Statutory Declaration].

[12] The RAD concluded that the new evidence did not raise "a serious issue related to the credibility of the [Applicant]".

[13] The RAD considered each piece of identity evidence offered by the Applicant and made the following findings:

a. The original 2011 Birth Certificate: the Applicant knew that absence of the original 2011 Birth Certificate was an issue for the RPD. The Applicant had 20 months before the RAD considered his appeal and he still failed to produce the original version of the 2011 Birth Certificate. The Applicant did not make any other efforts to obtain any other photo identification from Ghana.

b. The copy of the 2011 Birth Certificate: The informant, the Applicant's alleged father, died in 2002 yet, this document is dated March 17, 2011. The Applicant submitted that the name of the informant was "carried over" from the Original Birth Certificate. The Applicant does not provide evidence that this is the accepted practice for Ghana birth certificates. The 2019 Birth Certificate indicates otherwise, because the informant is the Applicant's mother. The Applicant could not explain how his former employer possessed a copy of the 2011 Birth Certificate when he allegedly gave it to them in 2008. By his

own admission, the Applicant only obtained the 2011 Birth Certificate in 2011 when seeking health insurance. The Applicant presented no evidence that hospitals in Ghana are the designated bodies to issue these documents.

c. The 2019 Birth Certificate: unlike the 2011 Birth Certificate, the informant for this document is the Applicant's mother. On one hand, this calls into question the Applicant's submission that informants are "carried over", thus impugning the 2011 Birth Certificate. On the other hand, if it is accepted that informants are "carried over", the 2019 Birth Certificate is not reliable. Furthermore, both the 2011 and 2019 birth certificates have a registration date of March 14, 2011. The objective documentary evidence suggests that an earlier date (the date when the birth was first registered) should be the date of registration. All of this contradictory information undermines the credibility of the birth certificates.

d. The Driver's Licence: the Applicant states that he obtained the Driver's Licence in 2008 based on the strength of his Original Birth Certificate, which was allegedly registered upon his birth. The Applicant submits that the 2011 Birth Certificate is a copy of the same birth certificate relied on to get the Driver's Licence. According to the Applicant, the registration date on the 2011 Birth Certificate is 2011 because in 2011, Ghana switched to an electronic system for births. The RAD reasoned that it already rejected the 2011 Birth Certificate and did not have the Original Birth Certificate, so the Driver's License cannot be relied on. Additionally, the name on the Driver's Licence and the 2011 Birth Certificate vary slightly.

e. The School Record: had the Applicant wanted the RPD to "cross check" the results on the examination record, he could have printed off those results himself. The burden rests with the Applicant, not the RPD. The school record submitted by the Applicant does not establish his identity because it lacks identifying information, such as a photo.

f. The Statutory Declaration: this document states that the mother is the informant on the 2019 Birth Certificate. The Applicant has not provided any proof as to why a birth certificate with a change of informant constitutes a genuine document. No weight can be placed on this document.

[14] The RAD concluded that the new evidence did not establish the Applicant's identity. The RAD noted that applicants have the onus of proving their identity and providing acceptable documents (*Immigration and Refugee Protection Act*, SC 2001 c 27, s 106 [*IRPA*]; *Refugee Protection Division Rules*, SOR/2012-256, s 11 [*RPD Rules*]). The Applicant failed to discharge that burden.

IV. Preliminary Matter – Admissibility of Applicant's January 10, 2021 affidavit

(1) Applicant's Position

[15] The Applicant submits a January 10, 2021 affidavit. It states that the RAD treated him unfairly by denying him an oral hearing and that, had he been given an opportunity at an oral hearing, he would have explained that his mother was the informant on the 2019 Birth Certificate because the 2019 Birth Certificate was an entirely new birth certificate distinct from the 2011

Birth Certificate. The affidavit is admissible because it provides evidence to establish a breach of procedural fairness that was not before the Tribunal.

(2) Respondent's Position

[16] The affidavit is not admissible because it does not fall into any of the established exceptions permitting the admission of new evidence on a judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20 [*Access Copyright*]). On judicial review, the Court is restricted to considering that which was before the decision-maker (*Anquilero v Canada (Citizenship and Immigration)*, 2015 FC 140 at paras 30-32). The affidavit is new evidence that the Applicant could have submitted to the RAD, but did not.

(3) Conclusion

[17] The Applicant's January 10, 2021 affidavit is not admissible. As the Respondent points out, the jurisprudence provides that the evidentiary record for a judicial review application is restricted to that which was before the decision-maker. Therefore, evidence that was not before the RAD and that goes to the merits of the matter is inadmissible on judicial review (*Access Copyright* at para 19; *Sharma v Canada (AG)*, 2018 FCA 48 at para 8). None of the established exceptions to this rule apply in this case.

[18] The Applicant submits that the affidavit falls into the exception related procedural defects that cannot be found in the evidentiary record of the decision-maker. I disagree. The contents of

the Applicant's affidavit indicate what he would have said, had he been given an oral hearing. This Court has declined to admit affidavits containing "new evidence" or "explanations" post-dating the decision under review. This is true even where the applicant advances a procedural fairness argument (*Kidane v Canada (Citizenship and Immigration)*, 2019 FC 1325 at paras 12-14, 17; *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at paras 26-27).

[19] As discussed in the Standard Review section, below, the RAD's decision not to hold an oral hearing under section 110(6) is not a matter of procedural fairness. Even if it was, however, the Applicant's affidavit does not provide the Court with details about an alleged breach of procedural fairness. In this case, the Applicant's affidavit merely seeks to provide "explanations" supplementing his RAD submissions, which go to the merits of the case. As such, the affidavit does not fall within an established exception and is inadmissible.

V. Issues

[20] The issues are:

(1) Was it reasonable for the RAD to conclude that the Applicant failed to establish his identity?

(2) Was it reasonable for the RAD to not convene an oral hearing?

VI. Standard of Review

[21] Neither issue engages one of the exceptions set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraphs 16-17. Therefore, the

presumption of reasonableness applies to the merits of the Decision. A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification and whether the decision "is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law, the decision will be reasonable (*Vavilov* at paras 85-86). In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87).

[22] Recent decisions from this Court also confirm that the RAD's decision not to hold an oral hearing under section 110(6) is reviewable on the standard of reasonableness (*Akinyemi-Oguntunde v Canada (Citizenship and Immigration)*, 2020 FC 666 at para 15; *Muhammad Faysal v The Minister of Citizenship and* Immigration, 2021 FC 324 at para 13; *Vavilov* at para 25). Procedural fairness concerns may arise when the process the RAD followed in making its determination under subsection 110(6) was procedurally unfair (*Mohamed v Canada (Citizenship and Immigration)*, 2020 FC 1145 at para 9). However, this is not what happened in the present matter.

VII. Parties' Positions

A. *Was it reasonable for the RAD to conclude that the Applicant failed to establish his identity?*

(1) Applicant's Position

[23] First, it was unreasonable for the RAD to reject the Applicant's birth certificates on the basis that the registration date was March 14, 2011. Ghana digitized its birth registry system in February 2011. The RAD does not consider the possibility that the March 14, 2011 registration date reflects the date that the birth certificate was registered digitally.

[24] The RAD states that the "objective documentary evidence indicates that an earlier date should have been entered in the date of registration section, i.e., the date when the birth was first registered" but does not cite any documentary evidence to this effect. This renders the Decision unreasonable. The Respondent states that the RAD relied on documentary evidence from 2015 when making this statement (2015 GHA 105228). While 2015 GHA 105228 does support the RAD's position that an earlier registration date (such as the Applicant's date of birth) should have been on the Applicant's birth certificate, that document does not address the possibility that March 14, 2011 could be the date when authorities registered the birth certificate digitally. Thus, an "ambiguity" still exists in the documentary evidence.

[25] Second, the RAD unreasonably rejected the 2019 Birth Certificate and the statutory declaration because the 2019 and 2011 birth certificates have different informants. Nothing in the country condition documents indicates that two different birth certificates cannot have two

different informants and the RAD acknowledged this. Yet, the RAD faults the Applicant for not providing documentary proof as to why a document with a different informant ought to be considered genuine.

[26] The RAD also unreasonably rejected the 2019 Birth Certificate because there was "contradictory information about how it was obtained and who reported it." This statement is unreasonable because the RAD did not have information about how the 2019 Birth Certificate was obtained. Therefore, it cannot be contradictory. The Respondent submits that the RAD is referring to the fact that there are different informants on the 2011 and 2019 birth certificates. This cannot be the case since the RAD was only referring to the second birth certificate when it pointed out the "contradictory information."

[27] Finally, the Applicant submits that a single sentence of the RAD decision is incoherent. The sentence reads, "He claims the U.S. authorities has it or any efforts for him to obtain it." This sentence is yet another example why the Decision is not transparent, intelligible, or justified.

(2) Respondent's Position

[28] The RAD reasonably concluded that the Applicant failed to establish his identity. The onus rests with the Applicant to establish his identity with sufficient evidence. If the Applicant's evidence is insufficient, an officer only has to consider evidence that is before them and they are not required to solicit an applicant for better or additional evidence (*Ormankaya v Canada (MCI)*, 2010 FC 1089 at para 31 [*Ormankaya*]).

[29] In this case, the Applicant failed to provide any objective evidence explaining why:

- The date of issuance was March 14, 2011 for both the 2011 and 2019 birth certificates despite being born earlier;
- The informants on the 2011 and 2019 birth certificates changed or why a birth certificate with a change of informant would constitute a genuine document;
- The name of a deceased informant would be carried forward from an original paper registration to an electronic registration;
- His former employer had a copy of the 2011 Birth Certificate when the Applicant had given it to them in 2008; and
- Why a hospital in Ghana was able to issue official birth certificates.

[30] As a result, the presumption of validity was rebutted and the RAD reasonably refused to assign weight to the birth certificates.

[31] Second, the RAD reasonably concluded that the March 14, 2011 registration date impugned the credibility of the 2011 and 2019 birth certificates. The RAD relied on two country condition documents (2017 GHA 106008.E and 2015 GHA 105228) when it concluded, “the objective evidence demonstrates that an earlier date should have been entered in the date of registration section.” Although the RAD did not provide an exact pinpoint for this citation, the reasons of a decision-maker do not need to be perfect (*Vavilov* at para 91).

[32] The country condition documents support the RAD’s finding that the birth certificates were not reliable. According to these documents, every Ghanaian birth certificate has an “entry

number" that ends in four digits indicating the year the birth certificate was registered (the Date of Registration). The country condition documents give an example of a birth certificate registered in 1954. It would have an entry number that looks like XXXXXX-XXXX-1954. The last four digits of that birth certificate did not change even after Ghana shifted to a computerized system. Rather, according to the evidence, the entry number stays "unique to every registration and remains the same on all copies" (2017 GHA 106008.E). Therefore, the RAD reasonably concluded that the year of registration on the Applicant's birth certificate should have been sometime close to his birth, not 2011.

[33] In addition, "the 'Date of Registration' section of the document contains the date when the birth was first registered" (2015 GHA 105228). This means that the Applicant's birth was first registered in 2011. The Applicant stated that his father first registered his birth in 1983 but his birth certificates indicate otherwise. Contrary to what the Applicant submits, there is no ambiguity within the country condition documents. It was reasonable for the RAD to refuse to assign weight to the birth certificates.

[34] Third, the RAD reasonably refused to assign weight to the Driver's License and school record. The birth certificate used to obtain the Driver's Licence was not before the RPD or the RAD. As well, the Driver's License was illegible and spelled the Applicant's name differently in comparison to the birth certificates. Similarly, the school record spelt the Applicant's name differently and did not contain any other identifying information. When scanned, the QR code only provides grades, which do not prove the Applicant's identity.

[35] Fourth, it was reasonable for the RAD to conclude that the Statutory Declaration did not establish the Applicant's identity. The Statutory Declaration does not address how or why a change of informant would constitute a genuine document.

[36] Finally, the RAD's decision is not unreasonable because a single sentence was recorded improperly. It is clear from the context that the sentence should read, "the Applicant claims the US authorities have the original 2011 birth certificate, but there is no evidence that he has made efforts to obtain it." This was simply a clerical error.

B. *Was it reasonable for the RAD to not convene an oral hearing?*

(1) Applicant's Position

[37] The RAD breached the Applicant's rights to procedural fairness by not convening an oral hearing. Had the RAD done so, the Applicant could have addressed the RAD's key findings that ultimately led to the dismissal of his application. The Decision was unreasonable because the RAD did not provide transparent, intelligible, or justified reasons for not convening an oral hearing.

[38] First, the Applicant could have addressed why the birth certificates had a registration date of March 14, 2011. The RAD should have given the Applicant an opportunity to address the documentary evidence (2015 GHA 105228), which supports the position that an earlier date should have been entered. The 2015 document relied on by the RAD is not included in the most recent 2017 National Documentation Package [NDP] for Ghana. It is unreasonable to think that

the Applicant's submissions could address an ambiguity in country condition documents that was not found in the most recent NDP.

[39] Second, the RAD should have convened an oral hearing so that the Applicant could address the "contradictory information" regarding how the 2019 Birth Certificate was obtained. Likewise, had an oral hearing been convened, the Applicant could have explained why the informant changed on the 2019 Birth Certificate.

[40] Alternatively, if credibility was not at issue, then the RAD erred by not asking these questions in writing.

(2) Respondent's Position

[41] It was reasonable for the RAD not to convene an oral hearing. The new evidence admitted by the RAD did not raise a serious issue of credibility related to the Applicant, which was central to the claim and would allow the RAD to accept or reject the claim. The question is not whether the new evidence itself is credible, but whether that evidence raises a serious issue with respect to the general credibility of the Applicant (*Canada (MCI) v Singh*, 2016 FCA 96 at para 44 [*Singh*]). Here, the new evidence was weighed alongside existing evidence and was only one of several factors. Therefore, it did not require an oral hearing.

[42] In addition, the Applicant, who was represented by counsel, expressly asked the RAD not to convene an oral hearing. It is improper for the Applicant to now claim a breach of procedural fairness because he did not tender sufficient evidence before the RAD (*Sanchez v Canada*

(Citizenship and Immigration), 2016 FC 737 at para 7). The Applicant could have given the RAD the affidavit he now seeks to admit on judicial review. He chose not to. Even if he had, the Applicant's personal explanations would not have addressed the inherent problems with the new evidence. He would have simply been offering his opinions – not objective evidence from reliable authorities.

VIII. Analysis

A. *Was it reasonable for the RAD to conclude that the Applicant failed to establish identity?*

[43] The Applicant has not satisfied his onus of establishing his identity. It is trite law that the onus of establishing identity always sits with refugee claimants. The RAD correctly noted this, citing both section 106 of *IRPA* and Rule 11 of the *RPD Rules*. In *Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064, at paragraph 11 Justice Norris explained the relationship between these provisions:

> Read together, section 11 of the Rules and section 106 of the IRPA clearly establish that the onus is on a claimant to take reasonable steps to obtain acceptable documentation establishing his or her identity. If a claimant cannot obtain such documentation, he or she must provide a reasonable explanation for the lack of documentation. This is a heavy burden (*Su* at para 4; *Malambu v Canada (Citizenship and Immigration)*, 2015 FC 763 at para 41; *Tesfagaber v Canada (Citizenship and Immigration)*, 2018 FC 988 at para 28). What is "acceptable documentation establishing identity" is not defined in the IRPA or the Rules; it is for the RPD to determine in each case (subject to appeals to the RAD and judicial review). Further, the RPD "must" take this into account "with respect to the credibility of a claimant." If a claimant fails to produce acceptable documentation establishing identity and fails to provide a reasonable explanation for the lack of documentation, this can have a serious adverse impact on his or her credibility.
>
> [Emphasis added.]

[44] I find that the Applicant is essentially re-arguing what he submitted before the RAD. It is not the function of a reviewing court to re-weigh the evidence.

[45] I also find that the RAD applied the presumption of validity and accuracy of foreign documents but found that the presumption was rebutted because of the issues with the Applicant's evidence, as pointed out by the Respondent.

[46] The RAD also did not reason that the school record should be afforded little weight because the RPD lacked an android phone. Rather, it held that "regardless of whether the RPD had an android phone, it is not up to the RPD to go seeking or confirming information… the burden rests with the Appellant to provide the document he wishes the RPD to consider" [Emphasis added].

[47] The RAD did not necessarily expect the Applicant to have the original 2011 Birth Certificate. Rather, the RAD appropriately considered the Applicant's "steps to obtain acceptable documentation" (*Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064 at para 11). The RAD noted that the Applicant had not tried to obtain the original 2011 Birth Certificate from the US or any other documentation from Ghana despite knowing, since the RPD hearing, that identity was a central issue.

[48] The sentence that the Applicant alleges is "incoherent" does not, on its own, render the Decision unreasonable. I agree with the Respondent that based on the context, this sentence is

intended to read “the Applicant claims the US authorities have the original 2011 birth certificate, but there is no evidence that he has made efforts to obtain it.”

[49] Finally, I find that the RAD did engage with the Applicant’s submission that the Applicant’s father could be “carried over” to the 2011 Birth Certificate. The RAD simply rejected this argument, noting that the Applicant did not provide evidence that this is the established practice. This argument was also contradicted by the 2019 Birth Certificate, which listed the mother as an informant.

[50] Regarding the March 14, 2011 registration date for the birth certificates, from a review of the record, it is clear that the RAD was aware of the shift from paper to electronic registration for birth certificates in Ghana. Likewise, the RAD considered the Applicant’s position that March 14, 2011 could reflect the date the birth certificate was registered digitally. The RAD simply concluded that the Applicant led no evidence establishing this position and that the objective evidence indicated otherwise.

[51] The RAD cited two country condition documents (2015 GHA 105228 and 2107 GHA 106008.E). It can be inferred from the record that the RAD was considering the passage cited by the Respondent, which indicates that entry numbers stay “unique to every registration and remains the same on all copies” (2017 GHA 106008.E). I agree with the Respondent that the RAD’s failure to provide a pinpoint does not render the Decision unreasonable (*Vavilov* at para 91). Even if this Court accepts that there is some ambiguity in the country condition documents, which it does not, the Applicant still had the burden to establish that the 2011 registration date

was a result of a switch to a digital system. In the absence of any such evidence, it is reasonable for the RAD to rely on the objective evidence before it.

[52] Turning now to the informant on the 2019 Birth Certificate, the Applicant takes issue with the RAD's statement that there was "contradictory information" about how the 2019 Birth Certificate was obtained and who reported it. In my view, when looking at the paragraphs that surround this finding, the RAD is referring to the fact that the birth certificates have two different informants.

[53] If the Applicant wishes to establish that informants on birth certificates can change, he has the onus to establish that with evidence. The Applicant has failed to meet this onus. It was reasonable for the RAD to fault the Applicant for not providing documentary proof as to why a document with a different informant should be considered genuine – particularly in light of his previous submission that informants are "carried over."

[54] Viewed holistically and contextually, the Decision regarding the Applicant's failure to establish his identity was reasonable. The jurisprudence establishes that an applicant's failure to establish his or her identity is fatal to further consideration of a claim for protection (*Rahal v Canada (Citizenship & Immigration)*, 2012 FC 319; *Flores v Canada (Citizenship and Immigration)*, 2005 FC 1138).

B. *Was it reasonable for the RAD to not convene an oral hearing?*

[55] The RAD acted reasonably in not convening an oral hearing under section 110(6) of the *IRPA*. Section 110(6) states:

> The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)
>
> > (a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
> >
> > (b) that is central to the decision with respect to the refugee protection claim; and
> >
> > (c) that, if accepted, would justify allowing or rejecting the refugee protection claim.
>
> [Emphasis added.]

[56] This is a discretionary provision. The RAD considered whether to hold a hearing and explicitly stated that the new evidence "does not raise a serious issue related to the credibility of the person who is the subject of the appeal, which is central to the claim and would allow me to accept or reject the claim. Rather, the new evidence is weighed along with the existing evidence, and is only one of several factors. I conclude that it is not necessary to examine these documents or to further question the Appellant at an oral hearing." Contrary to the Applicant's submissions, this passage demonstrates transparent, intelligible, and justified reasons for not convening an oral hearing.

[57] Even if the 2019 Birth Certificate and the Statutory Declaration satisfy subsections (b) and (c) of section 110(6), subsection (a) remains unfulfilled. None of the new evidence submitted by the Applicant called into question the overall credibility of the Applicant (*Singh* at para 44). The Applicant does not submit that the RAD made new credibility findings about the Applicant,

which warranted an oral hearing. Rather, he essentially submits that the RAD should have convened an oral hearing so that the Applicant could address any concerns the RAD had about the new evidence. There is no obligation to convene an oral hearing to assess the credibility of new evidence (*AB v Canada (Citizenship and Immigration)*, 2020 FC 61 at para 17).

[58] This case similar to *Abdi v Canada (Citizenship and Immigration)*, 2020 FC 172. In that case, the applicant stated that the RAD should have held an oral hearing because "it would have been beneficial to clear up any confusion and to have the Applicant provide further evidence on credibility issues, which is the intent of the legislative provision for an oral hearing" (at para 58). At paragraph 62 of that decision Justice Russell held that:

> …confusion (which included significant contradictions in the evidence) does not mean that the Applicant satisfied the criteria in s 110(6), or that he was entitled to an oral hearing to address mistakes and gaps in his written submissions to the RAD. As the Court held in *Sanchez v Canada (Citizenship and Immigration)*, 2016 FC 737 at para 7:
>
> > A hearing is not simply an opportunity to cooper up or fill in missing gaps in the evidence submitted. Here the Applicant, although personally signing the submissions to the PRRA Officer, clearly had some professional help in preparing the material whether by a lawyer or an immigration consultant or otherwise. At some point the Applicant, including those engaged by the Applicant, bear some responsibility to ensure that the materials filed are accurate and sufficient. If they are not, the Applicant cannot simply hope that a hearing would be held or, if not, then complain to the Court that procedural fairness was denied.
>
> [Emphasis added.]

[59] I agree with the Respondent that this is especially true given that the Applicant never even requested a hearing (*Jystina v Canada (Citizenship and Immigration),* 2020 FC 912 at para 28). In the circumstances, the reasonable course of action was for the RAD to look at the objective evidence before it, which is what it did.

[60] I do not agree with the Applicant's alternative submission that even if there is no credibility issue, the RAD erred by not asking him questions in writing. As the Respondent points out, the Applicant's response would have amounted to opinions and speculation – not objective evidence.

[61] The RAD's decision not to convene an oral hearing was reasonable. The RAD considered the requirements of section 110(6) and concluded that the statutory framework was not satisfied. The Applicant cannot complain of a breach of procedural fairness because he did not submit all of the relevant evidence he may have had (*Ormankaya* at para 32). The RAD's reasons demonstrate the requisite degree of transparency, intelligibility and justification.

IX. Conclusion

[62] The application for judicial review is dismissed. There is no question for certification.

JUDGMENT in IMM-6061-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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