

Federal Court



Cour fédérale

Date: 20220622

Docket: IMM-4877-20

Citation: 2022 FC 941

Ottawa, Ontario, June 22, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

TONFACK EPSE MBOUNA, GEORGETTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Georgette Tonfack Epse Mbouna, seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated August 4, 2020, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this application for judicial review is dismissed.

I. Background

[3] The Applicant is a citizen of Cameroon. She seeks protection from her in-laws and her husband's second wife who have accused her of witchcraft. The RPD found the Applicant was not credible and did not demonstrate subjective fear.

[4] In its decision, the RAD accepted two (2) of the eight (8) new documents presented by the Applicant as new evidence. The Applicant had requested a hearing pursuant to subsection 110(6) of the IRPA, which the RAD denied. The RAD found that the RPD had correctly determined that the Applicant did not credibly establish her claim on a balance of probabilities. The RAD further found that the Applicant was not deprived of her right to a fair hearing by virtue of a tense exchange that took place between counsel for the Applicant and the RPD at the hearing.

[5] The Applicant submits that the RAD made the following reviewable errors: (i) that the RAD erred by failing to hold a hearing pursuant to subsection 110(6) of the IRPA; and (ii) the RAD failed to apply the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Guidelines].

[6] The Respondent submits that the RAD reasonably determined that the new evidence did not fulfill the criteria of subsection 110(6) of the IRPA. As to the Guidelines, the Respondent

submits that the Applicant has not indicated in what way the Guidelines were ignored, and in any event, there was no credible allegation that related to the Applicant's gender.

II. Issues and Standard of Review

[7] The Applicant raised two (2) issues, which I reformulate as follows:

- A. Did the RAD err in deciding not to hold an oral hearing pursuant to subsection 110(6) of the IRPA?
- B. Did the RAD err in omitting to apply the Guidelines?

[8] Having considered the record and the submissions of counsel, I find that the issues raised by the Applicant are properly reviewed on a standard of reasonableness.

[9] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85). It is the Applicant, the party challenging the decision, who bears the onus of demonstrating that the RAD's decision is unreasonable (*Vavilov* at para 100). 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). A reasonableness review also is not a "line-by-line treasure hunt for error," the reviewing court simply must be satisfied that the decision maker's reasons "add up" (*Vavilov* at paras 102, 104).

III. Analysis

A. *The RAD did not err in deciding not to hold an oral hearing*

[10] The Applicant alleges that the RAD erred by refusing to hold an oral hearing. The Applicant highlights that while the decision states that the RAD considered whether the new documents admitted into evidence met the criteria of subsection 110(6) of the IRPA, the decision does not explain why the RAD found that the criteria were not met. The Applicant submits that the documents speak to credibility and ought to have given rise to a hearing. The Applicant further submits that the atmosphere during the RPD hearing was tense and caused significant stress to the Applicant, thereby weighing in favour of a hearing. Furthermore, the Applicant pleads that the RAD adopted a hostile approach to its analysis of the new documents.

[11] The Respondent pleads that the criteria in subsection 110(6) of the IRPA were not met, and that the Applicant has advanced no arguments as to why the new evidence meets the criteria. The Respondent submits that the points raised by the Applicant, being the tense atmosphere at the RPD hearing and an allegation that the evidence was examined with hostile intent, do not actually address the criteria in subsection 110(6) of the IRPA.

[12] Subsection 110(3) of the IRPA requires that the RAD proceed without an oral hearing, save for certain circumstances. Subsection 110(6) of the IRPA provides that the RAD may convene an oral hearing where new evidence (a) raises a serious issue with respect to the credibility of the person who is the subject of the appeal; (b) is central to the decision with respect to the refugee protection claim; and (c) if accepted, would justify allowing or rejecting

the refugee protection claim. The decision to hold an oral hearing is thus based on the RAD's assessment of whether the criteria set out in subsection 110(6) of the IRPA have been satisfied and, if so, whether the RAD should exercise its discretion to hold an oral hearing (*Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296 at para 44).

[13] The RPD decision focused on four (4) aspects of the Applicant's testimony that it found to be not credible: omissions and contradictions in her evidence about her daughters, the addresses at which she lived, her reasons for not submitting the police summons, and her reasons for failing to extend her visitor visa. The new evidence admitted by the RAD, being an affidavit from her daughter Ermine and a letter from her daughter Francine, does not speak directly to the issues of credibility addressed by the RPD. Furthermore, having considered the documents, I do not find it unreasonable for the RAD to have determined that they do not raise a serious issue of credibility of the Applicant that is central to the decision that if accepted would justify allowing or refusing the claim.

[14] As to the Applicant's submissions that the atmosphere at the RPD hearing was tense and thus a hearing ought to have been convened, I disagree. First, this is not one of the criteria in subsection 110(6) of the IRPA. Second, this issue was pled before the RAD as a question of natural justice, where the Applicant submitted that the exchange between her counsel and the RPD member as to evidence delivered late caused acute stress and deprived her of a fair hearing. The RAD considered this issue in detail in its decision, and found that the RPD managed the situation effectively by calming her lawyer down, explaining the situation to the Applicant, accepting all the late evidence, offering the Applicant a break and asking whether she was ok.

The RAD noted that the Applicant was a relatively elderly grandmother, with limited education, who has not worked, and considered whether, during the hearing, the Applicant's statements or behaviour signalled distress or that she was unable to proceed. The RAD found that it was not, nor was there any evidence submitted to support the allegation that the stress prevented her from responding adequately to the questions from the RPD.

[15] I therefore find that the Applicant has failed to identify a reviewable error in the RAD's decision to decline to hold an oral hearing.

B. *The RAD did not fail to apply the Guidelines*

[16] The Applicant alleges that the RAD failed to apply the Guidelines. The Applicant pleads that there was no mention of the Guidelines in the decision, and that the RPD and the RAD failed to apply both the letter and the spirit of them. The Applicant submits that the Guidelines ought to have been taken into account when analyzing the credibility of the Applicant.

[17] The Respondent submits that the Applicant has not identified what in the Guidelines was not considered nor what specifically would have changed. The Respondent argues that there were numerous unchallenged credibility findings and that the Guidelines cannot cure the RPD's and the RAD's conclusions on the lack of credibility. The Respondent submits that in any event, the Guidelines were not pled by the Applicant and the RAD's reasons were responsive to her submissions.

[18] The Guidelines are used to ensure that gender-based claims are heard with sensitivity (*Munoz v Canada (Citizenship and Immigration)*, 2006 FC 1273 at para 33 [*Munoz*]). The application of the Guidelines in the context of judicial review has been summarized by my colleague Justice Jocelyne Gagné in *Boluka v Canada (Citizenship and Immigration)*, 2015 FC 37:

[16] The applicant is required to demonstrate a lack of understanding or insensitivity on the RPD's part to convince the Court that the Guidelines have not been applied (*Sandoval Mares v Canada (Minister of Citizenship and Immigration)*, 2013 FC 297 (CanLII) at para 43). Further, this Court has found that the RPD's failure to specifically refer to the Guidelines in its reasons does not, in and of itself, demonstrate insensitivity (*Akinbinu v Canada (Minister of Citizenship and Immigration)*, 2014 FC 581 (CanLII)) and mere failure to consider the Guidelines is not fatal to a decision (*Higbogun*, above at para 65).

[19] This Court has established that the Guidelines are not a cure for the lack of credibility in an applicant's evidence (*Iqbal v Canada (Citizenship and Immigration)*, 2012 FC 1338 at 40 [*Iqbal*]; *Munoz* at 31, 33). The "spirit" of the Guidelines may be followed by means of active listening (*Iqbal* *ibid*; *Munoz* at 33).

[20] The Applicant highlights her personal profile as an uneducated widow, a mother and grandmother who is vulnerable in Cameroonian society, who has never worked and spent her life as a homemaker. She alleges she was insulted by her husband's second wife's family and following his death was accused of witchcraft and received a beating. Other than stating that a failure to consider the Guidelines impacted the RPD's and the RAD's credibility findings, the Applicant does not point to a lack of understanding or insensitivity in relation to the Applicant's gender or how the claim may have been impacted. I agree with the Respondent that the

Applicant does not indicate how the credibility findings would be different based on the Guidelines.

[21] Having reviewed the transcript, I note the RPD was sensitive to the state of the Applicant at the hearing and followed the “spirit” of the Guidelines by actively listening. The RAD explicitly noted the Applicant’s profile and considered in detail the possibility of distress at the RPD hearing, but ultimately found that the inconsistencies, omissions, the submission of non-authentic documents, and the Applicant’s behaviour do not reflect a risk of harm or fear of persecution and supported the negative credibility findings. The RAD explained in clear and intelligible terms why it found the Applicant was not credible.

[22] The Guidelines are intended to ensure that gender-based claims are heard with compassion and sensitivity. There is nothing in the present record to indicate that this was not the case. On the contrary, although the RAD determined that the Applicant lacked credibility, I am satisfied that it complied with the letter and the spirit of the Guidelines in the present case. In other words, the Applicant has failed to convince me that the RAD did not show appropriate compassion or sensitivity when assessing her evidence.

IV. Conclusion

[23] For the foregoing reasons, this judicial review is dismissed. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-4877-20

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and
2. There is no question for certification.

"Vanessa Rochester"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4877-20

STYLE OF CAUSE: TONFACK EPSE MBOUNA, GEORGETTE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 22, 2022

JUDGMENT AND REASONS: ROCHESTER J.

DATED: JUNE 22, 2022

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