Federal Court  Cour fédérale

Date: 20220727

Docket: IMM-5832-21

Citation: 2022 FC 1118

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 27, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

JOAO BLESE MUPATI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Joao Blese Mupati, is a citizen of Angola. He is seeking judicial review of a decision rendered on August 3, 2021, by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. In that decision, the RAD upheld the decision of the Refugee Protection Division [RPD] finding that the applicant was not a Convention refugee or a

person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant submits that the RAD erred by confusing the concepts of relevance and materiality of the evidence when it refused to admit four documents as new evidence.

[3] For the reasons that follow, the application for judicial review is allowed.

II. Standard of review

[4] The parties submit, and I agree, that the applicable standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraphs 23, 48). The reasonableness standard applies to the RAD's decisions concerning the admissibility of new evidence under subsection 110(4) of the IRPA. A reviewing court applying the reasonableness standard must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paragraph 99).

III. Analysis

[5] The applicant is a mechanic. He alleges that he fears for his life because the Angolan army falsely accused him of stealing the car of an Angolan army general. The applicant alleges

that he was detained and tortured and that he fled Angola with the help of a friend and his uncle. The applicant reports that his spouse and his uncle were subsequently pursued by police.

[6] The applicant argues that the RAD was unreasonable in rejecting four new pieces of evidence that he had submitted on the grounds that they were irrelevant. This new evidence that was deemed irrelevant consisted of: (a) a letter from a friend of the applicant who visited the home of the uncle and was informed that the uncle had been murdered; (b) a letter from the applicant's cousin stating that the police were threatening the entire family and that, on February 15, 2021, armed men burst into his home and beat his father, the applicant's uncle; (c) a letter from a church stating that they had taken in a 9-year-old girl who had been living with the uncle murdered by strangers; and (d) a death certificate for the uncle dated February 15, 2021.

[7] The applicant argues that this new evidence proves his uncle's death, which was connected with the threats he is facing and the reasons why he still fears returning to Angola. According to the applicant, the RAD's decision is unreasonable because the test for the admissibility of new evidence based on relevance is whether the evidence is capable of proving any fact that is relevant to the claim.

[8] For new evidence to be admissible in an appeal before the RAD, it must first fall within one of the three categories set out in subsection 110(4) of the IRPA and contain: (i) evidence that arose after the RPD rejected the refugee claim; (ii) evidence that was not reasonably available; or (iii) evidence that was reasonably available, but that the person could not reasonably have been

expected in the circumstances to have presented, at the time of the rejection (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] at paragraph 34).

[9] The RAD found that the four documents meet the requirements of subsection 110(4) of the IRPA. The RAD went on to state that, if the evidence meets any one of the IRPA requirements, the RAD must then decide whether the evidence is new, credible and relevant, citing *Singh* and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]. The RAD determined that the new evidence concerning the death of the applicant's uncle appears to be credible, but found that the four documents raise serious concerns with respect to their relevance. The RAD therefore concluded that the new evidence was inadmissible.

[10] This Court's role is not to reassess whether the new evidence should have been admitted, but rather to determine whether the RAD's finding was reasonable that the new evidence did not satisfy the well-recognized criteria set out in *Singh* and *Raza* (*Akanniolu v Canada (Citizenship and Immigration)*, 2019 FC 311 at paragraph 41).

[11] I agree with the applicant, and I find that the RAD's treatment of the new evidence was unreasonable. In the circumstances of this case, I am not satisfied that the RAD's decision to refuse to admit the new evidence is based on a logical and rational analysis in respect of the facts and the law as required in *Vavilov*. As stated in *Raza*, the test regarding the relevance of new evidence is whether the evidence is "capable of proving or disproving a fact that is relevant to the claim for protection" (*Raza*; see also *Singh* at paragraph 38).

[12] The evidence addresses the threats posed by the police and the uncle's murder, which are the reasons for the applicant's fear. In the present case, the RAD's reasons do not explain how the new evidence could be deemed irrelevant with respect to the applicant's refugee claim. While the written reasons given by an administrative body must not be assessed against a standard of perfection (*Vavilov* at paragraph 91), they must nevertheless be intelligible and justified (*Vavilov* at paragraph 96).

[13] I find that, in this case, the RAD was unreasonable in applying the broad factors set out in *Raza* with respect to relevance. That is a sufficient ground to warrant this Court's intervention to refer the case back to the RAD for reconsideration.

IV. Conclusion

[14] For these reasons, the application for judicial review is allowed. The decision is set aside, and the case is referred back to the RAD for reconsideration. No question of general importance was submitted for certification, and I agree that this case does not raise any.

JUDGMENT in IMM-5832-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision under review is set aside, and the case is referred back to the RAD for reconsideration by another decision-maker; and
3. No question of general importance is certified.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Stéphanie Valois	FOR THE APPLICANT
Lynne Lazaroff	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stéphanie Valois Montreal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT