Federal Court  Cour fédérale

Date: 20221129

Docket: IMM-4035-21

Citation: 2022 FC 1647

Toronto, Ontario, November 29, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

PELLUMB RRUKAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant applied for judicial review of a decision made by the Refugee Appeal Division (the "RAD") dated May 13, 2021, under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The applicant asked the Court to set aside the decision as a result of an alleged breach of procedural fairness, and on the grounds that the decision was unreasonable applying the

principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the reasons below, the application is dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Albania. He left that country in 2002 and arrived in the United States in 2003. He spent several years in the United States. He then came to Canada. He requested *IRPA* protection in Canada because he feared persecution by the ruling Socialist Party in Albania. For many years, he and his family have been supporters of the opposing political party in Albania, the Democratic Party. He also claimed that he feared persecution from members of organized crime in Albania because he worked as an informant for the United States Federal Bureau of Investigation ("FBI") from 2004 until 2008.

[5] By decision dated July 6, 2020, the Refugee Protection Division ("RPD") rejected the applicant's claim. The determinative issue was credibility. The RPD concluded that the applicant provided inconsistent testimony about why he sought refugee protection and gave vague responses to questions about his time as an alleged FBI informant. The RPD concluded that he failed to establish a forward-looking risk of persecution as an active member of the Democratic Party in Albania.

[6] In its reasons, the RPD noted that the applicant's father had owned a café that was attacked by firebomb in 2001, either because of his father's ownership or because Democratic Party members frequented it. The RPD found no evidence to show that his father, who continued to reside in Albania, had been persecuted because of his political opinion since 2003, despite

being the former owner of the café and a member of the Democratic Party. There was insufficient evidence to establish that the applicant would be targeted by the Socialist Party, including because the café was no longer in operation.

[7] The applicant appealed to the RAD. The applicant did not attempt to introduce new evidence or seek an oral hearing. The RAD dismissed his appeal and confirmed the RPD's decision. The RAD determined that the applicant failed to establish a forward-looking risk of persecution due to his political profile or his alleged work as an FBI informant.

[8] The RAD agreed with the applicant's position on a question of procedural unfairness by the RPD. The RAD found that the RPD failed to provide him with an opportunity to respond concerning why his father had remained safe in Albania, even though he was also a Democratic Party supporter, before relying on that fact to support a credibility finding against the applicant.

[9] The RAD found that the RPD should have put the issue to the applicant and given him an opportunity to respond. However, the RAD found that the applicant had had a chance to address this finding on appeal, so the breach had been remedied.

[10] The applicant claimed that he had worked as an FBI informant to provide the Bureau with information on organized crime and human trafficking in Albania. According to the applicant, he and his FBI contact met frequently for coffee between 2004 and 2008. The RAD found that the applicant's claim to be an FBI informant was "simply not credible". The RAD found that it was not plausible that he would be approached for information by the FBI, given that he had no contacts or connections to either organized crime or human trafficking. In addition, the applicant's evidence was vague, as he could not provide details of the information

he shared with his contact including “very basic details on anything substantive” they had discussed.

[11] Even if he had worked as an FBI informant, the RAD determined that the applicant did not establish a risk on that basis; there was insufficient evidence to demonstrate that either the Albanian government or organized crime members knew he was an informant.

[12] The RAD also concluded that the applicant’s past political activism did not support a forward-looking risk of persecution. The RAD agreed with the RPD’s conclusion that the applicant demonstrated only cursory knowledge of Albanian politics. He did not show that Socialist Party supporters continued to target his family. Although his brother has been granted asylum in the United States, the applicant had not submitted evidence to explain why his brother’s claim was granted.

II. Analysis

[13] The applicant applied to this Court for judicial review of the RAD’s decision. The applicant raised four issues to challenge the decision:

a) Did the RAD make an error by upholding the RPD’s procedurally unfair decision?
b) Did the RAD make a reviewable error by failing to consider relevant evidence?
c) Did the RAD make a reviewable error by requiring proof of persecution of family members?
d) Did the RAD engage in circular or other impermissible reasoning?

[14] When reviewing the procedural fairness of a decision, the Court determines whether the procedure used by the decision maker was fair, having regard to all of the circumstances including the nature of the substantive rights involved and the consequences for the individual(s) affected. While technically no standard of review applies, the Court's review exercise is akin to correctness: *Hussey v Bell Mobility Inc*, 2022 FCA 95, at para 24; *Gordillo v Canada (Attorney General)*, 2022 FCA 23, at para 63; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, at paras 54-55; *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1207, at para 8; *Kambasaya v Canada (Citizenship and Immigration)*, 2022 FC 31, at para 19.

[15] The parties agree that reasonableness is the applicable standard of review when assessing the substance of the RAD's decision. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 91-97, and 103.

[16] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

A. ***Did the RAD make an error by upholding the RPD's procedurally unfair decision?***

[17] The applicant's first position was that the RAD acted erroneously or unreasonably by concluding that its process on appeal remedied the RPD's breach of procedural fairness. In his written submissions, the applicant submitted that the RPD breached procedural fairness by denying the applicant the right to a fair hearing and the RAD process did not cure that breach. He submitted that the RAD would not have admitted a new affidavit on appeal if it contained his answer to the question not posed to him by the RPD concerning his father's safety in Albania. He claimed that it was impossible to know how the RPD would have decided if he had been permitted to answer. On that submission, the RAD should have set aside the decision and remitted the matter back to the RPD for a new hearing.

[18] At the hearing in this Court, the applicant appeared to resile from this position, instead arguing that there was evidence before the RAD that the RAD ignored.

[19] As I will explain, I do not agree with either position. The RAD did not make the mistakes alleged by the applicant.

[20] First, the RAD had considerable error-correction powers on an appeal from the RPD: see *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223, [2020] 2 FCR 299, at paras 41 and 44; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157, at para 78; *Alvarenga Torres v Canada (Citizenship and Immigration)*, 2021 FC 549, at paras 37-38; *Karim v Canada (Citizenship and Immigration)*, 2020 FC 566, at para 21. In my view, the RAD's procedures provided it with the ability to cure the possible breach of procedural

fairness in the present circumstances, by admitting new evidence to fill the evidentiary gap left by the RPD's failure to ask the applicant for evidence related to how his father could remain safe in Albania despite the alleged risks from the Socialist Party: *IRPA*, subsection 110(4); *Adekanmi v Canada (Citizenship and Immigration)*, 2021 FC 283, at paras 56 and 61; *Karim*, at paras 3, 10-11, 19-21; *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093, at paras 39-41. I note that in *Abdelrahman v Canada (Citizenship and Immigration)*, 2021 FC 527, on which the applicant relied, the parties apparently did not refer the Court to *Adekanmi*, *Karim*, or *Nuriddinova* and the issue was factually quite different (a credibility finding arising from sequential serial numbers on two children's birth certificates).

[21] The applicant theorized that he could not have succeeded in submitting new evidence on appeal to the RAD. However, he did not try. It appears to me that the respondent was correct to argue that such new evidence would have been admissible under subsection 110(4): *Nuriddinova*, at para 41; *Karim*, at para 22.

[22] Second, at the hearing, the applicant submitted that it was unnecessary to determine whether new evidence would have been admitted, because there was evidence that the RAD ignored. The applicant pointed to a paragraph in his written submissions to the RAD, in which he submitted that the RPD failed to consider that his father abandoned politics in fear and was too old to be a legitimate target in the eyes of the agent of persecution. The applicant submitted that he was in greater danger because he was still of an age to be a legitimate target and had directly hurt the Socialists by assisting his brother in identifying Socialist criminals to the FBI. His

brother won a refugee claim in the United States so, as a result, the applicant was a “reasonable surrogate”.

[23] The RAD did not ignore this submission, even if it did not agree with the applicant’s position on that evidence. The RAD expressly acknowledged the applicant’s testimony that after he and his brother left Albania, his father was not as involved in politics because he felt he was at risk, and that his father was no longer active in politics now as he is elderly. The RAD found that this evidence did not adequately explain why his father had not been threatened if the family itself was being targeted by Socialist Party supporters. The RAD agreed with the RPD’s finding that the father’s ability to live safely in Albania in the years following the applicant’s departure suggested that the family was no longer at risk.

[24] Elsewhere in its reasons, the RAD also addressed the issues about risks arising from his receipt of information from his brother. The RAD found that the applicant failed to demonstrate that the Socialist Party supporters were targeting his family on an ongoing basis. The RAD acknowledged that the applicant’s brother was granted asylum in the United States in 2011, but found that the applicant did not provide any evidence indicating why asylum was granted. Even if the applicant’s brother was active in the Democratic Party when he left Albania in 2008, the applicant had not provided any evidence of an ongoing risk on that basis. Having already determined that the applicant was not working as an FBI informant, the RAD did not accept that his brother was feeding him information to give to the FBI. Further, the RAD found that there was insufficient evidence to show that the Albanian government knew his alleged role as an informant. He had no evidence to show how the government would know about his role.

[25] Accordingly, the applicant's first argument cannot succeed. The RAD's process was fair and it made no error that warrants the intervention of this Court.

B. ***Did the RAD make a reviewable error by failing to consider relevant evidence?***

[26] The applicant's written submissions argued that the RAD failed to consider relevant evidence related to his father's persecution, his connection to organized crime and the knowledge of the agents of persecution of his activities. The applicant's submissions did not persuade me that there was any basis to intervene on the grounds that the RAD's decision was not justified in relation to the facts that constrained it or that the RAD overlooked any material evidence: *Vavilov,* at para 125-126; *Ozdemir v Canada (Minister of Citizenship and Immigration),* 2001 FCA 331, at paras 9-11; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* [1999] 1 FC 53, [1998] FCJ No 1425, at paras 15-17.

[27] At the hearing, the applicant argued that the RAD ignored evidence that the applicant's brother was the source of the information provided to the FBI. According to the applicant, neither he nor his brother was directly involved in organized crime or other illegal activities, but his brother lived nearby a location where crime occurred and could observe such activities. The applicant submitted that this evidence was sufficiently important to constrain the RAD's decision under the principles in *Cepeda-Gutierrez* and the RAD failed to account for this evidence. I do not agree. It is clear that the RAD was aware that the applicant's brother was the source of the information allegedly passed to the FBI. The RAD found that the applicant indicated that he and his FBI contact would discuss things the applicant "heard from his brother, 'but not much"'. Particularly given the absence of evidence from the applicant about his alleged interactions with

his FBI contact, I do not agree that the location of the applicant's brother's residence was of such significance to constrain the RAD's decision. While the applicant would have preferred the RAD to give greater weight in its analysis to the evidence about his brother's role, the RAD did not commit a reviewable error by failing to do so.

C. ***Did the RAD make a reviewable error by requiring proof of persecution of family members?***

[28] The applicant submitted that the RAD's reasoning implicitly required him to prove that his father was persecuted in Albania during the applicant's absence from the country. This position was based on the RAD's conclusion that his father was able to live safely in Albania despite his political profile. The applicant cited Justice McHaffie's reasoning in *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218, at paragraph 51:

> … the PRRA officer appears to have used Mr. Fodor's brother as a proxy for someone "more similarly situated" to Mr. Fodor, noting that there was no "corroborating" evidence of him being targeted. As there is no obligation for a claimant to demonstrate that they have themselves been persecuted in the past, it would be incongruous to effectively require evidence that a claimant's sibling has faced persecution in their stead: *Salibian* [*v Canada (Minister of Employment and Immigration),* [1990] 3 FC 250 (CA)] at para 19. The PRRA officer gives no reason, other than mere kinship, to suggest why Mr. Fodor's brother would be "more similarly situated" than others described in the country condition evidence, nor why the brother would be more similarly situated than other members of his family such as his spouse, sister and parents, who also fled Hungary. The term "similarly situated" cannot be construed so narrowly as to require evidence of persecution of family members, or to eliminate consideration of evidence describing the situation of others.

[29] At the hearing in this Court, the applicant expanded on this argument, alleging that the RAD's reasons were insufficient because they failed to provide an analysis of why the applicant

and his father were similarly situated. The applicant noted that the RPD found that the family as a whole had been persecuted, so it was incumbent on the RAD to explain why it disagreed and focused on his father. The applicant argued that the attack on the café targeted his father, not the family.

[30] I do not agree with the applicant's submissions. The RAD was aware of the relevant facts and addressed both sides of the applicant's current position (father and family). The RAD expressly recognized, at paragraph 13 of its reasons, that it was the father's café that had been attacked. It found that he was no longer at risk. The RAD also expressly concluded, at paragraph 15, that the applicant failed to demonstrate that Socialist Party supporters were targeting his family on an ongoing basis.

[31] As I read the applicant's submissions to the RAD, he was not particularly clear on whether his fear of persecution was akin to that of his father or his brother, or was arising from his own circumstances only. In this light, his critiques of the RAD's reasoning are unpersuasive.

[32] I agree with the respondent that there was no reviewable error in the RAD's statement that the applicant's "father's ability to live safely in Albania in the years following the [applicant]'s departure suggests that the family is no longer at risk." As the respondent described persuasively at the hearing, the applicant's own narrative dealt extensively with the alleged historical targeting of his family and his father. Unlike *Fodor*, there was far more than "mere kinship" in the RAD's consideration of the evidence related to the applicant's family in Albania: *Fodor*, at para 51.

[33] I do agree with the applicant that *Vavilov* requires that the RAD's decision must not only be justifiable – its decision must actually be justified: *Vavilov*, at para 86; *Canada Post*, at para 28. However, *Vavilov* also held that perfection is not the standard for reasons: *Vavilov*, at para 91. In this case, the RAD's reasons did not suffer from an absence of reasoning giving rise to a reviewable error. The analysis was not conclusory and provided a reasoned explanation of the RAD's conclusions overall and on all critical issues, including on why the evidence did not persuade the RAD that the applicant would be persecuted due to his, and his father's, past political involvement: see *Vavilov*, at para 102; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157.

D. ***Did the RAD engage in circular or other impermissible reasoning?***

[34] The applicant submitted that the RAD engaged in impermissible, circular reasoning, contrary to the requirements for a coherent chain of analysis in *Vavilov*, at paragraphs 102-104. He submitted that the RAD's reasoning suffered from the error identified in *Chen*, in which Justice Rennie held that it was impermissible to reach a conclusion on a claim based on certain evidence and dismiss the remaining evidence as inconsistent with that conclusion: *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311, at para 20; *George v Canada (Citizenship and Immigration)*, 2019 FC 1385, at para 37. The applicant relied upon the RAD's initial conclusion that the applicant was not working as an FBI informant (which he claimed ignored evidence about his brother's role), but later found on the basis of that initial finding that it did not accept that his brother was feeding him information.

[35] I agree with the respondent that the RAD did not make this alleged error. The premise of the applicant's position is unfounded because, as noted already, the RAD did account for his brother's role in reaching the initial conclusion.

[36] In addition, there is also a simpler explanation for the RAD's conclusion. The applicant's evidence to support his claim that he was an FBI informant was vague and insufficient, including as to what he told the FBI. The RAD found that the applicant had no contacts or connections with either organized crime or human trafficking. As the RAD stated, it "was not just specific dates or names that the [applicant] failed to provide, but rather very basic details on anything substantive he discussed with his [FBI] contact". The RAD found he was not an FBI informant as he claimed. If he was not an FBI informant, there was no reason for his brother to feed him information.

III. Conclusion

[37] For these reasons, the application is dismissed.

[38] Neither party proposed a question to certify for appeal and none will be stated.

JUDGMENT in IMM-4035-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4035-21
STYLE OF CAUSE:	PELLUMB RRUKAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 5, 2022
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	NOVEMBER 29, 2022

APPEARANCES:

Jeffrey Goldman	FOR THE APPLICANT
Giancarlo Volpe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jeffrey Goldman Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Giancarlo Volpe Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT