

Federal Court



Cour fédérale

Date: 20221115

Docket: IMM-8023-21

Citation: 2022 FC 1556

Toronto, Ontario, November 15, 2022

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

PATRICK ESUNGE EKEMA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Refugee Appeal Division [RAD] dated October 21, 2021 to dismiss an appeal from the Refugee Protection Division [RPD]. For the reasons below, I will dismiss the Application.

I. Background

[2] The Applicant, seven years of age at the time of this Application, was born in the United States [US] where he holds citizenship. His family is originally from Cameroon, where he claims that he and his family were attacked on multiple occasions by separatists, due to their Anglophone identity and political activities, which the Applicant alleges led to the death of his father.

[3] In September 2018, the Applicant and his family fled Cameroon on valid US visas and applied for refugee protection in the US in February 2019. While in the US, the Applicant's mother alleges that protestors who purported to be associated with the separatist movement in Cameroon threatened her. Feeling unsafe, the Applicant and his family crossed the border into Canada in January 2020, claiming refugee protection. The Applicant's family's refugee protection claims were declared ineligible pursuant to s. 101(1)(c.1) of the IRPA due to their ongoing refugee claim in the US.

[4] The RPD concluded that the Applicant – a minor child – is not a Convention refugee or a person in need of protection under ss. 96 and 97 of the IRPA.

II. Decision under Review

[5] The Applicant appealed the RPD decision to the RAD, arguing that several crucial errors were made by the RPD in its assessment of the risk of persecution, state protection, and the

mother's credibility (she testified for the Applicant at the RPD hearing since he was only five years old at the time).

[6] The RAD dismissed the appeal and affirmed the RPD decision. The RAD also rejected new evidence the Applicant tried to submit on appeal, namely, a psychotherapy assessment report regarding the Applicant's mother [Report].

III. Issues and Standard of Review

[7] The issues are whether the RAD erred in (i) rejecting the Report; (ii) concluding that family unity is not a consideration for refugee protection; and (iii) finding no objective basis for harm from the US foster care system.

[8] The parties agree that the Decision is reviewable on the standard of reasonableness, meaning that it must be transparent, intelligible, and justified *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23, 83, 85, 99-100 [Vavilov].

IV. Analysis

A. *The RAD reasonably rejected the Report*

[9] The Applicant contends the Report indicates his mother suffered from mental illness before the RPD hearing and that it affected her testimony, therefore the Report is relevant to the RPD finding that his mother was not credible.

[10] I disagree. The RAD reasonably observed that the Report “has little probative value as the RPD’s credibility finding regarding the Appellant’s mother’s omission from the original narrative is not determinative.” The RAD’s decision to reject the Report thus does not constitute a reviewable error; a psychotherapy report about the credibility of his mother in no way impacts the determinative issues vis-à-vis her son failing to satisfy his claim for s. 97 protection against the US.

B. *The RAD did not err regarding Family Unity*

[11] Specifically, the Applicant argues that the RAD did not consider the Applicant’s unique mental health condition when assessing the risk of harm. The Applicant submits that his mental health condition, namely speech and language issues, anxiety, and behavioral issues – all of which were acknowledged by the RAD in its decision – and the fact that he is a child, both amplify his risk of harm if he were to be (i) separated from his family and (ii) entered into the US foster care system.

[12] The Applicant relies on Justice Shore’s finding about the best interest of the child in *Kim v Canada (Minister of Citizenship and Immigration)*, 2010 FC 149 [*Kim*] to argue that the RAD failed to appreciate how his mental health condition as a child affects his risk of harm. However, the analysis in *Kim* concerned a s. 96 claim, whereas the Applicant’s argument centres on a finding of harm under s. 97 of the IRPA. Furthermore, *Kim* states “it is clear that the best interests of the child cannot substantively influence the answer with regard to whether a child is a refugee, but the best interests of the child are central to the procedure by which to reach a decision” (at para 6).

[13] This concept that the best interests of the child relate to procedural safeguards, rather than substantive content of refugee determination, is also reflected in the *Chairperson's Guideline 3: Child Refugee Claimants – Procedural and Evidentiary Issues*, which states that “in determining the procedure to be followed when considering the refugee claim of a child, the CRDD should give primary consideration to the best interests of the child” (online: <https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir03.aspx>). The applicability of the best interests analysis to refugee claims was recently discussed by this Court in *Weche v Canada (Minister of Citizenship and Immigration)*, 2021 FC 649 [*Weche*], where Justice McHaffie held at para 45 that “the RAD did not err when it determined that it did not have the discretion to consider the best interests of the child in dealing with the claim for refugee protection at issue.”

[14] Consequently, the RAD did not err in this case when it did not consider the best interest of the child Applicant in a substantive manner, when assessing the risk of harm if he were to be (i) separated from his family and (ii) entered into the US foster care system. First, the RAD's finding that family unity is not a consideration is reasonable. As noted by the RAD in its reasons, this Court has repeatedly held that family unity is not a consideration in determining whether an individual is a Convention refugee under s. 96 of the IRPA or in need of protection under s. 97 of the IRPA (*Soto v Canada (Minister of Citizenship and Immigration)*, 2022 FC 665 at para 23, citing *Weche* at paras 42-44 and *Ly v Canada (Minister of Citizenship and Immigration)*, 2021 FC 379 at paras 13-14).

C. *The RAD committed no error regarding country conditions*

[15] The RAD's finding that there is no objective basis for harm from the US foster care system is also reasonable. While the Applicant argues the RAD did not consider his specific situation as a child with a mental health condition, the RAD concluded that there was no evidence to support that the Applicant, "as a black child with mental health issues," would face harm reaching to the standard of s. 97 of the IRPA if placed in the US foster care system. Accordingly, the RAD did consider the Applicant's mental health condition and noted that his mother acknowledged that he would be able to receive treatment in the US for at least part of his condition, namely his speech issues. The RAD considered the totality of the evidence in making its finding.

V. Conclusion

[16] The RAD decision was reasonable. I will dismiss this Application for judicial review. The parties propose no question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-8023-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No questions for certification were argued and I agree that none arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8023-21

STYLE OF CAUSE: PATRICK ESUNGE EKEMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 26, 2022

JUDGMENT AND REASONS: DINER J.

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