Federal Court  Cour fédérale

Date: 20221201

Docket: IMM-7564-21

Citation: 2022 FC 1660

Ottawa, Ontario, December 1, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

EMMANUEL KWEKU GYATENG

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD], dated September 22, 2021, affirming a decision of the Refugee Protection Division [RPD], which found that the Applicant is excluded from protection as both a *Convention* refugee and a person in need of protection under Article 1F(b) of the *Convention Relating to the Status of Refugees*.

II. Facts

[2] The Applicant is a 45-year-old citizen of Ghana who alleges a fear of persecution on account of his identity as a gay man. The Applicant arrived in Canada in November 2016, and subsequently applied for refugee protection in December. The Applicant alleged that he had no reasonable expectation of obtaining adequate state protection from the Ghanaian authorities because sexual activities "directly associated with the gay and bisexual lifestyle" are prohibited under the Ghana Criminal Code. The Applicant alleged that individuals in Ghana who are gay or bisexual are abused, ostracized from the community and face a risk of death. Additionally, the Applicant noted that should such individuals come to the attention of Ghanaian authorities, they risked persecution.

[3] However, in March, 2020, a Ministerial representative intervened pursuant to subsection 170(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Minister alleged the Applicant committed a serious non-political crime outside of Canada and should be excluded under Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*.

[4] The Minister's intervention concerned three matters. The first, and central to this application, was an online news source from Ghana reporting the claimant was charged in 2015 with fraud by false pretences under section 131 of the *Ghana Criminal Code*. The charge concerned the Applicant accepting money from his victim in exchange for selling him 500 bags of sugar, valued at over $15,000 CDN. The Applicant never supplied the promise bags of sugar.

As part of his attempts to evade liability the Applicant also allegedly issued fraudulent cheques to the victim.

[5] Furthermore, the Minister provided evidence the Applicant had been charged by the Columbus Police Department in Ohio for resisting arrest on October 22, 2001. The Applicant had apparently previously used an alias and identified himself to police as Carlos Glenn Newman, born November 7, 1976.

[6] The Minister also reported a search of Canadian police information disclosed that on May 23, 2019, the Applicant was charged with possession of property by crime under section 354 of the *Criminal Code of Canada*.

[7] The Minister's information was given to the Applicant prior to the hearing as part of the RPD fairness obligations calculated among other things to afford the Applicant an opportunity to know the case against him and prepare accordingly.

[8] During the RPD hearing, the Applicant testified under oath that he was not the same person as the alleged perpetrator noted in the news article, but rather, had the same name. The Minister's representative did not appear at the hearing and relied on his written record.

[9] The RPD found there were serious reasons for considering the Applicant had committed a serious non-political crime outside Canada, and that the Applicant was therefore subject to the exclusion under Article 1F(b).

III. Relevant legislation and jurisprudence

[10] Section 98 of the *IRPA* provides:

Exclusion – Refugee Convention	**Exclusion par application de la Convention sur les réfugiés**
98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	**98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[11] Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees* provides:

F The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	**F** Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser:
…	…
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	**b)** Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
…	…

[12] In *Abbas v Canada (Citizenship and Immigration)*, 2019 FC 12 [*Abbas*], I summarized jurisprudence on judicial review respecting an exclusion pursuant to section 98 of the *IRPA* and Article 1F(b) of the *Refugee Convention* which continues to apply. This included a review of the

relevant principles from the case cited by the RPD in the present case, *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FC 238, per Strayer DJ, aff'd 2008 FCA 404, per Létourneau JA [*Jayasekara*]. As held in *Abbas* at paras 18-20:

> [18] The Federal Court of Appeal confirms that the Minister merely has to show, on a burden less than the civil standard of balance of probabilities, that there are serious reasons to consider the applicant committed the alleged acts. In *Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178 [*Zrig*] Nadon JA confirms the following principle at para 56:
>
> > [56] The Minister does not have to prove the respondent's guilt. He merely has to show - and the burden of proof resting on him is "less than the balance of probabilities"-that there are serious reasons for considering that the respondent is guilty.
> >
> > [Emphasis added]
>
> [19] As to what constitutes a "serious" crime, the Supreme Court of Canada in *Febles v Canada (Minister of Citizenship and Immigration)*, 2014 SCC 68, per McLachlin CJ [*Febles*], instructs at para 62:
>
> > [62] The Federal Court of Appeal in *Chan v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17150 (FCA), [2000] 4 F.C. 390 (C.A.), and *Jayasekara* has taken the view that where a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada, the crime will generally be considered serious. I agree. However, this generalization should not be understood as a rigid presumption that is impossible to rebut. Where a provision of the *Canadian Criminal Code*, R.S.C. 1985, c. C-46, has a large sentencing range, the upper end being ten years or more and the lower end being quite low, a claimant whose crime would fall at the less serious end of the range in Canada should not be presumptively excluded Article 1F(b) is designed to exclude only those whose crimes are serious. The UNHCR has suggested that a presumption of serious crime might be raised by evidence of commission of any of the following offences: homicide, rape, child molesting,

> wounding, arson, drugs trafficking, and armed robbery (Goodwin-Gill, at p. 179). These are good examples of crimes that are sufficiently serious to presumptively warrant exclusion from refugee protection. However, as indicated, the presumption may be rebutted in a particular case. While consideration of whether a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada is a useful guideline, and crimes attracting a maximum sentence of ten years or more in Canada will generally be sufficiently serious to warrant exclusion, the ten-year rule should not be applied in a mechanistic, decontextualized, or unjust manner.
>
> [Emphasis added]

[20] The Federal Court of Appeal's decision of *Jayasekara* identifies factors to evaluate whether a crime is "serious" for the purposes of Article 1F(b), at para 44:

> [44] I believe there is a consensus among the courts that the interpretation of the exclusion clause in Article 1F(b) of the Convention, as regards the seriousness of a crime, requires an evaluation of the elements of the crime, the mode of prosecution, the penalty prescribed, the facts and the mitigating and aggravating circumstances underlying the conviction: see *S v. Refugee Status Appeals Authority*, (N.Z. C.A.), supra; *S and Others v. Secretary of State for the Home Department*, [2006] EWCA Civ 1157 (Royal Courts of Justice, England); *Miguel-Miguel v. Gonzales*, no. 05-15900, (U.S. Ct of Appeal, 9th circuit), August 29, 2007, at pages 10856 and 10858. In other words, whatever presumption of seriousness may attach to a crime internationally or under the legislation of the receiving state, that presumption may be rebutted by reference to the above factors.

IV. Decision under review

[13] The determinative issue for the RAD was whether the RPD erred in its decision to exclude the Applicant. The key to this is its assessment of the newspaper article. In summary, the RAD affirmed the decision of the RPD and found that the Applicant had been rightly excluded pursuant to Article 1F(b) of the Convention and section 98 of the *IRPA*.

A. *Exclusion 1F(b)*

(1) Applicable legal principles

[14] The RAD noted the Minister bears the onus of establishing that there are "serious reasons for considering" that a claimant has committed a serious non-political crime. In considering the seriousness of a crime, the RAD decision maker referred to the Federal Court of Appeal's decision in *Jayasekara*, where it was determined this assessment requires a consideration of the elements of the crime, mode of persecution, penalty prescribed, the facts and any mitigating/aggravating circumstances underlying the conviction. The decision maker noted a crime will generally be considered serious where a maximum sentence of 10 years or more could have been imposed had the offence been committed in Canada. On this point, the Supreme Court of Canada cautioned in *Febles* that decision makers must not apply the 10-year sentence rule in an unjust, mechanistic or decontextualized way.

[15] With this background, the RAD decision maker found that the RPD correctly applied the jurisprudence on Article 1F(b).

(2) Assessment of serious non-political event

[16] The RAD found that the crime of "Defrauding by False Pretences" under section 131 of the Ghana Criminal Code in 2015 is sufficient to conclude that the Applicant is excluded under Article 1F(b). Among its reasons, the RPD found that large size of the Applicant's bail was an indicator of the seriousness of the offense alongside the Applicant's decision to flee criminal prosecution.

[17] The RAD decision maker acknowledged that the article naming the Applicant was not alone sufficient to prove that he was the person charged, the Applicant does not rebut the Minister's allegations given his serious credibility and trustworthiness issues.

(a) *Applicant's testimony and other evidence*

[18] The RAD decision maker agreed with the RPD's assessment on an affidavit submitted by the Applicant to rebut the Minister's allegations. The RPD found that an affidavit, allegedly written by the Applicant's cousin, contained nine noticeable errors and was fraudulent. The RAD notes the Applicant was unable to convince the RPD otherwise considering his oral concessions about the differences on the logo present and a variation of its colour. The Applicant was not able to provide a reasonable explanation for these issues identified by the RPD. Additionally, the RAD decision maker noted an innocent person in a similar citation would have gone to great lengths to prove their innocence. In the decision maker's view, the Applicant has not done so. The decision maker also found no credible explanation as to why the Applicant's lawyer could

not have provided an affidavit attesting to the fact that the Applicant is not facing charges in Ghana.

(b) *Article from Ghana*

[19] This was and is the central issue in this case.

[20] The RAD found the Applicant is indeed the person identified in the Ghanaian news despite his denials. In assessing and weighing this evidence, the RAD noted several specific points of identification. These are: the Applicant has the same name as the person in the article; the Applicant lived in Afienya as identified in the article; the Applicant publicly presents himself as a businessman as the article described; the Applicant publicly identifies as being the contact for Gilead Investments Limited whose main products includes sugar; the Applicant has a LinkedIn account that he admitted to creating, which also includes his name, photograph and job title as CEO of Gilead Investments Limited; and, the Applicant declared leaving Afienya in October 2016 and identified to addresses in Kumasi before he left for Canada in November 2016. Given these evidentiary determinations, the RAD found the Applicant had not rebutted the Minister's allegation with any credible evidence.

(3) The crime committed in Ghana

[21] Briefly, the RAD noted given its finding that the named individual in the news article was the Applicant, there are inherently serious reasons to consider that he has committed a non-political crime. The RAD, thereby, affirmed the RPD's finding.

(a) *Non-political crime*

[22] The RAD decision maker noted that for crime to be considered political for the purposes of Article 1F(b) of the *Convention*, a two-pronged test must be met:

> (1) is it committed for a political purpose, that is to say, with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy; and
>
> (2) there is a sufficiently close and direct link between the crime and the alleged political purpose.

[23] In the RAD's view, the crime of "defrauding by false Pretense" was committed for economic reasons and is, therefore, non-political for the purposes of the *Convention*.

(b) *Canadian law*

[24] The RAD decision maker found that the crime of "Defrauding by False Pretense" would amount to the crime of Fraud over $5000 under section 380(1)(a) of the *Criminal Code of Canada*.

(c) *Seriousness of the crimes*

[25] The comparable crime of fraud of $5000 is an indictable offence in Canada punishable by up to 14 years' imprisonment. As such, the RAD decision maker presumed it to be a serious crime for the purpose of analysis under Article 1F(b).

(d) *Aggravating and mitigating circumstances*

[26] In the RAD's assessment, aggravating factors included: the fact that the Applicant is an educated adult who knowingly made a promise to a client that he did not fulfil; in trying to rectify that mistake, the Applicant issued false cheques, which demonstrates a breach of trust, degree of sophistication, planning and deception; multiple victims involved in the criminal acts committed by the Applicant; the Applicant's flight from justice; denial of all the allegations; and the presentation of a fraudulent document to rebut the Minister's allegations.

[27] Given these findings, the RAD decision maker further affirmed the RPD's decision.

[28] The RAD acknowledged that the RPD did not assess the penalty prescribed as per the factors in *Jayasekara*, but found this issue was moot. In the RAD's view, the RPD considered all the factors and came to the same conclusion regarding exclusion.

[29] The RAD found the remaining grounds of appeal to be not relevant in assessing the allegations and exclusion decision made by the RPD.

V. Issues

[30] The central issue is whether the RAD's decision was reasonable. As it pertains to the concerns posed about procedural fairness, I will assess whether the tribunal's decision was correct, as per the required standard.

VI. Standard of Review

[31] Based on the entirety of written submissions provided to the Court, the parties seem to disagree slightly on the applicable standard of review. Respectfully, outside the singular issue concerning procedural fairness, the relevant standard of review is reasonableness. I will review the respective jurisprudence for both standard below.

A. *Reasonableness*

[32] Importantly in a reasonableness review on judicial review, *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*] makes it clear the role of this Court on judicial review is *not* to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[33] To the same effect, the Federal Court of Appeal recently held in *Doyle v Canada (Attorney General),* 2021 FCA 237 [*Doyle*] that reweighing and second-guessing the evidence is no part of the Federal Court's role on judicial review:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
>
> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.
>
> [Emphasis added]

[34] More generally with regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Vavilov*, the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court 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 para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).

[35] Furthermore, in this Court's decision of *Martinez Giron v Canada (Citizenship and Immigration)*, 2013 FC 7, Justice Kane enunciated the deference owed to tribunal decision makers:

> [14] With respect to the Board's analysis of credibility and plausibility, given its role as trier of fact, the Board's findings warrant significant deference: *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, [2008] FCJ No 1329 at para 13; *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857, [2012] FCJ No 924 at para 65.
>
> [15] This does not mean, however, that the Board's decisions are immune from review where intervention is warranted. In *Njeri v Canada (Minister of Citizenship and Immigration)*, 2009 FC 291, [2009] FCJ No 350 Justice Phelan stated:
>
> > [11] On credibility findings, I have noted the reluctance that this Court has, and should have, to overturn such findings except in the clearest case of error (*Revolorio v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1404). The deference owed acknowledges both the contextual circumstances and legislative intent, as well as the unique position that a trier of fact has to assess

> testimonial evidence. That deference is influenced by the basis upon which credibility is found. The standard is reasonableness subject to a significant measure of deference to the Immigration and Refugee Board.
>
> [12] However, deference is not a blank cheque. There must be reasoned reasons leading to a justifiable finding. With considerable reluctance, I have concluded that this decision does not meet this standard of review.

B. *Correctness*

[36] Questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at para 43. That said, I note in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, per Stratas JA at para 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': Re: *Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42." But see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [per Rennie JA]. In this connection I also note the Federal Court of Appeal's recent decision holding judicial review of procedural fairness issues is conducted on the correctness standard: see *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 per de Montigny JA [Near and LeBlanc JJA concurring]:

> [35] Neither *Vavilov* nor, for that matter, *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.

[37] I also understand from the Supreme Court of Canada's teaching in *Vavilov* at para 23 that the standard of review for procedural fairness is correctness:

> [23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.
>
> [Emphasis added]

[38] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VII. Analysis

A. *Contradictory findings by the RAD*

[39] The Applicant submits the RAD's findings are contradictory in reference to the sufficiency and weight assigned to the article. The Applicant note that the RAD initially stated that the article alone is not sufficient to identify the person in the article as the Applicant, but

then went on to "improperly" place the onus on the Applicant to disprove the allegation against him.

[40] The Respondent rejects this argument. In my view, the Applicant's claim of contradictions is not borne out by the RAD's reasons. The Respondent acknowledges the RAD stated earlier in its reasons the news article alone was insufficient to prove the allegations of fraud. However, in later paragraphs, the decision maker sets out all of the additional points upon which the RAD cross-referenced and based its conclusion. These included: the Applicant's name, hometown, employer, type of business conducted by that company and another town in which he resided.

B. *Exclusion under Article 1F(b)*

[41] This is the central issue in the case and was the focus of oral argument.

[42] The Applicant submits the Minister has the burden to demonstrate "serious reasons" to consider that the Applicant has committed a "non-political crime". In the Applicant's view, the standard to be applied in assessing the evidence is "higher than a mere suspicion, but lower than proof on the balance of probabilities standard" as per this Court's decision in *Jawad v Canada*, 2012 FC 232 per Justice Mosely:

> [27] The test of serious reasons for considering that a refugee claimant has committed a serious non-political offence within the scope of Article 1 F (b) is similar to the evidentiary standard of reasonable grounds to believe. It is more than mere suspicion but less than the civil standard of a balance of probabilities: *Ramirez v Canada (Minister of Employment and Immigration)*, 1992 CanLII 8540 (FCA), [1992] 2 FC 306 (CA) at para 4-6. The test requires

> compelling and credible information: *Mugeresa v Canada (Minister of Employment and Immigration)*, 2005 SCC 40 at para 114.
>
> […]
>
> [29] The informant's disclosure to the police was not in itself compelling and credible information on which to make a finding that the applicant possessed the cocaine for the purpose of trafficking. At best, it gave rise to suspicion calling for further investigation. It appears from the arrest that the extent of the further investigation conducted was the search of the applicant's vehicle. […]
>
> [Emphasis added]

[43] The Applicant submits the "unverified" Ghanian news article was not in itself sufficiently compelling and credible to support an exclusionary finding under Article 1F(b) and "at best, it gave rise to suspicion calling for further investigation."

[44] He submitted the article should not have been relied on without determining the trustworthiness of the news source in which it appeared, noting it was not the New York Times. He says the source should have been investigated but was not. More generally he submitted that on the internet, an innocent may be labelled guilty and a guilty person labeled innocent.

[45] He also criticized reliance on the contents of the article for their truth, in that he submitted that also should have been fact checked but was not. He noted in *Demaria v Canada (Citizenship and Immigration)* 2019 FC 489 per Russell J:

> [143] The weight that can be given to newspaper articles depends very much upon context and general indicia of reliability. As Justice MacTavish cautioned in *Thuraisingam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 607:

> [39] The evidence in question consisted of newspaper articles, the statements of P.A., an affidavit sworn by Officer Anthony Malcolm of the Toronto Police, and summaries of intercepted telephone communications. I agree with counsel for Mr. Thuraisingam that, in this context, newspaper articles have very little evidentiary weight. That said, the remaining evidence establishes that Mr. Thuraisingam was deeply involved in the activities of the Sellapu and VVT gangs.

[46] In this respect, the Applicant submitted newspaper articles generally have "very little evidentiary weight" which I agree was the finding made in the case cited by Justice Russell. However, and with respect, Justice Russell did not accept this as an immutable legal proposition; rather Justice Russell found, and I agree the weight that may be given to newspaper articles depends very much upon context and general indicia of reliability.

[47] Notably such contextual assessment entails the assessment and weighing of evidence.

[48] Counsel for the Applicant agreed, correctly with respect, in his opening submission that the Court is to refrain from reweighing and reassessing the evidence in this case.

[49] However, and with respect, it appears this is what the Applicant now invites the Court to do. That is not permitted as seen from *Vavilov* at para 125 and *Doyle*, both cited above.

[50] Moreover, as I held in *Abbas*:

> [30] In my respectful view, the dispute on this point comes down to assessing the weight given to evidence before the RPD. Before turning to that evidence, I note the RPD has broad discretion to prefer certain evidence over other evidence. The RPD has the duty

> to determine the weight assigned to the evidence it accepts. In these respects, the RPD is entitled to deference as fact finder. The Federal Court of Appeal tells us that findings of fact and determinations of credibility fall within the heartland of the expertise of the RPD: *Giron*. Moreover, the jurisprudence has determined that the RPD has expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge in matters before it. In addition, the RPD, by subsection 170(g) of *IRPA*, is not bound by any legal or technical rules of evidence.
>
> [Emphasis added]

[51] The Court also dealt with the issue of reliability of newspaper articles in *Abbas*:

> [40] As indicated at the hearing, I am not inclined to accept or give much weight to what was reported in the newspapers in this particular case. That said, I certainly do not say the RPD may not rely on newspaper articles, which it often does and is entitled to do in matters before it. Generally, this is a matter for the RPD to decide. In assessing this case for reasonableness on judicial review, particularly in terms of its defensibility on the facts, I have given the newspaper articles little weight.
>
> [Emphasis added]

[52] I also note the Applicant's appeal to the RAD did not include a challenge to the reliability of the website or newspaper itself, but rather to the truth of the contents of the article – see RAD reasons paras 9 and 10. I am not prepared to fault the RAD on an issue the Applicant chose not to raise before it in his Notice of Appeal. Indeed established jurisprudence of this Court confirms a party may not raise an issue on judicial review not raised before the RAD: *Wu v Canada (Citizenship and Immigration)*, 2022 FC 1123 at paras 6, 22 and 23. And see *Ogunjinmi v Canada (Citizenship and Immigration)*, 2021 FC 109 at paras 14 to 21 and especially para 21:

> [21] The RAD cannot be faulted for failing to consider arguments that were never put to it *(Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14). The Applicants' failure to adduce evidence and present their arguments before the RAD

> precludes them from advancing them for the first time in this application for judicial review.

[53] It is also worth observing the Applicant, despite notice of the article, chose not to file any evidence concerning the website or the newspaper. While that was his right, the fact remains the newspaper article was generally admissible and could be weighted and assessed by both the RPD and the RAD, as it was. In these circumstances, I will not engage further on the issue of the trustworthiness of the newspaper and its website generally.

[54] Turning back to the contents of the news article, I can only reiterate it was for the RPD to assess and weigh evidence with respect to the reliability of the content of the newspaper article, and the truth of the content in it insofar as meeting the test of "serious reasons for considering."

[55] The Applicant had notice of the article and every opportunity to cast doubt upon it whether by filing an affidavit saying he was not the same person, by saying the story was untruthful or incomplete, perhaps by alleging an alibi or placing before the Court some other probative evidence or reason to dispute the report including evidence and advocacy before, at or possibly even after the hearing. It is impossible to outline all the means of rebutting the Minister's evidence; they are for counsel to make and the tribunal assess.

[56] The point is the Applicant had a fair opportunity to consider and make submissions as he chooses as to why the newspaper report of the charge against him should not be relied upon.

[57] He took advantage of this opportunity in three respects. First, he testified he was not the person named in the article. Secondly, he filed a fraudulent affidavit of his cousin concerning his character. And he took the opportunity to argue why the article did not meet the legal test under Article 1F(b).

[58] On the first point, the RAD considered his denial, set out its reasons, and rejected it. I defer to the RAD's reasoning in this respect. I decline the Applicant's invitation to reassess and reweigh the evidence which I am required to do by *Vavilov* and *Doyle,* cited above.

[59] Nor does it appear to me the RAD erred in stating the applicable legal tests against which it was to assess whether there were serious reasons for considering the Applicant committed a serious non-political crime outside Canada. Fact findings in that respect are for the RAD to assess and determine. I defer to the RAD and again I decline the invitation to reweigh and reassess the evidence.

[60] I likewise decline to reweigh the finding of fraud made regarding the affidavit filed by the Applicant.

C. *Fraudulent affidavit*

[61] The Applicant took issue with the RAD's assessment of an affidavit he tendered. The RAD found it was a fraud. It was not suggested this finding was determinative, and as just noted I will not engage in reweighing and reassessing the evidence in that regard.

D. *Procedural fairness*

[62] The Applicant also submits the RAD erred in its alleged disregard for allegedly unfair treatment of the Applicant given his circumstances, which allegedly amounts to a breach of procedural fairness. This dispute centres around a request for post-hearing submissions on sentencing ranges that was sent to his RPD counsel which was not responded to apparently because of a change of address. This was carefully explored on appeal to the RAD, and the complaint was dismissed on the basis there was no evidence to support it.

[63] It was not suggested this issue is determinative. The Respondent submits the RAD took all steps necessary to ensure that the Applicant had the opportunity to be aware of its request. Given the RPD's actions, lack of returned communication from the Applicant and his then - counsel, and the litany of RPD Rules requiring vigilance from applicants with regard to contact information and informing the RAD of changes, the Respondent submits there were not breaches of procedural fairness. I have considered this matter on a correctness standard, and agree with the Minister.

VIII. Conclusion

[64] In my respectful view, the Applicant has not established the RAD's decision is either incorrect or unreasonable. Therefore, this Application for judicial review will be dismissed.

IX. Certified Question

[65] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-7564-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7564-21
STYLE OF CAUSE:	EMMANUEL KWEKU GYATENG v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 24, 2022
JUDGMENT AND REASONS:	BROWN J.
DATED:	DECEMBER 1, 2022

APPEARANCES:

Marc J. Herman	FOR THE APPLICANT
Judy Michaely	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Herman & Herman Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT