Federal Court  Cour fédérale

Date: 20230320

Docket: IMM-2021-22

Citation: 2023FC373

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 20, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MOULAYE ZEIAIDARA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Moulaye Zei Aidara, was granted leave to seek judicial review of a Refugee Appeal Division (RAD) decision confirming a decision of the Refugee Protection Division (RPD) according to which the applicant is not a refugee or a person in need of protection. The application for judicial review is made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

I. Facts

[2] Mr. Aidara alleges persecution by his immediate family as a result of his converting to Shia Islam in 2019. He is a citizen of Senegal and is 36 years old. It is known that he left Senegal on October 12, 2019. His Basis of Claim [BOC] Form is dated December 10, 2019.

[3] Mr. Aidara declared on his BOC Form that his interest in the [TRANSLATION] "Shia religion led him in January 2019 to adhere to Shia Islam". His family did not accept this life change. This resulted in death threats from his paternal uncles, who allegedly delegated some cousins to threaten him on April 30, 2019, as well as from a maternal uncle. In the face of these threats, the applicant applied for a visa for Canada and filed a refugee protection claim here.

II. Decision under review

[4] Both the RPD and the RAD decisions are short. Essentially, the RPD concluded that the applicant was not credible.

[5] The RPD confronted the applicant with his declaration on the form according to which he lived in Dakar from February 2019 to June 2019, and then lived in Tambacounda from June 2019 to October 2019. However, the April 30, 2019 incident where he was allegedly threatened supposedly took place at his maternal uncle's home in Tambacounda, his native town.

[6] For the RPD, this is a major difficulty with respect to the applicant's credibility. First, the threat received was allegedly made in Tambacounda on April 30, 2019, whereas he said he was living in Dakar. In a document reproduced at pages 102 and 103 of the certified tribunal record,

entitled “Schedule A – Background/Declaration” and signed by the applicant on December 19, 2019, the applicant states more than once that he was residing in Dakar between February and June 2019, not in Tambacounda. The two locations are several hundred kilometres apart. This contradiction was apparently not explained. Moreover, the RPD saw a significant inconsistency in the story in that the maternal uncle, who was an agent of persecution, received the applicant at his home in Tambacounda where the applicant allegedly lived. The sole explanation provided was that the applicant wanted to see his mother. He stated that going to live at his persecutor’s home was not inconsistent with a fear for his life and safety. This is not the conclusion drawn by the RPD.

[7] The RAD conducted its own analysis and confirmed the RPD decision for the same reasons. The essence of the decision on the location of the April 30 incident is found at paragraphs 26 and 27 of the RAD decision.

> [26] In my opinion, the contradiction raised by the RPD was not irrelevant or non-determinative as indeed, it was significant, and Mr. Aidara was unable to provide a satisfactory explanation.
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> [27] The questioning about this contradiction and the timelines provided for where Mr. Aidara lived went on at length and he had many opportunities to explain the difference between his testimony about being attacked in Tambacounda, and his address history indicating that he was in Dakar on the date that the alleged attack occurred.

[8] The RAD also considered that the decision to go live with his uncle who was allegedly an agent of persecution undermines the credibility of the applicant. Like the RPD, the RAD saw this behaviour as being inconsistent with that of a person fearing for his or her life and safety. The applicant had the option of living in Dakar if he had wanted to. He did not do so.

[9] In his appeal before the RAD, the applicant also complained that he had not been given in advance the form he had signed in which he stated that he had lived in Dakar from February 2019 to June 2019. If there was a difficulty as a result of said form not having been passed along, Mr. Aidara's counsel did not indicate at the hearing before the RPD that he had not received it; in fact, no objection was raised. The RAD listened to the recording, and nothing of the sort was raised during the hearing, which lasted several minutes. The panel wrote:

> [12] The POE forms were listed at the beginning of the hearing when the RPD member reviewed the list of documents, as is done in all RPD hearings, and Mr. Aidara's counsel agreed to the contents of the list of documents and made no mention that anything was missing from his file.
>
> [13] When the RPD member was referring to the IMM5669 form in particular, he displayed it so that both Mr. Aidara and his counsel could see it. At no point during this questioning did Mr. Aidara's counsel indicate that he did not have a copy of this form.

III. Arguments and analysis

[10] Before the Court, the appellant repeated the same themes as those argued before the RAD (and also the RPD).

[11] Accordingly, he claimed a breach of procedural fairness and attacked the findings made by the RAD on his credibility.

[12] Concerning procedural fairness, the applicant did not demonstrate how it might have been breached, nor did he cite any authorities. In fact, he had to demonstrate that there might have been a breach by proving that the form filled out and signed on December 10, 2019, was not in his possession. This has not been proven. On the contrary, indications are instead that the

form was in fact identified at the hearing and that there was ample time to raise deviations that could then have been remedied. At best, the applicant's counsel is seeking to testify *ex post facto* through the Memorandum of Fact and Law. The Court can only ignore these assertions.

[13] The respondent is right to note that the applicant did not object to the use of this form. Nor did the applicant's counsel seek to clarify what appeared to be a rather flagrant contradiction with respect to the moment he was allegedly assaulted by some members of his family. This disposes of the argument of breach of procedural fairness. It has not been established and, in any case, if there was a breach, it was not raised in a timely fashion (*Hashim v. Canada (Citizenship and Immigration)*, 2021 FC 676, para 17).

[14] The applicant is held to the reasonableness standard with respect to his allegations concerning his undermined credibility. The consequence of the reasonableness standard is, of course, that whoever attacks decisions on this basis has the onus of proof (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] para 100). The reviewing court must exercise judicial restraint and adopt a posture of respect in the face of the decision taken (*Vavilov*, paras 13–14). A reasonable decision is one that exhibits justification, transparency and intelligibility and is justified in relation to the relevant factual constraints (*Vavilov*, para 99). To attack the reasonableness of a decision, serious shortcomings must be shown to the extent that the characteristics of a reasonable decision such as justification, intelligibility and transparency can be said not to be met. It would have been necessary for the applicant to satisfy the Court of shortcomings sufficiently central or significant to render the decision unreasonable. Was it demonstrated that the decision is indefensible in some respects?

[15] I must conclude that the applicant has not discharged his burden.

[16] I take from the argument presented by the applicant and his Memorandum of Fact and Law that he disagrees with the weight given to the contradiction surrounding the date of April 30, when some of the appellant's cousins allegedly threatened him at one location when he was living elsewhere, several hundred kilometres away. This is not trivial. This does not demonstrate an unreasonable decision. In my opinion, neither is it trivial that while the applicant said that he was sufficiently fearful for his life and safety that he chose to come to Canada to seek refuge, he nevertheless chose to go live with one of the agents of persecution. No valid explanation was provided.

[17] It is not enough to claim, as did the applicant, that the RAD erred. It must be demonstrated that the decision was unreasonable. To simply argue that [TRANSLATION] "the RAD erred in its application of the law and in its analysis of the facts in the file" (Memorandum of Fact and Law, page 31) does not advance the applicant's cause when the standard of review is that of reasonableness. The burden on the applicant has not been discharged.

IV. Conclusion

[18] The Court must therefore dismiss the application for judicial review. No serious question of general importance emerges from this file.

JUDGMENT in IMM-2021-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Yvan Roy"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2021-22
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