Federal Court Cour fédérale

Date: 20230825

Docket: IMM-5622-22

Citation: 2023 FC 1155

Ottawa, Ontario, August 25, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

ABAYOMI OLUWOLE LAWRENCE AJAYI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the decision of the Refugee Appeal Division [RAD] that dismissed his appeal of a decision of the Refugee Protection Division [RPD] finding that he is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [*IRPA*].

[2] The Applicant is a citizen of Nigeria, and a Christian. He says that he was a candidate for a leading political party in Nigeria. In the context of his selection by the party he was asked to undergo traditional religious rituals that were meant to spiritually cleanse him and prove his loyalty to the party. He refused because such practices are contrary to his religious faith. The Applicant says he fears persecution because of his refusal to participate in the rituals, and because traditional leaders will seek to harm him to keep secret the details of these practices. He says that family members and others familiar with the traditional practices advised him of the risk he was under because of his actions, and so he fled Nigeria and claimed refugee status in Canada.

[3] The RPD rejected his refugee claim, largely because it found the objective evidence did not support the Applicant's claim that such traditional rituals were practiced in Nigeria, and he did not demonstrate a forward-looking risk. On appeal to the RAD, the Applicant filed new evidence to substantiate his claim, including an affidavit that confirmed his intention to continue his political involvement if he returned to Nigeria and articles that demonstrate the extent to which traditional rituals and practices are part of politics in Nigeria. The affidavit also referred to the risk that the Applicant faces from traditional leaders who will want to prevent him from sharing information about their practices. The RAD accepted the new evidence but refused the Applicant's request for an oral hearing.

[4] The RAD found that the objective evidence supported the Applicant's claim that many political leaders in Nigeria had undergone traditional ceremonies and practices, and thus it reversed the RPD on this point. However, the RAD found that the Applicant did not establish

that he faced a forward-looking risk, because if he refused to undergo the traditional practices he would be unable to be a candidate and to run for office, but he could still participate by voting. Finding that the Applicant had failed to demonstrate that anyone had been searching for him since he fled Nigeria, and considering the passage of time, the RAD concluded that the Applicant had failed to demonstrate that he faced a forward-facing risk upon his return to Nigeria. The RAD therefore dismissed the appeal.

[5] There are two determinative issues on this judicial review. First, I find that the RAD failed to provide a reasonable explanation for its refusal to hold an oral hearing. Second, I find that the RAD failed to grapple with an essential element of the Applicant's claim, namely the risks he feared from traditional leaders who wanted to "keep his mouth shut".

[6] Both issues are to be assessed under the reasonableness standard set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] In summary, under the *Vavilov* framework, 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). An administrative decision-maker's exercise of public power must be "justified, intelligible and transparent" (*Vavilov* at para 95). The onus is on the Applicant to demonstrate flaws in the decision that are "sufficiently central or significant" (*Vavilov* at para 100). The decision should be assessed in light of the history and context of the proceedings, including the evidence and submission made to the

decision-maker (*Vavilov* at para 94). A reviewing court should not interfere with a decision-maker's factual findings "absent exceptional circumstances" (*Vavilov* at para 125). However, a decision-maker's failure to "meaningfully grapple with key issues or central arguments raised by the parties" may render a decision unreasonable (*Vavilov* at para 128).

[8] The refusal to hold an oral hearing is often considered to be a matter of procedural fairness that would otherwise be assessed under an approach that resembles correctness (see *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras 54-56). However, the RAD's decision whether to admit new evidence under subsection 110(4) of the *Immigration and Refugee Protection Act,* S. C. 2001, c. 27 (*IRPA*), and by extension its decision whether to hold an oral hearing because of the new evidence under subsection 110(6), involves the interpretation of the specific criteria set out in the statute, which is assessed under the reasonableness standard: *Singh v. Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] at paras 29 and 74; and see the discussion in *C.D. v. Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1582 at paras 6-12.

[9] On the first issue, the Applicant filed new evidence to rebut the RPD's findings regarding the objective evidence about traditional religious practices in Nigerian politics, and his intention to continue to be politically engaged. He requested an oral hearing. The RAD refused, saying: "While the new evidence is relevant to the Applicant's claim, it is not central to his claim or addresses (*sic*) credibility concerns, and it does not justify allowing or rejecting his claim." (RAD Decision, para 9).

[10] The RAD went on to dismiss the Applicant's appeal, thereby ending his refugee claim, on the basis that he could avoid the risks he feared by either agreeing to undergo the traditional rituals or participating in politics in ways other than by standing as a candidate. In the course of its decision, the RAD specifically noted that the RPD never asked the Applicant whether he planned to return to politics. The RAD's findings thus involved an interpretation of the Applicant's statements about his future intentions set out in the affidavit he submitted as new evidence. This was a key element of the RAD's finding, and the RAD acknowledged the Applicant never had the opportunity to explain or answer questions about it.

[11] In light of this context, I find the RAD's reasons for denying the Applicant's request for an oral hearing to be unreasonable. The law is clear that oral hearings before the RAD are exceptional, and the strict criteria set out in IRPA must be complied with, beginning with whether the new evidence is admissible before the RAD: *Singh* at para 35. The criteria for determining whether to hold an oral hearing set out in subsection 110(6) of the *IRPA* "are unquestionably related to the materiality of the new documentary evidence…" (*Singh* at para 48).

[12] In this case, the RAD's explanation for refusing an oral hearing falls short because it does not align with the RAD's subsequent findings on the new evidence, findings which lie at the core of the decision the RAD ultimately reached. More was required here, and the RAD's failure to explain its reasoning on this point is unreasonable.

[13] Turning to the second issue, the starting point is the requirement under the *Vavilov* framework that the RAD demonstrate that it has grappled with the key elements of the

Applicant's case. In this case, the Applicant's refugee claim rested on two assertions: that he faced a risk because he had refused to participate in the traditional rituals, and that he faced a risk because of what he had seen – that the traditional leaders were motivated to harm him to prevent him from sharing what he had learned about the traditional practices.

[14] This latter claim was substantiated by the objective country condition evidence as well as by the affidavit of the Applicant's uncle who is identified as a traditional king in Osun State, Nigeria. In discussing the objective country condition evidence, the RAD noted that the National Documentation Package forbids speaking about the traditional practices, and found this confirmed the Applicant's statement in his affidavit "that the chief priests and politicians who demanded an oath from him are motivated to keep him permanently quiet…" (RAD Decision, para 16).

[15] However, when the RAD analyzed the forward-facing risks faced by the Applicant, this evidence is not discussed. The Respondent points out that the RAD found that the Applicant had failed to show that anyone was searching for him after he fled Nigeria, and that this shows that it dealt with this aspect of the Applicant's risk. I am not persuaded because the RAD failed to draw any connection between this particular finding and the Applicant's claimed risk.

[16] In assessing whether this aspect of the RAD's decision is reasonable, I find it significant that the Applicant has been clear and consistent throughout the process that he faces a separate risk because of what he learned about the traditional practices. This is stated in his original Basis of Claim form, was addressed in his testimony before the RPD and repeated in the affidavit he

submitted in his RAD appeal. Although the RAD accepted that the evidence supported the Applicant's claim on this ground, it failed to consider it when it examined his forward-facing risk.

[17] The evidence does not show that the traditional leaders would only be motivated to harm the Applicant if he became involved as a political candidate; on the evidence, the risk associated with his knowledge of the traditional practices does not seem to be connected to his future political engagement. The RAD's findings on that point cannot, therefore, be treated as implicitly covering both risks. Instead, the RAD was required to examine the evidence and explain its conclusion on the two separate risks. It failed to do that, and I find the RAD's decision to be unreasonable.

[18] Taken together, I am satisfied that the RAD's unreasonable treatment of these two issues is sufficiently central and significant to render the entire decision unreasonable: *Vavilov* at para 100.

[19] For these reasons, the application for judicial review will be granted. The RAD's decision will be quashed and the matter will be remitted back for redetermination by a different panel.

[20] One final point should be added. My findings on these two issues are sufficient to overturn the RAD's decision, and so it is not necessary to address the question of whether the RAD's finding that the Applicant had no forward-facing risk because he could choose to change his mind about participating in the rituals (thus violating his religious beliefs) or he could choose

to “exercise his right to his political opinion by voting for his preferred candidate without personally performing and holding a political position” (thus restricting the exercise of his political freedoms) is reasonable. My silence on this point should not be understood to be an endorsement of the RAD’s reasoning, which appears to be contrary to a long line of jurisprudence: see, for example, *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at paras 16-19; *Khair v Canada (Citizenship and Immigration)*, 2023 FC 374 at paras 24-25 and 43; *Sadeghi-Pari v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 282 (CanLII) at para. 29; *Kenguruka v Canada (Citizenship and Immigration)*, 2014 FC 895.

[21] There is no question of general importance for certification.

JUDGMENT in IMM-5622-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.

2. The decision of the Refugee Appeal Division dated May 31, 2022 is hereby quashed. The matter is remitted back to the Refugee Appeal Division for reconsideration by a different panel.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5622-22
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