Federal Court  Cour fédérale

Date: 20230908

Docket: IMM-6662-22

Citation: 2023 FC 1212

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 8, 2023

PRESENT: Mr. Justice Régimbald

BETWEEN:

FONHEY ARMEL JOCELYN VAHO

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Fonhey Armel Jocelyn Vaho, is a citizen of Côte d'Ivoire who arrived in Canada on September 26, 2019. In a decision dated June 21, 2022, the Immigration Division [ID or the panel] determined that Mr. Vaho had been a member of the Fédération Estudiantine et

Scolaire de la Côte d'Ivoire [FESCI], an organization that engages, has engaged or will engage in terrorism within the meaning of paragraphs 34(1)(c) and (f) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [IRPA]. The ID also declared the applicant inadmissible to Canada as it found that there were reasonable grounds to believe that he had been a member.

[2] The applicant is seeking judicial review of the ID's decision and contends that it was unreasonable for the ID to conclude that he had been a member of such an organization. The applicant submits that the ID's decision was unreasonable because although he made an error in claiming to have been a member of such an organization in his Basis of Claim Form, he provided a reasonable explanation to justify it.

[3] For the reasons that follow, the application for judicial review is dismissed. The ID's decision was clear, justified and intelligible in light of the evidence submitted (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). The applicant failed to discharge his burden of demonstrating that the ID's decision was unreasonable.

II. Factual background

[4] The applicant arrived in Canada on September 26, 2019, at 3 a.m., accompanied by his wife and child.

[5] Upon arrival, he was required to complete several forms, including Schedule A: "Background/Declaration," in which he declared that he had been an activist in the "Fédération Estudiantine de Côte d'Ivoire," whereas FESCI is identified in Canada as a terrorist organization.

[6] The objective documentary evidence shows that FESCI is a student group created in April 1990 and closely associated with Laurent Gbagbo's socialist party, the Front Populaire Ivoirien [FPI]. FESCI acted as a militia linked to former president Gbagbo, muzzling anti-government dissidents on high school and university campuses.

[7] Five months later, during his first interview with an immigration officer who considered the "Fédération Estudiantine de Côte d'Ivoire" to be the same entity as FESCI (which was not denied by the applicant), the applicant explained the circumstances of this misunderstanding by pointing out that he had forgotten the word "*comptable*" ([TRANSLATION] "accountant") when noting that he had been an [TRANSLATION] "activist" in the Fédération des étudiants comptables de la Côte d'Ivoire [FECCI] (and not for FESCI). He also said he had used the word "*estudiantin*" instead of "*étudiant*" due to the rush, stress and fatigue of his arrival.

[8] Since then, the applicant has continued to support this second version of events, according to which he had not been a member or militant of FESCI, but rather an FECCI [TRANSLATION] "member" or "militant." During the hearing before the ID, he denied having belonged to FESCI.

III. Standard of review and issues

[9] The only issue before the Court is whether the ID's decision that the applicant was a member of FESCI and therefore inadmissible to Canada was reasonable.

[10] The applicable standard of review is reasonableness. The decision will be reasonable if it is justified, transparent and intelligible, and if it is one of the possible outcomes in light of the facts and the law (*Vavilov* at paragraph 99).

IV. Analysis

[11] In short, the ID's role in this case was to assess whether the applicant was inadmissible to Canada by reason of his membership in FESCI. The panel had no jurisdiction to hear the claim for refugee protection.

[12] The parties agree that the test to be applied in determining whether a person is inadmissible is that set out in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paragraph 114, which states as follows:

> . . . [T]he "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities: *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.), at p. 445; *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.), at para. 60. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information*: Sabour v. Canada (Minister of Citizenship & Immigration)* (2000), 9 Imm. L.R. (3d) 61 (F.C.T.D.).

[13] Paragraph 34(1)(f) must also be read in light of section 33 of the IRPA, which states that in the case of inadmissibility, there is no temporal constraint on the acts of the organization concerned: there must be reasonable grounds to believe that these facts have occurred, are occurring or may occur in the future.

[14] It is important to note that the applicant in this case did not challenge the validity of the ID's finding that FESCI was a terrorist organization within the meaning of *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 98.

[15] The only issue for the ID in this case was therefore to determine the applicant's affiliation with FESCI. This, as the applicant conceded, is a question of credibility.

[16] However, it should be remembered that the applicant's membership in an organization within the meaning of paragraph 34(1)(f) of the IRPA must be interpreted liberally and without restriction. (*Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paras 27, 29). Thus, any foreign national or permanent resident who has been a member of such an organization, regardless of whether he or she committed the acts himself or herself, is inadmissible to Canada (*Rahman v Canada (Public Safety and Emergency Preparedness*), 2019 FC 807 at para 23 citing *Saleh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 303 [*Saleh*] at para 19; *Aboubakar v Canada (Citizenship and Immigration)*, 2020 FC 181 at para 17).

[17] The ID bases its decision on *Kanapathy v Canada*, 2012 FC 459 at paras 33–34, in which Justice McTavish pointed out that "actual or formal membership in an organization is not required: rather, the term is to be broadly understood", and that "[i]nformal participation or support for a group may suffice".

[18] The jurisprudential test therefore does not require the person to have knowingly or actively participated in terrorism or the overthrow of a government. It is sufficient that he or she has been a member (*Saleh* at paras 19 and 24 citing *Tjiueza v Canada (Minister of Citizenship and Immigration,* 2009 FC 1260.

[19] The applicant's main allegation was that the ID erred in concluding that the explanations he provided to remedy the error in his statement that he was a member of FESCI were not credible. He also argued that the panel did not provide clear reasons why this second version could not be accepted (*Nadasapillai v Canada (Citizenship and Immigration)*, 2015 FC 72 at paras 11–12). He alleged that in his haste, with the stress and fatigue of his arrival in Canada, he omitted to write the word "*comptable*" when he wrote that he had been an activist for FESCI. In the applicant's view, the omission of the word "*comptable*" and the use of the word "*estudiantin*" was not sufficient to conclude that the applicant had been a member of FESCI. He argued that since the other statements contained in the form were not found not to be credible, the ID should have given the applicant the benefit of the doubt in the circumstances based on *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593.

[20] In his affidavit in support of his application for judicial review, the applicant also asserted that he had never been a member of FESCI, and that he had instead joined FECCI as an accounting student in 2003, and that this organization helped accounting students enter the labour market. He stated that he became active in 2006, even though his membership began in 2003. He claimed that his membership card, dated 2003–2004, established the existence of FECCI and his membership in that federation.

[21] In this case, the ID's decision that the Minister had discharged his burden of demonstrating that there were reasonable grounds to believe that the applicant was a member of FESCI was reasonable.

[22] The panel took into account the applicant's explanations as to why he had stated that he was a member of FESCI rather than FECCI, but found this explanation unconvincing, given that there were several other contradictions in his testimony. Thus, as submitted by the respondent in his memorandum, the transcript of the hearing before the ID shows that the panel considered all of the explanations provided by the applicant.

[23] Indeed, in its decision, the ID noted a number of contradictions:

> A. During the hearing before the ID, The applicant confirmed that it was he who had written "*Fédération estudiantine de la Côte d'ivoire*" contrary to what was written in his memorandum before the ID, which stated that it was the immigration or customs officer who had written those words for the applicant;
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> B. The ID noted implausibilities and contradictions regarding The applicant's studies in finance and accounting at a private institution that was not affiliated with FESCI—FESCI was present at all public and private higher education institutions;
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> C. The applicant claims to have been a member of a [TRANSLATION] "student" federation, yet the objectives of FECCI described by the applicant appear to be aimed at accounting graduates;
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> D. The first statement provided at the port of entry states that he was a member from 2006 to 2013, but his FCCI membership card dates from 2003–2004;
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> E. He testified that he obtained his card after attending an initial meeting in 2007, which is inconsistent with the rest of the evidence;

> F. He claimed that the ITES could not confirm the existence of FECCI, a student association which, according to the applicant's own statements, was present in the institution, but also asked the ITES for confirmation that he was not a member of FESCI, when this organization was not present there.

[24] The panel was entitled to consider those explanations not to be credible, and to conclude that "the absence of the word 'comptable' in his first statement adds to the implausibility of his explanations." Although a single conclusion on this aspect is not sufficient, it is important to be clear that the applicant's credibility was undermined by the accumulation of inconsistencies and contradictions in his testimony. His explanations were not found to be credible by the ID (see the Decision, in particular at paras 20, 28, 36).

[25] The panel was also entitled to consider that the content of the applicant's first statement upon arrival, made spontaneously and in writing, was more reflective of reality, as opposed to his subsequent statements (*Ishaku v Canada*, 2011 FC 44, at para 53). Moreover, the applicant himself conceded that more weight should be given to a spontaneous statement made at a port of entry than to subsequent explanations that become vague or contradict the initial versions recounted spontaneously (see applicant's memorandum at paras 91–93).

[26] Although the applicant was clear that the facts of those decisions were different from those in his own case, he himself acknowledged that an initial and spontaneous statement, made without coercion, deserved considerable weight over a subsequent contradictory explanation which serves the applicant's interests.

[27] In itself, the Court's role as a reviewing court is very limited. The Court may intervene only if the findings of fact are clearly wrong, or if they are capricious or without regard for the evidence (*Brahim v Canada (Citizenship and Immigration)*, 2019 FC 503 at para 30). Indeed, the assessment of credibility falls within the heartland of the ID's expertise, and calls for deference from a reviewing court *(Ji v Canada*, 2019 FC 1219 at paras 7, 9).

[28] In *Randhawa v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 905, Gascon J. stated:

> [23] Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). An assessment of the reasonableness of a decision must be robust, but it must remain sensitive to and respectful of the administrative decision maker (*Vavilov* at paras 12-13). Reasonableness review is an approach anchored in the principle of judicial restraint and in a respect for the distinct role and specialized knowledge of administrative decision makers (*Vavilov* at paras 13, 75, 93). In other words, the approach to be followed by the reviewing court is one of deference, especially with respect to findings of facts and the weighing of evidence. Absent exceptional circumstances, the reviewing court will not interfere with an administrative decision maker's factual findings (*Vavilov* aux para 125-126).

[29] In this case, the decision of the ID was not so seriously flawed that it could be said not to meet the requirements of justification, intelligibility and transparency.

[30] Moreover, although certain aspects of the testimony of Mr. Konan and the applicant's sister Fonhey Marina Edwidge Pamela Vaho may have corroborated the applicant's assertion that he was a member of FECCI, the ID's conclusion that these two testimonies were not

sufficiently probative was reasonable. In fact, since Mr. Konan's testimony contradicted the applicant's as to the renewal of the card, it was reasonable for the ID to conclude that this evidence did not assist the applicant in demonstrating an error in his initial statement at the port of entry. The ID determined that the applicant was not credible, and the additional evidence was not considered sufficient to discharge the applicant's burden of proof.

V. Conclusion

[31] The ID's reasons were logical, coherent and rational, as required by paragraph 86 of the *Vavilov* judgment. The application for judicial review is therefore dismissed.

[32] The parties have not proposed any questions of general importance for certification and I agree that there are none.

JUGMENT in IMM-6662-22

THIS COURT'S JUDGMENT is as follows:

1. The application is dismissed.

2. No question is certified.

"Guy Régimbald"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6662-22
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