

Federal Court



Cour fédérale

Date: 20240229

Docket: IMM-3090-23

Citation: 2024 FC 341

[ENGLISH TRANSLATION]

Montréal, Quebec, February 29, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

ANDRÉ OUEDRAOGO

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, André Ouedraogo, is a citizen of Burkina Faso. He is seeking judicial review of a decision dated February 10, 2023 [Decision], in which the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] determined that he was neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1) of

the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD rejected Mr. Ouedraogo's claim because he lacked credibility and because there were omissions and inconsistencies with respect to key elements of his claim. The RPD also found that there was no credible basis for Mr. Ouedraogo's claim under subsection 107(2) of the IRPA.

[2] Mr. Ouedraogo submits that the RPD gave too much weight to inconsistencies between the evidence in the record and his testimony, that it misinterpreted some of the answers he gave in his testimony and that it erred in concluding that there was no credible basis for his claim.

[3] For the reasons that follow, Mr. Ouedraogo's application for judicial review will be dismissed. Having considered the RPD's reasons and conclusions, the evidence before it and the applicable law, I see no reason to set aside the Decision, since it contains no serious shortcomings that would require the intervention of the Court.

II. Background

A. *Facts*

[4] Mr. Ouedraogo studied microfinance in his country of citizenship, Burkina Faso. After completing his studies, he began working as a controller at the Union régionale des coopératives d'épargne et de crédit [URCBAN]. Over the years, he rose through the company's ranks, and he states that he became a director at URCBAN in 2011.

[5] Mr. Ouedraogo alleges that, in 2017, a group of investors went to his home to demand money that URCBAN owed them but was unable to reimburse. Mr. Ouedraogo also alleges that, in October 2017, investors went to the Kongoussi branch of URCBAN, where he was located,

and stoned him. After this incident, he decided to send his family to Ouagadougou, the capital of Burkina Faso.

[6] Fearing for his life, Mr. Ouedraogo departed Burkina Faso on January 19, 2018, for the United States. In March 2019, more than a year after arriving in the United States, he travelled to Canada and claimed refugee protection.

B. *Decision of RPD*

[7] In February 2023, the RPD rejected Mr. Ouedraogo's claim for refugee protection, finding that he was not credible. Given the inconsistencies and omissions in the evidence as a whole, including Mr. Ouedraogo's testimony, the RPD also concluded that there was no credible basis for his refugee protection claim under subsection 107(2) of IRPA.

[8] Specifically, the RPD considered a number of inconsistencies in the exhibits filed to show Mr. Ouedraogo's employment history at URCBAN. For example, Mr. Ouedraogo's curriculum vitae [CV] indicated that he was still working for URCBAN when he claimed refugee protection, and the record contained no other evidence showing his employment history at URCBAN. In addition, the RPD noted that it would give Mr. Ouedraogo the benefit of the doubt with regard to his working for URCBAN after 2014, but it still doubted his credibility because his testimony was evasive.

[9] Furthermore, when the RPD pointed out to him that his behaviour was not that of a person who fears for his life, Mr. Ouedraogo responded that continuing to work for URCBAN was his way of hiding his fear. The RPD also noted that, after Mr. Ouedraogo left Burkina Faso, he remained in the United States for more than a year without seeking asylum, which did not

indicate fear for his life. Finally, the RPD noted that, when it asked Mr. Ouedraogo whether he had come to Canada to work in finance, he immediately replied [TRANSLATION] “Yes, exactly”, adding, [TRANSLATION] “Given that I work in microfinance, this is what motivated me to come to Canada.” The RPD concluded from his testimony that Mr. Ouedraogo had not come to Canada to protect his life, but rather to work in microfinance.

C. *Standard of review*

[10] There is no doubt that the standard of reasonableness applies to this case with respect to the RPD’s findings on credibility and the lack of sufficient evidence to establish the basis of the refugee protection claim (*Regala v Canada (Citizenship and Immigration)*, 2020 FC 192 at para 5; *Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142 at para 17; *Yuan v Canada (Citizenship and Immigration)*, 2018 FC 755 at para 13; *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 25).

[11] In addition, the framework for judicial review of the merits of an administrative decision is now the one established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [Mason]). This framework is based on the presumption that the applicable standard of review in all cases is now reasonableness.

[12] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Mason* at para 64; *Vavilov* at

para 85). To make this determination, the reviewing court asks “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[13] It is not enough for the outcome of a decision to be justifiable. Where reasons are required, the decision “must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies” [emphasis in original] (*Vavilov* at para 86). Thus, reasonableness review is concerned with both the outcome of the decision and the reasoning process followed (*Vavilov* at para 87). Reasonableness review must entail a robust evaluation of administrative decisions. However, a reviewing court must begin its inquiry into the reasonableness of a decision by taking a “reasons first” approach, examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an appropriate posture of restraint, intervening only “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). The reasonableness standard always finds its starting point in the principle of judicial restraint and deference, and requires reviewing courts to show respect for the distinct role that Parliament has chosen to confer on administrative decision makers rather than on the courts (*Mason* at para 57; *Vavilov* at paras 13, 46, 75).

[14] The burden is on the party challenging the decision to show that it is unreasonable. To set aside an administrative decision, the reviewing court must be satisfied that there are sufficiently serious shortcomings to render the decision unreasonable (*Vavilov* at para 100).

III. Analysis

[15] Mr. Ouedraogo submits that the RPD gave too much weight to inconsistencies between evidence in the record and his testimony, as well as to the fact that the dates reported did not add up to show the length of his employment with URCBAN. He also states that he came to Canada to protect his life, not to work in microfinance, and that the RPD misinterpreted his response to this effect. Lastly, Mr. Ouedraogo submits that the RPD can make a finding that there is no credible basis for a claim only where there is no credible or trustworthy evidence, which, in his opinion, is not true in this case.

[16] With respect, I am not persuaded by Mr. Ouedraogo's arguments.

[17] As pointed out by the respondent, the Minister of Citizenship and Immigration [Minister], the exhibits filed in support of Mr. Ouedraogo's refugee protection claim do not in any way support his claim, and it was reasonable for the RPD to draw the conclusions set out in the Decision. In assessing Mr. Ouedraogo's credibility, it was also entirely open to the RPD to question him about his lengthy stay in the United States without taking any steps to seek protection. Moreover, before the RPD, Mr. Ouedraogo failed to prove the central elements of his refugee protection claim, which undermined his credibility and was sufficient to conclude that there was no credible basis for his claim.

A. *Decision of RPD reasonable*

[18] Mr. Ouedraogo alleges that the RPD erred by focusing on inconsistencies between the evidence in the record and his testimony, that it misinterpreted some of the answers he gave during his testimony and that it failed to consider all the evidence before it.

[19] With respect, these arguments do not hold water.

[20] First, the RPD reasonably concluded that Mr. Ouedraogo's evidence and testimony failed to establish that he had worked for URCBAN until 2018. Mr. Ouedraogo states that, since the certificate of employment he filed in evidence is dated June 26, 2014, it shows that he continued to work for URCBAN after 2014. In addition, he argues that his CV states that he worked for URCBAN [TRANSLATION] "from 2011 to present," without specifying an end date. Mr. Ouedraogo argues that this does not show that he did not work for URCBAN up until 2018.

[21] As the Minister notes, the evidence does not support these explanations. In fact, Mr. Ouedraogo's affidavit is entirely silent on this point. Moreover, even if it is accepted that Mr. Ouedraogo was unable to obtain a more recent or updated work certificate to show that he worked for URCBAN, it would not be unreasonable to expect him to have updated his CV so that he could provide in his refugee protection claim the most recent description of where he had worked and, in particular, until when he had worked for URCBAN. This is especially true since the CV was the only piece of evidence that could have established Mr. Ouedraogo's involvement with the company. In this case, updating his CV would have been appropriate because the facts supporting his refugee protection claim relate to the period after 2014, and this period was not covered by the certificate of employment he had filed. Therefore, it was entirely reasonable for the RPD to conclude that Mr. Ouedraogo's credibility was undermined by the inconsistencies between his testimony and the evidence and by the lack of a satisfactory explanation for the dates.

[22] The RPD also pointed out a number of other instances where Mr. Ouedraogo's testimony was inconsistent. In particular, the RPD determined that Mr. Ouedraogo's response regarding the

date he was allegedly stoned was vague and imprecise. At first, Mr. Ouedraogo stated that he did not recall the date, but after his lawyer repeated the question, he responded that it was [TRANSLATION] “after 2017.” Since this, according to his account, was the incident that made him fear for his life and decide to leave Burkina Faso, the RPD reasonably found the uncertainty and lack of detail in his response unsatisfactory. I would point out that the incident referred to by Mr. Ouedraogo, namely, being stoned by angry investors, is by no means insignificant; therefore, it is difficult to believe that Mr. Ouedraogo was unable to remember the date.

[23] Moreover, at the hearing before the RPD, Mr. Ouedraogo stated that he had sought refuge in Ouagadougou, whereas he states in his account that he lived in Kongoussi until January 2018. On confronting him, the RPD noted that Mr. Ouedraogo was visibly uneasy and that he stated that he had gone into hiding [TRANSLATION] “from time to time” in Ouagadougou.

[24] This Court has held that “lack of ability to recall detail – especially in circumstances where it ought to be remembered – provides a tribunal a reasonable basis for rejecting testimony” (*Su v Canada (Citizenship and Immigration)*, 2013 FC 518 at para 8, citing *Ma v Canada (Citizenship and Immigration)*, 2011 FC 417 at paras 31–33; *Pjetri v Canada (Citizenship and Immigration)*, 2013 FC 376 at para 43; *Li v Canada (Citizenship and Immigration)*, 2012 FC 998 at para 18). Moreover, this Court has repeatedly established that, “although they may be insufficient when examined individually or in isolation, the accumulation of contradictions, inconsistencies and omissions concerning the crucial elements of a refugee claim may support an adverse finding regarding a claimant’s credibility” (*Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at para 56 [*Paulo*], citing *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 19; *Quintero Cienfuegos v Canada*

(*Citizenship and Immigration*), 2009 FC 1262 at para 1). That is the case here. The accumulation of inconsistencies and omissions in Mr. Ouedraogo's account and testimony made it reasonable for the RPD to find him not credible.

[25] I would point out that the three aspects in which Mr. Ouedraogo's evidence was flawed, namely, his employment with URCBAN, the stoning incident and his travel to Ouagadougou, were the essence and the anchor of his claim for refugee protection. In these circumstances, it was entirely reasonable for the RPD to draw negative inferences about Mr. Ouedraogo's credibility.

[26] Contrary to Mr. Ouedraogo's allegations, it is clear from the Decision that the RPD did examine the exhibits he presented at the hearing but did not give them any probative value. As the Minister notes, it was open to the RPD to conclude that these exhibits had no probative value. As Justice de Montigny stated in *Linares Morales v Canada (Citizenship and Immigration)*, 2011 FC 1496 [*Linares Morales*]:

[21] Given the many inconsistencies and contradictions in the applicant's testimony identified above, it was open to the panel to not give him the benefit of the doubt. Therefore, the panel was also entitled to attach little probative value to the documents adduced into evidence by the applicant. A non-credibility finding concerning central elements of a claim may extend to other elements of the claim, as the Federal Court of Appeal recognized in *Sheikh v. Canada (M.E.I.)*, [1990] 3 F.C. 238 at paragraphs 7 to 9.

Linares Morales at para 21.

[27] None of the arguments put forward by Mr. Ouedraogo demonstrates a reviewable error by the RPD in relation to its credibility analysis. The RPD analyzed all the evidence before it and

noted that Mr. Ouedraogo had somehow adjusted his testimony for the purposes of his refugee protection claim and that he was improvising answers. Given the accumulation of inconsistencies that were not satisfactorily explained and the omissions, the RPD reasonably supported an adverse finding regarding Mr. Ouedraogo's credibility (*Paulo* at para 56).

[28] Lastly, it should be emphasized that negative credibility findings are within the expertise of the RPD. As this Court has repeatedly stated, credibility is “a question of fact that is central to the RPD's expertise” and “the RPD's findings of credibility invite considerable deference” (*Mbuyamba v Canada (Citizenship and Immigration)*, 2020 FC 918 at para 28, citing *Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at paras 31–32 and *Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at para 36).

B. *RPD reasonably concluded claim had no credible basis*

[29] Under subsection 107(2) of the IRPA, where a claimant provides no credible or trustworthy evidence on which to base a positive decision, the RPD must find that there is no credible basis for the claim (*Aboubeck v Canada (Citizenship and Immigration)*, 2019 CF 370 at para 15, citing *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51; *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 19). That is the case here.

[30] Mr. Ouedraogo was unable to demonstrate to the RPD the central elements of his claim for refugee protection, and this undermined his credibility. Moreover, he failed to provide any credible and trustworthy evidence that would establish the elements supporting his claim, whether it be his work, his alleged stoning or his travel to Ouagadougou. He was also unable to

explain why he had stayed in the United States for so long without applying for asylum. It was therefore entirely reasonable for the RPD to find that there was no credible basis for his refugee protection claim under subsection 107(2) of the IRPA. Mr. Ouedraogo simply failed to put forward any solid arguments or evidence to challenge the reasonableness of the RPD's conclusions in this regard.

[31] As counsel for the Minister pointed out at the hearing before this Court, subsection 107(2) of IRPA has two dimensions, namely, evidence that is both credible and capable of forming the basis of a favourable decision. It is clear that Mr. Ouedraogo's record fails to meet either of these requirements. The evidence submitted was scant, amounting to little more than a few documents and evasive testimony regarding the story behind his claim.

IV. Conclusion

[32] For the reasons above, Mr. Ouedraogo's application for judicial review is dismissed. The Decision bears the hallmarks of intelligibility, transparency and justification required by the reasonableness standard, and there are no grounds that would justify the Court's substituting its opinion for that of the SPR.

[33] The style of cause is amended to reflect the proper legal name of the respondent before the Court, the "Minister of Citizenship and Immigration."

[34] None of the parties has proposed any questions of general importance to be certified, and I agree that there are none.

JUDGMENT in IMM-3090-23

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.
2. The style of cause is amended to name the Minister of Citizenship and Immigration as the respondent.
3. There are no questions of general importance to be certified.

“Denis Gascon”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3090-23

STYLE OF CAUSE: ANDRÉ OUEDRAOGO v MINISTER OF CITIZENSHIP
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PLACE OF HEARING: MONTRÉAL, QUEBEC

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