

Federal Court



Cour fédérale

Date: 20240319

Docket: IMM-2599-23

Citation: 2024 FC 428

Ottawa, Ontario, March 19, 2024

PRESENT: Mr. Justice O'Reilly

BETWEEN:

ABDULAI YAKUBU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

I. Overview

[1] In 2016, Mr Abdulai Yakubu arrived in Canada and sought refugee protection. He claimed to be a citizen of Ghana and said he fled his home country out of fear of persecution arising from a family dispute over property.

[2] A panel of the Refugee Protection Division rejected Mr Yakubu's claim; the RPD found that Mr Yakubu had failed to prove his identity.

[3] Mr Yakubu appealed to the Refugee Appeal Division; the RAD also concluded that Mr Yakubu failed to provide satisfactory evidence of his identity. As a result, the RAD found it unnecessary to consider the merits of Mr Yakubu's refugee claim.

[4] Mr Yakubu now seeks judicial review of the RAD's decision. He submits that the decision was unreasonable because the RAD refused to consider new identity evidence, namely, a copy of his Ghanaian passport. In addition, Mr Yakubu faults the RAD for refusing to overturn the RPD's decision on the basis that the RPD had failed to consider Mr Yakubu's birth registration certificate as evidence of his identity. Finally, Mr Yakubu maintains that he was entitled to an oral hearing because the RAD, in effect, made a negative credibility finding against him.

[5] I agree with Mr Yakubu that the RAD's treatment of the issue of identity was unreasonable. The RAD should also have considered whether Mr Yakubu was entitled to an oral hearing. Therefore, I will grant this application for judicial review and order another panel of the RAD to consider Mr Yakubu's case.

[6] The sole issue is whether the RAD's decision was unreasonable.

II. Was the RAD's decision unreasonable?

[7] The Minister submits that the RAD's findings regarding the new evidence presented by Mr Yakubu and the lack of proof of his identity were both reasonable. No oral hearing was required, according to the Minister.

[8] I disagree with the Minister's submissions.

[9] In respect of the new evidence, the RAD correctly noted that Mr Yakubu had stated at his RPD hearing that he did not have a copy of his passport, but he was applying for a new one. It was also true that Mr Yakubu had not managed to find a copy of his passport during the almost six years between making his refugee claim and the RPD decision. He testified that he had lost his passport while travelling between South America and the United States.

[10] However, Mr Yakubu explained that it was only after the RPD rendered its decision that he was able to obtain a copy of his passport from the person who had assisted him with his travels. According to Mr Yakubu, the passport was not reasonably available at the time of the RPD hearing and he could not have reasonably been expected to produce it sooner. Therefore, he says, the passport qualified as new evidence under s 110(4) of the *Immigration and Refugee Act*, SC 2001, c 27 (see Annex for provisions cited). In contrast, the RAD found that Mr Yakubu had "not explained why this document was not reasonably available prior to the RPD's decision." In effect, the RAD seems to have disbelieved Mr Yakubu's assertion that he had been unable to obtain a copy of his passport until after the RPD hearing, but it provided no explanation for that adverse credibility finding.

[11] The RAD also found that the RPD had not failed to consider Mr Yakubu's birth registration certificate as evidence of his identity. The RAD pointed out that the RPD had referred to the certificate when comparing the name on that document with the name on Mr Yakubu's voter identification card – the names were the same. Therefore, the RAD

concluded that the RPD had not overlooked Mr Yakubu's birth registration certificate. There are three problems with the RAD's conclusion. First, the RPD did not list the birth registration certificate among the documents it considered on the issue of identity. Second, since the name on the certificate matched the name on Mr Yakubu's voter identification card, the certificate corroborated evidence of Mr Yakubu's identity. Third, the certificate provided independent evidence of Mr Yakubu's identity that the RPD did not explicitly assess.

[12] The RAD correctly noted that the RPD did mention the birth registration certificate in passing. But mentioning a document is not the same as considering its evidentiary significance. I find that the RAD's affirmation of the RPD's decision on the issue of identity was unreasonable.

[13] On the issue of an oral hearing, the RAD stated that it could not hold an oral hearing because there was no admissible new evidence before it, citing s 110(6) of the *Immigration and Refugee Protection Act*. However, the criteria for holding an oral hearing are separate from those that apply to new evidence. The RAD may order an oral hearing when documentary evidence discloses a serious issue about an appellant's credibility, credibility is central to the person's claim, and the evidence, if accepted, could justify granting or rejecting the claim. Here, the RAD appears to have made a credibility finding regarding Mr Yakubu's passport and that finding related to a central issue in Mr Yakubu's refugee claim, namely his identity. If the RAD had admitted the passport, Mr Yakubu's identity may have been established, allowing for a consideration of the merits of his refugee claim.

[14] Given my conclusion that the RAD's decision was otherwise unreasonable, I need not decide whether it should have held an oral hearing. I merely point out that there was a live issue that the RAD failed to consider.

III. Conclusion and Disposition

[15] The RAD's treatment of the issue of identity was not transparent, intelligible, or justified on the evidence – it was unreasonable. I must, therefore, allow this application for judicial review and order another RAD member to reconsider Mr Yakubu's appeal. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-2599-23

THE COURT'S JUDGMENT is that

1. The application for judicial review is allowed and another member of the Refugee Appeal Division shall reconsider the applicant's appeal.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

ANNEX***Immigration and Refugee Act, SC 2001, c 27*** ***Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)***

Appeal

110 (1) Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection.

Notice of appeal

(1.1) The Minister may satisfy any requirement respecting the manner in which an appeal is filed and perfected by submitting a notice of appeal and any supporting documents.

Restriction on appeals

(2) No appeal may be made in respect of any of the following:

(a) a decision of the Refugee Protection Division allowing or rejecting the claim for refugee protection of a designated foreign national;

(b) a determination that a refugee protection claim has been withdrawn or abandoned;

(c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;

(d) subject to the regulations, a decision of the Refugee Protection Division in respect of a claim for refugee protection if

Appel

110 (1) Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile.

Avis d'appel

(1.1) Le ministre peut satisfaire à toute exigence relative à la façon d'interjeter l'appel et de le mettre en état en produisant un avis d'appel et tout document au soutien de celui-ci.

Restriction

(2) Ne sont pas susceptibles d'appel :

a) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile d'un étranger désigné;

b) le prononcé de désistement ou de retrait de la demande d'asile;

c) la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

d) sous réserve des règlements, la décision de la Section de la protection des réfugiés ayant trait à la demande d'asile qui, à la fois :

(i) the foreign national who makes the claim came directly or indirectly to Canada from a country that is, on the day on which their claim is made, designated by regulations made under subsection 102(1) and that is a party to an agreement referred to in paragraph 102(2)(d), and

(ii) the claim — by virtue of regulations made under paragraph 102(1)(c) — is not ineligible under paragraph 101(1)(e) to be referred to the Refugee Protection Division;

(d.1) a decision of the Refugee Protection Division allowing or rejecting a claim for refugee protection made by a foreign national who is a national of a country that was, on the day on which the decision was made, a country designated under subsection 109.1(1);

(e) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister for a determination that refugee protection has ceased;

(f) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister to vacate a decision to allow a claim for refugee protection.

Making of appeal

(2.1) The appeal must be filed and perfected within the time limits set out in the regulations.

Procedure

(3) Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or

(i) est faite par un étranger arrivé, directement ou indirectement, d'un pays qui est — au moment de la demande — désigné par règlement pris en vertu du paragraphe 102(1) et partie à un accord visé à l'alinéa 102(2)d),

(ii) n'est pas irrecevable au titre de l'alinéa 101(1)e) par application des règlements pris au titre de l'alinéa 102(1)c);

d.1) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile du ressortissant d'un pays qui faisait l'objet de la désignation visée au paragraphe 109.1(1) à la date de la décision;

e) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant la perte de l'asile;

f) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant l'annulation d'une décision ayant accueilli la demande d'asile.

Formation de l'appel

(2.1) L'appel doit être interjeté et mis en état dans les délais prévus par les règlements.

Fonctionnement

(3) Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut-

agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.

Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.

Time limits

Délais

(3.1) Unless a hearing is held under subsection (6), the Refugee Appeal Division must make a decision within the time limits set out in the regulations.

(3.1) Sauf si elle tient une audience au titre du paragraphe (6), la section rend sa décision dans les délais prévus par les règlements.

Evidence that may be presented

Éléments de preuve admissibles

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

Exception

Exception

(5) Subsection (4) does not apply in respect of evidence that is presented in response to evidence presented by the Minister.

(5) Le paragraphe (4) ne s'applique pas aux éléments de preuve présentés par la personne en cause en réponse à ceux qui ont été présentés par le ministre.

Hearing

Audience

(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :

(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;

a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

(b) that is central to the decision with respect to the refugee protection claim; and

b) sont essentiels pour la prise de la décision relative à la demande d'asile;

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2599-23

STYLE OF CAUSE: ABDULAI YAKUBU v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ON

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REASONS:

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