Federal Court  Cour fédérale

Date: 20240828

Docket: IMM-10614-23

Citation: 2024 FC 1334

Toronto, Ontario, August 28, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

OMAR JAWARA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dated July 28, 2023 [Decision]. The RAD affirmed a decision of the Refugee Protection Division [RPD], which found the Applicant is 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*]. These concurrent

determinations by the RPD and RAD were made because the Applicant failed to establish his identity. The RAD based its finding on credibility issues given multiple contradictions and inconsistencies in the documentary and oral evidence, and documentary irrelevance. The application will be dismissed because the Decision is reasonable.

II. Facts

[2] The central issue is whether the Applicant is who he says he is, including where he was born and the adequacy of his documentation and explanations.

[3] The Applicant's narrative from his Basis of Claim [BOC] is as follows. I have removed what I consider non-material information.

[4] The Applicant alleges he is a 25 year old citizen of the Gambia. He says he was born in the village of "A" [real name deleted] at a hospital bearing the name of another village which I will call "B."

[5] The Applicant alleges he is bisexual, and seeks refugee protection on the basis of his sexual orientation. The Applicant alleges he has been aware of his attraction to men since age 13 or 14, but could not openly express his feelings due to taboo in both the Gambia and the Muslim community to which he belonged.

[6] On January 30, 2019, a relative allegedly caught the Applicant kissing a male friend while undressed. He claims the relative locked him in a room and lashed him about 300 times with a metal tool. The elders of his community then decided to stone him to death as punishment.

[7] In early 2019, the Applicant's mother helped him escape. The Applicant fled to another country by bus and ferry. He paid a bus driver additional money to help him cross the border, as he did not have any identity documents. He then fled to Spain through an agent and additional financial assistance from his mother. He says he could not claim asylum in Spain due to the COVID-19 pandemic.

[8] Thereafter and while in Spain, the Applicant says he was attacked by groups of men on two occasions in June 2021. The second time, he says he was beaten severely and broke his ankle. The Applicant says his attackers, speaking his language, discussed killing him. He suspects they were sent by his family. The Applicant says he ran away and was taken to hospital by a passerby, where he received surgery on his ankle. He stayed there for one week, after which he stayed with a friend.

[9] Allegedly fearing for his life, the Applicant says he then took his friend's Spanish passport and fled again to Canada, arriving the Fall of 2021. Upon arrival he was detained by Canadian authorities for 10 days for identity issues.

III. Decision under Review

[10] The RAD agreed with the RPD and held the determinative issue is whether the Applicant failed to establish his identity, a threshold issue in refugee protection.

A. *Identity of Applicant*

[11] The RAD upheld the RPD's finding that the Applicant failed to establish his identity on a balance of probabilities:

> [12] As noted by the RPD, the burden is on the Appellant to establish his identity. Section 106 of the IRPA states that the RPD must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing their identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain documentation. Rule 11 of the RPD Rules also states that a claimant must provide acceptable documents establishing identity and other elements of the claim.
>
> [13] A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them. Where a refugee claimant fails to produce acceptable documentation establishing identity and fails to provide a reasonable explanation for the lack of documentation, this can have a serious adverse impact on their credibility. If the claimant fails to establish their identity, it is fatal to their claim for refugee protection.

[12] The RAD determined that the RPD was correct for the many reasons:

- The Applicant has not provided photo ID;
- The Applicant provided inconsistent evidence respecting his place of birth;
- The Affidavit of BT does not establish the Applicant's identity;
- The birth certificate and attestations do not establish the Applicant's identity;
- The affidavit of the Applicant's mother does not establish identity;
- The medical records do not establish the Applicant's identity;

- The identity documents of the Applicant's family members do not establish his identity;

- The remaining documents do not establish the Applicant's identity.

[13] The RAD states:

> [37] I have thoroughly considered the Appellant's arguments, as well as the documents he has submitted to establish his identity. Given the credibility concerns I have outlined, I find these documents insufficient, either discretely or cumulatively, to establish the Appellant's identity on a balance of probabilities.
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> [38] In doing so, I acknowledge the Appellant's argument that the Appellant may be a citizen of the Gambia. However, given his lack of identity documents, his internally inconsistent testimony, and his inconsistent documentary evidence respecting where he was born and lived (including the affidavit of his mother), I am not satisfied, on a balance of probabilities, that the Appellant is who he says he is. For that reason, I am not persuaded that the question of identity can be "differentiated" such that, irrespective of where he was born, he is Gambian. Place of birth is a crucial part of establishing a person's identity, given that it is listed on most countries' passports and ID cards, such as those submitted to the RPD in this case. It is for this reason that the Appellant's lack of identity documents and inconsistent testimony and evidence respecting his place of birth taints his credibility to such a degree that I am unable to find, on a balance of probabilities, that the Appellant has credibly established his identity.
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> [39] I acknowledge that the Appellant has been consistent with respect to his name, date of birth, and nationality. However, the credibility findings I have made respecting his lack of Gambian ID card and the inconsistencies in his place of birth, lead me to question whether the Appellant is credible with respect to the other elements of his identity. Even acknowledging the numerous other pieces of evidence that the Appellant has tendered, given the credibility concerns I have identified I find them insufficient to establish his identity on a balance of probabilities. This is not a question of imposing Canadian expectations of public services on Gambian identity documents; rather, it is in response to the Appellant's non-credible testimony respecting his place of birth and lack of Gambian ID card, and the inconsistent documentary evidence (including the Appellant's own BOC narrative, Schedule

> A, mother's affidavit, and other documents), respecting his place of birth.
>
> [40] I acknowledge the submissions of the Appellant that the RPD ought not to have made a finding that the Appellant's inconsistent evidence and testimony undermine his credibility with respect to the merits of his claim. I agree. However, because the Appellant has not established his identity, I find I cannot address the merits of his claim. This is because identity is a threshold issue; if the Appellant's identity is not established, I cannot proceed further in considering his claim.

(1) Place of Birth

[14] The RAD upheld the RPD's finding that the evidence was inconsistent about the Applicant's place of birth, namely between the town of "B" and the village of "A" (a 6-hour drive apart).

[15] The RPD noted:

> [25] The claimant offered the explanation that the village is ["A"] where he was born and the hospital that was built in the town is called ["B"]. He testified that every person born in that hospital put ["B"] even if they are born in ["A"]. The panel does not accept this explanation because it does not reasonably explain the following:
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> > • why the claimant would state on his BOC form that his parents and siblings currently live in ["B"] [*sic*];
> >
> > • why he would state on his BOC narrative that he was "born in the town of ["B"]" [*sic*];
> >
> > • why he would state on his Generic Application Form that his "place of birth – city/town" is ["B"];
> >
> > • why his mother's affidavit would state that "… ["B"] has been my marriage home for what is now close to three decades, it is also where all my children were born including Omar";

> • why his birth certificate would state that his "place of birth" is ["B"]; and
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> • why the letter from the registrar that confirms the birth certificate would state that the claimant was "born at ["B"]".

[16] The RAD agreed with the RPD, finding that this inconsistency significantly undermined the Applicant's credibility of his evidence and testimony as to his place of birth. The Applicant's responses to questions by the RPD did not resolve this consistency.

[17] The RAD further agreed with the RPD in finding that the changes in the Applicant's testimony amounted to an "evolution" of his testimony to account for the noted inconsistency. The RAD also noted that the Applicant submitted no evidence (other than his own testimony) to support his claims a hospital named ["A"] in the village of ["B"] even existed.

[18] The RAD also referred to the Applicant's birth certificate and initial attestation of birth from the Registrar and Birth of Deaths, placing no weight on either document. The RAD stated:

> [28] The birth certificate and initial attestation of birth are themselves inconsistent with a later attestation of birth completed by a traditional leader, which states that the Appellant was born in ["A"]. I have already rejected the Appellant's explanation for the differences outlined in his various documents respecting his place of birth. Additionally, I would expect two attestations of birth to be consistent on where the Appellant was born. Given the inconsistency between the attestations of birth respecting where the Appellant was born, I place no weight on either of them to establish his identity. Simply put, I cannot determine which one is correct.
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> [29] For the same reasons, I place no weight on the birth certificate because, while consistent with the Appellant's BOC narrative that the Appellant may have been born in the town of ["B"], it is inconsistent with his testimony that he was born in the village of ["A"] and the traditional leader's attestation of birth. I

> find none of these documents sufficient to establish the Appellant's identity.

(2) Supporting Affidavits

[19] The RAD also upheld the RPD's finding that two supporting affidavits, one of BT, a commissioner for oaths in the Gambia, and the other of the Applicant's mother, did not establish the Applicant's identity. The RPD found on a balance of probabilities neither of these documents were genuine. The RAD made no findings of authenticity or genuineness, but gave no weight to either document because of their direct contradictions with the Applicant's testimony, and, in the case of the former, because the Applicant was not in the country when BT wrote the affidavit.

[20] The RAD's findings in regard to these affidavits centred around the same inconsistencies about the Applicant's place of birth noted above. For example, the RAD points to how the Affidavit of BT stating "the available record indicates that [the Applicant] was born… at ["A"]", is inconsistent with the Applicant's letter from the Registrar of Births and Deaths and his birth certificate which state he was born "at ["B"]." Meanwhile, the affidavit of the Applicant's mother states that "["B"] has been my marriage home for what is now close to three decades", which is yet again inconsistent with the Applicant's testimony.

(3) No adequate documents e.g. photo ID

[21] In its Decision, the RAD noted:

> [14] The Appellant has not provided any government-issued photographic identity documents to establish his identity, such as a passport, driver's licence, or identity (ID) card. The RPD found that the Appellant's lack of ID card and explanation for not having

one was inconsistent with the objective evidence of the National Documentation Package (NDP), which states that Gambian citizens over the age of 18 are required to carry an ID card with them at all times and that failure to do so is punishable by a fine or prison sentence.6 It rejected his explanation that, in the village he grew up in, he did not need one and did not even know how to obtain such a document when he lived there, and that how the law is written is different to how it is enforced.

[15] On appeal, the Appellant argues that the RPD erred in this analysis because it failed to consider counsel's submissions that ID cards are too expensive for the majority of Gambian citizens. I reject this argument. As noted by the RPD, the Appellant did not testify that he did not have an ID card in the Gambia because of its cost. Rather, he stated that he did not need an ID card because they were not used in the Gambia. Even acknowledging the documentary evidence7 submitted after the hearing that ID cards are unaffordable for many rural dwellers, this was not part of the Appellant's testimony and I therefore do not accept that it is a reason why he does not have one.

[17] I further note that the Appellant was able to provide copies of his mother's passport, a brother's passport, another brother's biometric ID card, his father's ID card, an ID card for a local traditional leader, and ID card for a commissioner for oaths. Even acknowledging the Appellant's testimony that his brothers required passports or ID cards in order to travel to other African countries, this does not explain why his mother would have a passport and his father would have an ID card, but he needed neither because they were not necessary to possess in his area.

[18] Whilst I can accept that the Appellant would have left the Gambia in haste and might therefore not be expected to have been able to apply for a passport, the Appellant's testimony that he never had an ID card is inconsistent with the objective evidence, as well as the evidence of four of his family members possessing photo identification. The NDP evidence that ID cards are mandatory is, in fact, supported by the news article referred to by Counsel in submissions, because it states at one point that "[t]he Alkali foresees a challenging time for poor farmers who cannot afford to pay for the ID card, noting that these people may land in the hands of the immigration officers who may not entertain any excuse."This statement is consistent with the ID card being mandatory for all people, including poor farmers who cannot afford the new biometric version of the card, and that there are sanctions for not possessing one.

> [19] Based on the consistency of this evidence, I do not accept the Appellant's explanation for not having a government-issued ID card from the Gambia and find that it has a serious adverse impact on the credibility of his allegations respecting his identity. I confirm the RPD's finding on this point.

(4) New Evidence

[22] The Applicant submitted two pieces of new evidence on appeal to the RAD: 1) The United Kingdom (UK) Statutory Declarations Act 1835, which is applicable to statutory declarations made in the Gambia; and 2) ECOWAS identity card for BT. This evidence was submitted by the Applicant to address the RPD's question of why BT would have sworn an affidavit before himself.

[23] The RAD found that this evidence was admissible but was of "limited assistance in resolving the question of the Appellant's identity" (para 9).

(5) Remaining Evidence

[24] The RAD similarly found that the Spanish medical records and identity documents of the Applicant's family members did not establish the Applicant's identity. With respect to the identity documents, the RAD stated:

> [34] The effect of this Appellant's internally inconsistent testimony and the inconsistency of various other documents is such that I have reason to doubt the credibility of the Appellant's evidence and testimony that these family members are, in fact, his family members. This is particularly so, given that the Appellant's mother's affidavit is inconsistent with his testimony respecting where he was born and where they lived in the Gambia for the last number of decades. I find that the differences inconsistencies between the Appellant and his mother respecting his place of birth,

> as well as the place of birth listed on his brothers' identity documents, lead me to place little weight on the cumulative nature of these documents to establish his identity. I therefore find them insufficient to establish the Appellant's own identity.

[25] Given the credibility concerns listed above, the RAD found the remaining evidence tendered by the Applicant was insufficient to establish the Applicant's identity, individually or together with the other documents. This evidence included photographs of the Applicant in the Gambia and football association documents. The RAD states:

> [35] In response to the Appellant's arguments, I have finally considered the photographs, football association documents[19] submitted to the RPD, and find them insufficient to establish the Appellant's identity. The laminated card states that the Appellant was a member of [deleted] FC and was issued by [deleted] Sports Association. The photos of a second card stating "["A"] football Association" appear to be cropped photographs of a computer screen showing this information, and not an actual card. I place no weight on the photos of this card to establish the Appellant's identity, given that they appear not to be photos of a physical player card. I further find the photos of the [deleted] player card insufficient to establish the Appellant's identity.
>
> [36] I accept that the photographs submitted to the RPD show the Appellant in the Gambia, but I find they are not probative in establishing the Appellant's identity and place no weight on them as a result.

[26] The RAD noted that it considered the Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics in its Decision.

IV. Issues

[27] The issue is whether the RAD's Decision is reasonable.

V. Standard of Review

[28] The parties submit the standard of review is reasonableness, and I agree.

[29] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or

> significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

[30] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
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> [Emphasis added]

[31] The Supreme Court of Canada in *Vavilov* at paragraph 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies," and provides guidance that the reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has

> fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
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> [Emphasis added]

[32] Furthermore, *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances." The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
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> [Emphasis added]

[33] Moreover, *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations

> would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

[34] The Federal Court of Appeal recently held in *Doyle v Canada (Attorney General),* 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
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> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

VI. Submissions of the Parties

A. *Was the RAD's finding that the Applicant had not established identity reasonable?*

(1) Onus and burden

[35] Applicants must establish they are who they say they are. The determination of this issue of identity is a question of fact: (*Husein v Canada (Citizenship and Immigration)*, 1998 CanLII 18842 (FC), citing *White v R*, 1947 CanLII 1 (SCC), [1947] SCR 268).

[36] The *IRPA* sets out the establishment of identity for claimants without identification. *IRPA* places the burden on the claimant to provide acceptable documentation or reasonable explanation(s) why they have not. Notably, a point that confuse some, there is no onus on the RPD or the RAD or the Respondent to establish a claimant's identity:

Credibility	**Crédibilité**
106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	**106** La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[37] That the onus is squarely on the Applicant to prove they are who they say they are, is reinforced by Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256:

Documents	**Documents**
11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.	**11** Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

[38] The jurisprudence confirms the onus is on the Applicant to establish identity on a balance of probabilities (*Ahmedin v Canada (Citizenship and Immigration)*, 2018 FC 1127). The jurisprudence also establishes this is a "high burden" (*Su v Canada (Citizenship and Immigration)*, 2012 FC 743). Neither legal proposition is disputed.

[39] The Applicant submits a balance of probabilities is not certainty of proof, and so the RAD's finding that the Applicant did not provide sufficient evidence to establish his identity is erroneous on the face of the totality of the evidence tendered. The Applicant points to *Ramalingam v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 (FC), where Dubé J comments on the presumption of validity for foreign identity documents (paras 5-6). However, I note that the RAD does not make any findings on the validity of these documents, but instead places little weight on them.

[40] I have reviewed the evidentiary issues set out in both oral and written submissions by both parties. Indeed the assessment of this evidence by the RAD formed almost the entirety of this case as addressed by both parties.

(2) Inconsistencies in Place of Birth and Identity Documentation

[41] The Applicant submits the RAD's focus on the inconsistency in the Applicant's place of birth was a narrow and one-sided analysis of the evidence that unduly favoured documentary evidence over sworn testimony and did not afford the Applicant the presumption of truthfulness. There is no merit in this submission. His evidence was as given but there is no requirement that it be accepted in the face of multiple inconsistencies and contradictions, particularly where alleged corroborative evidence was of little or no relevance.

[42] The Applicant further submits that while the RAD correctly outlined the framework of analysis for identity, it engaged in selective revision of the evidence and overlooked the Applicant's explanation for the lack of a national identity card, as well as the steps taken by the Applicant to obtain identity documentation. The Applicant argues that the RAD Member acted with zeal and as an advocate for a particular theory regarding the Applicant's identity, pushing the standard to a certainty of proof. Again and with respect I am not persuaded this is the case. In my view, given the volume of material filed by the Applicant, the importance of identity, and the statutory onus lying as it did on the Applicant, the RAD engaged in a reasonable, careful, and detailed analysis of the evidence including that of the Applicant and the documents, and reasonably found he had failed to establish his identity.

[43] In my respectful view, the RAD reasonably found multiple credibility concerns with the Applicant's testimony and evidence, resulting in it finding that he had not credibly established his identity as a citizen of the Gambia. His credibility was tainted. The Respondent further

submits that the Applicant did not provide reasonable explanations for these inconsistencies. All of this is detailed in the reasoning of the RAD and in my view is reasonable given the record.

(3) The Evidence as a Whole

[44] The Applicant submits that "one may be a liar and a refugee both" (*Canada (PSEP) v Gunasingam*, 2008 FC 181 (CanLII) at para 1), and therefore that if the Applicant's explanations are still not believed, the lies (of the Applicant, it seems) should be stripped and the "totality" of the evidence should be assessed by this Court such that he obtains a different and favourable outcome.

[45] That, with respect, is not the role of a Court on judicial review. Instead the Court is to note who has the onus (the Applicant in this case), whether the decision maker meaningfully grappled with the evidence both of the Applicant and the documents (it clearly did, no stone was left unturned), and determine if the Decision adds up (it does). Throughout this process the Court must remember it is not conducting an appeal, nor may it substitute the Court's views for that of the RAD whose determinations are entitled to respectful deference (per *Vavilov*) given their expertise is matters such as this.

[46] Certainly the Court is not to engage in second guessing and reweighing and reassessing the evidence unless there is a fundamental error or exceptional circumstance. On my review – and I reviewed this in detail through the written and oral representation concerning the evidence which formed almost the entirety of this case - neither is present. Thus and while the Applicant submits the Court should review the "totality" of the evidence and essentially make a contrary

identity determination on a balance of probabilities, the Court declines that invitation because at its root it is an impermissible request to reweigh and reassess the record in the absence of fundamental error such as a fatal misapprehension of evidence.

[47] The Applicant relies on *Sheikh v Canada (Minister of Citizenship and Immigration),* 2000 CanLII 15200 (FC), in which Lemieux J held:

> [23] The discrepancies relied on by the Refugee Division must be real (*Rajaratnam v. M.E.I.,* 135 N.R. 300 (F.C.A.). The Refugee Division must not display a zeal "to find instances of contradiction in the applicant's testimony... it should not be over-vigilant in its microscopic examination of the evidence" (*Attakora v. M.E.I* (1989), 99 N.R. 168 at paragraph 9). The alleged discrepancy or inconsistency must be rationally related to the applicant's credibility (*Owusu-Ansah v. Minister of Employment and Immigration* (1989), 98 N.R. 312 (F.C.A.). Explanations which are not obviously implausible must be taken into account (*Owusu-Ansah, supra*).
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> [24] Moreover, another line of cases establishes the proposition that the inconsistencies found by the Refugee Division must be significant and be central to the claim (*Mahathmasseelan v. Canada (M.E.I.)*, 15 Imm.L.R. (2d) 30 (F.C.A.) and must not be exaggerated. Marceau J.A. in *Djama v. The Minister of Employment and Immigration* (A-738-90, June 5, 1992, expressed the principle in the following manner:
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> > In our opinion, the members of the panel clearly exaggerated the import of a few apparent contradictions, hesitations or vague statements which they succeeded in detecting in the comments of the claimant, and they could not on that basis alone treat his testimony as a whole as being the testimony of a liar. It seems to us that their fixation on the details of what he stated to be his history caused them to forget the substance of the facts on which he based his claim.
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> [Emphasis added]

[48] With respect there is nothing microscopic or overzealous that I am able to detect about the RAD Decision, which is as detailed as one would expect given the extensive inconsistencies and contradictions in the evidence, credibility concerns, and the indisputable conclusion that some documentary evidence was quite irrelevant, all of which were properly subject of reasoned analysis.

[49] I agree the level of risk asserted in the Applicant's BOC affects the level of procedural protection the RAD should reasonably give the Applicant. The Supreme Court of Canada states in *Vavilov*:

> [133] It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker*, at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.
>
> [134] Moreover, concerns regarding arbitrariness will generally be more acute in cases where the consequences of the decision for the affected party are particularly severe or harsh, and a failure to grapple with such consequences may well be unreasonable. For example, this Court has held that the Immigration Appeal Division should, when exercising its equitable jurisdiction to stay a removal order under the Immigration and Refugee Protection Act, consider the potential foreign hardship a deported person would face: *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84.
>
> [Emphasis added]

[50] However, I am not persuaded there is procedural unfairness in this case. The Applicant had the ability to make his case. He had the assistance of experienced counsel in writing his BOC, containing but not satisfactorily addressing its inconsistencies. He had counsel before the RPD and RAD to assist making his case. However, it remains that his documentary evidence was not relevant, inconsistent and or contradictory such that he failed to meet his onus to establish he was who he claimed to be. Moreover I agree his evidence 'evolved' from when he was before the RPD to when he was before the RAD – and it is not unusual for tribunals to find "evolving" evidence gives rise to concerns about weight and credibility, as here.

[51] With respect, in my view the RAD's decision follows an internally coherent and rational chain of analysis that demonstrates a very detailed and meaningful review of and proper grappling with inconsistent, contradictory and evolving evidence.

B. *Did the RAD err in assessing the Applicant's sur place claim?*

[52] The Applicant submits the RAD committed a reviewable error in failing to properly assess the Applicant's *sur place* claim. There is no merit in this line of argument given the following jurisprudence: (*Husein v Canada (Citizenship and Immigration)*, 1998 CanLII 18842 (FC); *Flores v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1138 at paras 7-11; *Liu v Canada (Citizenship and Immigration)*, 2012 FC 377 at para 6; *Naeem v Canada (Citizenship and Immigration)*, 2014 FC 1134 at para 5). Given identity was not established there was no country of reference in respect of which a *sur place* claim could be analyzed.

VII. Conclusion

[53] This application for judicial review must therefore be dismissed.

VIII. Certified Question

[54] Neither party propose a question of general importance, and I agree none arises.

JUDGMENT in IMM-10614-23

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed and there is no question of general importance to certify.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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